

## The complaint

Mr A has complained that Nelson Insurance Company Ltd have settled a claim against him by a third party as a fault claim under his Private and Public Hire insurance policy. And that they've charged him an additional premium as a result of this.

## What happened

Mr A received a call from Nelson's claim handling agent, who I'll refer to as N, on 25 November 2020 to say they'd received a claim against him for damage to a vehicle he'd been involved in an accident with. They also said they wanted to arrange an inspection of his vehicle. Mr A told N he hadn't been involved in an accident. The same day N wrote to Mr A to explain who they were and asking him to complete an Accident Report Form. Mr A wrote to his insurance broker to check that N were acting for Nelson. His broker emailed him to confirm they were on 21 December 2020. Mr A submitted the Accident Report Form with a diagram of the accident and a photograph on 18 January 2021 and said N should not hesitate to contact him if they needed further clarification.

Mr A contacted N in March 2021 to query why the claim was still on his record. As N hadn't heard from the third party's insurer for some time, they decided to mark the claim as non-fault (bonus allowed) and allow Mr A's no claims bonus (NCB). N then heard from the third party claim handler in August 2021 that the third party still wanted to claim against Mr A. N then decided they wouldn't be able to defend the claim and settled it on a without prejudice basis. This led to Mr A's NCB being reduced again. This was backdated to the renewal of Mr A's policy and Nelson charged him an additional premium of £659 as a result of this, which I understand Mr A paid by adding it to the finance agreement he had arranged through his broker to pay the premium for his policy.

Mr A complained and N issued a final response letter on behalf of Nelson. They said they thought they'd acted reasonably and were not upholding Mr A's complaint.

Mr A asked us to consider his complaint. One of our investigators did this. He explained that he didn't think Mr A's complaint should be upheld. This was because he thought N's view that they wouldn't be able to defend the third party claim on behalf of Nelson was reasonable in the circumstances.

Mr A didn't agree with the investigator's view. He still felt that he was entitled to query who N were when they contacted him and that their decision to settle the claim was unreasonable, bearing in mind he'd agreed to co-operate. In view of this, the investigator put the case forward for an ombudsman's decision.

I reviewed the complaint and wrote to Nelson recently setting out my view on it informally. I said that I could understand why Mr A wasn't sure about who N were and felt he needed to check with his broker before co-operating with them. I went on to say that – in view of the fact it was clear in January 2021 that Mr A was willing to co-operate – I didn't consider N's decision to settle the third party claim after hearing from the third party insurer in August 2021 without further investigation was reasonable. I explained that whilst it was difficult to know whether N would have been able to defend the claim if they had tried to do so, I felt the

fact they didn't even inspect Mr A's vehicle and engage with him further about the incident meant the fair and reasonable outcome to his complaint was for Nelson to mark the claim as non-fault (bonus allowed), reinstate Mr A's NCB, refund the additional premium he been charged and pay him £100 for distress and inconvenience.

Our investigator let Mr A know about my view and he said he was happy with it and had nothing further to add.

Nelson don't agree with my view. They've said N's details are on the first page of the policy provided to Mr A, so there was no reason he wouldn't have known who they were. And, because Mr A refused to cooperate regardless of how many times N explained to him it was to help them defend the claim against him, they still feel the decision to settle the third party claim on a without prejudice basis was reasonable. Especially, as 'no-one takes pictures of another vehicle when no impact has occurred'. And they still feel Mr A wouldn't have made a credible witness if they'd tried to defend the claim and the case had gone to court.

### **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've noted Nelson's comments in response to my informal view on the merits of Mr A's complaint. However, I do not agree with their comments that Mr A refused to co-operate. Or that no-one takes photographs when no impact has occurred. On the latter point I suspect many people take photographs to prove they did not cause damage to another vehicle if they feel they have been falsely accused of doing so. Once Mr A was satisfied that N were acting for Nelson he provided everything he had been asked to, and was clearly willing to have his vehicle inspected. I appreciate it took a while for Mr A to get to this point, but it seems N did not provide him with an accident location or details of the third party vehicle in their original call to him or in their first letter. So, I can see why Mr A was concerned about who they were. And, whilst details of N were in his policy document, I can understand why he may have instead turned to his broker to check them out.

In view of this and Mr A's positive response in January to N's request for information and co-operation, I cannot understand why N didn't see Mr A as a credible witness and at least further investigate the third party claim with a view to defending it. Nelson did of course have the right under the terms of Mr A's policy to take over and deal with claims against him as they felt appropriate. But they needed to exercise this right reasonably to fulfil their obligation to handle claims fairly. And I don't think they did.

It is now not possible to know what would have happened if N on behalf of Nelson had done what they should have done and further investigated and considered defending the third party claim. But, it is possible Mr A has lost out because of their unreasonable decision not to do this. Plus – in my opinion – it was unreasonable for N to suggest Mr A wouldn't have made a credible witness. And I think it may have been possible for Nelson to defend the claim against him. In view of this, I think that as part of the fair and reasonable outcome to Mr A's complaint Nelson should mark the claim as non-fault (bonus allowed) and reinstate Mr A's NCB. This means they will need to refund the £659 they charged him when they reduced his NCB, plus any additional interest Mr A paid on this as a result of it being added to the instalment plan he had in place to pay for his policy. This is because I don't think it was appropriate for Nelson to charge the additional premium in view of their unreasonable decision to settle the third party claim against Mr A without further investigation. And he should not have had to pay it or pay interest on what he borrowed to cover it.

I also think the unreasonable approach by N on behalf of Nelson caused Mr A unnecessary

distress and inconvenience and Nelson should pay him £100 to reflect this.

### **Putting things right**

For the reasons set out above, I consider the fair and reasonable outcome to Mr A's complaint is for Nelson to mark the third party claim against him as non-fault (bonus allowed) on their records and any external databases they placed it on. I also consider Nelson should refund the additional premium Mr A paid when his NCB was reduced. They should also refund any interest Mr A paid on this as a result of it being added to the instalment plan in place to pay the premium for his policy. I also consider Nelson should pay Mr A £100 in compensation for distress and inconvenience.

### **My final decision**

For the reasons set out above, I've decided to uphold Mr A's complaint about Nelson Insurance Company Ltd and I order them to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 26 April 2023.

Robert Short  
**Ombudsman**