

The complaint

Miss H complains about how Marshmallow Insurance Limited (“Marshmallow”) handled a claim under her motor insurance policy. When I mention Marshmallow I also mean its approved repairer.

What happened

Miss H had a motor insurance policy with Marshmallow covering her car.

In November 2023 she was involved in a collision and she reported it to Marshmallow. Her car was recovered by Marshmallow. While it was being, further damage happened to it.

While her car was away, Miss H used a hire car provided by a legal company acting on her behalf and provided to her by Marshmallow. This went on until about 13 March 2023 when it was returned due to the third-party failing to respond. But Miss H was sent a bill for £947 as she’d had the hire car from 26 February to about 13 March despite being asked for it back. I can see some discrepancies in the date the car was returned, but for simplicity I’m using 13 March.

She’s since used taxis to commute and for other journeys.

Miss H complained to Marshmallow that she wanted a courtesy car when the hire car was returned. Marshmallow said it wouldn’t supply one as her car was roadworthy.

Miss H has made a further complaint to Marshmallow. This complaint can only deal with matters until its final response letter of 24 April 2024.

Marshmallow didn’t respond to her complaint within the eight weeks it’s allowed, so Miss H brought her complaint to this service. She asks for her excess, car tax, taxi fares and insurance premiums refunded.

Marshmallow later responded and offered Miss H £300 compensation for delays and inconvenience during her claim.

Our investigator looked into it and thought it would be upheld in part. He thought it wasn’t fair to ask it to refund her premium or her excess. But he thought Marshmallow should have provided Miss H with a courtesy car while her car was being repaired, and so it should cover the cost of the hire car between 26 February and 5 March, when her car was roadworthy.

He also thought Marshmallow should pay Miss H a total of £500 compensation for the length of the claim.

Miss H didn’t agree with the view. She asked that Marshmallow pay her a total of £16,978.10 for the value of her car, her costs and expenses and compensation for her distress and inconvenience.

Because she didn’t agree, her complaint has been passed to me to make a decision.

I issued a provisional decision intending to uphold Miss H's complaint, but on a different basis to the view:

I'm issuing this as a provisional decision upholding Miss H's complaint, but on a different basis to our investigator. It's important I say I'm not looking to award Miss H's desired outcome of nearly £17,000 and I'll explain why.

I've read about Miss H's claim and I can see she's been given very poor service by Marshmallow.

In its final response, Marshmallow said it'd caused several delays during Miss H's claim. But the legal company it passed her to ensured Miss H had been provided with a hire car for much of the delay. I think that the provision of the hire car was fair and reasonable.

Due to Marshmallow's lack of action, it took about six weeks for her car to be recovered in the first place. And a further two for it for repairs to be authorised, two further weeks to reach the repairer and finally three more for the work to be done. So about 13 weeks in total. But as I mention above, during this time Miss H had been provided with a hire car so her inconvenience should have been minimised.

Miss H's car was ostensibly ready for her on 23 February, so she was asked to return the hire car on 26 February.

But, further damage had been found on her car on 2 February and had been reported to Marshmallow. These were marks on the car's sill and indicated that it'd been handled badly during the recovery and storage process.

It took Marshmallow a month to respond to this issue. On 5 March Marshmallow said she should take her car back as it was roadworthy.

Miss H refused to accept it and wouldn't pay her excess. She kept using the hire car, which she still had. She said she kept it because she needed it for work.

Repairs to her car then took place, lasting until 19 April. During this period, the car's MOT and tax expired and Miss H said she couldn't have it back because it was unroadworthy.

I can see from the file that Miss H took her car back in early May, having paid the excess, but noted there were further problems with the car. As I've said above, I can only consider her complaint until the date of Marshmallow's final response to her. If she remains unhappy about these later issues then she can make another complaint to Marshmallow and this service in due course if she remains unhappy.

There are certain parts of Miss H's complaint I'm able to deal with directly:

Miss H has asked that I decide Marshmallow should refund her excess. The excess is part of Miss H's agreement with Marshmallow under the terms of her policy. She agrees to pay the excess when she makes a claim. She has made a claim, so needs to pay the excess as part of that process. So this isn't something I can fairly ask it to refund to her.

Again, her premium is part of her contract with the insurer. And Miss H needs to make sure she pays that premium under the terms of the policy. I can see there was a period of time when Miss H didn't have her car, or a temporary replacement provided by Marshmallow, but it's still her responsibility to keep paying her premiums. So I'm not going to ask Marshmallow to refund any of her premium.

Turning now to other parts of her complaint, I've thought carefully about the situation around the time Miss H was asked to hand back her hire car and take her car back.

Marshmallow have said Miss H's car was available from 5 March, as at this time the damage from the collision was fixed. There was the matter of the sill damage, but the car was declared roadworthy by the repairing garage.

But Miss H says that as its MOT and tax had expired, she feels Marshmallow should pay for the car hire costs until 15 March 2024, plus taxi fares to get to and from work after the car hire was returned. It's not clear why Miss H didn't accept the car back. She has said the repairer said it wasn't ready, but the file says the work was done and the car was roadworthy.

I suspect there may have been a misunderstanding here, that the work was done to a point, but not complete due to the sill damage that was going to be dealt with separately. But her car was still roadworthy and I think it's fair I say it should have been collected by Miss H.

And it's this point that seems to be at the crux of the matter. If Miss H had taken her car back, then there wouldn't have needed to have been a hire car. Miss H would, presumably, have been entitled to a courtesy car from the repairer while her's was being worked on.

But as she refused to accept it, either because she misunderstood or didn't want to pay her excess, then she's incurred these extra costs.

That said, the sill damage seems to have been incurred while the car was in the care of Marshmallow. And from what I can see, it's Marshmallow's slow response to both her claim and the subsequent extra damage that delayed Miss H's claim so much.

As Marshmallow has paid for the sill damage to be repaired, it's fair I say it has accepted responsibility for it.

I have said above that I think Miss H should reasonably have taken back her car when she was asked, but I must consider that her car was only in that state due to Marshmallow's actions, and its inactions in not moving her claim forward repeatedly.

So I also think it's fair on balance that it deals with the problems it's caused Miss H.

What this means is that I propose to say that Marshmallow needs to waive or pay the extra hire car cost its supplier is charging Miss H.

I've also considered Miss H's travel costs she continued to incur. I've said above that I think she should reasonably have taken back her car when it was ready, even though the work wasn't completed. Her choice to not do that means that she's incurred some of those costs, but I also agree with her that she should have been entitled to a courtesy car during the actual repairs to her car.

From the file of evidence, the dates when the car was actually being worked on were 15 to 18 April, so I think Marshmallow need to refund Miss H for her reasonable, evidenced costs during that period.

I can see from the file that Miss H has been caused considerable distress and inconvenience during her claim. Marshmallow offered her £300 for this. If Marshmallow had acted as it should during the claim, which took five months to deal with to the date of its final response, her distress would have been much less. But it was responsible for providing her with a hire car for an extended period, which is fair and reasonable.

I've also thought about how Miss H's actions in not accepting her car back, and I think it's fair I say that some of her distress about that wasn't fairly caused by Marshmallow. I've looked at this service's guidelines and taking everything into account I think the figure of £300 compensation is appropriate, which was the amount originally offered by Marshmallow.

Responses to my provisional decision

Marshmallow didn't respond.

Miss H responded and didn't agree with my provisional decision. She said she was told by the repairer that her car wasn't ready and wasn't roadworthy, so she wasn't able to have it back. She said she had several conversations about this with both the repairer and Marshmallow on or around 18 March.

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.

I've read Miss H's response to my provisional decision carefully, and I've compared it to the information held in the file. The evidence I have seems clear. On 1 March, the repairer told Marshmallow that Miss H's car was roadworthy and ready for collection. By this, what I think it means is that the initial damage had been repaired, but the further sill damage hadn't.

Then, Marshmallow told the repairer it could release Miss H's car to her on 5 March.

Marshmallow also said in its final response to Miss H that she had refused to accept her car back or pay her excess.

On the evidence I have, it seems more likely to me that Miss H didn't accept her car back, rather than because she was told it was unroadworthy and couldn't be returned to her. I do appreciate Miss H's strength of feelings about this, but this is an evidence based service and the file I have seems to show me that she chose to not have her car back.

I can see that Marshmallow's service wasn't very good over an extended period, and I can see this impacted Miss H. But the decision I'm reaching is the same as in my provisional decision as I don't reasonably think there's new information that would lead me to reconsider it.

My final decision

For the reasons set out above, it's my final decision that I uphold this complaint. I direct Marshmallow Insurance Limited to:

- Waive or pay the hire car costs billed to Miss H.
- Pay Miss H £300 for her distress and inconvenience.
- Pay Miss H for her reasonable, evidenced travel costs between 15 -18 April 2024 inclusive.

Marshmallow Insurance Limited must pay the amount within 28 days of the date on which we tell it Miss H accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 11 October 2024.

Richard Sowden
Ombudsman