

The complaint

Miss W complained that Marshmallow Insurance Limited (“Marshmallow”) unfairly declined her claim and cancelled her motor insurance policy, following an accident claim.

What happened

Miss W had an additional named driver on her policy I’ll refer to as Mr R. Mr R was driving Miss W’s car on 20 December 2024 when he was involved in a collision. Miss W contacted Marshmallow to make a claim. The business subsequently found that her car didn’t have a valid MOT certificate. Miss W said it asked her for proof she’d made an appointment for an MOT. She provided this information, but Marshmallow declined the claim and cancelled her policy.

Miss W said she had to cancel an MOT test appointment on 19 December 2024 due to illness. But she arranged another appointment for 21 December. She said the car had been recently serviced and was in a roadworthy condition at the time of the accident. Miss W didn’t agree with what Marshmallow had said and complained.

In its final complaint response Marshmallow explained that its policy terms and conditions require Miss W to have a valid MOT. It said that because there was no MOT in place at the time of the accident it was able to decline her claim and cancel her policy. It advised that a car can legally be driven without an MOT certificate. But only if that journey is to take the car to a pre-booked MOT appointment. The business said this didn’t apply to Miss W’s circumstances and it maintained its decision.

Miss W didn’t think she’d been treated fairly and referred the matter to our service. Our investigator upheld her complaint. He said the relevant regulations determine that a claim can only be declined due to a breach of policy conditions if it’s material to the loss. He didn’t think Marshmallow had shown that the lack of an MOT was material to the loss. Because of this he said the business should settle the claim, reverse the cancellation, removing all records from industry databases, and refund the cost of recovery and storage Miss W had paid to include 8% simple interest. Additionally, he said the business should pay £750 compensation for the distress and inconvenience being without a car, and dealing with this matter had caused Miss W.

Marshmallow accepted what our investigator said about dealing with the claim. But said its policy terms allow it to cancel Miss W’s policy in these circumstances.

As an agreement wasn’t reached the complaint has been passed to me to decide.

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.

Having done so I’m upholding Miss W’s complaint. Let me explain.

Our approach in cases such as this is to consider if the insurer acted according to its policy terms and conditions, the regulator's rules, and that it treated Miss W fairly and reasonably.

I've checked Marshmallow's policy terms and conditions. It states:

"General Exclusions

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

.. being driven in an unroadworthy, unsafe or damaged condition or where the vehicle does not have a Department of Transport MOT if one is required by law or Vehicle Tax".

Miss W accepts her car had no MOT certificate at the time of the accident. Her policy terms exclude cover under these circumstances. So, on the face of it, Marshmallow was able to decline the claim. However, the Financial Conduct Authority (FCA) sets out rules and guidance in its 'Insurance: Conduct of Business Sourcebook' (ICOBS) that I must have regard to. I've thought about how the rules apply in these circumstances.

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".

What this means is that to decline Miss W's claim, Marshmallow must show that the lack of an MOT was material to the loss that occurred. From what I've read it hasn't shown this to be case. I also note from its more recent correspondence that the business accepts the claim should not have been declined.

Based on this it wasn't fair for Marshmallow to decline Miss W's claim for the reason it gave. It follows that the business should now settle the claim under the remaining policy terms and conditions.

I'm aware that Miss W has incurred costs when arranging recovery of her vehicle and for storage fees. In these circumstances I agree with our investigator that Marshmallow should pay these costs. This should include simple interest at 8% from the date Miss W made these payments until this is refunded.

I've thought about whether it's fair for Marshmallow to have cancelled Miss W's policy. The terms it relied upon say:

"We can cancel this policy where there is a valid reason for doing so... Valid reasons may include but are not limited to:

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

I set out the general exclusion (above) regarding a valid MOT. Based on this evidence Marshmallow's terms and conditions allow it to cancel Miss W's policy in these circumstances. However, I don't agree that it was fair for the business to decline Miss W's claim. In which case for me to say that it acted fairly when cancelling her policy, for essentially the same reason, would lead to a perverse result.

So, having considered this carefully, I don't agree that it's fair for Marshmallow to have

cancelled Miss W's policy. It should arrange for all record of the cancellation to be removed from any internal and external data bases.

I've thought about the impact all of this had on Miss W. She explained that she was able to arrange car sharing to mitigate some of the impact of her car being off the road. But the lack of a car has caused her significant inconvenience over several months. She also contended with the worry of having her insurance cancelled, and the impact this could have when obtaining future cover.

The records show shortfalls in the standard of service Miss W received. Marshmallow acknowledges these issues. This occurred when she provided proof of her MOT appointment(s). Marshmallow agreed it had failed to deal with this promptly. The business also acknowledged it could have pre-authorized the release of Miss W's vehicle from the storage yard. She'd arranged a tow truck to collect her vehicle, only to be told this had to be authorised by the business. This resulted in further inconvenience and frustration. In addition, the records show regular updates weren't provided on Miss W's claim.

To put this right, it's reasonable that Marshmallow compensates Miss W. She experienced distress and inconvenience over a prolonged period. In these circumstances I think a payment of £750 is fair.

My final decision

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

- settle Miss W's claim under the remaining terms and conditions of her policy;
- refund the reasonable, evidenced costs that Miss W can show resulted from the declination of her claim, plus 8% simple interest*;
- remove any record of the cancellation from all internal and external databases;
- pay £750 compensation to Miss W for the distress and inconvenience it caused her.

*If Marshmallow considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Miss W how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 October 2025.

Mike Waldron
Ombudsman