

## **The complaint**

J has complained about New India Assurance Company Limited's (NIACL) decision to turn down its claim for damage to its vehicle under its Fleet Motor Insurance policy.

J is represented by Mr O, who is a director.

NIACL is the underwriter (insurer) of this policy. Much of this complaint concerns the actions of its appointed agent. As NIACL accepts it is accountable for the actions of its agent, in my decision, any reference to NIACL should be interpreted as also covering the actions of its appointed agent.

## **What happened**

Mr O has said he was driving a vehicle insured under his policy with NIACL through a tunnel in July 2019 when a coach coming the other way collided with the rear of the vehicle causing damage. He's said the coach didn't stop. Mr O had two witnesses to the accident and both of these provided statements. He also reported the incident to the police.

Mr O originally decided to claim against the insurer of the coach (the third party insurer). And he did not report the incident to NIACL. The third party insurer has said that J held its policyholder responsible for the collision. But, having received the repair and hire documentation, it could not validate the entire claim as presented. And that liability was also disputed. It has explained that further investigations were conducted, but J issued proceedings. The third party insurer appointed a solicitor and invited J to drop the claim, but it did not do so. Mr O, on behalf of J, then tried to discontinue the claim by emailing the court and the third party insurer's solicitors sent Mr O a form to complete. But he didn't complete this and his claim was struck out due to a lack of notice of discontinuance. Mr O then reinstated J's claim several months later. But the claim was then struck out as the judge dismissed J's application at a hearing.

Mr O then submitted the claim on behalf of J to NIACL in 2021, which NIACL repudiated in August 2021. It seems it did this on the basis J had issued proceedings against the third party. Mr O then seems to have come back to NIACL after his case was dismissed by the court and asked it to reconsider J's claim.

NIACL asked Mr O to explain why the third party insurer rejected his claim. Mr O provided a copy of the court order dismissing his application. NIACL wrote back to Mr O asking him to set out exactly why his claim with the third party insurer wasn't successful. In doing so it suggested the court appeared to have accepted the third party insurer's denial of liability. Mr O responded to say that the fact his claim wasn't successful wasn't due to his inability to produce sufficient evidence, as he had two independent witnesses who could verify that the accident occurred. And he explained that the court never explained to him why his application was dismissed. NIACL responded to Mr O to say it assumed that the third party insurer set out its reasons for its denial of liability and it asked him to share what these were. It seems instead of doing this Mr O asked us to consider a complaint by J against NIACL. We explained to him that we needed to notify NIACL that he wanted to make a complaint and allow eight weeks for it to issue a final response. We did this and NIACL issued its final

response on 8 August 2023. It said it had concerns about the veracity of the claim Mr O had presented on behalf of J. That the amount J was claiming could not be validated and that J's policy did not respond to meet a claim that could not be validated.

Mr O asked us to consider J's complaint. One of our investigators did this and said NIACL's decision to turn down J's claim was reasonable in the circumstances. Mr O did not agree with the investigator and asked for an ombudsman's decision.

I issued a provisional decision on 18 January 2024 in which I set out what I'd provisionally decided and why as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Under insurance industry rules and guidance, NIACL needed to handle Mr M's claim promptly and fairly. From what I've seen, I don't think NIACL did this, as I'll explain. I do of course appreciate that it is unusual for a policyholder to submit a claim as late as Mr O did for J. And there is a clause in J's policy, which requires it to report incidents which could lead to a claim as soon as possible and within 24 hours. However, I can understand Mr O's reasons for making J's claim so late, which was based on his desire not to make a claim against J's policy if he could avoid it, in case it affected the premium moving forward. And, as far as I am concerned, it would only be fair and reasonable for NIACL to reject J's claim for late notification if this had prejudiced its position.*

*From the evidence I have seen J's claim against the third party was dismissed by the court for procedural reasons, as opposed to it being due to a lack of evidence or an inability on Mr O's part to establish a claim against the third party. In view of this, I do not consider NIACL is anywhere near being able to establish J's claim is fraudulent, which seems to be what it is implying by questioning its veracity.*

*And I think Mr O provided sufficient evidence to NIACL for it to investigate J's claim and consider whether it should pay anything for the damage to its car, i.e. I don't think the late notification prejudiced NIACL's ability to investigate it. It may have prevented NIACL from using one of its approved repairers, but I would not expect it to pay J more than doing this would have cost; so I don't think there is any real prejudice in this regard.*

*I also appreciate the fact that Mr O issued proceedings against the third party on behalf of J could have affected NIACL's ability to recover its outlay from the third party insurer. However, I think if NIACL had investigated the claim when it received it and paid out for repairs to J's vehicle it, may have been able to persuade the third party insurer to reimburse its outlay. And, bearing in mind J's case was not subject to trial, it may have been that NIACL could still have pursued recovery through the courts. So, I do not consider it would be fair to allow NIACL to use any prejudice around recovery as a reason not to pay a fair amount on J's claim.*

*NIACL is not obliged to pay anything for hire costs as this is a claim J can only make against the third party. And NIACL can't be expected to cover storage costs, when it is clear that if Mr O had contacted them earlier these wouldn't have been incurred.*

*But I do think NIACL should have investigated the repair costs, by checking with Mr O where the repairs were carried out and checking the costs out with the repairer. It's clear J's car was damaged in the way Mr O has suggested, as he's provided photographs showing this. And it looks like his two witness statements are genuine. But, again, NIACL could have contacted the witness to verify them, as opposed to simply rejecting J's claim.*

*It is of course now very late in the day and I think it would be unfair for me to allow NIACL a chance to investigate the claim, bearing in mind it had plenty of opportunity to do this when*

*Mr O submitted it. And I've got no reason to doubt the validity of the repair invoice provided by Mr O, as it seems to have been carried out by the company who charged for storage, which exists as a body shop and can be found on the Government register of companies. The repair items also seem to match the damage Mr O has described and the photographs of it he has provided.*

*Had NIACL investigated the claim when it should have done, it would have been appropriate for it to check with its approved repairer what it would have charged and pay this amount, as it has said it would have had J's car repaired by one of its approved repairers. Therefore, bearing in mind Mr O did report the accident and make J's claim very late, I think as part of the fair and reasonable outcome to J's complaint, NIACL should be allowed to have the repair invoice priced by one of its approved repairers and work out what it would have cost it to repair J's car. It should then pay this amount to J. There doesn't appear to be an excess that would have needed to be deducted. So NIACL should pay the full amount it would have cost it to have J's car repaired to J.*

*I think it should also pay interest on the amount due to J at 8% per annum simple from one month after Mr O submitted J's claim to it. This is to compensate J for being without these funds, which would not have been the case had NIACL handled J's claim promptly and fairly. I also consider NIACL's failure to handle J's claim reasonably caused it unnecessary inconvenience. And I think this warrants a compensation payment to J of £200.*

I gave both parties until 1 February 2024 to provide further comments and evidence in response to my provisional decision. Mr J has responded to say he has no further comments or evidence to provide.

NIACL has responded with the following further comments.

- It has said that I appear to have reached the conclusion that Mr O's claim against the third party was dismissed for procedural reasons, as opposed to it being due to a lack of evidence or an inability on Mr O's part to establish liability. It doesn't think this conclusion is correct and has observed that I made no attempt to contact the third party to request further detail on the rejection of the claim or to locate the two independent witnesses. And NIACL has queried why Mr O would discontinue his claim.
- I've suggested that a recovery against the third party could be made, as J's case was not subject to trial, which is incorrect.
- I have not contacted the third party insurer and raised further questions concerning its position on liability.

### **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, including considering NIACL's further comments in response to my provisional decision, my view on the fair and reasonable outcome to Mr O's complaint remains the same. I'll explain why.

The evidence I have seen, which was provided by the claim handler for the third party insurer, suggests to me that J's claim was dismissed by the court for procedural reasons. So, I do not think the evidence suggested the court decided on liability. And I have decided the fair and reasonable outcome to this complaint on the evidence available. I do not consider I need to contact the third party insurer or the independent witnesses. These were things I think NIACL should have done to properly investigate J's claim; rather than simply rejecting it. As I explained in my provisional decision, I'm satisfied Mr O was involved in a

genuine accident and made a genuine claim under J's policy. And the fact Mr O did not pursue a claim against the third party does not alter this in my opinion. It was for NIACL to investigate the claim, but it chose not to do so. And, at this late stage, bearing in mind I can't see the late notification by Mr O prejudiced NIACL's position, I consider it should settle J's claim.

Even if it would not have been possible for NIACL to recover its outlay on J's claim via the courts, it would not alter my view that it is fair and reasonable for it to settle J's claim. This is because I believe if it had properly investigated J's claim when Mr O first submitted it, NIACL may well have been able to establish the third party was liable and recover any outlay it made from the third party insurer.

### **Putting things right**

It therefore follows that for the reasons set out above and in my provisional decision, I've decided to uphold J's complaint and make NIACL do the following:

- Settle J's claim by paying the amount it would have cost one of its approved repairers to carry out the repairs to J's car, based on the repairs set out in the invoice Mr O has provided.
- Pay interest on the amount due to J at 8% per annum simple from one month after Mr O submitted J's claim to the date of actual payment.
- Pay J a further £200 in compensation for inconvenience.

### **My final decision**

I uphold J's complaint and order The New India Assurance Company Limited 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 J to accept or reject my decision before 4 March 2024.

Robert Short  
**Ombudsman**