DRN-5164872

The complaint

Mr B complains that Marshmallow Insurance Limited ("Marshmallow") unfairly declined his claim and avoided his motor insurance policy (treated it as though it never existed) as well as damaging his vehicle whilst under its care.

What happened

In January 2024 Mr B's van was damaged when a tree fell on it during a storm. He arranged for the recovery of his van so it could be kept out of the rain. He subsequently contacted Marshmallow to make a claim and asked for it to use a garage he named for the repairs. Mr B says Marshmallow didn't follow his instructions. It then contacted him to say its agent had collected the van and it was thought likely that it was beyond economical repair.

In February 2024 Mr B was told that his policy had been avoided. This is because he'd failed to inform Marshmallow that his van had been modified into a camper. Mr B didn't think he'd provided inaccurate information. He says his engine wasn't modified, which is what he thought this question had been referring to.

Mr B says he was given 14 days to collect his van, which was inconveniently located 320 miles from his home. On collection he says there were some exposed wires, and the gearbox was making a strange noise. After driving approximately one mile the front axle collapsed and his van was recovered by the police. Mr B says this was the result of damage caused by Marshmallow's agents. Mr B has incurred additional costs in arranging recovery, storage, and repairs for his van.

In its final complaint response Marshmallow says when it received images of Mr B's van it discovered it had been converted into a campervan. It says he didn't declare this modification when he took out his policy, despite being asked a clear question about modifications. Because of this it declined the claim, avoided the policy, and retained Mr B's premium.

Mr B didn't think Marshmallow had treated him fairly and referred the matter to our service. Our investigator upheld his complaint in part. She agreed that Marshmallow could avoid the policy given the misrepresentation Mr B had made. But she thought this was a careless mistake so it should refund his premium plus interest.

Our investigator says Marshmallow hadn't responded to the part of Mr B's complaint concerning the additional damage. To put this right, she says it should obtain an expert opinion from an engineer as to whether it was at fault for this. It should use the evidence Mr B provided when considering its liability. Our investigator says Marshmallow should pay Mr B £200 compensation for the distress and inconvenience it caused by not dealing with this matter previously.

Marshmallow didn't respond to our investigator's findings. As an agreement wasn't reached 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.

Having done so I'm upholding Mr B's complaint in part. I understand he will be disappointed that I'm not upholding his complaint in full. But I'll explain why I think my decision is fair.

The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Under CIDRA Mr B must take reasonable care not to make a misrepresentation when taking out insurance. If Mr B doesn't do this, CIDRA allows an insurer to take certain actions, assuming the misrepresentation is a qualifying one. A qualifying misrepresentation is where the insurer wouldn't have provided cover at all, it would only provide cover under different terms, or it would only provide cover for a higher premium.

Marshmallow provided the questions Mr B was asked about modifications. This says, "*Has the car been modified in any way?*". An information box is presented next to this question. It says:

"*A vehicle is considered modified if it has been changed in any way since it was first supplied by the vehicle manufacturer…This would include: changes to the bodywork, suspension or brakes, cosmetic changes and changes to the engine management system or exhaust system. If you are unsure whether changes to the vehicle are classed as a modification, please check with your chosen provider before purchasing*."

The statement of fact document Marshmallow sent to Mr B shows he answered "*no*" to this question, indicating his van hadn't been modified. However, the photos I've seen show Mr B's van has been converted into a campervan. This includes an electrical installation, a bed, shower, and cooking facilities. This confirms Mr B's van had been changed from how it was originally supplied by the manufacturer. So, he should have answered "*yes*" to the question about modifications.

Marshmallow has provided its underwriting information. This is considered commercially sensitive information so I can't share it. But it does show that had Mr B answered accurately, he wouldn't have been offered any cover. This means he made a qualifying representation under the CIDRA rules. And Marshmallow is able to avoid Mr B's policy and decline his claim.

I've thought about Mr B's comments that he didn't think his van had been modified. He maintains there was no modification to the engine and that he had mentioned his van as a camper in every communication since the accident.

Mr B's comments made after the accident don't affect the outcome here. However, I think it's more likely that he made a careless mistake as opposed to deliberately providing inaccurate information. Mr B assumed he knew what his insurer wanted to know regarding modifications. He thought this related to engine modifications and performance. He makes clear that his van hadn't been modified in this way. However, there are a wide range of modifications Marshmallow (and insurers in general) need to know about. Because he was careless, in the information he provided it means that under CIDRA Marshmallow must return the premiums Mr B paid. I agree with our investigator that it should apply interest at 8% simple to this amount. It should do this from the date it avoided the policy until this payment is made.

I've thought carefully about the post-accident damage Mr B says Marshmallow is responsible for. The business didn't comment on this in its final complaint response. But the contact Mr B

had with it shows this was highlighted during a webchat session in February 2024. So, it should've considered this as part of his complaint. Our investigator asked Marshmallow to provide further comment, but it didn't provide any relevant information around this point.

I asked Marshmallow again for its comments concerning the damage Mr B highlighted. It subsequently responded to say that the weight of a tree falling on the roof of a van could cause the suspension system to compress unevenly or beyond its limits. It says this could transfer force to the axle, potentially causing misalignment or stress related damage. Marshmallow says that if the impact caused the van to shift, slide, or hit a curb or other object, the axle could sustain damage as a secondary result.

Mr B has supplied photos that show damage to his exhaust. He says the garage repairing his van told him it had been picked up by a forklift, which caused this damage. The photos he's provided show an indentation on the exhaust that appears to fit with this explanation. On review this could have occurred when Marshmallow arranged for its agent to recover the van to a salvage yard.

Having considered the evidence, I don't think Marshmallow behaved fairly when it failed to address this aspect of Mr B's complaint. But I can't reasonably conclude it's liable for the additional damage given the possibility that this also resulted from the fallen tree. This will require further assessment by an engineer. So, I think it's fair that Marshmallow arranges for an engineer to assess the additional damage Mr B highlighted. The engineer should refer to the evidence he provided and consider Marshmallow's liability for these repair costs. The business should provide a detailed response to this aspect of Mr B's complaint and let him know if it accepts liability. If Mr B isn't satisfied with its response he can ask our service to consider the matter.

I've thought about the impact Marshmallow's lack of response had on Mr B regarding the additional damage he highlighted. This should've been addressed within its original complaint investigation. For clarity, I'm not saying it should pay for the repairs at this juncture. This will need to be considered by an engineer. But Marshmallow has delayed dealing with the matter, which has caused Mr B distress and inconvenience. To put this right, I agree with our investigator that it should pay him £200 compensation.

My final decision

My final decision is that I uphold this complaint. Marshmallow Insurance Limited should:

- arrange for an engineer to consider the additional damage highlighted by Mr B and confirm whether it's liable for the repair costs; and
- pay Mr B £200 compensation for the distress and inconvenience caused by its delay in dealing with this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 February 2025.

Mike Waldron
Ombudsman