

The complaint

Mr K is unhappy with how Marshmallow Insurance Limited handled a motor insurance claim.

What happened

Mr K held motor insurance with Marshmallow. In November 2023, he was involved in an accident that wasn't his fault. The other driver left the scene and Mr K wasn't able to note their licence plate. Mr K thought CCTV cameras had captured the incident. He spoke to the local council who managed the cameras. The council said they could only release the footage to the police or to Mr K's insurer, and the footage would be deleted after 30 days. So, Mr K made a claim to Marshmallow and told it about the footage and the deadline.

Marshmallow didn't obtain the footage in time, so Mr K complained. He was also unhappy that he had had to pay the approved repairer himself and they'd damaged his car.

Marshmallow admitted it didn't obtain the footage in time. But it couldn't say whether the footage would have made a difference to the outcome of the claim. It apologised for the delay and its poor communication, and it offered Mr K £100 to put things right. It said Mr K had only had to pay his £925 policy excess to the approved repairer. And it told Mr K to speak to the repairer about any additional damage to his car.

Mr K didn't think this was fair, so he referred his complaint to the Financial Ombudsman.

Our investigator thought the complaint should be upheld. She said we can't know what the footage would have shown, but the reason we can't know is because Marshmallow didn't obtain it. She said it wasn't fair for Mr K to have a fault claim recorded against him. She thought Marshmallow should record the claim as non-fault, allow Mr K's no-claims discount, and pay Mr K a further £200 of compensation. She also thought Marshmallow should pay Mr K a further £75 for returning his car with more damage. However, she was satisfied the money Mr K had paid to the repairer was his policy excess.

Mr K and Marshmallow accepted our investigator's recommendation, and the complaint was closed. Mr K contacted us again because Marshmallow had not settled the complaint. When Marshmallow did not respond to our investigator, the complaint was re-opened and passed to me to make a final decision.

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 the complaint. The parties agreed to our investigator's recommendation, so I've considered whether that recommendation is fair – and I think it is.

I've reviewed the correspondence between Mr K, Marshmallow, and the local council. Marshmallow took two weeks to email the council. When it did, it didn't provide the accident location. Marshmallow provided this on the final day of the deadline, but it gave the wrong address and the wrong date. The council responded a few days later to say the footage was gone. I'm satisfied Marshmallow's delays and mistakes prevented it being obtained.

Marshmallow is correct that we can't know what the footage would have shown. But I agree with our investigator that the reason we can't know is because Marshmallow did not act promptly and fairly to obtain it and find out. I think this deprived Mr K of a reasonable opportunity to dispute liability – especially considering the other driver drove into the back of Mr K's car. I don't think it's fair that Mr K is left to face the consequences of a fault claim and the loss of his no-claims discount because of Marshmallow's failures.

To sort things out, I think it's fair for Marshmallow to record the claim as 'non-fault' on internal and external databases. And it must allow Mr K's no-claims discount. I think this fairly limits the impact on Mr K. Marshmallow has not been able to recover its costs, so I think it's fair that Mr K's policy excess remains paid.

Mr K was concerned that the £925 he paid to the repairer was for the repairs and not his excess. I've seen the invoice that the repairer sent to Marshmallow and the costs of the repairs are more than Mr K's excess of £925. So, I'm satisfied he has only had to pay up to his policy excess. He needed to pay this under the terms of his insurance policy.

Our investigator thought Marshmallow should pay a total of £300 to compensate Mr K for its poor service. I think Mr K tried very hard to have Marshmallow obtain the footage, because only it was able to do so. I think Mr K did all he reasonably could to help, and I think it would have been deeply frustrating and disappointing for him to learn that the footage was lost, along with his chance of pursuing the third party. Marshmallow's agents often reassured Mr K that the matter was in hand when it wasn't. I think £300 is a fair amount to recognise this.

Turning to the additional damage to Mr K's car. I agree it would have been disappointing for Mr K to receive his car back with more damage. This would have added to Mr K's frustration. Even so, the damage was minor and cosmetic. I understand it was repaired within two weeks. I find the further £75 our investigator recommended reasonable to put this right.

With all this in mind, I think the agreement reached by the parties was fair, so I require Marshmallow to carry this out.

Putting things right

To resolve the complaint, I direct Marshmallow to:

- Update the claim to show as 'non-fault' on all internal and external databases as applicable,

- Restore Mr K's no-claims discount, and
- Pay Mr K a total of £375 of compensation for distress and inconvenience, to be reduced by any amount it has already paid.

If Mr K accepts my final decision, Marshmallow must pay the above compensation within 28 days of our service confirming his acceptance. If Marshmallow has not paid by then, it must add 8% simple interest per year to any unpaid amount until the date it is paid.

My final decision

For the reasons I've given, I uphold Mr K's complaint about Marshmallow Insurance Limited and direct it to do as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 January 2025.

Chris Woolaway
Ombudsman