

The complaint

Mr M complains that after he made a claim on his motor insurance policy Marshmallow Insurance Limited (Marshmallow) unfairly said he had to accept it as his fault. He further complains his claim was then cancelled.

There are several parties and representatives of Marshmallow involved throughout the complaint but for the purposes of this complaint I'm only going to refer to Marshmallow.

What happened

In September 2023 Mr M's parked car was hit by a van that did not stop. It caused damage to the bodywork, however the car was still drivable. He made a claim on his motor insurance policy.

Marshmallow said because the third-party van was not insured at the time of the incident it would be unable to recover its costs and therefore the claim would have to be settled through Mr M's own motor insurance cover.

Mr M checked with the Motor Insurance Bureau (MIB) database and found the van was insured at the time of the incident. He provided this information to Marshmallow. He disagreed with Marshmallow progressing the claim as his fault.

Marshmallow said that Mr M closed his claim on 21 September 2023. It said it closed his claim and it had been removed from his policy. It also confirmed his no claims discount (NCD) had not been affected. However Mr M said he never asked it to close the claim. He said his claim was rejected and closed without his consent. He said he wants his car to be repaired without having to pay any excess.

Because Mr M was not happy with Marshmallow, he brought the complaint to our service.

Our investigator upheld the complaint. They looked into the case and said Marshmallow had caused substantial inconvenience to Mr M because it had made an administration error regarding the third-party being uninsured. They said it should pay him £200 to apologise for the inconvenience caused. They said because Mr M had closed his claim there had been no impact on him.

As Mr M is unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I provisionally said

Claim progression

Mr M made the claim on his motor insurance policy on 9 September 2023. Based on the information and evidence provided by Mr M, Marshmallow recorded it as a non-fault claim and it handed it to its non-fault claim partner to progress.

When Marshmallow's claim partner started to look into the claim it said it had found that the third-party van that had collided with Mr M's car was uninsured. Mr M was told that due to the third-party van having no insurance it was unable to deal with his claim on a non-fault basis.

Mr M contacted Marshmallow by online chat on 12 September 2023 after being told this. He said because the accident had happened whilst his car was parked and unattended, he was not liable for the incident, and therefore it should not be recorded as his fault. During this online chat he was told by Marshmallow that the van was showing as insured on the motor insurance database.

I saw Marshmallow also told Mr M during this online chat, that his claim would be managed by one of its fault claim partners. It said he now had the option to claim on his own policy and he would need to pay the policy excess. It said if it was able to recover its costs he would be repaid any excess paid.

When Mr M made his claim he provided evidence of the third-party van hitting his car, which included images, a video and an eye-witness statement. Therefore because Marshmallow confirmed the third-party was insured, it's not clear why it changed its mind and told Mr M it would now deal with his claim as fault, when it had previously said it would be investigated with the third-party insurer as non-fault.

In November 2023 in Marshmallow's response to Mr M's complaint about his claim being dealt with as fault, it said the van who had hit his car had found to be uninsured. This is in contradiction to what it had told him during the online chat in September 2023 in which it said it had found the van was insured.

It is clear there was an ongoing administration error made by Marshmallow regarding if the third-party van was insured or not. And this is the reason for the initial delay in this claim. Marshmallow should have contacted the third-party insurer at the time Mr M made the claim and conducted the required investigations straight away.

I saw Mr M made the effort and took the time to find and provide Marshmallow with the evidence that showed the third-party vehicle was in fact insured. He provided this information to Marshmallow on 13 November 2023. This was acknowledged by Marshmallow, and it said it had forwarded this information to its relevant team to look at and it would get back to him as soon as it had an outcome.

I have not seen any evidence of Marshmallow contacting Mr M since this date. It said he had closed his claim. Mr M confirmed he did not ask for the claim to be closed. He asked only for it not to be dealt with as fault.

In April 2024 Marshmallow again said because it had now seen evidence that the third-party van was insured, that Mr M's claim had been picked up and would be investigated. However despite both our investigator and I making requests for an update and also for it to provide evidence of Mr M closing the claim, it has not responded.

Marshmallow's repeated administrative error regarding the third-party insurance cover, plus its closure of Mr M's claim without his permission, has caused significant delays to the claim, and ongoing distress and inconvenience to him over many weeks.

Therefore, I intend to require Marshmallow to progress Mr M's claim immediately using the evidence he provided in September 2023 and using the evidence that insurance was in place on the third-party van. It should be progressed without any further delay as per the terms and conditions of the motor insurance policy.

I also intend to require it to pay him £600 for the poor level of service received and the considerable avoidable delay caused to his claim.

Claim Liability

I understand Mr M said if the claim was settled as his fault he would have to pay his policy excess and also it would have an impact on future premiums and make them become unaffordable.

It's important to note that obtaining the third-party insurance details doesn't always mean a claim will immediately be classed as non-fault. Fault doesn't always mean who is being blamed for the accident. Marshmallow is entitled to investigate the claim with the third-party insurer and recover its costs before it closes the claim and records it as non-fault.

Should the third-party insurer not accept liability when the claim is investigated, Marshmallow should discuss the way forward with Mr M. He can then decide if to claim on his own policy and pay the policy excess.

Responses to my provisional decision

Mr M did not respond.

Marshmallow responded and said it had requested bank details from Mr and also instructed its claims team to pick up his claim as soon as possible.

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.

As neither Mr M or Marshmallow brought any further comments, I maintain my provisional decision and I uphold Mr M's complaint.

I require Marshmallow to progress Mr M's claim immediately using the evidence he provided in September 2023 and using the evidence that insurance was in place on the third-party van. It should be progressed without any further delay as per the terms and conditions of the motor insurance policy.

I also require it to pay him £600 for the poor level of service received and the considerable avoidable delay caused to his claim.

My final decision

For the reasons I have given I uphold this complaint.

I require Marshmallow Insurance Limited to

- Progress Mr M's claim with the third-party insurer immediately.
- Pay Mr M £600 for the poor level of service received and the significant delay caused in progressing his claim.
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Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 November 2024.

Sally-Ann Harding
Ombudsman