

The complaint

Mr O complains that Marshmallow Insurance Limited (Marshmallow) cancelled his motor insurance policy without notice following an incident which led to a claim. References to Marshmallow include other organisations and individuals acting on its behalf.

What happened

Mr O had motor insurance underwritten by Marshmallow. His car was involved in a collision with another vehicle and Mr O made a claim on his motor insurance policy. Marshmallow arranged for an engineer to inspect Mr O's car. The engineer said that the tread on the offside front tyre was 0.9mm, which was below the legal limit of 1.6mm.

Marshmallow declined the claim and cancelled the policy with immediate effect.

Mr O wasn't happy about this and complained to Marshmallow. Marshmallow said under the Policy Wording, cover does not apply where the vehicle is being driven in an unroadworthy, unsafe or damaged condition.

Mr O wasn't happy with what Marshmallow said and complained to this service. Our investigator didn't uphold his complaint. The investigator said as there had been a breach of Marshmallow's terms it was able to apply immediate cancellation of Mr O's policy.

Mr O wasn't happy with what the investigator said so his complaint has been passed to me. Mr O wants the complaint upheld with a finding that Marshmallow has not shown—on the balance of probabilities—that an illegal tyre existed at the time of the accident or that tyre condition caused the loss. He also wants Marshmallow to reassess and honour the total-loss claim at the pre-accident valuation with appropriate interest, the removal of all cancellation/repudiation markers from internal and external databases and appropriate compensation for distress and inconvenience arising from investigative shortcomings (absence of a timely inspection and loss of opportunity to obtain independent evidence).

Mr O has also told this service that he does not challenge the investigator's view on the claim repudiation, but that his complaint concerns the lawfulness and fairness of the insurer's immediate cancellation and the continuing prejudice caused by the resulting "cancelled by insurer" marker. He has suggested that Marshmallow should pay compensation of £150 for distress and inconvenience arising from the unfair cancellation process and its foreseeable impact on his access to insurance.

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 don't uphold Mr O's complaint. I'll explain why.

Firstly it's important to state that I'm not an engineering expert and it's not my role to decide on the condition of Mr O's car or the cause of the collision. My role is to decide whether

Marshmallow has acted fairly and reasonably in dealing with the claim.

Mr O's insurance policy documents with Marshmallow said:

"What is NOT covered

...These sections of your insurance policy do not cover, and we will not be liable for, the following:...

- *loss or damage caused while driving other than in compliance with English law.*

...Section 14: General Conditions

...If you, or any driver on this policy, are found breaching any of your terms of cover in relation to a claim, we reserve the right to recover any payments due for third party claims and cancel your policy.

...Looking after your vehicle

You or any permitted drivers are required to maintain the insured vehicle in a roadworthy condition.

...Part 3: Cancelling or voiding your policy

...Cancellation by us

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...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.*

...Section 15: General Exclusions

This section sets out the situations which are not covered by this policy and for which we will not be liable or required to pay any sums to you in the event of any such loss or damage arising.

Excluded uses and excluded drivers

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...*
- *being driven other than in compliance with UK law..."*

I have seen the engineer's report Marshmallow obtained, which states that at the date of the inspection the tread on the tyre was below the legal limit. Mr O says that the engineer's report was conducted more than two weeks after the incident and based solely on a post-accident inspection. He accepts that it states that the offside front tyre had a tread depth of

0.9mm but maintains that this conclusion fails to account for several factors:

- The violent nature of the impact which caused extensive structural damage to the offside front of the car.
- The fact that the car spun twice and came to rest in the opposite lane, suggesting the tyre could have been abraded or damaged as a result of the incident.
- The driver's side front wheel was torn off, further invalidating the credibility of any post-incident tyre tread measurement.
- The MOT certificate issued about 7 months previously, confirming roadworthiness with no advisories related to the offside front tyre.

Mr O has provided this service with a garage invoice dated about a month before the incident for alternator replacement, during which he says the vehicle was inspected by a professional mechanic, and the driver's side front wheel was removed, meaning the wheel and tyre must have received special attention. Mr O says that had the tyre been in a worn or illegal condition at that time, he would have been informed.

Mr O maintains that a single measurement taken weeks after a violent collision is not sufficient to establish a breach of the law or policy. However he hasn't provided any expert advice or opinion or inspection report which supports his view. Mr O says that Marshmallow arranged for the car to be removed from the site of the incident so he couldn't arrange an inspection. However he could have asked Marshmallow where the car had been taken to and arranged an inspection there. Mr O also says that Marshmallow failed to investigate the cause of the accident, or seek service records, vehicle history, or prior evidence of roadworthiness, instead focusing narrowly on a tyre measurement. However I wouldn't expect a business to do this once it had established that a car wasn't roadworthy

In the absence of any expert evidence to the contrary I accept Marshmallow's engineer's expert opinion about the state of the tyre, and that the car was being driven in an unroadworthy condition and not in compliance with the law. Marshmallow was therefore entitled to cancel the policy in accordance with the terms and conditions.

Mr O says that Marshmallow cancelled the policy with immediate effect, without the required 7-day notice as stated in their own Policy Wording (Section 14, Part 3), which deprived him of any opportunity to rectify the matter, retrieve the vehicle, or seek independent assessment.

However I note that the relevant section of the policy, quoted above, stated that "*If cover has already commenced we will give you **up to 7 days notice***" (my emphasis).

Mr O says he could have driven another car under the policy for those 7 days. However I note that the policy documents stated:

"Driving other cars (third party only)

...The policyholder only will be covered to drive another private motor car within the territorial limits in extraordinary circumstances. The cover is limited to third party damages only...

The cover will apply when:...

- *your vehicle is not damaged beyond economical repair, stolen or sold...*

This cover will NOT apply when any of the above circumstances are not met.”

As the car was a total loss, Mr O couldn't have recovered it by driving it, and also wouldn't have been covered under the policy to drive another car. He could if he wished have contacted Marshmallow and arranged for the car to be recovered by other means or inspected.

Mr O has told this service that he was charged with careless driving following the incident, but has since been found not guilty due to insufficient evidence. However in my view this doesn't change the fact that an expert engineer determined that the car wasn't roadworthy at the time of the incident due to the defective tyre.

Therefore I am satisfied that Marshmallow dealt with the claim fairly and reasonably and in accordance with the policy terms and conditions.

My final decision

For the reasons given above I don't uphold Mr O's complaint. So I won't be asking Marshmallow Insurance Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 November 2025.

Sarah Baalham
Ombudsman