

The complaint

Mr H complains that Marshmallow Insurance Limited mishandled his claim on a van insurance policy.

What happened

The subject matter of the insurance, the claim and the complaint is a van, first registered in 2018.

In about March 2022, Mr H acquired the van.

For the year from late March 2023, Mr H had the van insured on a comprehensive policy with Marshmallow.

Unfortunately, Mr H reported that in early October 2023, a third party had accidentally damaged the offside of the van.

Marshmallow arranged repairs. On about 20 October 2023, the repairs started.

Much of the complaint is about acts and omissions by claims-handlers and the repairer. Insofar as I hold Marshmallow responsible for them, I may refer to them as acts or omissions of Marshmallow.

On about 13 November 2023, the repairer told Mr H it had finished the repairs of the van. Mr H complained to the repairer that the repairs were not of a satisfactory quality. The repairer did some rectification work. Mr H continued to use the van for work purposes.

By early April 2024, Mr H had complained to Marshmallow that it should've treated the van as a total loss and that the repairs were not of a satisfactory quality.

On about 10 April 2024, Mr H's engineer inspected and reported on the repaired van. He said that the van should never have been repaired.

By a final response dated 27 May 2024, Marshmallow turned down the complaint.

Mr H brought his complaint to us in mid-July 2024.

On about 6 September 2024, Mr H's engineer again inspected and reported on the repaired van.

On 3 October 2024, our investigator recommended that the complaint should be upheld. He thought that Mr H's engineer's reports were consistent with Mr H's concerns with the repairs carried out on his vehicle. The investigator recommended that Marshmallow should:

1. allow Mr H to get the vehicle repaired at a garage of his choice, with Marshmallow covering the cost of this; and

2. reimburse Mr H for the engineer's reports he had to obtain; and
3. provide £500.00 compensation for the poor service provided.

Mr H accepted the investigator's opinion.

Marshmallow didn't respond to the investigator's opinion. So the investigator asked for an ombudsman to review the complaint.

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.

The Financial Ombudsman Service is bound by the Financial Conduct Authority's dispute resolution rules. One such rule is that, before we can investigate a consumer's complaint against a regulated firm, the consumer must first have made that complaint to the firm and waited for up to eight weeks for a final response.

We can investigate complaints that the consumer made to the firm before the final response. We can't investigate such complaints with the addition of complaints that the consumer makes later (including about issues arising later) – we would have to deal with such later complaints separately.

Also, we have to follow a two-stage process under which an investigator gives an opinion and, if necessary, an ombudsman gives a final decision.

Mr H has sent a more recent complaint to the claims-handlers. The investigator didn't comment on that complaint and I consider that this was in line with the rules. So I make no findings on that complaint.

The accident and the need to make a claim were, in my view, bound to cause Mr H upset and inconvenience.

Marshmallow was under an obligation to deal with the claim promptly and fairly. From what Mr H and Marshmallow have each said, its claims-handlers provided a hire vehicle.

I would expect Marshmallow to get the repair right first time. It's common ground that it failed to do so and that's why the van went back to the repairer for rectification work.

Generally, compared to the evidence of Marshmallow, I find Mr H's evidence more consistent and persuasive. I place weight on the more recent of his engineer's reports. That included the following detail:

“Defect/Inspection/Circumstances.

After a general vehicle condition check which showed the vehicle to be in an overall average condition, with an amount of pre-accident damage to the n/s panels. I went on to examine the specific faults and found the following:

- 1. The internal plywood panels are at such a tension due to the unevenness of the bodyside that the fixing screws are not strong enough to hold the ply panels in place and due to the normal motion of the vehicle they work loose and allow the panels to detach.*
- 2. A straight edge was placed along the o/s sill panel and it was plain to see the sill panel bends inwards towards the centre of the vehicle by a good 10mm in the area of the impact.*

3. The fourth bracket from the front or 2nd from the rear which attaches the o/s sill panel to the chassis frame has not been replaced and is still bent, pulling the external o/s body side inwards, the repair has been covered up with underseal, but the attached images reveal how the bracket should look when welded to the chassis frame and how the bracket under notice bears no resemblance to the others.

4. The alignment between the rear bumper and the n/s and o/s body sides are different as are the gaps between the rear lamps and bodysides, indicating there is a misalignment present."

So I find that Marshmallow's repair (and rectification) to the offside of the van fell below a satisfactory standard because of the four issues listed by Mr H's engineer.

The report continued as follows:

"Rectifications

A new o/s bodyside bracket should be fitted, but the o/s sill and bodyside require pulling out to allow the fitting of this bracket, this would be very labour intensive and bearing in mind the argument regarding repairability that is currently ongoing, it would not be economically sensible for any more money to be spent on this kind of major rectification work."

Nevertheless, our investigator made recommendations including further repair or rectification. Marshmallow had an opportunity to comment on the investigator's opinion in the last three months, but it has failed to do so.

Mr H provided two estimates for rectification, one for about £10,400.00 including VAT and another for about £11,600.00 including VAT. I don't think Marshmallow has yet seen those estimates. Such costs, when added to the earlier costs, look like an uneconomic repair.

However, it was Marshmallow's decision to repair the van. I consider that it must do so to a satisfactory standard (or reach a negotiated settlement with Mr H).

Putting things right

I find it fair and reasonable to direct Marshmallow to pay a repair garage of Mr H's choice to put right the four issues listed by Mr H's engineer.

As Marshmallow hadn't accepted what Mr H had said about such issues, it put Mr H into the position of having to instruct and pay his engineer for reports. So I find it fair and reasonable to direct Marshmallow to reimburse Mr H for the engineer's invoices, with interest at our usual rate.

From the email correspondence, I've seen that Marshmallow's mishandling of the repair has caused Mr H extra distress and inconvenience at an already difficult time for him. The impact on him has lasted over a year.

That has included the disappointment and inconvenience of having to be without his own van during rectification works. It also included the need to send and receive more emails than should've been necessary.

It also included the frustration that Mr H felt that Marshmallow wasn't reading what his engineer had said. The impact also included a daily irritation at the poor appearance of his van.

So I conclude that £500.00 is fair and reasonable and in line with our published guidelines for compensation for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct Marshmallow Insurance Limited to:

1. pay a repair garage of Mr H's choice to put right the four issues listed by Mr H's engineer; and
2. reimburse Mr H for the invoices for his engineer's reports; and
3. pay Mr H simple interest at a yearly rate of 8% on each such engineer's invoice, from the date of his payment to the date of its reimbursement. If Marshmallow considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr H how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
4. pay Mr H £500.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 19 February 2025.

Christopher Gilbert

Ombudsman