DRN-4972805

The complaint

Mr H complains that Marshmallow Insurance Limited has unreasonably declined a claim he made under his commercial motor insurance policy.

What happened

Mr H made a claim to Marshmallow because his car developed faults after he drove through a large deep pool of floodwater.

Marshmallow declined the claim on the basis of a report from Mr H's roadside assistance provider, who said they dried the engine out and got him back on the road. Marshmallow's engineer said the car wouldn't have been able to be dried out and driveable that quickly if the issues were water related. Based on this, the engineer said the issues Mr H was experiencing didn't appear to have been caused by water. Marshmallow accepted some customer service issues around delays in the early part of the claim and poor communication through its online chat. It offered Mr H £150 compensation and its apologies.

Mr H later provided a report from a mechanic which suggested the engine had suffered some water related damage. But Marshmallow didn't change its position, so Mr H approached the Financial Ombudsman Service. He complained about the claim decision and about the customer service he received from Marshmallow.

An investigator considered the complaint and thought it should be upheld. She said it wasn't fair for Marshmallow to rely on the roadside assistance report to decline the claim. She said its engineer's findings weren't sufficiently detailed to persuade her that the issues weren't the result of the water. Based on the evidence available, she said she found Mr H's garage report the most persuasive, so she said Marshmallow should cover the damage which that report said was incident related. For the remaining issues, she said Mr H should provide a new, more detailed, expert report on the damage for Marshmallow to consider.

The investigator also commented on Mr H's desire to have a courtesy car provided by Marshmallow. She said he was only entitled to one while repairs were being carried out, so she didn't recommend that Marshmallow should provide a courtesy car at this stage.

The investigator didn't think Marshmallow had caused long or unreasonable delays to the progress of the claim. But she did agree its communications had been poor to begin with. She said Marshmallow's actions had caused Mr H some avoidable distress and inconvenience, and that it should pay £150 compensation to put things right.

Marshmallow didn't agree that it would be reasonable for it to rely on Mr H's garage report, or a new report from his expert. But it offered to instruct an independent engineer to assess the damage, and to reconsider its position in light of the results. Mr H agreed to this as a fair way forward, and so the complaint was closed.

However, we're now two months down the line and Mr H has confirmed he has yet to hear from Marshmallow about a date the inspection can be arranged for. And despite multiple chasers being sent to Marshmallow by the investigator, it has not responded to confirm that it has initiated the complaint settlement that both parties agreed to.

Because Marshmallow has not settled the complaint as it agreed to, the complaint has been passed to me for a final decision, which will be binding on Marshmallow if accepted by Mr H, and so something he could enforce should he feel he needs to.

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.

It's no longer in dispute that Marshmallow needs to do more to establish whether the issues and damage being claimed for were related to the incident or not. Marshmallow has offered to appoint an independent engineer to inspect the damage and issue a report. And Marshmallow has said it will reconsider its position on the claim in light of this new evidence. Mr H has also accepted this as a proposed way forward, but the settlement has yet to be fulfilled despite around two months having passed.

I've considered whether it would be fair and reasonable to direct Marshmallow to settle the claim in these circumstances. But I understand Mr H is concerned with the length of time the car has remained idle and (in his view) water damaged, while the complaint has been ongoing, and that this may have led to further incident related issues with the car. And I'm mindful any hypothetical, potential issues like this wouldn't be included if I directed Marshmallow to settle the claim based on the quotes and invoices Mr H has produced up to now.

So, taking everything into account, I agree that the instruction of an independent engineer is a fair way to progress Mr H's claim and to resolve his complaint. The independent engineer should be instructed to review the damage, and the relevant associated evidence from both sides, and to issue a report on which issues with the car, if any, are most likely incident related and which, if any, aren't. Marshmallow should then consider the results of the independent inspection and reconsider Mr H's claim in line with the terms and conditions of his policy.

I also agree that the level of customer service Mr H has experienced has fallen short of his reasonable expectations and that he's suffered avoidable distress and inconvenience as a result. I agree that £150 compensation is fair to put right the impact of Marshmallow's failings in the early part of the claim.

However, under industry rules published by the Financial Conduct Authority (FCA), Marshmallow is required to comply promptly with any award or direction made by an ombudsman, and/or with any settlement it agrees at an earlier stage of the procedures – such as an agreement following an investigator's assessment of the complaint. But it clearly hasn't done so here.

Therefore, I think Mr H has been caused further avoidable distress and inconvenience as a result of Marshmallow failing to carry out the agreed settlement promptly, and by its failure to properly engage with Mr H or the investigator about this for the past two months. I can see that Marshmallow has sent Mr H a couple of emails in this time confirming that he will be contacted by the relevant department to arrange things. But I can also see this hasn't happened yet, that nothing of substance appears to have happened with moving the settlement forward, and that Marshmallow has ignored several subsequent requests for contact from both Mr H and the investigator.

So, in addition to the £150 recommended by the investigator, I'm awarding a further £100 for the impact of Marshmallow's failings since agreeing to arrange an independent inspection.

I've also considered the length of time Mr H has been without his car. But whether it's reasonable to hold Marshmallow solely, or partly, responsible for this will depend on the results of the independent inspection. Should the inspection prove that everything Mr H has claimed for is incident related, then it could be argued Marshmallow's incorrect decision initially is what caused Mr H to be without his car between then and now. Whereas if the inspection shows the faults aren't incident related, then Mr H would not have been covered and Marshmallow wouldn't be at fault for the fact the car has been off the road since the claim decision.

So, I think Mr H should wait until the outcome of the independent inspection before discussing with Marshmallow whether he thinks it is responsible for some, or all, of the period he's been without a car. Should the parties not be able to agree on this, Mr H will be able to raise this issue as a new complaint, which he could later refer to the Financial Ombudsman Service – subject to our normal rules and timescales – if he remained unhappy with Marshmallow's final response.

My final decision

For the reasons I've explained above, I uphold Mr H's complaint.

Marshmallow Insurance Limited must:

- Appoint an independent engineer to inspect the damage and to issue a report.
- Upon receipt of this report, reconsider the claim in line with the terms and conditions of the policy.
- Pay Mr H a total of £250 compensation for the avoidable distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 16 September 2024.

Adam Golding
Ombudsman