

The complaint

Mr A complains about the way his motor insurer, Marshmallow Insurance Limited ('Marshmallow') dealt with a claim he made on his policy.

What happened

Mr A made a claim on his motor insurance policy after he was involved in a road traffic accident in February 2024. Marshmallow's agents assessed the car and declared it a total loss about a week after the accident. Mr A was offered an £8,231 valuation which he accepted on 26 February 2024.

Before making the payment, Marshmallow asked for some documentation from Mr A which he provided in early March 2024. After deducting the excess, Marshmallow raised a payment for £8,031 on 5 March 2024, which it believed had been paid into Mr A's account three days later.

Over March 2024 Mr A contacted Marshmallow a number of times saying that the money hadn't been received by his bank. He raised a complaint about this and about the fact that he wasn't offered a courtesy car despite being entitled to one.

Marshmallow responded on 22 March 2024 to say that it should have made it clearer to Mr A that he was entitled to a courtesy car and this should have been available to him from 20 February 2024. It offered him £50 compensation for this. In relation to the missing payment, it said this had been paid and asked Mr A to contact his bank.

Mr A insisted that the payment had not been made and complained again. He said that the delay in receiving the payment meant that he wasn't able to buy a new car and also that he suffered a loss of earnings due to not having a car.

Mr A brought his complaint to us in March 2024 and said that he had still not received his payment. He said he needed the money to get a new car so he could work and that he was losing money due to not being able to work.

Marshmallow responded to the second complaint on 12 April 2024 and offered Mr A £550 in compensation as well as an apology for delaying the payment. It said that when the payment was initially raised on 8 March 2024, its bank asked for further checks to be carried out due to the amount involved. It said it failed to action this until 9 April 2024 despite this issue being raised with it almost a month earlier.

Mr A wasn't happy with Marshmallow's increased offer though he was pleased that it accepted it had made an error. He said the £550 offered wasn't enough to compensate him

for his losses. He said he was losing £1,300 in earnings and that this had gone on for eight weeks. He said the compensation should be at least £10,000.

Marshmallow said to us that it wouldn't agree to make loss of earnings payments and also that it wasn't clear why Mr A wasn't able to take transport to and from work or how not being able to buy a new car impacted his ability to work. It didn't think it should be liable to pay £10,000 in lost earnings.

One of our investigators reviewed the complaint but thought that Marshmallow didn't need to take any further action and that its £600 overall offer was fair and reasonable. Our investigator agreed that Mr A was entitled to a courtesy car under his policy and as this wasn't provided, he could look at a loss of use award. He said this would include reasonable travel costs or the cost of hiring another car but without evidence in support he wouldn't be able to make such an award.

Mr A provided evidence of shifts that he was booked to attend which he said he had to cancel due to not having a car. He said that he could not afford to buy a second car, take public transport or hire another car. He also said he wasn't sure Marshmallow would pay him his total loss payment and didn't want to risk it. He added that public transport would have taken one to three hours each way and would have negated the hours he would have left to work.

Mr A provided screenshots of three shifts which he said he had to cancel due to Marshmallow failing to provide a courtesy car for two weeks and due to it delaying his pay-out.

Our investigator didn't change his view. He said that he hadn't seen evidence that the shifts had been booked and then cancelled due to Mr A not having any transport. He also said he didn't see any evidence that Mr A had tried to mitigate/minimise his losses by, for example, hiring another car. He thought the cost of this would have been low compared to Mr A's earning potential. He also said he didn't think it would be fair to ask Marshmallow to pay for loss of potential earnings as he thought Mr A could have done more to mitigate his losses.

The matter was then passed to me to decide. Before I issued my decision, I went back to Marshmallow to ask for a copy of the policy terms and conditions as well as a confirmation of how long Mr A was entitled to a courtesy car and how long he was provided with one for.

Marshmallow said that a courtesy car was provided between 29 February and 27 March 2024 and provided a copy of a booking form from the provider of the courtesy car which it said Mr A had completed on 27 February 2024. It said under the terms and conditions Mr A was entitled to a replacement car for 28 days.

Our investigator wrote to Mr A to relay what Marshmallow has said above. She asked if he had any comments to make. No response was received so we emailed Mr A once again after the initial deadline and allowed him a few more days to respond. Mr A responded to ask for an extension which our investigator agreed to.

Mr A said that Marshmallow repeatedly denied him a courtesy car and refused to provide one until he provided it with a copy of their (insurance) contract. He added that this initial two-week delay was excessive and resulted in him cancelling work and incurring substantial out-of-pocket expenses. He said his main complaint is that Marshmallow insisted that it had sent him his total loss payment when that wasn't true. And that when he said the payment wasn't received, it refused to investigate and insisted he contact his bank. He said this caused him financial insecurity and significant distress. He didn't feel that Marshmallow's offer adequately addressed the harm he suffered and feels such an award would have been more appropriate if he had suffered minimal inconvenience. Mr A also didn't feel that Marshmallow demonstrated that it had handled the complaint with reasonable care and skill and said it failed to treat him fairly and act with due skill, care and diligence.

No further comments were received, and I decided to proceed with my decision.

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.

The courtesy car

I think there was some confusion in relation to the courtesy car. And I think this was due to the fact that the provision of a courtesy car in situations where the insured car was a total loss is an optional extra that Mr A took out. Normally, a courtesy car would not be available in the event of a total loss. And, though this was part of Mr A's cover with Marshmallow, it was provided by a separate provider and not Marshmallow.

Mr A said that Marshmallow failed to provide a courtesy car for two weeks. But he'd also said he didn't have a courtesy car for eight weeks though he has since clarified that there was an initial two-week delay in getting one.

Marshmallow accepted that it should have been clearer with Mr A that he was entitled to a courtesy car and explained how he could go about arranging this. Marshmallow has now provided us with evidence that Mr A was able to request a courtesy car on 27 February 2024 which was about two weeks after the accident. Mr A has confirmed there was an initial two-week delay which ties in with the information provided by Marshmallow so, based on the available evidence I think that a courtesy car was, on balance provided between 29 February and 27 March 2024 i.e., 29 days. This seems to be in line with the 28-day entitlement for a courtesy car that Mr A has under his policy, according to Marshmallow.

Loss of earnings

Mr A said that as a result of not having a courtesy car he had to cancel work. He said public transport would have taken a long time and also that he couldn't afford to hire a car. He also said that as a result of not being able to buy a replacement car for eight weeks he was again not able to carry on working. He says he lost about £1,300 per week in earnings as a result of Marshmallow's errors.

The incident happened around the middle of February 2024 and the total loss wasn't settled until April 2024. This is longer than what we would expect for a total loss settlement. We also know that there was an initial two-week delay in Mr A being provided with a courtesy car and that there were also about ten days between him giving back the courtesy car and receiving his total loss payment.

Mr A says that as he wasn't able to use his car he wasn't able to work and therefore suffered a loss in his earnings. Mr A's policy does not provide cover for loss of earnings claims and it excludes indirect losses resulting from the incident which led to the claim. Nevertheless, this is something we could award if we felt it was fair and reasonable to do so in the specific circumstances of the complaint. And we would have to be provided with particularly persuasive evidence to make us ask the insurer to step outside the policy terms and cover something it wouldn't otherwise have to.

In the specific circumstances I am not minded to make a loss of earnings award and I will explain why. As our investigator said, there is a duty on Mr A to mitigate or minimise his losses. In this case this may have meant Mr A hiring another car for the period when he didn't have a courtesy car or using public or other transport so he could carry on working.

Mr A has provided screenshots of shifts that he said he had to cancel. Those shifts would have paid him between £350 (for a shorter shift) and £680 per shift. Mr A supplied further screenshots to show the shifts had been accepted but I haven't seen anywhere that says the shifts were cancelled. Also one of the shifts was in March 2024, while Mr A had a courtesy car.

Mr A said that he could not afford to hire a car but looking at what he would have earned per shift I think reasonable hire costs would have been a lot less. So it would have still been worth Mr A's while attending his shifts. Mr A said that if he'd hired a car for 60 days it would have cost £6,000 and he wouldn't have been sure this is money he would have got back from Marshmallow. I don't necessarily agree with this argument. I think Mr A could have hired a car to attend each shift so this wouldn't have been for the whole 60 days. Also, as I said above Mr A was in a courtesy car for 29 of those days. And he could have also hired a car just for the shifts which were on dates when he didn't have a courtesy car, if he was concerned he wouldn't have recouped those expenses from Marshmallow. If he had hired another car for a reasonable daily charge, I would have, on balance, said this was a reasonable expense which Marshmallow should be responsible for. Mr A said he also wasn't able to take public transport as it would have taken one to three hours each way. I think that's something that could have been looked at on a case-by-case basis. I don't think a one-hour commute to work is unusual but perhaps a three-hour commute might have been, especially bearing in mind Mr A's line of work where he says he has to stay rested to perform his duties safely. So, on some occasions, depending where his shift was, Mr A could have reasonably taken public transport but on others it may have been more reasonable to have hired a car or taken a taxi.

Overall, I appreciate Mr A may have found himself in a difficult situation, but I don't think it would be fair or reasonable for me to ask Marshmallow to compensate him for his loss of earnings claim. I haven't seen enough evidence to be persuaded that Mr A's loss of earnings was purely down to Marshmallow's actions. And even if Mr A did provide evidence that he

lost earnings over that period, as our investigator said, we'd expect him to show that he tried to mitigate those losses. And based on the information provided I don't think Mr A did.

Also, as I said above, I'd have to be persuaded that Marshmallow's handling of the claim was particularly poor to warrant requiring it to pay something that the policy doesn't cover and I don't think this was the case here. I do think that Marshmallow caused some delays and I deal with those below.

Distress and inconvenience

Marshmallow has accepted that it made an error and that this led to a delay in Mr A receiving his total loss funds. Even though the initial payment wasn't delayed, it failed to complete the extra checks requested by its bank in order for the payment to go through. This added up to delays of over a month. Marshmallow has also accepted that it delayed providing Mr A with a courtesy car and we also know that his courtesy car was taken away around ten days before he received his total loss payment.

I appreciate this was a very frustrating situation for Mr A especially as Marshmallow should have known that the payment didn't go ahead from its end. And I also think it was frustrating for him that Marshmallow was insisting that he contact his bank to make enquiries when it was clear from March 2024 that it had more to do to ensure the payment reached Mr A. Mr A had to contact Marshmallow a number of times, raise two complaints and a complaint with us before the matter was investigated thoroughly and a solution was found. I think this would have been distressing as well as inconvenient for Mr A. And this was in addition to the delays with the courtesy car. Bearing this in mind, I was pleased to see that Marshmallow apologised and made a £550 offer to Mr A in addition to its previous £50 offer. I think this was fair and reasonable.

I appreciate Mr A may feel that £600 would be sufficient for instances where only minimal inconvenience is experienced. But such an award is more in line with awards we would make in cases with considerable distress, upset and worry. And in situations where significant inconvenience and disruption was experienced, which needs a lot of extra effort to sort out. The impact could last weeks or months. For these reasons I think Marshmallow's offer, in these particular circumstances, is in line with what we would award in similar situations. Mr A has mentioned that this also caused him to cancel work, financial insecurity and led to him suffering financial losses but those losses, which I dealt with above, are considered separately to a distress and inconvenience award.

I appreciate Mr A may be disappointed with my decision. I agree that Marshmallow's service wasn't always up to the standard we would expect but I think its offer to compensate Mr A for this is fair and reasonable.

My final decision

Marshmallow Insurance Limited has already made an offer to pay Mr A £600 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that Marshmallow Insurance Limited should pay Mr A £600 if it hasn't already.

Marshmallow Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr A accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

If Marshmallow Insurance Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one so he can reclaim tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 11 December 2024.

Anastasia Serdari
Ombudsman