

The complaint

Miss G complains that Marshmallow Insurance Limited unfairly cancelled her policy and repudiated her claim. She would like Marshmallow to remove the cancellation marker from her name and cover the costs of the claim which she needed to settle herself.

What happened

In October 2023, Miss G was involved in a road traffic accident. She notified Marshmallow of this and registered a claim.

Marshmallow asked Miss G the purpose of her journey and she explained she'd been shopping and to visit family. It later asked about Miss G's occupation and Miss G said she was a Carer. Marshmallow said this was not what it had on the policy for Miss G's occupation, it had this recorded as a Cleaner.

It asked further questions about her current occupation and whether she visited clients in their homes, whether Miss G needs to take clients anywhere and whether she carried specialist equipment in her car. Miss G confirmed she visited client's homes but responded with a 'no' to both other questions.

At the end of October 2023, Marshmallow wrote to Miss G and said it was invoking its right to cancel the policy. It said Miss G was not insured to work as a Carer and use her vehicle to drive to multiple locations. It cancelled the policy as it didn't think Miss G had told them at inception she would use her car for work.

Our investigator said they didn't think Marshmallow acted fairly with the claim decision it made and its decision to cancel the policy. They said Miss G had not been asked in the notification of loss call whether she used her car for business use. So although there had been a question about her occupation and this changing, it hadn't been confirmed by Miss G that she used the car for her job.

As Miss G was returning from the shops and visiting her family, she had been using the car inline with the cover provided – for social domestic and pleasure as well as commuting to and from a fixed place of work. So our investigator didn't think she was using the car outside of the policy terms. And Miss G had not said she had been using the car in this way when answering the questions asked by Marshmallow.

Miss G had changed her occupation after the policy had been taken out, and the change from Cleaner to Carer could be considered a fundamental change in risk. However when the policy was inceptioned, there was no misrepresentation as to her employment status and role.

Marshmallow said if Miss G had notified it of the change, it would have provided cover with an increase in premium of £136.35, so the change in occupation would not have resulted in the policy being cancelled.

Based on this, our investigator didn't think Marshmallow acted fairly and reasonably when it cancelled the policy and declined to cover the claim. They recommended the following to put

things right.

- Refund any out-of-pocket costs resulting from the claim that Miss G incurred (she had pursued the claim directly with the assistance of a solicitor with legal fees associated to this.)
- Remove the cancellation record from internal and external databases and confirm this has been done with Miss G in writing.
- Pay Miss G £400 compensation for the distress and inconvenience.
- Not pursue Miss G for any costs incurred for this claim.

Marshmallow initially accepted the outcome but asked that it deduct from the settlement the additional premium it would have charged to provide the cover based on Miss G's change in occupation.

Our investigator didn't think it was fair the claim was reduced in this way and asked that Marshmallow settle the claim in line with her recommendation.

Marshmallow then provided a further response setting out that it felt Miss G had made a misrepresentation. Marshmallow felt its actions to cancel the policy were fair and it was able to do this based on the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It said based on this, it was not willing to cover the claim but would remove the cancellation marker and pay Miss G £400 for the distress and inconvenience.

Our investigator highlighted to Marshmallow that CIDRA placed no ongoing requirement on a consumer to advise it of a change to their circumstances once a contract begins. Miss G had changed her job after the policy had inceptioned so there was no misrepresentation at inception and CIDRA and its remedies are not relevant to this claim.

They maintained that Miss G had not been driving her car outside of the cover provided and it was fair for Marshmallow to cover the claim. But they felt it was fair for the additional premium that would have been charged to be deducted from the settlement and she endorsed the offer previously made by Marshmallow to settle the claim as fair.

Marshmallow has provided no further response on this complaint to confirm if it accepts the recommendation made and whether it will settle the claim in line with its previous offer. As a result the complaint has been passed to me for decision.

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.

I've decided to uphold this complaint in line with our investigators recommendation and will explain why.

When Miss G notified Marshmallow of her claim, with the assistance of her family member, Marshmallow asked a number of questions. But as has been set out and accepted by Marshmallow, it did not ask Miss G whether she used her car for business purposes. Although the call highlighted that Miss G had changed occupations, there was no indication she was driving her vehicle outside of the policy terms and conditions and cover.

Marshmallow, within its terms and conditions for the policy place an obligation on Miss G to update it if her circumstances change. It sets out a list of things which it thinks it should be updated on and this includes a change to occupation.

Any changes accepted by Marshmallow will be applied from the date the update was made and it will be entitled to vary the premium in accordance with the change. It may also add a fee of £25 for any change made.

When a change in circumstances is a fundamental change in risk, it is fair and reasonable to expect that this change is updated with the insurer. And a change in job from Cleaner to Carer could be seen as such a change and Marshmallow can determine whether, had notice been provided, that it would cover the risk.

Marshmallow explained it would have accepted the change but the cost of the policy would have increased to reflect this. The cost of this increase would have been £136.35. As I've said, its terms and conditions set out it will vary the contract in accordance with any changes and it is fair for it to do this.

Ultimately, the cover would have always been provided if Miss G had notified Marshmallow of the change and it is not fair and reasonable to cancel the policy. But it is fair for Marshmallow to increase the cost of the premium based on any change.

When Marshmallow unfairly cancelled the policy and declined Miss G's claim, it caused distress and inconvenience. Miss G used the services of a solicitor to pursue her claim directly with the third party and this came at a cost to her which she would not have incurred had the claim been accepted.

Marshmallow said when it declined the claim Miss G could have come to this Service to determine whether the claim outcome was fair. But there is no requirement on her to do this and it would not be fair to say she should remain liable for her costs because of this. And it is right that together with the costs incurred, Miss G is compensated for the distress and inconvenience of this matter.

Overall, I am not satisfied Marshmallow acted fairly when it declined to cover Miss G's claim and cancelled her policy. It has not been demonstrated she was using her car for anything beyond the cover she had in place. And had her change in job been confirmed with it, the cover would have remained in place but with an additional premium due. So Marshmallow need to take steps to put things right.

Putting things right

Marshmallow should do the following to put things right:

- On receipt of invoice, pay the costs Miss G incurred in pursuing her claim, less the £136.35 additional premium Miss G should have paid for her cover.
- Remove the cancellation record from internal and external databases and confirm this has been done with Miss G in writing.
- Pay Miss G £400 compensation for the distress and inconvenience.
- Not pursue Miss G for any other costs incurred for this claim.

My final decision

For the reasons I've explained above, I uphold Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 19 February 2025.

Thomas Brissenden

Ombudsman