

## **The complaint**

Mrs B complains about the decline of her motor insurance claim and cancellation of her policy by Marshmallow Insurance Limited ('Marshmallow').

## **What happened**

The background to this complaint is well known to Mrs B and Marshmallow. I won't repeat in detail what's already known to both parties. In my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

At around 8pm on 31 December 2024, Mrs B was driving with her family to a restaurant. She has said she encountered very heavy rain and her car stalled due to rising floodwater. She made a claim under her insurance policy with Marshmallow. They initially accepted the claim, but ultimately declined it as they said Mrs B had breached the policy terms when failing to take reasonable care to safeguard her car. They then cancelled the policy.

Mrs B made a complaint. After Marshmallow didn't uphold it, she referred it to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that it be upheld. As the dispute remained unresolved, it was referred to me for a decision. I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've considered the complaint for 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

I've no doubt that this experience (becoming trapped in water) will have been difficult for Mrs B and I'm sorry to hear that.

### *The scope of my decision*

My role here is to decide if, on balance, Marshmallow have fairly considered this claim in line with the policy terms before declining it and cancelling the policy.

### *My key findings*

I've summarised Mrs B's account below.

- Notification of claim to Marshmallow: a bus and car went ahead of Mrs B and made it through the flood. Mrs B followed them, but the car stalled and water rose further.
- Complaint to Marshmallow (bold added for Ombudsman's emphasis):

*“At the time of the incident, **I made my decision based on observations of other vehicles safely navigating the same area.** I did not anticipate the damage to my vehicle and acted in good faith, believing the risk to be minimal. There was no clear indication that proceeding through the area would cause such extensive damage.”*

*“I contend that **slowing down or reassessing would not have altered the circumstances in a meaningful way, as the depth and impact of the water were not immediately evident.** The damage occurred unexpectedly,”*

*“the water level was lower at the time of the accident and when the 2 cars in front of me passed the road in question safely and without any problems, **I had no doubt that there would be no problem for me either** and I never thought that it would be a risk for me”*

- Complaint form to our Service:

*“While passing under a bridge on a main road, our car suddenly stalled due shallow flood and would not restart. Unfortunately, rising floodwater began to surround the vehicle, and for our safety, we had to exit the car immediately. Water surrounded the car quickly.”*

To summarise - Mrs B was aware of the presence of flood water in the underpass, but after observing two other vehicles make it through, she entered the underpass, her car stalled and water rose causing her to need to exit her car very quickly through a window.

Marshmallow have said:

*“Your Policy wording clearly states, in the ‘Your obligations’ section, that: ‘You or any person in charge of the insured vehicle are required to take all reasonable care to safeguard it and its contents from loss or damage, for example the vehicle should not be left unlocked.’”*

*“...Preventative measures were not taken to avoid this incident from happening, as you have confirmed that you saw other vehicles enter the flooded area, and still decided to drive into the flooded area. Therefore, **it has been deemed that reasonable care was not taken to prevent this incident from happening, or to safeguard the vehicle and its contents from damage as you did not assess the risk of damage when entering into this area, nor was an attempt made to slow down and assess the situation.**”*

If an insurer turns down a claim because the consumer failed to take reasonable care, there needs to be evidence to show the consumer acted in a way that amounted to recklessness. The test of recklessness we use is the one set out in the leading legal case on ‘reasonable care’ – *Sofi v Prudential Assurance* (1993) 2 Lloyd’s Rep.559. In summary, a consumer failed to take reasonable care if they recognised a risk but took it anyway by taking measures which they knew were inadequate or taking no measures at all.

Mrs B says she used her judgement to drive through the flood water after seeing other vehicles safely navigate it.

I find Marshmallow have fairly applied the policy terms to decline the claim. I say this because it’s clear that Mrs B was aware of the presence of flood waters in the underpass prior to entering it, even in the absence of any emergency services or warning signs – but she still chose to make a reckless judgment call and drive towards the risk/danger, rather than stop or slow down and assess the risk presented (including the dept of the water) - or

seek an alternative route.

I have also considered if any mitigation applies to ensure a fair and reasonable outcome, but I find no mitigation applies that would undermine Marshmallow's actions as being unfair. I say this because:

- Mrs B has not described (for example), driving around a blind corner and suddenly finding her car submerged unexpectedly in water, or parking her car and returning to find it submerged in water. She has referred to observing other vehicles go ahead of her and she has not described stopping to take stock of the risk before proceeding ahead. To quote her testimony: *"I made my decision based on observations of other vehicles safely navigating the same area...."* and *"I contend that slowing down or reassessing would not have altered the circumstances in a meaningful way."*
- When considering what is fair and reasonable in the overall circumstances of the complaint, I've also factored in that Mrs B provided Marshmallow with documents suggesting she had only come to the UK a few months previously. It is of course possible that Mrs B won't have been aware of previous, regular flooding incidents at this underpass. A search online shows that this location has flooded on many occasions in recent years. But regardless of any prior knowledge of the area, I find on balance that Marshmallow have acted fairly when concluding that Mrs B failed to take reasonable care – for the reasons outlined above and no mitigation applies that would deem their actions unfair.

It follows that the policy terms allow Marshmallow to cancel Mrs B's policy with immediate effect.

Mrs B has argued she wasn't given a fair right of reply, but I find that in the lead up to the cancellation and claim decision Mrs B had a fair opportunity to engage with Marshmallow and she provided supporting evidence (such as testimony, videos and photos) which were considered when reaching their claim position. I note Mrs B hadn't responded to our Investigator's recent request for more information and she also didn't respond to my provisional decision.

I find that Marshmallow have also fairly recorded the cancellation on relevant internal and external databases.

#### *Other relevant points*

Mrs B has referred to not having her car returned, I note in their letter dated 5 February 2025, Marshmallow told her:

*"If your vehicle has been recovered and stored as part of your claim, **please contact us through live chat to find out where your vehicle is.** You are liable to pay the recovery and storage charges and additional charges will accrue daily. Please note you will have 14 days from this letter to collect your vehicle. After 14 days, we will assume you have no interest in your vehicle and will dispose of it."*

I'm satisfied that this was made clear to Mrs B.

Overall, my decision will disappoint Mrs B, but it ends our Service's involvement in trying to informally resolve her dispute with Marshmallow.

**My final decision**

My final decision is that I don't uphold this complaint.

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

Daniel O'Shea  
**Ombudsman**