

## The complaint

Mr E has complained about his commercial car insurance provider Nelson Insurance Company Limited because it wouldn't accept damage found to his car had been caused in an accident which it had accepted a claim for.

## What happened

Mr E had an accident in February 2020. But he thought he couldn't claim for it, so he paid to repair the car himself. He had another accident in September 2020 which he did make a claim for. And Nelson repaired his car. But Nelson found a problem with the opposite side of Mr E's car from where his car and the other one involved had come together. It said it wouldn't resolve that issue.

The car was returned to Mr E. He thought that meant it was fixed. In around June 2021 he began having trouble keeping one of his front tyres inflated. He found it had worn excessively. This was later traced to an issue with the suspension on the front right-side – the side on which Nelson had said any issue wasn't related to the September 2020 crash.

Mr E felt the problem must have been related to the crash because he hadn't had any trouble with the suspension before, and an issue in that area had been noted during the September 2020 repairs. He also became aware that he could claim for the incident in February 2020 and Nelson agreed to accept a claim in that respect. But when it wouldn't agree to pay for the disputed right-hand side damage and repairs, Mr E instructed solicitors to assist him and later complained to this service.

Our Investigator, have examined available expert evidence on the cause of the disputed damage, didn't think Nelson had done anything wrong. And he didn't think Nelson should have to pay Mr E's solicitor's costs. But he did think it should pay Mr E £150 compensation.

Mr E was unhappy. He said he couldn't get an expert report on the damage as the car had been repaired – and Nelson knew it was being repaired but hadn't told him he should gather evidence like that. He said he believed the right-hand side had been affected during the September crash because he had felt the car rock with everything being absorbed by the right-hand front tyre.

Our Investigator replied to Mr E. But he remained unhappy, so his complaint was passed to me for an Ombudsman's consideration. I felt that Nelson had fairly determined that the damage wasn't related to the September incident. But still felt it should be reimbursing Mr E's cost for repair, plus interest\* and paying him £250 compensation. So I issued a provisional decision to explain my views. My provisional findings were:

*"It strikes me that both parties have come to this complaint only prepared to look at it and see it from a very narrow perspective. I can understand that initially happening – but I think Nelson has failed Mr E by not widening its view of things as more detail appeared.*

*So, to start with, Nelson only had a claim for damage to Mr E's car that had been caused during an accident in September 2020. And, at that time, during Nelson's repair of his car, other damage was found – or rather signs were found that something must be wrong*

*because the car was tracking heavily on the right-hand side. Nelson – fairly and reasonably I think, having seen the accident details and the engineering considerations – felt the right-hand problem was unrelated to the accident it had the claim for. That accident was essentially a glancing blow to the left-hand end of the front bumper, whereas the disputed tracking issue was on the right of the car. Mr E knew something of that disputed issue at the time of that repair and, later, when he found there was a significant problem with the right-hand side suspension, he naturally focused his approach to Nelson on the basis of what had happened in September 2020. As I said, I don't think that was an unreasonable place for things to start.*

*But what I think Nelson has then overlooked is that it later-on accepted a claim for Mr E's car in respect of an accident which occurred in February 2020. It was sent details of the repairs that were completed following that accident. They included impact related, front-end, right-hand side repairs.*

*Ultimately Nelson accepted that the disputed right-hand side damage to Mr E's car had been caused by an impact. But said it wasn't liable for that damage because, in the September incident, no impact to the right-hand side had occurred. Which seems like a logical argument. But the logical progression of that argument is surely that now Nelson has a claim for damage sustained in February 2020 which appears to have occurred following impact to the front, right-hand side of the car, the disputed damage should be being accepted under that claim. I've not seen any good reason why that shouldn't happen.*

*So I think it's fair and reasonable for me to now award Mr E his repair costs and direct Nelson to add that outlay to the February 2020 claim. Mr E says the repairs cost him £3,644.12 and I understand Nelson has seen the invoice. I also understand that the repairs took place on 23 July 2021. I think Nelson should pay Mr E that sum plus interest\* from 23 July 2021 until settlement is made.*

*I know Mr E believes that the right-hand side was likely affected during the September incident. And I don't doubt his recollection of the car rocking onto the front right wheel. But the car moving that way doesn't necessarily mean the damage was caused by that. And engineers have said it is unlikely, given the nature of the blow, that this was the case.*

*I suspect that Nelson and Mr E may also argue that if the damage had been there since February 2020 there would have been more signs of it, likely in excessive wear to the tyre, by September 2020. Not least as there was certainly excessive wear by June 2021. But I've reviewed the mileage records for the car as stored on the MOT data available on-line. These show that the car was used very little in the period after the late-February 2020 repairs until the accident in September, compared to its use after it was returned to Mr E in mid-October 2020 to June 2021. The car did around 8,000 miles in the first period which was around six and a half months, but about 23,000 in the second period of around eight and a half months. And I think that makes sense given the pandemic and very strict lockdown rules which were in place between March and July 2020, and were still on-going, but not in such a restrictive way in the first half of 2021. And whilst the outside of the tyres and the condition of the wheels were noted during the September 2020 repairs, the inside of the front right tyre – where I note the excessive wear, manifested by the right-hand side suspension issues, was found in July 2021 – doesn't seem to have been considered.*

*I'd also add here that I know Mr E has concerns about the engineer's report Nelson obtained in July 2021. I think it's worth noting that an engineer completing a report like this does so on an independent basis regardless of who pays for the report. And I think that reading his report as a standalone document shows it to be impartial and it includes strong reasoning which makes it appear compelling. But I think it is flawed in part. Much of the report focuses on why the right-hand damage identified in July 2021 must have happened after the*

*September 2020 incident and repairs. The engineer doesn't seem to have been advised or made aware of the fact that the problem with the right-hand side was already there and in fact had been identified by Nelson's repairing garage and engineer in September 2020. So, I'm satisfied that his findings as they relate to the disputed damage having occurred post September 2020 are flawed. As such, I've disregarded them. But his final conclusion is in-line with other details on the file from September 2020 – that a glancing impact to the left-hand side of the front bumper in September 2020 is unlikely to have caused a significant issue with the suspension on the right-hand side. And I still think that makes sense. But, for the reasons stated, Nelson must now settle with Mr E for the cost of repairing the disputed damage in question, as part of the claim for damage which occurred in February 2020.*

*I know Mr E feels Nelson should have to reimburse his legal fees. And I understand he felt ignored prior to getting his solicitor involved. But I note that Mr E complained to Nelson in August 2021. By that time he had been made aware, as a result of his own enquires admittedly, of the insurance complaint process. And part of that process is that the insurer has eight weeks to answer a complaint. If they don't respond in that time, then the complainant can complain to this service. But Mr E did not wait eight weeks, and nor did he come directly to us. Rather, having complained to Nelson on 4 August 2021, he instructed solicitors in late August, with them writing to Nelson on 7 September 2021. And he then didn't complain to us until December 2021. In those circumstances I can't say it would be fair or reasonable for me to make Nelson reimburse Mr E's legal costs as he chose to use the solicitor at a time when he could have been preparing and then making his complaint to us free of charge.*

*Whilst I'm not minded to make Nelson reimburse that outlay, I do think it should pay Mr E some compensation. He will now be compensated for his financial outlay by Nelson reimbursing his repair cost, plus interest\*. But I think he has clearly been somewhat frustrated by Nelson's refusal to accept liability for this damage. I think £250 compensation is fairly and reasonably due."*

Mr E said he accepted the decision. Nelson said it hadn't accepted a claim for February – merely put forward to Mr E that he could claim. It said it didn't think it had, therefore, been wrong to decline the damage on the basis of the claim it had – for the incident in September. It also said the garage that repaired the car in February, also repaired it in September, so it thinks if damage had remained from February, this would have been picked up.

### **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.

Nelson did give Mr E the option of whether he wanted to proceed with a claim for the February 2020 incident. But in doing that it told him it was happy to process the claim and would reimburse him, less the policy excess. So, to me, that reasonably equates to Nelson accepting the claim. And Mr E has been quite clear that he does want to progress a claim for the February 2020 incident.

Mr E had repairs done by a manufacturer garage in February 2020. That was not the same garage that Nelson used for repair in September 2020. And Nelson's garage, as I said, did note there was an issue, in September 2020, that was not related to the incident damage it was repairing.

So Nelson knew there was an incident in February 2020 which it was prepared to accept a claim for. And it knew there was damage present in September 2020, which whilst it didn't fit the incident that had occurred at that time, did look like damage which might have been

caused in the February incident. I still think Nelson acted unfairly and unreasonably by maintaining its narrow stance on liability for this damage under the September claim once it knew of the February incident which it was prepared to accept liability for. And that happened not long after Mr E had his car repaired. So I'm satisfied that reimbursing his repair cost, plus interest, along with £250 compensation, is fair and reasonable redress in this instance.

### **Putting things right**

I require Nelson to pay Mr E:

- £3,644.12, plus interest\* from 23 July 2021 until settlement is made.
- £250 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 Nelson to take off tax from this interest. If asked, it must give Mr E a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require Nelson Insurance Company 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 Mr E to accept or reject my decision before 15 November 2022.

Fiona Robinson  
**Ombudsman**