

The complaint

Mr J is unhappy Marshmallow Insurance Limited (Marshmallow) are holding him partially at fault for an accident under his motor insurance policy and haven't refunded his policy excess.

Any references to Marshmallow in this decision include the actions of its agents, the actions of whom Marshmallow are responsible for.

What happened

Mr J unfortunately had an accident in November 2021 which was reported to his motor insurer Marshmallow. A witness statement was received by Marshmallow in December 2022 and it tried to recover its costs from the third party's insurance company. In May 2023 Marshmallow told Mr J it wasn't financially viable to instruct solicitors to recover the loss and so it would be closing its file. Mr J told Marshmallow he wanted it to continue to pursue the claim.

In June 2023 Marshmallow emailed Mr J to say it had recovered 50% of Mr J's excess and asked for his bank details so it could send this to him. In January 2024 Mr J raised a complaint with Marshmallow as he hadn't received a refund of his excess. He also said he wasn't accepting the offer to settle the claim on a 50/50 basis. Marshmallow didn't respond to Mr J's complaint within eight weeks and so he referred his complaint to this Service.

Our investigator upheld Mr J's complaint. He said based on the evidence he didn't think it was unreasonable for Marshmallow not to continue to pursue the third party insurance company given the modest costs involved and the lack of response from the third party insurer. He said he hadn't seen evidence 50% of Mr J's excess had been refunded and the amount Marshmallow had said it would refund was incorrect. He said he thought Marshmallow should refund Mr J 50% of his policy excess and pay 8% per year simple interest on this amount. He also thought Marshmallow should pay £150 compensation to acknowledge the reasonable effort Mr J had made in trying to resolve this issue.

After receiving further information from Marshmallow our investigator issued a further view. He said he thought the evidence provided now showed Marshmallow had re-opened its file and were holding the third party 100% at fault for the accident and this was reasonable. He said he still thought Marshmallow should refund Mr J 50% of his policy excess, including 8% per year simple interest and pay him £150 compensation for the same reasons as before.

Mr J didn't agree with our investigators first view as he didn't think it was reasonable for the claim to be settled on a 50/50 basis as he had a witness supporting his version of events. He didn't respond to our investigator's second view. Marshmallow also didn't respond to our investigator's second view.

As neither party have accepted our investigators view, the complaint has been passed 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.

I have addressed Mr J's complaint points individually.

Liability Decision

Mr J was unhappy he was told by Marshmallow it would no longer be looking to pursue the third party insurance company as it wasn't financially viable to instruct solicitors to recover its loss. Mr J said he had a witness who had provided a statement and so he wanted Marshmallow to continue to pursue this.

Marshmallow have since confirmed it has re-opened its file and is chasing the third party insurance company for 100% recovery of its losses. It has said it has instructed solicitors and has chased the solicitor.

Mr J has provided a copy of a letter he received from a solicitor in June 2023 who said it had been instructed by his insurance company to recover its costs. This letter was sent to Mr J after he had been told by Marshmallow it wouldn't be pursuing the claim further. Therefore I'm persuaded Marshmallow are holding the third party 100% at fault for the accident and are pursuing the third party insurance company for a recovery of its costs. I think this is reasonable in the circumstances.

Refund of policy excess

Mr J received an email from Marshmallow on 23 June 2023 saying it had recovered 50% of his excess payment and asking for bank details to refund this to Mr J. It said 50% of Mr J's excess was £150. Mr J provided his bank details the same day.

Marshmallow haven't provided any evidence this payment has been made to Mr J and Mr J has said he hasn't received it. Additionally Mr J's policy schedule shows his excess is £350, meaning 50% of his policy excess would be £175 rather than £150. The invoice from the repairer who repaired Mr J's vehicle also shows Mr J paid a £350 policy excess.

Marshmallow should refund Mr J 50% of his policy excess (£175) as it said it would. It should also pay 8% per year simple interest on this calculated from the date it received this from the third party insurance company (no later than 23 June 2023) to the date it pays this to Mr J.

Mr J has also suffered distress and inconvenience as he hasn't received the refund he should have done, and has had to spend time chasing Marshmallow for this. I think Marshmallow should pay £150 compensation to Mr J to acknowledge this. A compensation award of this amount fairly reflects the frustration caused to Mr J and the reasonable effort he has made to sort this issue out.

My final decision

For the reasons I've outlined above, I uphold Mr J's complaint about Marshmallow Insurance Limited. I require it to:

- Refund Mr J 50% of his policy excess
- *Pay 8% per year simple interest on this amount calculated from the date it received the excess refund from the third party insurance company to the date it pays this to Mr J

- Pay Mr J £150 compensation

*If Marshmallow Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr J how much it's taken off. It should also give Mr J a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 23 December 2024.

Andrew Clarke
Ombudsman