

## **The complaint**

Mr P complains about the way Marshmallow Insurance Limited (“Marshmallow”) recorded a claim he made on his motor insurance policy.

## **What happened**

Mr P raised a claim to Marshmallow in August 2024 after his vehicle was damaged by a foreign-registered lorry that struck his parked vehicle while he was refuelling. The accident was confirmed as not his fault; but despite Mr P providing the police report, photographs, and all relevant evidence, Marshmallow said they were unable to trace the third-party driver. As such, they didn’t have anyone to make a recovery from and they recorded the claim as “fault” on Mr P’s policy.

Mr P felt this was unfair and raised a complaint. Marshmallow considered the complaint but maintained they had acted fairly and in line with the policy terms. But they did award £25 compensation for delays and communication failures. Mr P remained unhappy with Marshmallow’s response to his complaint – so, he brought it to this Service.

While the complaint was being reviewed, Marshmallow made an increased compensation offer of £300. They said this was because they’d identified delays and areas where communication with Mr P could have been clearer. An Investigator then looked at what had happened, but thought Marshmallow had acted fairly and didn’t need to do anything more to resolve the complaint. The Investigator explained that Marshmallow had attempted to identify the third-party driver but were unable to; so, they correctly recorded the claim as fault on Mr P’s policy. The Investigator also explained that he felt Marshmallow’s offer of compensation was fair in the circumstances.

Mr P didn’t agree with the Investigator’s recommendation. He maintained that he wasn’t responsible for the accident, and he was going to experience a significant and ongoing financial loss as a result. Mr P also outlined why he felt Marshmallow hadn’t done enough to pursue a recovery from the third-party driver.

Mr P asked for an Ombudsman to consider the complaint – so, it’s 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’ve reached the same overall outcome as the Investigator, and I’m satisfied Marshmallow acted fairly overall. I appreciate this will come as a disappointment to Mr P, so I’ve explained why below.

It’s not in dispute that Mr P isn’t liable for the accident that damaged his vehicle. I can see from Marshmallow’s file they acknowledged this and sought to trace the other driver to make a recovery. But when they were unable to do this, Marshmallow wrote to Mr P and explained

they would be treating the claim as “fault” under his policy. They said this was because they didn’t have anyone to make a claim against. Mr P is unhappy with Marshmallow’s stance on this. He’s said a fault claim being recorded against him will have a negative financial impact on him for years to come.

I’ve considered Marshmallow’s claim notes, and I’m satisfied they acted fairly and reasonably here in attempting to make a recovery. They followed up with the additional information Mr P provided and I’m satisfied they took sufficient steps to try to resolve this for Mr P. However, when they were unable to secure a recovery, they recorded the claim as “fault”.

I do appreciate this would be frustrating, but as the Investigator has previously outlined, it’s normal insurance practice for a claim to be recorded this way on insurance databases where an insurer cannot recover their claim costs from anyone. And this means a no claim discount will often be reduced, in line with the policy’s terms. Ultimately, this isn’t a judgement on blame towards Mr P, but a reflection that Marshmallow were required to bear the costs of the claim. In those circumstances, I don’t think it’s unfair that the no claims discount was adjusted in line with the policy or that the claim was recorded as “fault”.

Mr P says that Marshmallow refunded his excess of £275, which he says acknowledges that the incident was a no-fault accident - but I don’t agree with this. Marshmallow has acknowledged from the start that Mr P was not responsible for the accident. And the refund of his excess appears to have been a goodwill gesture over and above what the policy terms require them to do, which I find to be fair. But the fact remains that a claim will be recorded on a policyholder’s own policy where there is no third-party to make a recovery from.

In relation to how the claim was handled, I can see that Marshmallow initially made an award of £25 and then increased this by £300 after the complaint was brought to this Service. They said this was due to delays and times where their communication could have been clearer. Having looked at everything that’s happened here, I do agree Marshmallow could have handled the claim better at times, so I think awarding a sum of compensation is appropriate.

But the £300 Marshmallow has offered is more than I would have awarded in similar circumstances. So, while I appreciate Mr P feels the sum offered isn’t enough to compensate him, because Marshmallow has agreed to pay this, I’m satisfied this total award produces a fair and reasonable conclusion in this case and I won’t be asking them to increase this.

### **My final decision**

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

- Pay a further £300 compensation for their delays and communication failures.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 15 December 2025.

Stephen Howard  
**Ombudsman**