

The complaint

H – a limited company – is complaining that Marshmallow Insurance Limited has declined a claim it made against a motor insurance policy and subsequently cancelled the policy.

H has been represented by its director who I shall refer to as Mr S.

What happened

In February 2024 Mr S took out a motor insurance policy to insure a vehicle H had entered into a lease agreement to hire. In April 2024 Mr S contacted Marshmallow to claim for the vehicle's theft. Shortly afterwards Marshmallow wrote to Mr S to say he'd said he used the vehicle to drive to places of business, which was outside of the allowed usages of the policy. So it declined the claim and also cancelled the insurance policy.

Mr S didn't think Marshmallow was fair and said his words had been misinterpreted. He said H was based in a large building with multiple clients in this building. He also said the vehicle wasn't being used for business use when it was stolen.

I issued a provisional decision not upholding this complaint and I said the following:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to uphold this complaint.

I first need to explain why I think H is the eligible complainant in this complaint and not Mr S. The insured vehicle was acquired through a lease hire agreement. The agreement is in the name of H and H is paying the finance through its bank account. So it is H who has the insurable interest in the vehicle and only H can suffer any financial loss from the vehicle being damaged or stolen. So, while Mr S was the policyholder, the insurance policy was actually taken out for the benefit of H – not Mr S.

Cancellation of the policy

The terms of the insurance policy entitled Marshmallow to cancel the insurance policy if it wanted to do so. But it must have a fair reason to do so. The terms of the policy also give a number of examples where Marshmallow may choose to cancel the policy and, one of these examples is:

"Your [Mr S] failure to comply with any of the General conditions or General exclusions set out by this policy."

Marshmallow says Mr S was using the vehicle for business purposes and I think it's fair it said as such. I'll now explain why.

Firstly, I've found Mr S's comments he made when he first reported the claim to be most persuasive. In particular he said the following:

"There was a few equipment and some materials I had bought for my client. I had three drills

and equipment I bought some equipment which I was supposed to use to deliver a service which was in the range of about £900 - £960."

Also, when asked "So do you, as part of your job, drive between addresses or do you have a fixed location you travel to?" Mr S answered "I drive my vehicle all around my facilities that I manage."

I also note Mr S said "I was trying to push for a courtesy car, I can't visit most of my contracts and it's affecting my job."

Mr S has said his words have been misinterpreted and also highlighted English was not his first language. And he has set out several times that he only ever drove to a single place of work. But I think what Mr S said when he first reported the claim clearly sets out that the vehicle is used for business purposes. I cannot agree that what Mr S initially said can be interpreted in any other way than this. I'm satisfied that Mr S drove it to various different locations and, more importantly, it was used to transport goods.

But, even if this wasn't the case, I cannot ignore that the vehicle is leased by H – a limited company. So, for this very reason alone, the vehicle is used for business purposes with Mr S also being able to use it for personal use.

So, taking everything into consideration, I'm satisfied the vehicle was frequently used for purposes excluded by the certificate of motor insurance. And the policy entitled Marshmallow to cancel the insurance policy in these circumstances. So I cannot say it was unfair for Marshmallow to have cancelled the insurance policy.

Decline of the claim

Marshmallow has declined the claim because it says the vehicle was being used for business purposes. Mr S has disputed this. He says it had been parked at his house for 48 hours as he was doing home improvements. And he's said the only equipment in the vehicle at the time was personal equipment and items meant for his home improvement. He says there wasn't any client equipment. He says H doesn't supply materials – it only manages its subcontractor's work as a facilities management company.

However, as I said above, Mr S's initial comments disputes this. He clearly and specifically said the vehicle had equipment bought for one of H's clients and equipment for H to deliver the service. So I'm satisfied the vehicle was clearly containing client goods at the time it was stolen and therefore, being used as part of H's business purposes. Given this, I also cannot say it was unreasonable for Marshmallow to say the vehicle was being used for business purposes at the time it was stolen.

Ultimately, I'm satisfied the vehicle was being used for a purpose which wasn't permitted by the certificate of motor insurance. And Marshmallow was entitled to decline the claim in these circumstances. I also don't find that was unfair. So it follows that I don't require Marshmallow to take any action."

Mr S didn't agree with my provisional decision and raised the following points:

- He accepts the vehicle was in H's name, but maintains it was never used for business purposes. And he said the vehicle was given to him as part of his managing director benefits.
- He maintains he only ever drove the vehicle to a single place of work.
- He said it took four days to get through to an agent to report the incident. He said his comments were only made out of frustration from the situation and due to the fact he

- urgently needed a courtesy car because of the situation.
- The vehicle was only used once or twice a week, but never for excluded purposes.
- The items in the vehicle were only for his home improvement.
- He queried why Marshmallow didn't raise this when he took out the policy rather than when he made a claim.

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.

Mr S hasn't raised anything he hasn't raised before, so I see no reason to reach a different conclusion to the one I reached before. The fact of the matter is the content of the telephone calls clearly set out that the vehicle was being used for H's business purposes. As I said, Mr S clearly set out that the vehicle had equipment bought for one of H's clients and equipment for H to deliver the service. There is no ambiguity with what Mr S said and I don't accept this was made out of frustration.

I am satisfied that the vehicle was being used for business purposes during the policy term – including when it was stolen. And for all the reasons I've set out in my provisional decision, I can't say Marshmallow has treated H unfairly.

Mr S has queried why Marshmallow didn't check the information he provided at the start. But it was his responsibility to make a fair presentation of the risk Marshmallow was being asked to insure. And there was no requirement of Marshmallow to check the information it was given when the policy started.

Mr S took the policy out online through a comparison website. And I haven't seen anything to show Mr S told Marshmallow he wasn't the owner of the vehicle, or that it was being used for business purposes. I also haven't seen anything to alert Marshmallow the information it was given at the start was incorrect.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

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

Guy Mitchell

Ombudsman