

The complaint

Mr H complains about the way Marshmallow Insurance Limited administered his motor insurance policy after his vehicle was declared a total loss.

What happened

Mr H's car was written off following an accident in April 2023. He contacted Marshmallow about his insurance premium in May 2023 and it told him he would be due a refund of any unused premiums once the claim had been settled.

Marshmallow later said it had got this wrong, it said it could cancel Mr H's policy from July but he wouldn't be due a refund from before that. Marshmallow renewed Mr H's policy in July 2023 but a month later, cancelled it as it hadn't received payment from Mr H. It said Mr H owed it around £130 for the cancelled policy and the month of cover it provided.

Mr H complained to Marshmallow about the conflicting information he'd been given. It said it didn't think it had done anything wrong. It said Mr H was told he could cancel the policy in July and didn't, which is why it renewed. Marshmallow said Mr H still needed to pay the £130 for the cancelled policy.

Unhappy with Marshmallow's response, Mr H brought his complaint to the Financial Ombudsman Service. Before we investigated it, Marshmallow said it would refund the £130 charged for the new policy, as it said Mr H's policy shouldn't have renewed given the vehicle had been a total loss and no other car had been insured. It said it would treat the policy as being cancelled at the end of the 2022-2023 policy term.

Mr H asked for our Investigator to review the matter. Having done so, our Investigator didn't think Marshmallow had treated Mr H fairly. He said given Mr H's claim was a non-fault one, Marshmallow had been able to recover its outlay from the third party, so it shouldn't also keep Mr H's unused insurance premium. So he said it should give Mr H a refund from 30 days after the car was deemed a total loss, until the date the policy ended. And he said Marshmallow couldn't charge a cancellation fee as the policy wasn't cancelled, it had ceased.

He noted Marshmallow had now agreed to refund the premium for the new policy, but said it should pay compensation for the misleading information given to Mr H. He said Mr H had been caused unnecessary distress and inconvenience and so Marshmallow should pay £200 compensation to reflect this.

Marshmallow asked for an Ombudsman to review the complaint. It said it would accept £100 compensation but felt £200 was too high given the circumstances. As the matter hasn't been resolved it's come 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.

Marshmallow accepts it shouldn't have renewed the policy in July 2023, given there was no vehicle to insure. It told this Service it would no longer charge the £130 it referred to in its

complaint response. So I'm not going to consider this point further and I'm satisfied this is a fair way to resolve that part of the complaint.

It is accepted that Mr H's accident which resulted in his vehicle being a total loss wasn't his fault. In early July 2023 Marshmallow confirmed this. So in this scenario – where Marshmallow settles a claim and is later able to recover its outlay – we'd expect it to provide a pro-rata refund of premiums to Mr H. Mr H says he was told his car was deemed a total loss on 12 May 2023. Under the policy terms Mr H had 30 days to insure another vehicle on the policy or it should have ceased. From reviewing the file, I can't see any reference to Mr H wanting to insure another vehicle, he only ever enquired about how to end the policy and receive a refund. So I think a fair way for Marshmallow to calculate his refund in this case – bearing in mind the unnecessary trouble Marshmallow has caused him – is to backdate it to the date the vehicle was deemed a total loss.

This is slightly different to what our Investigator has said but I don't think the findings are so dissimilar that it warrants a provisional decision allowing Marshmallow an opportunity to provide further comments. I say that particularly given Marshmallow did not object to the principle our Investigator set out of providing a refund and, for it, the difference in the amount to refund, against what I am now awarding, is relatively minor.

When calculating this refund, Marshmallow cannot deduct any cancellation fee as the policy hasn't been cancelled, it has just ceased because there is nothing to insure. And given Mr H has paid for these premiums already, Marshmallow should add 8% interest on each premium payment refunded from the date each payment was made, until the date of settlement.

There is reference in the file to Mr H maybe having not paid the final instalment of his insurance to his finance provider, but I haven't considered that as part of this complaint. So any issue relating to Marshmallow deducting any amount for this from the refund owed to Mr H would need to be considered as a new complaint.

Marshmallow has referenced recording the policy as 'cancelled', but I don't think it should be recorded as cancelled by Mr H or Marshmallow. The policy terms say the policy will cease in the event of a total loss, this isn't the same as a policy being cancelled by either party. And in this case, Marshmallow has given confusing and conflicting information to Mr H about what will happen to his policy when the claim resolves. So it wouldn't be reasonable in this case for it to treat any actions Mr H took as meaning the policy is cancelled. As such Marshmallow will need to remove any record it made of a policy cancellation of this policy, by it or Mr H, from any internal or external databases.

Mr H has said dealing with Marshmallow, whilst recovering from his injuries sustained in the accident, has caused him stress and anxiety. I've reviewed his correspondence with Marshmallow, and I can see it did give differing and contradictory information to him. In mid-May 2023, when Mr H asked about what would happen with his policy he was told that once matters were resolved, he would receive a refund of any overpayments made. On 1 July, using Marshmallow's chat function, Mr H asked again about what will happen to his premium now matters are resolved. He didn't receive a response to this and so asked again a few days later on the same chat function.

This time Mr H was told that because he had a fault claim on his policy, there was no refund due to him. This claim referred to was in relation to a different accident in 2022. Mr H rightly pointed out that this accident hadn't happened in the current policy term of 2022-2023 and having done so Marshmallow quickly corrected its mistake and confirmed Mr H would get a pro-rata refund. But it said the refund would only be calculated to 5 July – the date this discussion was had. I'm satisfied based on Mr H's policy that this information was incorrect, and it was at that point Mr H complained about it. Marshmallow then sent its complaint response, reiterating its incorrect stance, around a month later. It also reiterated that Mr H owed it £130 for the policy it renewed, which was also incorrect.

I'm satisfied this will have caused Mr H unnecessary distress and inconvenience. I've no doubt it was frustrating for Mr H to be given incorrect information by Marshmallow on more than one occasion. But I think it would be even more concerning to be told he actually owed Marshmallow money for a policy it renewed. Marshmallow had the opportunity to put this right before our Service's involvement via its complaints process, and it didn't. Whilst I don't know if Mr H paid any further amounts to Marshmallow, I've no doubt the worry of being told he's in debt with a firm would cause a degree of anxiety. So in the circumstances of this case I think it's reasonable for Marshmallow to pay £200 compensation for the impact of its poor communication.

My final decision

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

- Treat Mr H's policy as ceased when his vehicle was deemed a total loss and calculate a refund of his premiums from that date.
- Add 8% interest onto each refunded payment Mr H made from the date of payment to the date of settlement.
- Remove any record of a cancellation relating to the 2022-2023 policy from any internal or external databases.
- If Mr H has paid Marshmallow the £130 it said he owed it, then it should refund this with 8% interest from the date of payment until the date of settlement. If it wasn't paid by Mr H, Marshmallow should not pursue him for this money.
- Pay Mr H £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 May 2024.

Michelle Henderson
Ombudsman