

The complaint

Mr M complains that Marshmallow Insurance Limited referred him to a credit hire and repair service rather than dealing with his claim on his car insurance policy.

What happened

Mr M was hit in the rear by another driver and called Marshmallow to claim on his car insurance policy. Rather than dealing with his claim, Marshmallow referred Mr M to its “Non-fault service” who I’ll refer to as W. W assessed Mr M’s claim and provided him with a hire car while the damage to his car was assessed. W determined Mr M’s car wasn’t one it would repair, so it paid him a total of £9,450 as the market value of his car.

As W was unable to recover the hire car costs from the third party, it wrote to Mr M to request his financial details as it would need these to pursue the costs through court. It said if Mr M didn’t co-operate then he would be responsible for its costs, which were in excess of £22,000. Mr M didn’t think this was fair and complained to Marshmallow, he said he’d never agreed to these costs and didn’t understand how he could be pursued for more than his excess following a non-fault claim.

Marshmallow reviewed the complaint but didn’t uphold it. It said Mr M had been referred outside of his car insurance policy and that he had agreed to the terms and conditions of the credit hire and repair agreements. Marshmallow said as Mr M wasn’t co-operating with W then it didn’t agree he was being pursued for the charges unfairly. Mr M didn’t agree and referred his complaint here. He said the hire car charges were over inflated and didn’t understand why he should be liable when he had fully comprehensive car insurance. He also said the valuation given by W for his car was too low.

Our Investigator reviewed the complaint and found that Marshmallow hadn’t given Mr M clear information about his options when he called up to claim. He said he thought if Mr M had been given clear information, then he wouldn’t have used W. Our Investigator said because of the poor referral, Mr M now needed to support W in recovering the hire car costs and potentially attend court. So thought Marshmallow should compensate Mr M for this as he wouldn’t have had to do it if he claimed on his policy.

Our Investigator acknowledged that being pursued for over £22,000 worth of costs and having to go to court to help recover them was distressing and recommended Marshmallow pay him £500 compensation. However, our Investigator didn’t think it was fair for Marshmallow to cover the £22,000 worth of costs, as they could be recovered from the third party with Mr M’s co-operation. He also looked at the valuation given by W to see if the referral had caused Mr M a loss in the market value of his car. He found the value given was in line with the highest values given by the motor valuation guides we used and in the absence of other evidence he thought it was fair.

Mr M said he agreed to the outcome if Marshmallow did. However, Marshmallow didn’t agree. It said it was its process to refer non-fault claims and that its e-mail to Mr M let him know there was an alternative to using the non-fault service. Our Investigator didn’t think this meant Mr M had been given clear information about his options.

As Marshmallow didn't agree the complaint has come 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.

Before I address the merits of this complaint, I think it's first important to set out the different parties involved and Marshmallow's responsibilities, to make clear what I can and cannot look at in this decision.

When Mr M called Marshmallow to report the damage to his car, he was referred to W to handle the claim rather than claiming on his policy. W is a solicitors who handle non-fault insurance claims and when it handled Mr M's claim it was done outside of his insurance policy with Marshmallow. Also, the actions of W aren't within the jurisdiction of this service. This means in this decision I can only consider the actions of Marshmallow when it referred Mr M to W.

As Mr M's insurer, Marshmallow was obliged to provide Mr M with information that was clear, fair and not misleading, in line with its obligations under Principle 7 of the FCA Handbook: Communications with clients (see PRIN 2.1 The Principles) and ICOBS 2.2.2R (Clear, fair and not misleading rule). In the circumstances of this case, this means that when Mr M contacted Marshmallow to tell it about his 'non-fault' claim for damage to his car, Marshmallow ought to have provided him with clear information about his options, so he could decide how best to proceed with getting his car repaired.

Marshmallow hasn't been able to provide the referral call so I'm unable to determine what information was given. However, Marshmallow has provided an extract from an e-mail it sent Mr M which says if W doesn't agree it's a non-fault claim, then Marshmallow will let Mr M know the next steps. The e-mail also gives an overview of who W is and what it does.

While Marshmallow did explain to Mr M that W is a separate company and would be handling his claim. I'm not persuaded Marshmallow provided Mr M with enough information for him to make an informed choice. I say this as Marshmallow didn't explain that by using W, that Mr M would need to enter into a credit agreement with W for the repair of his car and the hire car. Or that there is a possibility he could be held liable for these costs if the third party doesn't pay them.

When taking this into account, along with Mr M's comments about the hire car charges and recovering them from the third party, I'm satisfied that if Marshmallow had given Mr M sufficient information for him to make a choice, then he wouldn't have chosen to use W. I've therefore looked at the impact this poor referral has had on Mr M. Mr M now needs to support W with its recovery of the hire car charges and attend court to do so. This is something he wouldn't have needed to do if he'd claimed on his own policy with his insurer. Mr M has also explained he finds this very distressing as he believes W has over inflated the high car charges.

I understand Mr M's concerns, but as the charges are likely to be recovered from the third party with his co-operation, I'm not persuaded it would be fair to direct Marshmallow to pay them. However, I do think Marshmallow should compensate Mr M for the unnecessary distress and inconvenience this has caused. I'm satisfied the £500 recommended by our Investigator is fair compensation, therefore Marshmallow needs to pay Mr M £500 for the distress and inconvenience caused.

I've also considered Mr M's point about W providing a low valuation for his car. While this is a decision by W, I've looked whether the valuation would have been fair if offered by the insurer. I can see W ultimately valued Mr M's car at £9,450 and the highest of the four valuation guides we use valued it at £9,375, which is lower than W's valuation. In the absence of any further evidence to suggest the value should be higher, I'm satisfied the referral hasn't meant Mr M received a lower value than he would have claiming through his policy with Marshmallow. So, I won't be telling Marshmallow to do anything in relation to the amount Mr M received as the market value for his car.

My final decision

For the reasons explained above, my final decision is that I uphold this complaint. I require Marshmallow Insurance Limited to pay Mr M £500 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 January 2024.

Alex Newman
Ombudsman