

## **The complaint**

Mr A complains about poor claims handling and customer service by Marshmallow Insurance Limited.

## **What happened**

The history to this complaint is well known to the parties, so I won't repeat all the details here. In brief summary, in late January 2025, Mr A's unattended car was damaged by a third party. Mr A contacted Marshmallow in early February 2025, but was concerned not to have his no claims discount (NCD) affected.

Mr A wanted Marshmallow to obtain CCTV evidence and investigate the incident, but Marshmallow said it could only look to recover costs if a claim was made. So no action was taken to identify the third party.

Mr A said this was unfair and not made clear from the outset. Mr A paid £800 to have his car repaired privately, but was asked by Marshmallow to pay £38.94 for non-returnable parts. Mr A said he'd never authorised Marshmallow to repair his car, but made the payment wanting to ensure that a fault claim wasn't recorded against him.

Mr A complained. Marshmallow maintained its claims process had been correctly followed but accepted communication could've been better, ultimately offering £75 compensation for poor service.

Mr A came to the Financial Ombudsman Service. Our investigator upheld his complaint in part, recommending that Marshmallow reimburse Mr A the money he'd paid for non-returnable parts and take action to ensure that Mr A's NCD wasn't affected by recording it as 'notification only' on the claims underwriting exchange (CUE). Our investigator didn't propose any increase in the compensation offered by Marshmallow for service failings and thought the business had acted fairly in saying it would not investigate the incident without a claim being made.

Marshmallow accepted our investigator's recommendations, but Mr A remained unhappy about the elements of his complaint that were not upheld. So he asked for an ombudsman to review everything and issue 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 this complaint to the same extent as our investigator. I appreciate this will be disappointing news for Mr A and I'm sorry about that. I'll explain my decision, focusing on the points and evidence I consider material to the outcome. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've

focused on what I think are the key issues. The rules that govern the Financial Ombudsman Service - an informal dispute resolution service - allow me to do this. So, if I don't refer to a specific point or piece of evidence, it's not because I haven't read and thought about it. Rather, I don't think it changes things. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

### *Claims procedure*

Insurance contracts work by transferring financial risk from the policy holder to the insurer, thereby protecting against potentially substantial losses. In making a claim, the policy holder is asking the insurer to pay for the losses incurred following an insured event – such as repair costs following damage to an insured vehicle. It follows that payment for losses cannot be made without a claim.

The nub of this complaint relates to Mr A's dissatisfaction with Marshmallow regarding the handling of the incident he reported. Mr A had made some initial investigations, but wanted Marshmallow's assistance to secure CCTV footage and try to identify the third party. However, Mr A was very concerned about the impact of a claim on his NCD.

The impasse here is that Mr A wanted to know if the third party could be identified and successfully claimed against before, for want of a better phrase, officially making an insurance claim. He didn't want his NCD impacted by a fault claim, should Marshmallow not be able to recover costs from the third party. But Marshmallow was not prepared to incur costs investigating the incident until Mr A confirmed that he was making a claim on his policy. And when Marshmallow explained this, Mr A felt that he'd been misled and that this wasn't made clear to him from the start.

I've looked at the policy documentation and evidence of communications between Mr A and Marshmallow.

Section 3 of the policy, entitled *loss of or damage to the insured vehicle* explains what's covered as:

*Where you make a valid claim, we will cover you against loss of or damage to the insured vehicle (less any excess that applies) caused accidentally, by malicious damage or vandalism or as a result of theft, fire, lightning, explosion, theft or attempted theft.*

The policy defines a valid claim as:

*a claim that is made in accordance with the terms of this policy, using procedures set out in this policy and is not subject to any exceptions contained herein*

And under a section entitled *claims procedure*, it says:

*We shall have discretion in the conduct of any proceedings or in the settlement of any claim.*

So Marshmallow is entitled to determine how a claim will be assessed and determined. This is not unique to Marshmallow, but rather, standard practice across the insurance industry.

From what I've seen, in various communications, Marshmallow did explain what this meant in practice for Mr A. For example:

*3 February 2025:*

Mr A:

*My vehicle has a minor at a carpark, I contacted [solicitors] straight away and efforts to get the CCTV footage has been futile but I want my vehicle repaired without affecting my NCD.*

Marshmallow:

*We understand you want to repair your vehicle without affecting your No Claims Discount (NCD). Here's what you need to know:*

- 1. If your claim is settled as non-fault, your NCD won't be affected.*
  - 2. However, if it's settled as a fault claim (which may happen if the third party can't be contacted), your NCD could be reduced.*
  - 3. To start the process, get in touch with us through the app by tapping 'Report an incident' on the home screen, or call our claims line.*
  - 4. If your claim is valid, we'll use our network of approved repairers to fix your car, guaranteeing the quality of the repair.*
- Remember, the impact on your NCD depends on how the claim is settled. We'll assess the situation and guide you through the process.*

11 February 2025:

*Please note that as we do not currently have the third-party details, you will be required to claim on your policy. I understand that you have mentioned there is CCTV footage of the incident, however, to pass this over to our recoveries team to look into you will need to proceed with the claim.*

19 February 2025:

*We understand your concerns however we cannot investigate CCTV footage and liability without an open claim. The reason for this is that we will not look to incur costs from retrieving the CCTV footage if you do not wish to proceed with the claim.*

5 March 2025

*I completely understand your concerns regarding the No Claims Discount. I would like to assure you that in case the Recoveries Team is successful in claiming the costs back from the Third Party Insurer, we will settle your claim as non-fault, and your NCD will not be affected. However, they can only start this process if you agree to claim on your policy.*

I understand Mr A's frustration about the potential for a fault claim to be recorded against him when he had no involvement in the incident and therefore did not consider himself to be 'at fault'. But it would've been impossible for Marshmallow to tell Mr A how the claim would be settled prior to investigating the full circumstances. From what I've seen, Marshmallow explained the terminology and potential outcomes to Mr A – including when his NCD would and wouldn't be affected – and clearly set out why it would not investigate without confirmation of a claim. I think the explanations were reasonable and I don't think Marshmallow acted unfairly in not conducting the enquiries Mr A wanted without confirmation of a claim being made.

#### *Reimbursement of private repair work*

Mr A paid privately to have his car repaired. He'd like Marshmallow to reimburse him all or at least part of that cost. But I don't think that's reasonable. Mr A had two options. Either, proceed with a claim, whereupon Marshmallow would cover the cost of repairs, the risk

being that if those costs were not recoverable from the third party, a fault claim would be recorded, likely impacting on Mr A's NCD. Or, repair the car privately and retain his NCD. Mr A was adamant he didn't want his NCD affected and I'm satisfied he actively chose not to pursue a claim and to repair privately. I don't agree that Marshmallow, having not had the opportunity to validate a claim should nevertheless pay for or towards a repair. So I'm not going to ask Marshmallow to make any reimbursement in respect of Mr A's repair costs.

### *Non-returnable parts and Compensation*

Our investigator found that parts had been ordered without Mr A's agreement for the repair to go ahead – that is, without confirmation of a claim. His recommendations, in terms of reimbursement and accurate recording of the incident on CUE, were accepted by both parties. As this issue is no longer in dispute I won't make any further comment, but will include the recommendations in my directions below.

Marshmallow offered Mr A £75 compensation, acknowledging that some aspects of its service could've been better. I accept there was some confusion regarding the instruction of repairs and acknowledge that Mr A was frustrated with Marshmallow's position regarding the investigations. But I've already said I don't think Marshmallow's position in terms of the claims procedure was unreasonable. Overall, I think the £75 offer is fair.

### **Putting things right**

To put things right, Marshmallow should:

- Pay Mr A £75 compensation for service issues
- Reimburse Mr A £38.94 relating to non-returnable parts, plus simple interest on that amount at 8% per annum, from the date Mr A paid Marshmallow to the date of reimbursement.
- Ensure that Mr A's NCD is not affected by this event, recording it on CUE as notification only with no associated unrecovered costs.

I appreciate Mr A feels very strongly about this situation and likely will be unhappy with the extent of my decision. But I'm satisfied Marshmallow acted reasonably regarding the incident and that the directions I've given above fairly resolve this complaint. Once again, I'm sorry this isn't the news Mr A was hoping for.

### **My final decision**

For the reasons given above, I uphold this complaint in part and require Marshmallow Insurance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 November 2025.

Jo Chilvers  
**Ombudsman**