

The complaint

Mr M has complained that Marshmallow Insurance Limited unreasonably refused to pay his claim under his motor policy when his car was damaged when he drove it through a flood by accident

What happened

Mr M unwittingly drove his car through a flood on 4 January 2024. His car broke down and he had it towed to a garage. He reported this to Marshmallow and said he would be using his own repairer as they had recovered his car.

Mr M obtained an estimate from his own garage and sent this to Marshmallow. It included pictures from his garage repairer of his car also.

Marshmallow told Mr M on 16 February 2024 that it was refusing to pay his claim as it considered the damage to be mechanical and not caused by the floodwater.

Mr M said he had to take out a loan from his family member to pay his garage the repair cost of over £4,000. He complained to Marshmallow who refused to change its stance, but it did pay him £125 compensation for its delays. So, on that basis he brought his complaint to us. The investigator was of the view that Marshmallow had provided no engineering evidence to show the damage wasn't caused by the flood, so he thought it should pay Mr M's claim with interest. He also thought it should pay him a further £100 compensation.

Marshmallow didn't agree. It said it had no chance to inspect Mr M's car because he was using his own repairer. Consequently, Mr M's complaint has 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'm upholding this complaint along the same lines as that of the investigator. I'll now explain why.

The claim

No motor insurer and Marshmallow is no different will pay any claim for any mechanical breakdown or wear and tear issues. Marshmallow's specific policy wording is that the following is not covered:

'Wear and tear, mechanical or electrical breakdown including failure of any equipment, integrated circuit, computer chip, computer software or computer related equipment and failure or breakages of any part due to application of brakes or road shocks.'

So, in the first instance, the policyholder, Mr M here, has to show his claim is unlikely to be anything that is specifically not covered above. Mr M did this in my view because his own repairer's estimate in January 2024 clearly detailed '*attend to Dual Clutch and Mechatronic failure after flood damage*'. Further on 7 February 2024 Mr M's repairing garage said:

'The customer (Mr M) had reported the vehicle was driving perfectly ok prior to the encounter with a flood, and straight after out of the flood the vehicle faulted.

....

The Mechatronic was blown and the Dual Clutch was also replaced due to the vehicle going through the flood, it is a dry dual clutch and is located outside the gearbox'.

There is no indication of any wear and tear from the repairing garage here. Clearly the repairing garage is satisfied the damage occurred after the car drove through a flood. Consequently, it is then for Marshmallow to disprove this, given it's so sure it's down to a mechanical fault or wear and tear. As the burden of proof then shifts to it rather than to Mr M as he's initially shown it was from going through the flood.

Marshmallow critically didn't have any engineer actually look at Mr M's car, its engineer merely relied on what Mr M's repairing garage said plus the photos of the car that Mr M's repairing garage sent in. Marshmallow's engineer said the following:

'PH is claiming damage to the gearbox / mechatronic unit as a result of driving through flood water - The mechatronic unit is a sealed unit and would not be effected by flood water. The unit is sealed to protect it from the elements. Image 3 also shows fresh oil coming from the gearbox unit, no signs of flood water? I have asked [Marshmallows' repair centre partner] to submit their report on the basis that this is mechanical failure and therefore not covered under the policy. Have informed PH of this and advised we cannot proceed with claim for damage.'

This is completely at odds to what Mr M's repairing garage said. They said the Mechatronic unit was blown by the flood water and the dual clutch also. The dual clutch was located outside the gearbox. The repairing garage on its invoice was very clear to explain no work had been done on the gearbox either. So, there was never any claim about the gearbox which was clearly showing no issues given it shows 'fresh oil' too. So, I don't think what Marshmallow's engineer has said above helps any argument that the claim concerned either a mechanical failure or wear and tear.

In its reasons for disagreeing with the investigator's view, Marshmallow said it had no opportunity to inspect Mr M's car. It said Mr M didn't notify it in a timely manner that the vehicle was undergoing repairs. It said the estimate produced from Mr M's repairing garage wasn't sufficient for it to determine the cause of the failure. It said it would have arranged an inspection of the car if it had been informed of the urgency of the repairs. Therefore, as it wasn't, its ability to assess the situation was severely compromised.

However, Mr M has shown us that he wrote to Marshmallow on 10 February 2024 complaining he had been ignored for a week, so he now has no option but to bring his complaint to us.

Prior to that Mr M showed us he reported the claim on 4 January 2024. Following that on 8 January he was asked to provide his V5 and driving licence and proof of his address which he did on 11 January. He chased matters on 11 January explaining he had to report back to his repairing garage and might have to authorise the repairs. Mr M explained on Sunday 14 January Marshmallow asked him to send in his V5 and licence which he had done already.

On 15 January Mr M has shown us that he called Marshmallow again explaining it was dragging on and that he had to give the garage the go ahead to repair his car because they can't keep it any longer without working on it. And further then it would cost £150 to tow it back to his house also and indeed more funds to tow it to yet another garage. But later that afternoon after he told Marshmallow the above Mr M has shown us, he received a call for someone else to pick up his car. He explained that Marshmallow had known 11 days earlier that his car had been taken to a garage.

Then Marshmallow responded on 16 January saying the following:

*'It is possible for you to arrange repairs through a garage of your choice!
If you choose to do this, you will be responsible for paying the difference between the cost of our repair centre and the cost of a private repair, on top of your pre-existing excess of £1,075.*

You should be aware we will only pay up the amount our approved repairer would charge if they were doing the repairs We also can't guarantee the work done by your garage.'

Then Mr M showed us that he contacted Marshmallow again on 31 January also sending through the repair invoice from his garage along with pictures. He also showed us that he phoned Marshmallows repair network as he had finally got a number for them from Marshmallow on 1 February, and he explained he told them his repairing garage had completed the repair of his car and was now going to charge £20 per day storage fees. This repair network operator said he hadn't received any details from Marshmallow about Mr M's car. All which finally led to Mr M bringing his complaint to us.

At no stage in Marshmallow's file or indeed the detailed submission from Mr M proving the calls he made and the emails he sent, did Marshmallow ever say it wanted to inspect his car. There is just no indication of that at all. That only arises following the investigator's view. So, I don't consider it's true that Marshmallow never had 'the chance' to examine Mr M's car, it's far more likely it decided it was never going to pay his claim as it had already made up its mind it wasn't going to pay it because it thought it was likely to be a mechanical or wear and tear issue.

Therefore, I consider it's only fair and reasonable for Marshmallow to pay Mr M's claim subject to the remaining terms and conditions which does mean it will be less the excess payable. This is because I am now asking Marshmallow to pay the claim and the excess is always payable if a claim is being paid. Since Marshmallow provided no estimate of the costs any of its repair network would have charged to repair Mr M's car, I don't consider it's entitled to rely on that issue in any way to reduce its payment to Mr M. Interest should be added to the claim payment too. Mr M has shown us his family loaned him the payment of the garage invoice which came to £4,581.72 inclusive of VAT which he paid on 5 February. And it should also repay him the sum for the recovery of his car to the garage too. I believe this was £150.

Compensation

When Marshmallow finally issued its final response letter on 10 April 2024 it acknowledged it had unreasonably delayed matters for Mr M and paid him the sum of £125 by way of an apology.

I agree with the investigator that Marshmallow should have properly managed Mr M's expectations from the start, most especially its view that it was likely it was going to think this claim was due to mechanical failure or wear and tear. This is part of its Consumer Duty to Mr

M. So, I consider it's fair to add another £100 compensation to the £125 already paid. Making the final compensation payment to be £225. This is in line with our approach for such matters which is more fully detailed on our website.

My final decision

So, for these reasons it's my final decision that I uphold this complaint.

I now require Marshmallow Insurance Limited to do the following:

- Refund Mr M the sum he paid his repairing garage in the sum of £4,581.72.
- And refund him the towing fee to this garage which I understand is £150.
- Interest of 8% simple should be added from the date Mr M paid these sums to the garage to the date it refunds Mr M. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr M for HMRC purposes.
- Pay Mr M a further sum of £100 compensation so that the total compensation paid to him is £225.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 January 2025.

Rona Doyle
Ombudsman