

The complaint

Ms K complains about Marshmallow Insurance Limited (“Marshmallow”) declining a claim she made on her car insurance policy and cancelling her policy.

What happened

Ms K held car insurance underwritten by Marshmallow. Her policy started in June 2023.

In January 2024 Ms K was unfortunately involved in an accident where her car was driven into a ditch. After this accident, her car was collected and taken into storage by Marshmallow. Shortly after the claim was reported, Marshmallow discovered the road tax on Ms K’s car had expired on 1 December 2023.

Due to the road tax having expired, Marshmallow decided to cancel Ms K’s policy with immediate effect and decline her claim. Ms K complained about this, and also that she’d been wrongly told by Marshmallow it wasn’t in possession of her car after it had been collected.

In its final response, Marshmallow said it hadn’t acted unfairly by cancelling the policy and declining the claim as Ms K had breached the policy terms by allowing the road tax to expire. Marshmallow accepted, though, it had made an error misinforming Ms K that it hadn’t collected and stored her car and in recognition of this it offered her £200 compensation.

Marshmallow later agreed to reverse its decision to decline the claim, accepting that the lack of road tax hadn’t materially affected the claim arising.

Our investigator didn’t think this was enough. He said that Marshmallow had acted unfairly by cancelling the policy and made some recommendations to put that right.

Marshmallow didn’t agree, so the complaint has been referred to me to decide. I issued a provisional decision upholding the complaint and I said the following:

“Decline of the claim

I think that it was unfair for Marshmallow to have declined the claim in the first instance but since Marshmallow has now agreed to cover the claim I don’t need to consider this further other than the impact to Ms K of its original decision to decline the claim, and also how it handled the claim.

I think Ms K has suffered a lot of distress and inconvenience caused by how the claim was handled and Marshmallow’s decision to decline it. In particular:

- *Ms K was given misleading information about where her car went following the accident. She was initially told it was recovered by the Police and it was only once Ms K herself told Marshmallow she’d receive a text message from Marshmallow’s recovery agent did it acknowledge it had arranged to recover the vehicle.*

- Marshmallow unfairly declined the claim in the first instance.
- Ms K was without her car for over two weeks because of the above delays, which had impact on her ability to get to work and general transport.
- Ms K had to make her own arrangements for repairs.

Marshmallow offered to pay Ms K £200 in compensation. But I don't think this took into account everything that's happened and I think it should pay her a further £100 in compensation.

Cancellation of the policy

The terms of the insurance policy allow Marshmallow to cancel the insurance policy where it can show Ms K failed to comply with any of the General conditions or General exclusions set out in the policy. And the policy sets out that Ms K needed to ensure the car had a valid road tax, which it didn't do so. So under the strict application of the policy, Marshmallow was entitled to cancel the insurance policy. But I've thought about whether it was fair and reasonable for it to do so.

Ultimately it's a legal requirement for Ms K to ensure her car was taxed or declared SORN, but she hadn't done so at the time of the accident. So she was driving the car illegally. While I recognise this was an oversight on Ms K's behalf, I can't say it was unreasonable that Marshmallow didn't want to continue providing the insurance policy. It follows, therefore, that while it was unfair for it to have declined the claim, I don't think it was unfair it chose to cancel the insurance policy.

That said, I'm conscious Marshmallow didn't give Ms K any notice it was going to cancel the policy. I accept the policy allows Marshmallow to cancel without giving notice, but it should only do so in exceptional circumstances. And I would consider it good industry practice for it to give at least seven days notice it's intending to cancel the policy.

However, I'm not persuaded Ms K has lost out because she wasn't given notice of cancellation. It seems to me she's unhappy Marshmallow has cancelled the policy in the first instance. And, as I said, I don't think it was unreasonable it did so in this case. And I'm also conscious she wasn't able to use the car in this time because of the accident and the car being in storage."

Ms K responded to say she accepted my provisional decision. Marshmallow did not provide any response.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Ms K has accepted my provisional decision, and Marshmallow hasn't given me anything more to think about, I see no reason to depart from the conclusion I reached in my provisional decision. So I've decided to uphold the complaint for the same reasons I've set out above.

Putting things right

I require Marshmallow to do the following:

- Pay Ms K a total of £300 compensation for the distress and inconvenience caused.
- Reconsider Ms K's claim subject to the remaining policy terms.

My final decision

My final decision is that I uphold this complaint and I require Marshmallow Insurance Limited to settle the complaint in line with what I've set out in the 'Putting things right' section of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 13 December 2024.

Daniel Tinkler
Ombudsman