

The complaint

Miss G complained about the length of time and the consequent lack of contact from Marshmallow Insurance Limited when she made a claim on her motor policy following an accident.

References to Marshmallow includes all its agents repairers and other intermediaries.

What happened

Miss G's front wheel came off her car following a collision with a bollard, and she made her claim to Marshmallow on 26 March 2023. Marshmallow instructed its approved repairers to examine her car on 31 March 2023.

Her car wasn't sent to a repairer until 23 May 2023. When Miss G complained to us on 3 July 2023 the repair of her car still hadn't been completed.

Miss G complained to Marshmallow about the excessive delay, the lack of contact, the excessive amount of chasing she had to do, along with several lots of misinformation about whether her car would be repairable or written off, and even at times the actual location of her car. It upheld her complaint paying her £75 compensation.

Miss G didn't think this was sufficient. She wasn't given a hire car or courtesy car until 12 May 2023 and incurred two lots of taxi costs of £120 totalling £240 from 10 April 2023 to 14 April 2023 and again from 9 May 2023 to 12 May 2023. So, she brought her complaint to us. The investigator ultimately upheld it. She thought Marshmallow should pay both lots of taxi costs plus pay a total of £200 compensation.

Neither Miss G nor Marshmallow agreed. Miss G felt this wasn't enough given her losses due to the excessive delay in getting her car fixed and more importantly being allocated a hire car. She explained that as her job required her to be in work early in the morning or late at night on a strict roster basis when public transport wasn't available, it caused both extra costs in taxi fares plus childcare costs also, since she had to pay for childcare whether she had managed to get her child to the childminder, or not.

Marshmallow said its policy didn't provide for loss of use and that Miss G should have simply got the bus or train instead. It also appeared to have some problems understanding our change of stance on loss of use as fully detailed and publicised on our website and through other media channels. In essence it simply didn't agree with the change in stance.

So, on this basis Miss G'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.

There is no dispute that there was an excessive and an unreasonable delay in getting Miss G's car repaired. That means this delay put Miss G to excessive amount of distress and inconvenience as Marshmallow didn't keep to its own policy terms nor more importantly the regulations under which it operates to treat its customers fairly and in line with its duties under those regulations.

Miss G explained the excessive amount of chasing she had to do in order to get her claim going. At every turn there was misinformation about whether her car was repairable, or whether it should be written off. There were also times when no one appeared to know where her car was actually being stored. Finally in April an approved repairer phoned her and said they were going to repair her car. However, the car wasn't delivered to this repairer until late May. Then there were issues concerning parts and the delay in acquiring them. With the exception of the delay in getting parts, I consider Marshmallow failed Miss G in its duties to deal with her car in a reasonable amount of time, considering the accident happened on 26 March 2023 and by 3 July 2023 when Miss G brought her complaint to us her car was not repaired. Furthermore, it didn't arrange a hire car for Miss G until 12 May 2023. Its policy specifically details a courtesy car would be given by the repairing garage if available. However, that presupposes there is little delay in getting the car to a repairing garage also. More especially since Marshmallow's service standards say a repairer would be in contact within 48 hours. Here, Marshmallow failed to get Miss G's car to the repairer until late May 2023, nearly two months after the accident.

And it didn't try and limit Miss G's inconvenience for being without a car until it provided a hire car on 12 May 2023. Given the delay, the burden of proof to limit the losses incurred shifts from the policyholder to the insurer who is causing the delay. And that here was Marshmallow and its agents in either repairing Ms G's car or writing it off and paying her the market value to buy a new car. It's irrelevant therefore that the policy doesn't provide for loss of use, as Marshmallow and its agents had excessively delayed in sorting out Ms G's car in a reasonable period of time. I consider its service to Miss G was very poor and far below the standard I would have expected any motor insurer to give its policyholder.

Therefore, given Miss G's job and its hours and roster, I consider the taxi fares she incurred to be reasonable and not excessive in her particular circumstances. And I consider Marshmallow should refund them with interest. Given her job and the hours she had to attend it, public transport would not have been always available at these times or suitable for Miss G, and certainly not buses as Marshmallow felt Miss G should have used instead. Like the investigator I don't consider the childcare costs Ms G said she incurred over this time to be that relevant here as these costs are not backed up by consequent loss of income to substantiate their relevance. Therefore, I don't consider these should be refunded by Marshmallow.

Essentially the terms of the policy aim to keep policyholders mobile as courtesy cars are provided for by the repairers (if available) if the car is being repaired or otherwise the market value is paid to enable the policyholder to buy a new car. Given the excessive delays Ms G endured by Marshmallow's own delays, she was effectively without a car for seven weeks from 26 March 2023 until the hire car was provided on 12 May 2023. Ms G's transport costs throughout this time were the taxi fares which I've decided Marshmallow should reimburse. So as there is no other evidence of losses, the rest comprises the inconvenience and trouble and upset Ms G endured.

I don't consider the initial payment of £75 was at all enough given the excessively long time Miss G was without a car. It's certainly not in line with our stance for compensation which is available for Marshmallow to read on our website. I do consider the £200 in total as suggested by the investigator to be more appropriate and more in line with our approach too. So, I consider Marshmallow should pay Miss G a total of £200 compensation. Miss G said she has never received the £75 compensation payment Marshmallow said it paid her. So, Marshmallow must now ascertain if this payment has been made and cashed by Miss G and if not, it must now pay it to be included in the £200.

Lastly our change in stance on the 'loss of a use of car' is to reflect the actual losses the consumer has incurred so that each consumer's particular circumstances are considered. And again, any policy terms and conditions which set out to limit this or to refuse to cover it are irrelevant when it's found (as in the case here) the insurer, namely Marshmallow has delayed things unreasonably.

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:

- Reimburse the taxi fares of the total of £240 adding interest at 8% simple per year from the date Miss G incurred the taxi fares to the date it refunds them. If income tax is to be deducted from the interest, appropriate documentation should be provided to Miss G for HMRC purposes.
- Pay Miss G a total of £200 compensation to include the £75 which Miss G said Marshmallow hasn't yet paid her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 24 April 2024.

Rona Doyle
Ombudsman