

The complaint

Mr W complains about Mulsanne Insurance Company Limited ("MIC") and the damage he thinks the telematics device installed as part of the policy they provided caused to his car.

What happened

Mr W purchased a motor insurance policy, underwritten by MIC. This policy required a telematics device to be fitted to Mr W's car, so his driving behaviours could be monitored which in turn would feed into the pricing of his policy. MIC used an administrator, who I'll refer to as "IG" to administer his policy. As IG were acting as an agent of MIC, I'll refer to any actions taken, or comments made, by IG as though they were made by MIC where appropriate throughout the decision.

The telematics device was installed on Mr W's car on 13 November 2022. And on the same day, Mr W had to call a breakdown company to assist him, after his battery had run flat. His car couldn't be restarted and so, he took his car to a repairer, who I'll refer to as "S", to identify and fix the issue.

S undertook investigations and provided their opinion that the telematics device was directly draining Mr W's car battery. And, that the attempts to jump start Mr W's car after the battery had drained most likely caused an issue on his car's ECU. So, S repaired Mr W's car without reinstalling the telematics device, and Mr W paid for the costs of this. But Mr W was unhappy he'd been left out of pocket and so, he complained to MIC.

Mr W thought the telematics device he'd been given was faulty, and that it had led to the costs he'd incurred repairing his car. And while he did initially request for a replacement device, he didn't want to fit it to his car in case the same issue occurred. So, he cancelled his insurance policy. But he didn't think the costs applied for this cancellation was fair. So, he wanted to be reimbursed for the costs he'd incurred.

MIC responded to the complaint and didn't uphold it. They didn't think Mr W had provided sufficient evidence to show the telematics device was the cause of his battery issue, and the repairs required following this. So, they didn't think they should cover the costs outlined in S' invoice that Mr W paid. And while they thought the cancellation was ultimately Mr W's own decision, they thought they had acted fairly when refunding Mr W a telematics fee and waiving the usual cancellation fee. So, they thought the outstanding balance of £60.69 remained payable. Mr W remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and upheld it. They thought that, based on the balance of probability and the evidence available to them, that the telematics device was most likely the cause of the battery running flat, and the impact this may have had on the car ECU. So, as MIC were responsible for the policy and the requirement for the device, they thought MIC should reimburse Mr W the £480.78 he paid for the repair works completed by S, plus 8% simple yearly interest from the date the invoice was paid to the date of refund. And they thought MIC should pay Mr W an additional £100 for the inconvenience he would've been caused.

But they thought MIC were fair when continuing to charge the non-refundable device cost, as a second device was sent which Mr W chose not to have installed himself. So, they thought any outstanding fees relating to the cancellation remained payable.

Mr W accepted this recommendation, but MIC didn't. And MIC provides several comments explaining why. These centred around their belief that S hadn't completed or provided a full diagnostics report when repairing the car. And without this, they didn't think it was fair to decide the telematics was faulty or the cause of the damage that needed repairing. So, they didn't think they should be directed to do anything more than they had already.

Our investigator considered MIC's comments, but their view remained the same. MIC continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached this decision, I think it's important for me to explain what I've been able to consider, and how. I want to make it clear it's not my role to say for certain whether I think the telematics device was faulty, or whether this would then lead to a flat battery and an ECU issue, as I don't have the expertise to do so. Instead, it is my role to consider whether I think the actions and decisions MIC have taken are fair and reasonable. And this consideration is based on the evidence and information available to me. Where I don't hold evidence that gives a definitive answer, it is our service's approach to consider the information and evidence I do have, and that MIC had access to and sight of, to then think about what I think is most likely to have happened, based on the balance of probability. And so, what I think fair and reasonable actions from MIC would've been.

In this situation, I can see it's not in dispute that Mr W's telematics device was fitted to his car on 13 November 2022. This follows the information MIC retrieved from the device, which showed it was active on the same date for a short period of time.

And I can see on the same date, Mr W needed to call out a breakdown company to assist him, as his battery had run flat. And after inspection, this breakdown company recommended Mr W's car be taken to a garage for further inspection. I've seen no evidence to show Mr W's car had a previous fault with the battery, or any other aspect of its electrics, before this date and so, I can understand why Mr W would link the telematics device to the issue with the battery, considering how close the issue occurred to the fitting.

And I've seen an e-mail from S, who completed the repair work. And in this email, I think it's clear S found that the battery held its charge when it wasn't fitted to the telematics device. But, when it was fitted, I think S made it clear the battery charge was impacted. And further to this, I can see S have then stated the attempts to restart Mr W's car by Mr W himself, and the breakdown company, may have directly led to the issue then found with the ECU and the other parts that Mr W has then had to pay to be repaired, as shown on the invoice he's provided.

So, I would expect MIC to take this information and diagnosis on board, as S were the independent, repairing expert who were able to assess the car in person. While I appreciate

this opinion was given in an email, rather than a diagnostic report, I don't think it's fair for MIC to completely discount this when thinking about the actions they should take.

It is our service's approach to place weight on the evidence and testimony given by an expert who has been able to inspect an issue in person. And this doesn't stipulate that this opinion must be given in a certain format. While I agree a full diagnostic report would've been ideal in this situation, unfortunately one was compiled or provided. And I don't think it's fair to hold Mr W at fault for this, or use this to disadvantage him, as I wouldn't expect Mr W to know that this sort of report was available or necessary. And as the repairs have since been completed, there is now no way of obtaining a report that would provide the relevant insight.

So, I've thought about the opinion provided by S against the testimony and information provided by MIC. And while MIC have provided a report of the telematics device, I don't think this provides enough relevant information as MIC themselves have confirmed the device was only activated for a very short period of time. So, I don't think it provides a proportionate and reasonable amount of data that shows the telematics device was working as expected.

And while I note MIC have provided comments from the device manufacturer explaining how the device should work, I think this is all the comments provide. They explain how the device should work if it's working as expected. But crucially, the comments don't talk to the actual device Mr W had fitted and so, I think this must be considered.

So, having thought about all the above, I'm more persuaded by the opinion of S, which I think gives a plausible explanation of why the battery was draining, how they decided this was caused by the telematics device and how this then impacted the ECU and other parts that needed to be repaired and replaced. So, I don't think I can say MIC acted fairly when deciding not to rely on this information and so, I've then thought about what I think they should do to put things right.

Putting things right

Any award or direction I make is intended to place Mr W back in the position he would've been in, had MIC acted fairly in the first place. And in this situation, I think MIC would've provided him with a fully functioning telematics device, that didn't impact the battery of his car. And as I've explained above, I don't think I can say they did, based on the balance of probability and what I think is most likely to have happened.

And had they done so, I think it's reasonable for me to assume that the issue with Mr W's car battery, and the repairs linked to these issues, wouldn't have needed to be completed. So, Mr W wouldn't have incurred the invoice from S he's had to pay. So, I think MIC should reimburse him the full amount, plus 8% simple yearly interest from the date he paid the invoice to the date of refund, to recognise the length of time he's been without these funds.

And I do think Mr W was inconvenienced by the issues he faced, as it left him without a driveable car for a period of time. Our investigator recommended MIC pay Mr W £100 compensation to recognise this inconvenience, which I note Mr W accepted. And I think this amount is a fair one, that falls in line with our service's approach and what I would've directed had it not already been paid. So, this is a payment I'm directing MIC to make.

But I do think MIC provided Mr W with a replacement device after conversations regarding his situation and his complaint. And I do think it was Mr W's own decision not to install this device. While I recognise why he took this decision, that doesn't negate from the fact Mr W received another device from MIC. And as this wasn't installed, I think MIC were fair to cancel the policy as it was dependent on the device being fitted. So, I do think MIC were fair

to charge Mr W for this non-refundable device fee.

And I'd expect them to charge Mr W for the time he was on cover and any other non-refundable charges and compare this to the premiums he'd paid up to the point of cancellation. As this left Mr W with an amount to pay, I do think this amount remains payable. But I am glad to see MIC acted fairly and reasonably when agreeing to waive the cancellation fee and refund the additional telematics fee he paid considering I think the first device was most likely faulty. So, I don't think they need to do anything more regarding the cancellation of the policy, and the left-over payable balance of £60.69.

My final decision

For the reasons outlined above, I uphold Mr W's complaint about Mulsanne Insurance Company Limited and I direct them to take the following action:

- Reimburse Mr W the £480.78 he paid to S, plus 8% simple yearly interest from the date of payment to the date of refund; and
- Pay Mr W £100 compensation to recognise the inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 January 2024.

Josh Haskey
Ombudsman