

The complaint

Mr W has complained that Marshmallow Insurance Limited cancelled his motor insurance policy.

What happened

The background to this complaint is well known to the parties. In summary Marshmallow cancelled Mr W's insurance policy and declined his claim when he notified Marshmallow he had been sentenced for a non-motoring criminal offence. It refunded his premium on a pro-rata basis.

Our investigator recommended that the complaint be upheld. She didn't find that there had been a qualifying misrepresentation under the relevant legislation. She accepted that Marshmallow was entitled to cancel the policy when it learned about Mr W's conviction, but she said that Marshmallow should have advised Mr W of this so that he had the opportunity to cancel the policy himself. She felt that any cancellation marker should be removed and that Mr W should be awarded £100 in compensation.

As Marshmallow didn't agree the matter has been passed to me to determine.

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.

Although I've summarised the background and arguments, no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.

The relevant regulator's rules provide that insurers must treat customers fairly. I've considered, amongst other things, the relevant law, the policy terms and the available evidence, to decide whether I think Marshmallow did treat Mr W fairly. Having done so I agree with the conclusion reached by the investigator. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. Marshmallow thinks Mr W failed to take reasonable care not to make a misrepresentation when taking out his policy through a comparison website in December 2023.

He was asked: *Do any of the drivers on this policy have any unspent non-motoring convictions?*

Marshmallow says that as Mr W was indicted for an offence in January 2017, he had a criminal conviction and should have disclosed this. But Mr W says he pleaded guilty in January 2024 and was sentenced in April 2024. Marshmallow hasn't shown that this information is incorrect.

Accordingly at the time he took out the policy he didn't have any un-spent non-motoring convictions. Marshmallow has said that Mr W would have been fully aware of the pending charges. I agree this is so, but that is not what the question asks. The rehabilitation period for a conviction under the relevant legislation begins from the date of conviction or from the end of the sentence – not the date of conviction. As Mr W wasn't sentenced under after the policy was taken out, I don't agree that he failed to take reasonable care when answering the above question.

Mr W was sentenced for the offence on 19 April 2024. His car was then involved in an accident on 20 April 2024 – this was a Saturday. The policy requires Mr W to tell Marshmallow immediately if any information previously given is incorrect or if anything changes. He called Marshmallow on Monday 22 April 2024 to inform them about the accident and to tell them that he had a conviction.

I don't agree it would be fair and reasonable to say Mr W should have called Marshmallow as soon as he received the sentence – he called after the weekend, I find that was reasonable. Nevertheless I accept, having seen the underwriting guidelines, that Marshmallow will not offer cover for anyone with unspent non-motoring convictions.

The policy terms and conditions say:

We can cancel this policy where there is a valid reason for doing so. If cover has already commenced, we will give you up to 7 days' notice in writing to your last email address notified to us...

If you advise us of a change of risk under your policy which we are unable to insure.

And so, I think it would have been fair for Marshmallow to treat this as a cancellation. Marshmallow advised Mr W that his policy was going to be voided on 26 April 2024. I'm satisfied that if it had been explained to Mr W when he called to advise about the claim and conviction that Marshmallow wouldn't be able to continue the policy, Mr W would have cancelled it himself. Accordingly, I don't think it is fair for a cancellation marker to be added to his record on any database.

But in any event if the policy had been cancelled in accordance with the policy terms Mr W would have been given 7 days' notice. I agree that it would have been stressful and upsetting for Mr W to be told his policy was being cancelled with immediate effect. I find that compensation is merited and £100 is fair in all the circumstances.

My final decision

My final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to:

- Remove any reference to cancellation by Marshmallow or avoidance from any internal or external databases
- Pay Mr W £100 in compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or

reject my decision before 4 June 2025.

Lindsey Woloski
Ombudsman