

The complaint

Mr S complains that Marshmallow Insurance Limited wrongly removed his No Claims Discount (NCD) after he made a claim under his motor insurance policy.

Marshmallow is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As Marshmallow has accepted it is accountable for the actions of the agents, in my decision, any reference to Marshmallow includes the actions of the agents.

What happened

In April 2022, Mr S made a claim under his motor insurance policy with Marshmallow after discovering his car had been damaged while parked in the road outside his home. Mr S said he believed the car had been damaged due to vandalism rather than due to an accident involving another vehicle.

Marshmallow decided to write off the vehicle. As Mr S wished to retain the vehicle, it deducted an amount from the settlement for salvage.

In April 2023, Mr S raised a complaint with Marshmallow after discovering that his NCD had been removed.

Marshmallow said it had reviewed the damage to the vehicle and had concluded that it did not coincide with a vandalism claim and would need to be recorded as multiple claims. This could have resulted in Mr S paying a significant amount in excess costs, so it had agreed to record it as one claim. However, as it was recorded as a single incident, the amount pushed the threshold of a vandalism claim and caused the vehicle to be deemed a category N write-off (uneconomical to repair).

Marshmallow said that as the claim was handled as an accidental damage claim, rather than a vandalism claim it impacted Mr S's NCD.

Marshmallow acknowledged that it should have been clearer with Mr S, and he should have been provided with the option of either making multiple claims for the damage or having one singular claim made with his NCD deducted. It also apologised for a delay in handling Mr S's complaint. It offered Mr S £125 compensation for the distress and inconvenience.

Mr S remained unhappy and asked our service to consider his complaint. He said there was pre-existing damage on the car when he bought it and he'd made Marshmallow aware of this. He said there had been no accidental damage since he'd purchased the car. If Marshmallow had told him it didn't think the damage was due to vandalism, he would have cancelled his claim. He said Marshmallow had refused to insure him and the premiums he'd been quoted by other insurers were unaffordable.

I issued a provisional decision on 28 October 2024 where I explained why I intended to uphold Mr S's complaint. In that decision I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint."

Based on what I've seen so far, I intend to uphold Mr S's complaint. I'll explain why.

The relevant industry rules require insurers to provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress.

The policy's terms and conditions say:

"In the event of a vandalism claim, your NCD will be protected."

According to Marshmallow's notes, Mr S said he wasn't sure if his car had been damaged by an accident or by vandalism when he first made his claim. But he later said he believed the damage was due to vandalism.

Marshmallow has provided a copy of an engineer's report from May 2022 which contains a number of photographs of Mr S's vehicle. Under some of the pictures there is a description of damage followed by the wording "the insured has stated that this damage should also be included as part of the incident." There are also comments about pre-existing damage beneath some of the photographs.

In an email to Marshmallow in late May 2022, Mr S said he wanted to make it clear that the claim was vandalism, and he was told that the claims team would be informed that this is what he suspected. Mr S was told that a full assessment of his vehicle would be carried out and if it was found that his vehicle was vandalised then his NCD would be protected as per his policy wording.

In an email Marshmallow sent to Mr S in mid-June 2022, it said the engineers who inspected the damage to his vehicle did not believe all of the damage he'd mentioned was caused as a result of the incident. Due to this it had asked another engineer's firm to provide a second opinion and he would be contacted directly to arrange an inspection of his vehicle.

Marshmallow says the independent engineer inspected the vehicle a couple of weeks later. Marshmallow hasn't provided a copy of this report, but there's reference to it being "very vague" in an internal email it's shared with us.

In its response to Mr S's complaint Marshmallow says it, its repair network and an independent engineer agreed that the damage did not coincide with a vandalism claim and it would need to be recorded as multiple claims. However, this would have resulted in Mr S having to pay an excess of £500 per claim, totalling around £2,500. It says it decided to record it as a single incident, but the amount pushed the threshold of a vandalism claim and caused the car to be deemed a category N write off – uneconomical to repair.

I can't see any reference to multiple claims in Marshmallow's notes from the time of the claim. The notes from early August 2022 indicate that Marshmallow decided to deal with the claim because there was no conclusive evidence that Mr S was claiming for damage that was unrelated to the incident. The note says: "Vehicle is going to be a TL, even with the damage that would be most likely from the circs [sic]." So, Marshmallow appears to have concluded that the vehicle would be a total loss even if only damage from the incident relating to the claim was considered.

Marshmallow has acknowledged that its communication with Mr S has been poor. I can't see that it told Mr S that it would be recording his claim as accidental damage, rather than vandalism prior to settling it.

Given Mr S's concerns about the impact on his NCD, I don't think it's likely he would have gone ahead with a claim for accidental damage if Marshmallow had explained this is what the incident would be recorded as. But I think he would have gone ahead with a claim for vandalism as this wouldn't have impacted his NCD.

Mr S was paid a settlement of around £2,800 for the claim after the policy excess, his outstanding premium for the year and the salvage value was taken off. But it's unclear from its notes whether Marshmallow accepted that the incident was due to vandalism or whether it believed it was due to Mr S's car being hit by another vehicle. While Marshmallow referred to a "threshold" for vandalism claims in its response to Mr S's complaint, I can't see any reference to this in the policy's terms and conditions.

I can see that Marshmallow asked an engineer to review the damage and advise whether he believed it was actually from vandalism, or a traffic collision, or just wear and tear. However, this was in August 2023, more than a year after the claim was settled.

The engineer made a few comments regarding previous repair work, wear and tear and damage that appeared to be from a separate incident. He went on to say:

"I would say in my experience there is amount $\frac{3}{4}$ different areas of damage from different aspects but none which concrete vandalism damage. However there are scratches along the side which could be seen as vandalism."

I haven't been provided with anything that clearly shows me which areas of Mr S's vehicle might have been damaged by vandalism or how much repairs for these would have cost. So, I don't have anything to tell me whether or not the £2,800 settlement Marshmallow paid Mr S was more than he would have been entitled to if Marshmallow had only indemnified him for damage caused by vandalism.

Under the circumstances, I think it would be fair for Marshmallow to amend any internal and external databases so that the claim is recorded as "vandalism" with "bonus allowed". It should also reinstate Mr S's NCD and provide him with written confirmation of this for his new insurer(s).

Mr S believes Marshmallow's removal of his NCD has had a significant impact on the premiums he's been charged by his new insurer(s). I think this is likely to have had some impact on the premiums he's been charged since the claim. But I don't have sufficient information to determine what his financial loss might be.

If Mr S provides evidence of his motor insurance cover (and premiums paid) since the claim, I think it would be fair for Marshmallow to pay him the difference between the premiums he's been charged by his new insurer(s) and the premium(s) Marshmallow would have charged him if the claim had been recorded correctly (as a vandalism claim). It should also add interest to this at 8% simple per year to reflect the time Mr S has been deprived of the funds.

Mr S says he only became aware of how Marshmallow had recorded his claim when he tried to obtain motor insurance elsewhere and found that the premiums were unaffordable. I understand from what he's said that he was without insurance for a number of months which meant that he wasn't able to drive his car. Mr S says that since he took out another policy, he's been placed in financial difficulty due to the high premium cost. He's recently told us that his current policy is about to end, and he is having difficulty obtaining insurance.

I'm persuaded that Marshmallow's poor communication and errors have caused Mr S considerable distress, upset and worry. So, I think it would be fair for Marshmallow to pay

Mr S a total of £500 for distress and inconvenience. This would include the £125 it offered Mr S in its response to his complaint.”

I set out what I intended to direct Marshmallow to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Marshmallow didn't provide any further comments or information for me to consider.

Mr S said he'd gone without insurance for a long time because he couldn't afford it and had relied on public transport. He'd sold his car because it was too expensive to insure. He'd used temporary insurance to insure a car when he was desperate, and it had cost a lot of money. He'd also used monthly insurance at one point. He said that he and his partner had got a trade policy for the last year, costing £550 a month. Mr S provided documents and screenshots relating to the temporary insurance, monthly insurance and trade policy.

Mr S also made some comments about the impact of not having the freedom to drive and the high cost of insurance on his mental health.

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.

After receiving the further information from Mr S, I emailed both parties to let them know that the redress I intended to tell Marshmallow to pay Mr S would be slightly different to what I'd set out in my provisional decision.

I explained that I didn't think it would be fair to require Marshmallow to compensate Mr S for the periods he'd taken out temporary insurance as these policies weren't like for like with the Marshmallow policy. I said I also wouldn't be able to ask Marshmallow to pay anything towards Mr S's partner's trade insurance.

I said I thought it would be fair for Marshmallow to reimburse Mr S for the additional premium he paid (due to losing his NCD) for the two months he was covered by the monthly insurance policy. Although it wasn't for the same vehicle or duration as the Marshmallow policy, it appeared to be for a similar vehicle with similar cover where the cost wasn't significantly higher.

I noted that the policy schedule Mr S had provided for the monthly insurance policy had a different surname on it but the first name, date of birth, contact details and post code were the same as the ones we hold for Mr S. Mr S had said he could provide evidence of his name change if Marshmallow needed to see this before paying the redress.

In response, Mr S said he didn't feel he was being fairly compensated as almost three years had passed and he couldn't afford insurance because of Marshmallow. He said Marshmallow should pay the difference for the period he didn't have insurance too. Getting around was more expensive and more time consuming without a car.

Mr S also commented that it would be hard to calculate the difference having three years no claims would have had on his current policy with his partner. When he used the temporary insurance, he had to disclose zero no claims and the accident and that had drastically increased his premiums which was unfair.

I appreciate Mr S doesn't believe his financial loss has been fully considered. But Mr S isn't the policyholder for the trade insurance his partner took out around a year ago. He is only a named driver. So, while he may have contributed to the premiums, this isn't evidence of a financial loss incurred by him.

Mr S has suggested the premiums for the temporary insurance he took out on various occasions were higher due to the removal of the NCD and Marshmallow's recording of the claim. My role is to consider what's reasonable in the circumstances and award compensation for any financial losses I believe are a direct consequence of Marshmallow's mistakes. I've explained why I think it's reasonable for Marshmallow to reimburse Mr S for additional costs he had to pay for a broadly similar policy for two months. But the temporary insurance policies he took out were high cost, very short-term policies on different vehicles, with different ratings used to calculate the premiums. While I'm not discounting that a claim may have had an impact on the price, as the terms of these policies were so significantly different to the Marshmallow one, I don't think it would be reasonable for me to tell Marshmallow to pay the difference in premiums.

I understand that Mr S made the decision to sell his car because he didn't think he could afford to insure it. However, I can't tell Marshmallow to compensate him for the loss of use of his vehicle as it had already settled his claim.

I appreciate Mr S feels that my award of redress isn't enough to hold Marshmallow responsible for its mistakes. But it isn't the Financial Ombudsman Service's role to fine or punish a business.

I acknowledge what Mr S has said about his financial difficulties and mental health struggles and I empathise with him. But £500 is in the range of what our service would typically award where the impact of a business mistakes has caused considerable distress, upset and worry and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Having carefully considered Mr S's comments, I think this reasonably recognises the impact of Marshmallow's poor service on him.

Putting things right

Marshmallow should:

- Reinstatement Mr S's NCD and provide him with written confirmation of this.
- Amend any internal and external databases so that the claim is recorded as a vandalism claim with bonus allowed.
- For the period 6 September 2023 to 5 November 2023, pay Mr S the difference between the premiums he's been charged by his new insurer and the premium Marshmallow would have charged him if the claim had been recorded correctly.
- Add interest to the above at 8% simple per year* from the date(s) Mr S paid his premiums to his new insurer until the date the settlement is paid.
- Pay Mr S £500 for distress and inconvenience.

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

My final decision

For the reasons I've explained, I uphold Mr S's complaint and direct Marshmallow Insurance Limited to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 December 2024.

Anne Muscroft
Ombudsman