

The complaint

Mr L complains Marshmallow Insurance Limited (Marshmallow) caused unacceptable delays after he made a claim on his motor insurance policy.

There are several parties and representatives of Marshmallow involved throughout the complaint but for the purposes of this complaint I'm only going to refer to Marshmallow.

What happened

In early April 2023 Mr L was involved in an incident with a third-party vehicle. The bodywork of the car was damaged to the passenger side. He made a claim on his motor insurance policy.

The car was taken to Marshmallow's approved repairer. The reported damage was inspected and the estimate for repairs was authorised.

Mr L was without a car for more than three months before the repairs were started because the approved repairer did not have a courtesy car available and there was a delay in obtaining the parts required to complete the repairs.

Mr L paid for taxis to keep himself mobile, mainly to get to and from work.

As Marshmallow did not provide him with a courtesy car whilst he was without a car he wants it to reimburse him for the travel expenses he has incurred.

Marshmallow accepted there had been unacceptable delays and inconvenience caused to Mr L. It offered him £300 compensation for this. However it said providing a courtesy car was subject to availability when repairs were being undertaken and therefore it would not cover the travel costs he had incurred.

As Mr L was not happy with Marshmallow, he brought the complaint to our service.

Our investigator upheld the complaint. They looked into the case and said Marshmallow had not been reasonable and had failed to provide him with a courtesy car for an extended period. He said it should pay him the costs he had incurred which totalled £2,386.54, plus 8% interest from the date of his complaint in addition to the £300 compensation offered.

As Marshmallow are unhappy with our investigator's view the complaint has been brought to me for a final decision to be made.

What I provisionally said

I looked at the terms and conditions of Mr L's policy. On the statement of fact it says;

"8. Provision of a courtesy car

Courtesy car provided for the duration of repairs if a network repairer is used."

In the terms and conditions document on page 31 it says;

"If a valid claim is made under this policy, and the insured vehicle is to be repaired by one of our approved repairers, the repairer will provide you with a courtesy vehicle (subject to availability) for the duration of the repairs.

If the parts required to repair the insured vehicle are not immediately available to our approved repairer we reserve the right to withhold the provision of a courtesy vehicle until such time as the necessary parts are available and repair work can proceed."

Marshmallow said its policy wording is clear that a courtesy vehicle is subject to availability, and that it does not guarantee this being provided in the event of a claim.

I accept this is said in the terms and conditions, however the time taken to start the repairs to the car should be reasonable.

I saw Mr L's car was taken to Marshmallow's approved claims provider on 12 April 2023 and inspected by the approved repaired on 19 April 2023. Marshmallow approved the estimate for repairs on 4 May 2023. Mr L was told a courtesy car would not be available until the end of June 2023.

Towards the end of June 2023 Mr L was told there were delays with obtaining the parts required to complete the repairs. At this point he found an alternative repair garage that could complete the repairs and also provide a courtesy car straight away. He asked to move his car there. Marshmallow said Mr L would be liable for the cost of the parts ordered by its approved repairer and it was not possible for him to take these parts to the repair garage he had identified.

The repairs to Mr L's car were started in mid-July 2023. When this work started the approved repairer found additional work that was not accident related that required further investigation. This causing further delay.

There was a delay of approximately three months in starting the repairs, due to a courtesy car not being available and then waiting for parts. I think it unreasonable that Mr L was without a car during this time. It is not fair he wasn't kept mobile due to Marshmallow's choice of garage.

I saw evidence Mr L's car was still roadworthy when it was taken to the approved repairer. It is unclear as to why his damaged car was not returned for him to use whilst the approved repairer chosen by Marshmallow was able to offer a courtesy car and whilst it was waiting for parts to arrive. I asked Marshmallow for clarification around this, but it did not provide any response.

I would expect to have seen Marshmallow make arrangements to return Mr L's car to him as it was still roadworthy or make alternative arrangements to keep him mobile whilst waiting for parts. This may have meant renting a hire car for him.

Marshmallow said its approved repairer was responsible for provision of a courtesy car. However as Marshmallow is the insurer it is accountable for the actions of any organisations working on its behalf. In this case a claims partner who managed the claim and the approved repairer.

For the reasons I have given I do not think it is fair for Marshmallow to rely on the policy term 'subject to availability' regarding provision of a courtesy car in this case. It should therefore make a payment for loss of use during the delay. This is compensation for the financial loss Mr L suffered as a result of being without a car when he shouldn't have been.

Mr L provided evidence of costs for taxis between 20 April 2023 and 11 August 2023, and for one train journey in May 2023.

I cannot hold Marshmallow responsible for any delay caused by the additional work found when it started the repair work in mid-July 2023. Therefore I think it is fair to require Marshmallow to pay for transport expenses evidenced by Mr L for the train journey and for taxis up to 29 July 2023. This date is approximately two weeks after the actual repairs were started and would have likely been completed if the additional non-incident related damage had not been found.

Marshmallow agreed there were delays in obtaining parts and getting the repairs started and offered £300 compensation. I think this is fair in the circumstances of this case.

Therefore, I intend to uphold Mr L's complaint and intend to require Marshmallow Insurance Limited to pay Mr L £300 compensation for the delay in starting the repairs to his car and cover his travel expenses from April 2023 to 29 July 2023.

Responses to my provisional decision

Mr L responded and said he accepted the provisional decision.

Marshmallow responded and said

- The car was not roadworthy due to damage caused in the incident so couldn't have been returned to Mr L.
- The car was also fully stripped to examine the damage so was not drivable and could not go back on the road until it was fixed.
- It spoke to Mr L about a courtesy car not being available in May 2023 and explained it was subject to availability and it wouldn't cover travel expenses.
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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.

In response to Marshmallow's comments

- Other evidence submitted by Marshmallow stated that on 19 April 2023 his vehicle has been deemed *roadworthy*. It now says the car was unroadworthy due to the damage and also undriveable due to being stripped.

I accept the reasons it has now provided as to why it was not returned to Mr L whilst waiting for the parts to complete the repairs.

However even considering the damaged car could not be returned because it was unroadworthy and undrivable, the length of time Mr L was left without a car whilst he was waiting for the parts for repairs to be started was still unacceptable. And alternative arrangements to keep him mobile whilst waiting for parts should have been made by Marshmallow.

Based on the evidence I've reviewed; I maintain my provisional decision and I uphold Mr L's complaint.

My final decision

For the reasons I have given I uphold this complaint.

I Marshmallow Insurance Limited to pay Mr L

- £300 compensation for the delays caused.
- Reimburse the taxi and train travel expenses incurred from April 2023 to 29 July 2023 (on receipt of the valid receipts).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 14 March 2024.

Sally-Ann Harding
Ombudsman