

The complaint

Mr S complains that Nelson Insurance Company Ltd (“Nelson”) unfairly declined a claim on his commercial motor insurance policy.

What happened

Mr S had a private and public hire policy with Nelson. In December 2016 Mr S was unfortunately involved in an incident and notified his insurer. The third party involved disputed liability – and, after reviewing pictures of the damage to both vehicles, Nelson decided it would need to cover the claim. That meant it would be recorded as a ‘fault claim’ against Mr S’s policy – and Nelson wrote out in January 2017 to let him know.

In July 2017 Mr S called Nelson with a representative, from a credit hire firm I’ll call “X”, also on the line. They said there was evidence they wanted to send Nelson in relation to liability. The insurer says it never received anything from X or Mr S – so it closed the file on the claim in January 2018.

In June 2018 Mr S called Nelson to say he wanted to claim on his policy. The insurer emailed him following that call to say it would need to see the repairs estimate, invoice and proof of parts purchased for the work before it could progress with the claim. Nelson says it didn’t receive anything from Mr S, so again closed its file.

In February 2019 Mr S contacted Nelson to ask the insurer to cover his outlay for the repairs. Nelson wanted to inspect the vehicle, but Mr S said he’d sold it by that point. The insurer asked for evidence of the cost of the repairs from the garage that carried out the work. Mr S sent in a damage assessment report (dated December 2016) and an invoice from X (dated February 2017). He also sent in proof he’d paid X a different amount to the one quoted on the invoice. Nelson didn’t accept those documents as evidence of the cost of the repairs, as none came from the repairing garage. The insurer wrote out to Mr S to say it would need to see invoices for the parts purchased.

Mr S contacted Nelson again in 2021, but the insurer referred to its previous letter which said the claim wouldn’t be settled until further supporting evidence was received. A complaint was raised, and Nelson maintained its position. Unhappy with the insurer’s response, Mr S referred the complaint to our service for review.

An investigator here asked Mr S to contact the credit hire firm, X, for the outstanding parts invoices, as he hadn’t done that previously. Mr S then forwarded on a response from X which said it wouldn’t be willing to provide proof of the parts purchased. He also explained the difference in the amount he’d paid and the invoice from X, by showing the investigator there was an extra cost for new tyres when the repairs were done.

The investigator said Nelson appeared to accept Mr S's vehicle had been damaged and that repairs had likely been carried out. So, in light of that, he asked if the insurer would consider making an offer based on its approved repair rate – using images of the damage and its own engineer's report. Nelson agreed to that resolution, but Mr S didn't – saying the insurer should cover all of his outlay and some consequential losses.

Nelson's engineer didn't think all of the repairs on the original damage assessment report could be justified based on the photographs – so valued the claim at £1,971.73 (less the excess). Mr S made a counteroffer to Nelson *“for settlement excluding the £500 excess for £2,950”*. Both Nelson and our service interpreted that to mean £2,950 less the excess of £500, and the insurer agreed to pay that amount as a goodwill gesture. When Mr S realised the excess had been deducted from the settlement payment, he explained he'd intended his counteroffer to mean he'd receive £2,950 after the excess was taken off the total. He asked if Nelson would pay an additional £500 in settlement of the claim, but the insurer said it wasn't willing to – as it considered the amount previously offered as a goodwill gesture to be more than fair.

As no agreement could be reached, the complaint was passed to me for a final decision on the matter.

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 also upholding Mr S's complaint – and I've decided Nelson's recent offer to settle the claim is a fair one. I appreciate this will come as a disappointment to Mr S, who I know feels very strongly that he's owed more. But I hope the below is helpful in explaining how I reached my decision.

Mr S doesn't believe the claim should be recorded against his policy, as he feels the third party was at fault in what happened. He's also mentioned trying to take legal action against the third-party insurer but said that wasn't successful. Nelson reviewed Mr S's description of the incident, along with pictures of the damage caused and where it happened – as a recording of the incident wasn't available. The insurer said it would have expected to see damage on the inside of the passenger door if it was already open (as had been alleged by Mr S) when it hit the third-party vehicle. But Nelson said the damage looked more like it was caused by the door being opened into another vehicle, as the damage was on the outside. Having considered the evidence myself, I agree with the insurer's assessment – so I find Nelson acted reasonably when it told Mr S it would have to deal with the claim. The terms of the agreement also gave Nelson full discretion in deciding how best to settle, so it didn't need Mr S's permission before accepting liability.

This claim has been ongoing for a long time but having considered the timeline of events I haven't seen that Nelson caused any delays. Initially it wasn't clear if Mr S wanted to claim on the policy, as he was disputing liability. Subsequently, there were long periods where the insurer was expecting to hear from Mr S, but didn't – and so (I think reasonably) closed down its file on the claim. As I don't consider Nelson is responsible for the delay in settling the claim, I'm not holding the insurer responsible for any consequential losses arising from Mr S not receiving payment sooner.

Mr S is adamant the insurer should cover his outlay to X – but the terms of his policy said the insurer would need to approve any estimate before work commenced, and Nelson wasn't given that opportunity. The terms also said if Nelson thought the estimate was unreasonable, or costs couldn't be agreed upon, it would either arrange for the vehicle to be moved to a

different repairer or pay up to what its approved repairer would charge. So, having not been involved in that process, I think it was reasonable that Nelson wanted to see supporting information from Mr S regarding the cost of repairs before agreeing to settle.

Nelson says it didn't receive evidence of the repairs carried out until 2019. Having reviewed that evidence, I find Nelson acted fairly at that point by asking Mr S for further information. I agree the repair estimate and invoice seemed high, based on the damage evident in the photographs Nelson had seen. Mr S had also since sold the vehicle, so Nelson wasn't able to carry out its own assessment of the repairs completed. I've not been able to find anything online about the company that compiled the damage assessment report, so I can understand why Nelson had trouble establishing their credentials. The repairs invoice was also from X, who aren't a garage – so wouldn't have carried out the work. The invoice didn't have a breakdown of how the total cost was arrived at either – and it differed from the amount Mr S paid to X. Bearing in mind all of the above, I find Nelson's request for the parts purchased invoices to have been a reasonable one. That information was needed to establish the repairs that had taken place and corroborate the amount being sought. Without those parts invoices, I don't find the December 2016 damage assessment or X's invoice on their own to be reliable evidence for determining the value of the claim.

Since coming to us, Mr S has explained why there was a difference between what he paid X and the invoice – and has shown that he's unable to get the parts invoices. I'm satisfied he's now done all he can to support his claim, but the issues with the evidence previously supplied remain. Nelson accepts Mr S's car was damaged, and that repairs were likely carried out. So all that's left to decide is how a fair settlement figure should be now calculated, bearing in mind the terms I outlined earlier.

I've reviewed the report compiled by Nelson's engineer. It has highlighted that some of the costs in the original damage assessment don't appear to be justified or supported by the photographs of the damage. I've found its reasoning for disagreeing with the initial estimate to be detailed and persuasive. So, on that basis, and in the absence of any available evidence from the repairing garage to corroborate what repairs actually took place, I don't think Nelson needs to cover what Mr S paid to X. The amount most recently offered (and since paid) by the insurer is above what its engineer assessed the value of the claim to be – so I find it to be a fair settlement offer in the circumstances. I don't think that offer could have been made before it was confirmed the parts invoices weren't available or the discrepancy in the amount Mr S paid X was explained. So I'm not directing Nelson to pay any interest on the settlement amount or any of the consequential losses claimed.

My final decision

My final decision is I uphold Mr S's complaint about Nelson Insurance Company Ltd, but I consider the amount now paid to Mr S in settlement of the claim to be fair and reasonable in the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 June 2022.

Ryan Miles
Ombudsman