

The complaint

Miss P has complained about her car insurer, Marshmallow Insurance Limited (MM) regarding a claim she made when her car was damaged in an accident.

What happened

Miss P was involved in an accident on 24 May 2024. She reported the incident to MM as being not her fault. Her car was driveable but she was told she could have it collect her car and she'd get a courtesy car straight-away. After her car was collected Miss P found out the advice about the courtesy car was incorrect – she wasn't going to get one and she was now without any transport. Miss P was due to start a new job and began trying to resolve her transport issues with MM.

MM said it would log a complaint about the advice Miss P had received about a courtesy car – but it could now do nothing until an engineer had assessed the car. When MM's engineer assessed the car on 6 June 2024, he decided it was a total loss. MM told Miss P it would settle her claim by paying her what it viewed was the market value of the car, less her policy excess and less a salvage sum (because she retained the car). It told her if she did not accept its valuation and settlement offer, it would charge her for storing the car. Miss P agreed the settlement and her car was returned to her on Friday 14 June 2024, allowing Miss P to start her new job the following Friday.

Miss P complained to MM and it issued a final response letter to her on 19 July 2024. Miss P was not happy with that response and so complained to the Financial Ombudsman Service.

When MM received contact from our Investigator, it clarified that it was prepared to offer £280. This would be, it said, a refund for the extended courtesy car cover Miss P had but hadn't utilised. Plus £100 compensation. Our Investigator noted that Miss P had said she'd lost wages of £355. So our Investigator reviewed Miss P's complaint.

Our Investigator felt that MM had failed Miss P in some respects, with MM having accepted that some failures by it had occurred. Our Investigator thought Miss P had lost two-weeks work as a result of MM's failings. She felt that a total of £500 compensation – inclusive of the £280 extended cover payment – and £355 for lost wages, should be paid.

MM agreed to that outcome. Miss P said she felt we'd missed the point that she did not agree her car was a total loss. She felt MM had acted unfairly when it had made that decision and that, as a result, it should be made to reimburse the salvage fee it had taken. She also indicated that she felt the compensation sum was insufficient given she'd faced losing her job and she'd been unable to get around.

The complaint was referred to me for an Ombudsman's decision. Having reviewed it, I was minded to agree with our Investigator that Marshmallow (MM) failed Miss P. But I noted an additional failure by it which I felt I needed to explain. Further, I thought MM should be paying Miss P for three weeks lost wages rather than two (£532.50 rather than £355). So I issued a provisional decision to explain my views to both parties. My findings were:

“Miss P’s complaint to MM was summarised by it in its final response letter as follows:

- 1) You are dissatisfied that our claims call handler confirmed that a courtesy vehicle would be provided to you, once we instructed [a solicitor] to manage your claim.*
- 2) You are dissatisfied that your vehicle was deemed a total loss, but an independent mechanic inspected your vehicle and determined that it could be repaired.*
- 3) You are dissatisfied that a courtesy vehicle wasn’t provided to you and has caused severe detriment.*
- 4) You feel threatened to accept the total loss assessment or if you didn’t want to claim anymore, you would be required to pay the claim costs we’ve incurred.*
- 5) You would like to be compensated for your financial loss, emotional distress and the misinformation that was provided to you.*

1) and 3)

MM accepted that it had given wrong advice regarding points 1) and 3). What I think it overlooked when it issued its final response was the impact its failure had on Miss P. Miss P’s car was driveable after the incident – but I understand that based on the fact she was told she was going to get a courtesy car, she allowed her car to be taken away immediately. When she found out the advice she’d received about getting a courtesy car was wrong, that meant she was without transport and MM’s only answer for her was to say it would log a complaint. I can see that Miss P began asking it straight away to get her car back – but MM’s only response in that respect was, there was nothing it could do until the engineer had assessed the car. I know Miss P was starting a new job, so I absolutely understand how worrying and frustrating this was for her.

Miss P was due to start her job on the day of the accident, and to work the following day too. I’m satisfied that the fact that she couldn’t work those two days was more likely to do with the accident than MM. But I think if MM had responded to her better once the error about the advice was realised and Miss P started asking for her own car back, I think Miss P could have started work the following week on 29 May 2024. Miss P’s employer kept agreeing to push her start date back. Miss P got her car back on 14 June and her start date was confirmed as 21 June. I’m satisfied that, but for MM’s error, Miss P would have worked between 29 May and 15 June. Miss P said that for two-weeks she lost £355 (£177.50/week). That seems reasonable to me. I’ve found though that Miss P lost three weeks work, so I think MM should compensate her for that by paying £532.50 (three times £177.50). Based on the likelihood that Miss P would have been paid a week in arrears, I’m going to require MM to add interest to each weekly sum I’m satisfied Miss P would have earned, to be applied in-line with the likely in-arrears payment, so from when she’d likely have received payment and until settlement is made.

I’d add though that in the usual course of events, Miss P would have been entitled to a courtesy car only once MM had decided how her claim was to be resolved. If it had felt Miss P’s car was repairable and it could provide a courtesy car, Miss P would have received one, once the car was being repaired. Here MM wasn’t minded to repair Miss P’s car. It felt it was a total loss (I’ll look at that more in a minute).

Miss P had extended cover which she could have utilised once MM said her car was a total loss. I think MM accepts that, in the circumstances here, where it had already failed Miss P in respect of the courtesy car, it could have done more to highlight this additional cover option (not provided by it) to Miss P.

I note MM offered to pay £280 to Miss P in respect of the extended cover. It seems to indicate the cover would have given her £10 a day for 28 days, hence its offer. But it has also said to this Service that it has offered £280 as a refund of the extended cover because it was not used. So the basis for MM’s offer is unclear. But what is clear is that this is not cover

which MM itself provides. And I'm mindful that for extended cover like this it would always be for the policyholder to make the claim. So I think it's fair to say that the intention behind MM's offer of £280 was really compensatory – it wanted to compensate Miss P for not helping her utilise cover she could have had which may well have lessened the distress and inconvenience she was suffering. So I am going to take this sum into account when I look at overall compensation for upset – rather than making MM pay it to Miss P in respect of an unspecified financial loss.

2) and 4)

I know Miss P thinks her car was not a total loss, and that even a mechanic has said he does not think there was anything structurally wrong with the car. But it might help Miss P to understand the decision MM came to, if I explain that, for an insurer to view a car as a total loss, it does not have to be affected structurally, it does not have to be undriveable.

Rather, when an insurer looks at repairing a car under an insurance policy it is tasked with reinstating the car to the condition it was in before the accident. Which includes cosmetic work, as well as anything 'structural'. So, for example, the insurer would have to resolve any paintwork issues, any dents or scratches, as well as things like broken headlights, snapped bumper clips or broken windows, all in addition to any more serious damage such as engine issues, broken suspension or a twisted chassis. I list these items as examples to highlight the range of repairs an insurer might have to undertake – with all of those types of repairs, necessary as a result of the incident, getting factored into the overall likely repair cost.

Once an insurer has an overall repair cost, it would look at the market value of the vehicle. The market value is the price it would cost to replace the car with a similar vehicle, in terms of things like make, age and mileage. An insurer will review repair costs in comparison to a car's market value. If an insurer thinks that repair costs are getting high compared to the market value, the insurer will likely decide to treat the car as a total loss. That isn't something this Service would usually find to be unfair. That is because, once work starts, the true cost of repairs can often increase from the estimated value. So, making a decision to 'total loss' a car, once estimated costs get to a certain point, prevents delays and costs increasing.

Here I note that MM's engineer had noted some pre-existing panel damage to Miss P's car. I know she was aware of that damage, which was unrelated to the incident and was worried that MM had factored in repairing that damage as part of the claim. I'm satisfied that MM did not do that. MM's engineer's report satisfies me that the repair costs were calculated based on damage to the off-side front corner of the car – in-line with the incident impact area. The list of damage does appear cosmetic in nature, as Miss P has said. Whilst I know Miss P has not seen fit to repair this damage, as I've said, under a claim, MM would have had to. The cost of repair of the incident damage was estimated at £4,453.32.

MM's engineer said he had checked one trade guide to ascertain the car's market value. He said the market value was £6,950. This Service would usually expect several guides to be checked. However, having had our Investigator do that, I can see that the sum of £6,950 is slightly in excess of all of the guide values our Investigator returned. So I'm satisfied the market value MM applied of £6,950 was fair and reasonable. I noted the estimated repair cost above. That was around 65% of the market value. I'm satisfied that MM acted fairly and reasonably when it decided Miss P's car was a total loss.

There was a policy excess and salvage value deducted by MM from the market value sum. I'm aware that Miss P wants the salvage value reimbursed. I can't reasonably require that of MM. I've found that MM fairly and reasonably decided Miss P's car was a total loss, and in that event the car would ordinarily become MM's property. Where MM keeps a total loss car,

it would ordinarily sell it for salvage, accruing an agreed sum from its salvage agent. This Service is generally satisfied that type of arrangement is fair.

Here, Miss P wanted to keep the car. So MM deducted an amount for salvage from her settlement. MM deducted £1,737.50. That works out at 25% of the market value sum (before the excess was deducted). That is in line with what we see from other insurers. I think it was fair for MM to take this from Miss P.

What I don't think was fair of MM was the way it responded to Miss P about the settlement offer. Miss P told MM that she was unhappy about the offer it had made. MM's response was to say if Miss P did not accept its offer, and instead did not want to claim anymore, it would charge her for storing her car. And MM has sought to defend its action in that respect, both to Miss P in the final response letter, and to our Investigator.

Miss P was entitled to challenge the offer MM had made. She may not have been correct in what she said – and I've found the offer made was fair. But it was her right to challenge it – she shouldn't have felt forced to agree to it. To treat Miss P fairly, what MM should have done, was to tell her that it would pay the settlement on an interim basis. That would have allowed her to receive the settlement, importantly have her car returned and then still be able to complain that the method of settlement was unfair and/or that the sum offered was insufficient. MM should not have sought to fetter Miss P's right to disagree with it and complain, in the way that it did.

Having made that point, I'll add that whilst this tactic from MM clearly caused Miss P some upset – it did not actually cause her to forego complaining. So it seems that MM's unfair act had a somewhat limited consequence on this occasion. But, it is important that both parties understand the failures which occurred, which caused upset or loss, and to what extent compensation is required for any of that.

5)

So, having set out all of the above, I move on to thinking about compensation. I'm satisfied that from around 27 May 2024, Miss P was suffering a lot of upset because of MM's error regarding the courtesy car and its lack of meaningful support in resolving that. I accept Miss P likely missed appointments and I know she had to rearrange starting her job. I can also see there was a possibility she would lose that job opportunity. But I also know that Miss P's car was returned to her on 14 June 2024, by which time she'd confirmed her job was secure and would start on 21 June 2024. So the considerable upset and significant inconvenience Miss P was caused by all of this was limited to a period of two to three weeks between 27 May and 14 June.

I've also found above that regarding MM's method and sum of settlement, which Miss P was unhappy about, MM acted fairly. But I did find Miss P was caused upset because she felt threatened by MM and forced into taking that settlement. I accept that was distressing.

For all of this distress and inconvenience, MM has agreed to pay £500. I note our guidelines for compensation awards which say we'll award £300 to £750 where an insurer's mistakes caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needed a lot of extra effort to sort out. For that type of award, typically, the impact of the insurer's failures will have lasted over many weeks or months. But sometimes we'll make an award in this range if a mistake has a serious short-term impact. Taking everything into account, particularly the period during which Miss P was most affected by MM's mistakes, I think the sum of £500 is fair and reasonable compensation."

Miss P said she accepted my findings. MM did not reply.

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.

As neither party objected to my findings, I've no need to provide additional comment on them, or change them. I can confirm then that my provisional findings are now the findings of this, my final decision.

To be clear, any redress amounts discussed at any earlier stage in our process, included in my background above for context, are no longer valid. If Miss P accepts my final decision within the deadline set, MM will be bound by what I have found, including what I've set out it should pay. In short, valid acceptance from Miss P will mean that MM will have to pay her the amounts set out below in "Putting things right".

Putting things right

I require MM to pay Miss P:

- £532.50 as compensation for lost wages.
- An amount equivalent to interest* on each of three sums of £177.50, applied on the first of the three from 5 June 2024, on the second from 12 June 2024 and on the third from 19 June 2024. All until settlement is made.
- £500 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require MM to take off tax from this interest. If asked, it must give Miss P a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Marshmallow Insurance Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 2 April 2025.

Fiona Robinson

Ombudsman