

The complaint

Mr G complains that Marshmallow Insurance Limited mishandled his claim on a motor insurance policy.

What happened

The subject matter of the claim was a car, first registered in 2011.

Mr G or one of his parents acquired the car in December 2021 (according to the policy documents).

Mr G insured the car on a comprehensive policy with Marshmallow for the period from September 2022 to August 2023.

Unfortunately, in mid-December 2022, Mr G reported that the car was damaged in an incident on an icy road.

Much of the complaint concerns acts or omissions by Marshmallow's claims-handling company. Insofar as I hold Marshmallow responsible for such acts or omissions, I will refer to them as Marshmallow's.

Marshmallow took possession of Mr G's car.

From late December 2022, Marshmallow arranged for a car hire company to supply a car to Mr G.

On about 23 January 2023, Marshmallow decided that Mr G's car was a total loss.

Marshmallow has said – but Mr G disputes - that on 23 January 2023, Marshmallow or its repairer told him that he needed to return the hire car by 30 January 2023.

Mr G returned the hire car on the afternoon of 9 February 2023.

The car hire company charged Mr G for those 9 days, totalling about £700.00.

On about 13 February 2023, Mr G complained to Marshmallow that it should cover that cost.

By a final response dated early April 2023, Marshmallow turned down the complaint.

Mr G brought his complaint to us in early May 2023.

our investigator's opinion

Our investigator recommended that the complaint should be upheld in part. He thought that it was reasonable to say that Mr G should've returned the car by 1 February 2023. The investigator recommended that Marshmallow should be liable for the car hire costs up to,

and including, 1 February 2023. He said that Mr G should be liable for the hire costs after this date from 2 February 2023 until 9 February 2023.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr G and to Marshmallow on 8 November 2023. I summarise my findings:

I wasn't minded to find Marshmallow responsible for the hire company's charges to Mr G for the period after 30 January 2023

Subject to any further information either from Mr G or from Marshmallow, my provisional decision was not to uphold this complaint. I didn't intend to direct Marshmallow Insurance Limited to do any more in response to this complaint.

Mr G disagreed with the provisional decision. He says, in summary, that:

- It is the standard procedure of the insurance company to give 7 days' notice of a vehicle being off hired. He can only assume that the reason for this is to allow customers to play out returning the vehicle.
- When he was first contacted by the car hire company on 30 January, he was asked to return the vehicle that day, despite him being across the country. He does not think it is reasonable to expect him to drop everything to return a vehicle he had no reason to expect would be off hired.
- He kept the vehicle for longer than 7 days. That was due to the amount of confusion, mixed messaging and false statements made during that time.
- If the email had been sent by the repair company on 23 January as they said it was, then he would have adjusted his plans accordingly and returned the hire car on time. However they did not send the email. So, he kept his original plans not knowing the car was to be off hired.
- He didn't receive any written confirmation that his car was written off until 9 February after he returned the hire car.

Marshmallow accepted the provisional 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.

I accept that Marshmallow's terms included the following:

"8 - Provision of a Courtesy Vehicle

If the insured vehicle is accepted by our approved repairer as being a repairable proposition, but it is subsequently deemed by us to be beyond economical repair, we reserve the right to withdraw the courtesy vehicle immediately."

That's not an unusual term in a motor insurance policy.

As I've said, on about 23 January 2023, Marshmallow decided that Mr G's car was a total loss.

When he brought his complaint to us in May 2023, Mr G's complaint form included the following:

"The first time [the car hire company] contacted me was on the 30th and it was by phone..."

On 4 February 2023 (a Saturday), Mr G and Marshmallow had a webchat. Mr G said the following:

"[car hire company] called me ten minutes after [claims-handling company] asking me to return the car on Tuesday. They told me that the hire ended on the 31st"

From those two statements, I find that the car hire company contacted Mr G on 30 January 2023 (a Monday) to ask him to return its car by no later than 31 January (a Tuesday).

The webchat on 4 February 2023 also included Marshmallow's statement as follows:

"your hire would have stopped when [the claims-handling company] determined your car to be a total loss, as we don't issue courtesy/hire cars in the event of a total loss."

That was in line with the policy term, in my view.

Mr G's response to the provisional decision

Mr G has said that it is the standard procedure of the insurance company to give 7 days' notice of a vehicle being off hired. I haven't seen any evidence to support that. And it would fly in the face of the policy term quoted above that Marshmallow had the *"right to withdraw the courtesy vehicle immediately"*. So I don't accept that Marshmallow had any standard procedure to give 7 days' notice.

Mr G has said that on 30 January he was "across the country" and he does not think it is reasonable to expect him to drop everything to return a vehicle he had no reason to expect would be off hired. However, he hasn't given any detail of his whereabouts that day, or why he couldn't return the vehicle the next day (or even that week). So I don't find it unreasonable to expect Mr G to return the car by no later than 31 January 2023.

Mr G has said that he kept the car due to the amount of confusion, mixed messaging and false statements. However, the webchat on 4 February 2023 had made clear that the hire had stopped. So I consider that Mr G was hanging onto the car for reasons of his own.

Mr G has said that If the email had been sent by the repair company on 23 January 2023, then he would have adjusted his plans accordingly. However, Mr G hasn't given any detail of his plans. And after the webchat on 4 February 2023 had made clear that the hire had stopped, he didn't adjust his plans so as to return the car before the afternoon of 9 February 2023. So I don't accept that he would've adjusted his plans on 23 January.

Mr G has said that he didn't receive any written confirmation that his car was written off until 9 February. However, I find that the repairer had told him by 30 January 2023 that his car was to be written off as a total loss.

Conclusion

Mr G hung on to the hire car after the car hire company asked him on 30 January 2023 to return it. Even after Marshmallow confirmed the position on 4 February 2023, Mr G hung on to the hire car until 9 February 2023.

So I don't find Marshmallow responsible for the hire company's charges to Mr G for the period after 30 January 2023.

My final decision

For the reasons I've explained, my final decision is that I don't uphold this complaint. I don't direct Marshmallow Insurance Limited to do any more in response to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 December 2023.

Christopher Gilbert
Ombudsman