

## **The complaint**

Mr A has complained about Marshmallow Insurance Limited. He isn't happy that it turned down a claim under his motor insurance policy.

## **What happened**

I looked at this case and provided my initial thoughts in my provisional decision as follows;

*Mr A made a claim under his motor insurance policy after his car was involved in an accident. But when Marshmallow looked into the circumstances surrounding the incident it turned down the claim. This was because Mr A's car wasn't taxed at the time of the incident.*

*As Mr A wasn't happy about this he complained to Marshmallow, but it didn't change its position. It maintained that Mr A's car tax had run out a few weeks before the incident so it declined the claim, cancelled the policy and said it would look to charge Mr A any costs it incurred. So Mr A complained to this Service.*

*Our investigator looked into things for Mr A but didn't uphold his complaint. He considered all the details and evidence surrounding the claim and although he sympathised with the position Mr A found himself in he didn't think Marshmallow had done anything wrong.*

*As Mr A didn't agree the matter has been passed to me for review.*

## **What I've provisionally 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've come to a different view to our investigator, and I'm currently minded to uphold this complaint. I'll explain why.*

*When Mr A's vehicle was involved in an accident his car wasn't taxed and hadn't been for a few weeks. I understand from his representative that he'd struggled to get his car taxed after he bought it as he wasn't given the correct paperwork. He struggled to contact the DVLA about this as well, especially as English wasn't his first language.*

*Marshmallow looked to decline Mr A's claim relying on a 'General Exceptions' clause which excluded any loss or damage 'arising while the insured vehicle is.....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...'. And it decided to cancel Mr A's policy as well.*

*I can understand Marshmallow's position and Mr A's car should've been taxed. However, I think the cancellation of Mr A's policy has produced a particularly harsh outcome in the particular circumstances of this case.*

*I say this as the fact that Mr A's car wasn't taxed didn't have any bearing on the accident. It's clear that his car was roadworthy and had a valid MOT at the time of the accident. And Mr A has explained the difficulties he had which caused the delay in getting his car taxed including the language barriers he faced and the fact he wasn't given the correct paperwork when he bought the car.*

*Given all of this I think the fair and reasonable thing to do, in the particular circumstances of this case, is for Marshmallow to reconsider Mr A's claim in line with the remaining terms and conditions of the policy. And I think it should pay Mr A £200 compensation for the clear stress, worry and inconvenience all this has caused him.*

## **Replies**

Both sides responded to my provisional decision. Mr A's representative said that he was shocked by the way Marshmallow treated his vulnerable client and felt that it hadn't treated him fairly. He said that Mr A had been pushed into personal hardship and faced mental stress because of how it dealt with him by its unfair treatment.

While Marshmallow said it would look into the claim if Mr A could produce his V5 document. It went on to suggest that it had registered keeper concerns and requested the V5 document from Mr A about five months after it declined the claim by relying on the 'General Exclusions' clause. And said it would reconsider the claim now if Mr A could produce the V5.

## **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 remain of the view that the complaint should be upheld. I don't propose to rehearse the arguments and evidence again now, especially as Marshmallow seems to accept the position outlined, in that it will reconsider the claim in line with the remaining terms and conditions of the policy. But I will address the additional points both sides have raised in response.

Marshmallow seems to now accept the position outlined in my provisional decision and that it should reconsider the claim now without relying on the 'General Exceptions' clause outlined above. It has suggested that it will reconsider the claim now but that it needs the V5 document to be produced as it has questions around the registered keeper.

I will leave Marshmallow to advance this now, but I must highlight that its delay in asking for the V5, the scrapping of his car and declining the claim initially as his car wasn't taxed will complicate Mr A's ability to provide the V5 document now. Mr A's representative has explained that by the time this was requested the car had already been scrapped which impacted the ability to gain the V5 from the DVLA. And he explained the difficulties Mr A originally faced which caused the delay in taxing his car initially which stemmed from the fact he wasn't given the correct paperwork when he bought the vehicle and because of the language barriers he faced. Given this I would expect Marshmallow to be flexible here and ensure it acts in a fair and reasonable way in reconsidering the claim now without relying on the 'General Exclusion' clause.

Mr A's representative has raised concerns about the impact all this has had on Mr A who was vulnerable and explained that he hasn't been treated fairly. I can understand this, and I'd expect Marshmallow to consider how this has impacted Mr A once it has reconsidered the claim in line with the remaining terms and conditions. But I do think Mr A should be paid £200 compensation for the clear stress and worry the incorrect decline of his claim under the '*General Exclusion*' clause caused him.

Ultimately, I'm satisfied that Marshmallow should reconsider the claim in line with the remaining terms and conditions of the policy as the fact that Mr A's car wasn't taxed didn't have any bearing on the accident and his car was clearly roadworthy. And it should pay £200 compensation for the stress and inconvenience the decline of his claim for the reasons given has caused Mr A.

### **My final decision**

It follows, for the reasons given above, that I uphold this complaint. I require Marshmallow Insurance Limited to reconsider Mr A's claim in line with the remaining terms and conditions of the policy. And pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 13 February 2024.

Colin Keegan  
**Ombudsman**