

The complaint

Mr R complains that Marshmallow Insurance Limited (“Marshmallow”) declined a claim and cancelled his motor insurance policy.

What happened

Mr R had a motor insurance policy with Marshmallow covering his car.

On 4 May 2024 Mr R was involved in an incident causing substantial damage to his car. He contacted Marshmallow and made a claim.

Marshmallow investigated his claim and discovered that his car didn’t have valid VED (“tax”) or an MOT certificate at the time of the incident. The MOT had expired on 26 April and tax had run out a couple of months beforehand.

It said Mr R wasn’t complying with the terms and conditions of his policy. It cancelled the policy immediately and wouldn’t pay his claim.

Mr R brought his complaint to this service. He said he didn’t use his car while it wasn’t taxed, and that he was making a journey to have an MOT test done when the incident happened.

Our investigator looked into his complaint and thought it would be upheld. He thought the lack of a valid MOT and tax didn’t contribute to the incident, so he thought it wasn’t fair that Marshmallow took the action it did.

He said it should settle Mr R’s claim, pay him £350 compensation, and refund his expenses. But he said he thought it was fair that Marshmallow cancelled his policy.

Marshmallow said it was minded to agree with the view. But it didn’t agree it needed to refund ‘all’ Mr R’s expenses.

Mr R responded to the view and said he didn’t agree that Marshmallow acted fairly when it cancelled his policy. He said losing his car had led to significant financial problems for him and he thought he’d struggle to afford insurance again given the cancellation being recorded on his details.

Because both Mr R and Marshmallow didn’t agree, this complaint has been passed to me to make a final decision.

I issued a provisional decision intending to uphold Mr R’s complaint, but also considering the cancellation of his policy further:

Our approach in cases like this is to consider whether the insurer has acted in line with the terms and conditions of the policy, in accordance with the regulator’s rules, and fairly and reasonably towards Mr R.

I can see from Marshmallow’s terms and conditions that it says it won’t cover cars without a valid MOT test or tax:

“Excluded uses and excluded drivers

This policy does not cover any liability, loss or damage arising in relation to the insured vehicle being used in the following ways:

- where the vehicle does not have a Department of Transport MOT if one is required by law or Vehicle Tax”*

I’ve thought about this and considered the rules under which an insurance company carries out its claims handling. The regulator, the Financial Conduct Authority (‘FCA’), has set out rules and guidance contained in the ‘Insurance: Conduct of Business Sourcebook’ (ICOBS’).

The relevant section, ICOBS 8.1.1, provides that insurers must not unreasonably reject a claim.

ICOBS 8.1.2B provides that rejection of a claim for breach of a condition or warranty:

“... is unreasonable unless the circumstances of the claim are connected to the breach.”

In Mr R’s case, what this would mean is that for Marshmallow to reject his claim, it must show that the lack of MOT and/or tax on his car was material to the incident that happened. And, from the evidence I have, I can’t see that it has done so. Also, in later correspondence, Marshmallow said it was minded to agree with most parts of the view.

So, I think it’s fair that Marshmallow now settles Mr R’s claim under the remaining policy terms.

Because I don’t think Marshmallow acted fairly when it cancelled Mr R’s policy, I also think it now needs to pay Mr R’s reasonable, evidenced, costs. What I mean by this is that Mr R may have sustained some extra costs due to his car being damaged, such as public transport, taxi and perhaps hire costs. I can see from the file that Marshmallow didn’t agree that this was described as it needing to pay “any” of Mr R’s costs, and it’s important I reiterate I’m going to ask it to pay for Mr R’s reasonable, evidenced costs that relate to him being without a useable car only.

I’ve also thought about the cancellation of Mr R’s policy. During its investigation of Mr R’s claim, Marshmallow had some concerns about the circumstances. But it cancelled his policy because it said it was allowed to do so under its terms, which say:

“General Conditions

We can cancel this policy for a valid reason.

Your failure to comply with any of the General conditions or General exceptions set out by this policy.”

I’ve listed the general exception (exclusion) above which relates to the presence of a valid MOT.

So, under its terms, Marshmallow does include the ability to cancel a policy for this reason.

But in Mr R’s case, I don’t agree this would lead to a fair outcome. I’ve said above that I don’t agree it was fair that Marshmallow declined his claim so I further think that to say Marshmallow acted fairly in cancelling his policy would lead to a perverse result.

I would also say that, under the terms of its policy, if a car is written off it allows up to 30 days for a customer to obtain a replacement. So it follows that Mr R's claim should have been settled, and his policy would have continued per the policy wording.

So I also don't think it can record it cancelling his policy in this way. Under the terms of his policy, if the claim had been paid but Mr R hadn't replaced his car, then the policy would have come to an end. But it would not have been recorded as being cancelled by the insurer.

I think Marshmallow now needs to remove records of it cancelling Mr R's policy from its internal and any external databases it's updated. It also needs to write to Mr R and confirm this.

I've also thought about Mr R's distress and inconvenience caused by the cancellation of his policy and rejection of his claim. I can see from his evidence that this has been significant, so I'm minded to set the level of compensation at £500

Responses to my provisional decision

Mr R accepted my provisional decision. Marshmallow replied to say it would respond by the deadline I set, but then didn't respond further..

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 Mr R accepted my provisional decision and Marshmallow didn't respond, my final decision and reasoning remain the same as my provisional decision.

My final decision

It's my final decision that I uphold this complaint. I require Marshmallow Insurance Limited to:

- Settle Mr R's claim subject to the remaining terms and conditions of the policy.
- Reimburse reasonable, evidenced expenses Mr R can show resulting from the decline of his claim.
- Remove records of his policy cancellation from both its internal and any external databases it's updated, and write to Mr R confirming this.
- Pay £500 compensation to Mr R for his distress and inconvenience it caused due to its unfair cancellation of his policy.

Marshmallow Insurance Limited must pay the amount within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 11 February 2025.

Richard Sowden
Ombudsman