

The complaint

Mr O complains that Marshmallow Insurance Limited unfairly applied a no claims discount (NCD) when offering him a motor insurance policy and then charged him an additional premium after removing that discount.

What happened

Mr O was looking for a motor insurance policy on a comparison website. When doing so he said that he had 16 years NCD which he had earned overseas. He accepted a quote from Marshmallow. He was then directed to its website where he bought its policy for a sum of £908 (including the broker's fees). He chose to pay the premium by monthly instalments.

Soon after Mr O bought the policy Marshmallow asked him for proof of the 16 years of NCD. Mr O told Marshmallow he wasn't able to provide the proof it was asking for.

Marshmallow told Mr O that to keep the policy he would have to pay an additional premium of £176 –inclusive of broker's fees. It also told him he could cancel the policy. Mr O didn't cancel the policy but he didn't think Marshmallow had charged the additional premium fairly. He brought his complaint about that to the Financial Ombudsman Service.

One of our Investigators looked into Mr O's complaint. After requesting more information from Marshmallow he didn't think it needed to take any further action. Mr O didn't agree so his complaint's 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.

In bringing this complaint Mr O has referred to a number of points. I've considered everything he's said. While doing so I've considered the relevant law, regulators' rules, guidance and standards, and codes of practice. However, in this decision I don't intend to address each and every point Mr O has raised. Instead I will focus on what I see as being the key issues at the heart of Mr O's complaint and the reasons for my decision.

Did Mr O tell Marshmallow he had 16 years NCD?

Mr O said he told Marshmallow that he had zero years NCD earned in the UK. But it had applied 16 years NCD when calculating his premium without his consent.

Marshmallow's shown us evidence that when looking for a quote on the comparison site Mr O entered that he had had zero years NCD earned in the UK. But he also entered that he had 16 years NCD earned abroad. That information pulled through to Marshmallow's website and was the information it used when it provided the quote. That NCD information was included in the summary when Marshmallow offered Mr O the policy. Mr O did not amend that information and bought the policy which included the 16 years overseas NCD.

When offering the policy Marshmallow's website explains that it will not accept NCD earned on a motorbike, taxi or fleet policy.

Shortly after Mr O had bought the policy, Marshmallow contacted him and asked him for proof of his overseas NCD. Mr O said he couldn't provide the proof it wanted. He also said

he'd earned the overseas NCD on a motorbike policy and whilst driving a fleet car for a ride hailing company. Marshmallow told Mr O that NCD earned in those circumstances wouldn't be acceptable to it.

It's notable that, amongst other things, in a webchat Mr O said:

*"Yes, I originally entered **16 years of NCD** [sic] on the comparison website, not fully understanding what it meant"*

it's clear that Mr O accepted he himself entered that information on the comparison site when asking for a quote. He says he didn't enter that information on Marshmallow's website though. But it had already pulled through from the comparison site and Mr O didn't alter it. So I'm satisfied Marshmallow used the information he had provided when calculating a premium and offering him a policy. It follows that it's not the case that Marshmallow found that information from some other source and applied it to the premium calculation without Mr O's knowledge. It only used the evidence Mr O provided when looking for the policy

In the above circumstances it's apparent that Mr O made a mistake when declaring this 16 years of NCD earned overseas. But I don't think Marshmallow could have known that when it provided the quote and offered the policy. It follows that I don't think it did anything wrong when initially applying 16 years overseas NCD when calculating the premium.

I'll briefly add that Mr O said Marshmallow's use of 16 years NCD was in breach of ICOBS¹ 8.1.2. However, the paragraph Mr O refers to only applies to an insurers' conduct when refusing a policyholder's claim. That's not the case here, so that rule doesn't apply. But in any event, as I've already said I'm satisfied that Marshmallow acted fairly and reasonably.

Did Marshmallow unfairly charge Mr O an additional premium?

As Mr O couldn't provide evidence of his 16 years' NCD earned overseas Marshmallow told him it would charge him an additional premium of £176 inclusive of broker fees. Mr O doesn't think that's fair. So I've thought carefully about this.

Mr O's mistake in declaring 16 years NCD that he couldn't evidence is known in the insurance industry as a careless misrepresentation. And there's specific legislation – the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) – which sets out what insurers may do in such a situation. It says that insurers may:

- cancel the policy; or
- tell the consumer that it will settle any future claims on a proportionate basis (or apply other exclusions or limitations it would otherwise have applied).

The insurer is allowed to choose which of the above remedies it prefers and it doesn't have to offer both of the above options to the consumer. However, CIDRA doesn't allow the insurer to simply impose an additional premium. But we think it's reasonable for an insurer to explain to the consumer that there's a problem and give them the option of paying the additional premium in order to keep the policy going or otherwise to cancel the policy themselves.

In this case, Marshmallow gave Mr O the choice of either paying the additional premium or of cancelling the policy himself. It said that if he didn't reply within a week it would assume he wanted his policy to continue and it would charge him the additional premium of £176. It said that alternatively if he wanted to cancel his policy it would be happy to help him with that.

Mr O didn't reply and Marshmallow charged Mr O the additional premium of £176 which it spread across the additional instalments. So, while he remained unhappy with that, I think he

¹ ICOBS stands for Insurance: Conduct of Business sourcebook. This is part of the Financial Conduct Authority's (FCA) handbook which sets out the rules and guidance that regulates how firms sell, advise on, and administer general insurance products.

made a clear, if not explicit, choice that he would rather pay the additional premium than cancel the policy.

In those circumstances I don't think Marshmallow has done anything wrong by charging Mr O an additional premium and then collecting those funds from him. That's the case regardless that he later complained about having to pay the additional premium.

In response to our Investigator's complaint assessment Mr O's said that in charging an additional premium while he had an ongoing complaint Marshmallow was "violating" DISP² 2.3.4. However, DISP 2.3.4 refers to limits on the Financial Ombudsman's Service's jurisdiction to consider complaints about non-regulated activities. So it doesn't apply to Mr O's situation and it doesn't support his complaint.

Mr O also said he didn't cancel the policy as a £60 cancellation charge would apply, which he thinks is unfair.

My understanding is that it's the broker and not Marshmallow Insurance Limited – which is the policy underwriter – that applies the cancellation charge. And while the broker administers the policy for Marshmallow Insurance Limited and both firms operate under the Marshmallow branding, they are separate entities. As such I can't consider a complaint about the broker in this decision.

In any event, I've seen no evidence that Mr O has previously complained to Marshmallow about the application of a cancellation fee. So, as our rules require that a business must first have the opportunity to answer a complaint before the consumer brings it to this Service, this is not a matter I can consider as part of this complaint.

I'll add that Mr O appears unhappy that Marshmallow has not explained how it calculated its additional premium. But that's not something it's required to do. Insurance is a competitive market and exactly how insurers go about pricing their policies, including calculating any discounts they apply, is commercially sensitive information.

Businesses do not want to risk their competitors getting insight into their pricing practice such that they might lose a competitive advantage. And we think that's fair. So Marshmallow was not under any obligation to explain to Mr O exactly how it had calculated his additional premium.

However, Marshmallow has shared some information with us. Having considered it I've seen no evidence that Marshmallow has singled Mr O out. And as I've said above, if he didn't want to pay the additional premium he didn't have to, he could have cancelled his policy.

It follows that I've seen no evidence beyond Mr O's comments that Marshmallow treated him unfairly.

My final decision

For the reasons set out above I do not uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 27 February 2026.

Joe Scott
Ombudsman

² DISP stands for Dispute Resolution and are the rules and guidance within the FCA's handbook which set out how firms and the Financial Ombudsman Service should handle complaints.