

## **The complaint**

Mr T complains that Marshmallow Insurance Limited has recorded an open claim on his motor insurance policy and asked for his full year's premium to be paid when he cancelled his policy.

## **What happened**

Another driver's representatives contacted Marshmallow to allege that Mr T had damaged their car in an incident. Mr T denied any involvement and offered proof that he was at home at the time and that his car was undamaged. Marshmallow asked the representatives for "strict proof" of Mr T's involvement, but they didn't respond.

In the meantime, Marshmallow recorded an open claim on Mr T's record. Mr T decided to cancel his policy mid-term and Marshmallow then asked him to pay the outstanding balance of the premium. Mr T was unhappy with this, and that Marshmallow hadn't accepted his evidence that he hadn't been involved.

Our Investigator didn't recommend that the complaint should be upheld. She thought Marshmallow had to open a claim when it received the allegations. She thought it had instructed solicitors immediately to contest the matter. She thought Marshmallow was entitled by the policy's terms and conditions to ask Mr T to pay the balance of his premium when he cancelled his policy. And she thought it had fairly told Mr T that it would close the claim and refund his premium payment if the claim remained dormant for a year.

Mr T replied that he was totally innocent, and he didn't accept that Marshmallow hadn't done anything wrong. As Mr T didn't agree, his complaint has come to me for a final decision.

## **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 can see that Mr T is adamant that he wasn't involved in the incident. He has provided a witness statement that he was many miles away from the site at the time of the incident. And he provided photographs to show that his front bumper was undamaged. I can understand that he must feel frustrated that the matter is ongoing. It's now almost a year since the incident and I can understand that Mr T wants this matter resolved.

But I'm satisfied that when Marshmallow received the allegations and Mr T's registration number, it was obliged to open a claim and to investigate it. It instructed its solicitors to defend the claim and they asked the other driver's representatives for proof that Mr T had been involved, such as photographs, CCTV footage or a description.

The other side didn't respond. But I can't reasonably hold Marshmallow responsible for the other side's lack of response. And I can see that the solicitors chased it regularly, which I think was fair and reasonable. So I can't say that Marshmallow did anything wrong in this.

In the meantime, there was an open claim on Mr T's record. Marshmallow explained to Mr T that it ran a risk, in keeping with relevant laws, that if the claim was closed and undefended then it could lead to a fault claim against Mr T. But, under dormancy rules, the claim could be closed after a year if no further response was received from the other side.

The Investigator has already explained that it isn't our role to decide who was responsible for causing an accident or deciding if a claim is fraudulent. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision about the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy?

I'm satisfied Marshmallow is entitled under the terms and conditions of its policy with Mr T to take over, defend, or settle a claim as it sees fit. Mr T has to follow its advice in connection with the settlement of a claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I do not find it unusual.

So I'm satisfied that Marshmallow acted within the terms and conditions of the policy and fairly and reasonably when it kept the claim open despite Mr T providing evidence of his whereabouts at the time of the incident. It's now almost 11 months since the allegations were made. And so Mr T will have to wait a further month before the claim can be closed if the other side remains unresponsive.

Mr T decided to cancel his policy and Marshmallow asked him to pay the year's outstanding premium. This is common in policies where a cancellation is made mid-term and there is an open claim. So I'm satisfied that Marshmallow was entitled to ask for this amount. And I can see that it's already explained that this will be refunded if the claim is closed after one year. I think that's fair and reasonable.

### **My final decision**

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 February 2024.

Phillip Berechree  
**Ombudsman**