

## **The complaint**

Miss M complains about damage she says was caused to her vehicle following its recovery after an attempted theft. Her complaint is against the insurer of her motor insurance policy, Watford Insurance Company Europe Limited (Watford).

References to Watford in this decision include their agents.

This decision covers Miss M's complaint about damage she says was caused whilst her vehicle was recovered and with Watford's salvage and engineering firm (C) and the vehicle manufacturer garage to which it was subsequently recovered (R) before the vehicle was returned to her. It doesn't cover Miss M's complaint about Watford's decline of her claim for damage from the attempted theft, which was the subject of a separate complaint to this Service.

## **What happened**

The following is a summary of what happened from the time of the original incident where Miss M's vehicle was the subject of an attempted theft. It includes her claim for damage from the attempted break in, as context for her subsequent, separate complaint about damage she says occurred from the time the vehicle was recovered to C through to its return to her.

On the 3/4 April 2023 thieves attempted to steal Miss M's vehicle, removing wheel nuts, and opening the bonnet. But they weren't successful. When Miss M put the key in the ignition, a warning message 'theft mode' came on and the key became stuck in the ignition. Miss M reported the incident to Watford and the vehicle was recovered to C on 24 April.

Following its recovery to C, the vehicle was inspected by C (24 April) and then two further inspections from a second firm (N) on 9 May and 24 May. The latter inspection was carried out at R, to where the vehicle had been taken (on 15 May), to enable an electrical check to be carried out. Based on the reports from the inspections, Watford said the damage wasn't theft-related (other than the missing wheel nuts) so they wouldn't cover it as they considered it wear and tear, excluded under the policy, referring to two sections of the policy wording. But they would cover replacing the missing wheel nuts. Once replaced, Watford said the vehicle would be returned to Miss M by their recovery agents. The vehicle was returned from R to Miss M on 22 June 2023.

When her vehicle was returned to her, Miss M said her vehicle had suffered damage, either when it was first recovered or whilst at C. She said the vehicle had been in near-perfect condition before the incident, but when returned the interior was in a mess and there were scratches to the bodywork. There were loose wires, and the vehicle was unrepairable, so she was without a vehicle.

Miss M complained about the damage to Watford. In their final response, Watford upheld the complaint in part, accepting there had been some damage to the front bumper, consistent with loader damage, for which C accepted liability. Watford said the damage to the front bumper could be repaired and offered £60 (£30 for paint and £30 for labour) to repair the damage to the front bumper.

But they didn't accept they caused any other damage to the vehicle. Specifically, they said the gear lever surround would have been moved on recovery of the vehicle to allow the vehicle to be put into neutral to enable it to be moved. Watford said the surround should be able to be slotted back into position, so it wasn't damaged. On the exposed wires, Watford said C told them there was no part of their process in which they would have touched the vehicle wiring, so didn't accept they'd done anything to the vehicle wiring. Watford also referred to N's inspection report and references in the report to unrelated damage to the front and rear bumpers, nearside door mirror and broken driver seat surround trim. Based on this and photographs taken by the recovery agent, when they collected the vehicle to be taken to C, Watford said there were no exposed wires; the driver seat surround trim was already broken; and the rear bumper was already damaged. And the windscreen didn't appear to be cracked, rather it was marked. So, C hadn't caused any of this damage. Watford also questioned the elapsed time between the vehicle leaving C in May 2023 and Miss M's complaint in August 2023.

Miss M was unhappy at Watford's response and complained to this Service. She said Watford's offer wouldn't cover the cost of all the damage to her vehicle. When her vehicle was first recovered to C, the only issue was the key being stuck in the ignition and the vehicle being unable to start due to the theft deterrent system. The vehicle had been returned to her in a poor condition and nothing worked. She'd spoken to mechanics, who said wiring had been removed from the vehicle and it was likely to be unrepairable. She thought the damage may have occurred at R.

Our investigator didn't uphold the complaint, unable to conclude Watford caused the damage to Miss M's car in the way she set out. Watford offered to pay for repair of the damage to the vehicle's front bumper. But disputed their agents caused any further damage. From the reports and photographs available, scratches had appeared on the vehicle bodywork and glass, as well as to the interior. But it wasn't possible to conclude when the damage had occurred. So, it wouldn't be fair or reasonable to hold Watford responsible for it.

Miss M disagreed with the investigator's view and requested an ombudsman review the complaint. In disagreeing she said when her car was recovered there was nothing wrong with it apart from the key being stuck in the ignition. She'd provided pictures of the vehicle before the incident showing it was in good condition. Cables had been stripped from the car, making it unrepairable – though she didn't think that had happened while the vehicle was with C, but subsequently to where it was taken (R) before being returned to her.

In my findings, on the exterior damage, on balance I thought Watford (C) were responsible for the damage to the front bumper and the rear bumper. I also thought it likely the windscreen scratch or mark could also reasonably be held to have happened while the vehicle was away from Miss C – so either with C or with R. Watford accepted – and offered to replace – the missing wheel nuts. But I didn't think there was enough evidence to conclude Watford were responsible for any other exterior damage, such as scratches.

On the interior damage, I thought the gear lever surround was displaced to enable the vehicle to be recovered, so would be the responsibility of Watford. On the driver seat surround, I thought this likely to have been pre-existing, as it was evident when the vehicle was recovered to C, so I couldn't conclude the damage would be Watford's responsibility.

Regarding the damage to the driver footwell lower dashboard, I thought this happened while the vehicle was with R, before its return to Miss M. I accepted Watford's view that C wouldn't have had reason to touch the wiring, and the evidence indicated the damage wasn't present at the point the vehicle was taken from C to R.

Given these conclusions, I considered the extent to which Watford could be held responsible for the various damage to the vehicle. As their salvage and engineering agent, I think they were responsible for the damage whilst the vehicle was with C.

But their final response suggested they didn't accept any responsibility for what may have happened whilst the vehicle was with R, before its return to Miss M. However, I didn't think this fair and reasonable, as it was Watford's decision to arrange for the vehicle to be taken from C to R, to enable an electrical check and a second inspection by N. So, I thought it reasonable to say the vehicle was under Watford's care and control from the initial recovery from Miss M to C in April 2023 through to the vehicle being returned to her in June 2023. Watford had control of the claim and inspections during this period, when Miss M says the damage occurred.

So, I thought R was effectively an agent of Watford as it was acting on their instructions. I didn't see any evidence of a break in the chain during this period to suggest R wasn't an agent of Watford whilst the vehicle was with them. Given this conclusion, I thought it reasonable to see R as acting as an agent for Watford, meaning Watford could reasonably be held responsible for any damage during the time the vehicle was with R.

Taking all these points together, I concluded Watford hadn't acted fairly towards Miss M because of the damage to her vehicle whilst it was away from her and with C and then R.

Having reached this conclusion, to put things right, I thought Watford should:

- Arrange for the damage to the front and rear bumpers, scratch/mark to the windscreen to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.
- Arrange for the damage to the interior of the vehicle, including to the electrical system or wiring, to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.

I also thought it would be reasonable for Watford to reimburse Miss M for the invoiced cost of the inspections and assessments she had carried out on her vehicle.

I also considered the impact of what happened on Miss M, given my conclusion Watford hadn't acted fairly towards her. In the specific circumstances of the case and the published guidelines from this Service on making awards for distress and inconvenience, I thought Watford should pay Miss M £250 compensation for distress and inconvenience.

Because I reached different conclusions to those of the investigator, I issued a provisional decision to give both parties the opportunity to consider matters further. This is set out below.

*What I've provisionally decided – and why*

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

*My role here is to decide whether Watford have acted fairly towards Miss M.*

*The key issue in Miss M's complaint is whether there was damage to her vehicle from the time it was recovered to C and subsequently returned to her. Miss M says there was damage, leaving the vehicle unrepairable. Watford dispute this, though have offered to pay for damage to the front bumper.*

*In considering the issue, I've looked at the available evidence and information, in particular the various inspection and recovery reports as well as the associated photographs of the vehicle taken at different times.*

*When the vehicle was recovered to C, they inspected the vehicle and their report dated 24 April includes comments about there being minor dents and scratches, scuffed alloy wheels and the exterior and interior condition both described as 'fair'. Under a heading Condition Notes it states: "Due to the nature/extent of the damage the pre-incident condition is indeterminable." Looking at the photographs of the vehicle included in the report, they support the comments, though appear to show the gear lever surround being dislodged (that may have been due to having to put the vehicle into neutral to facilitate its recovery to C).*

*The first inspection report from N is dated 9 May 2023, the inspection being carried out at C's location. The report notes "Light Mechanical Failure Front Interior" under the section headed Damage and the Condition section records "Average". There's a further comment "The vehicle appears to have suffered light mechanical failure to the front interior". The report goes on to include the following comment:*

*"There are no signs of forced entry to vehicle and there is no evidence of any theft related damage. It should be noted that three wheel nuts are missing from all four alloy wheels .*

*Gear lever gaiter has been displaced at some point.*

*Battery is currently completely flat so vehicle has no power.*

*Key is stuck in ignition and whilst it turns freely it cannot be removed from ignition lock. It would be my opinion that the ignition lock has failed."*

*The report also includes a section headed Unrelated damage which records:*

*"We noted the following damage on the vehicle which does not appear to relate to the claim under review and we have therefore classed it as unrelated damage:*

*LR bumper dented and scratched  
L Door mirror scratched  
LF Bumper scratched  
RF Seat trim broken."*

*The photographs in the report show the vehicle from various angles, externally and internally. While it's difficult to see the extent of the exterior damage noted in the report, as N inspected the vehicle then I don't doubt they recorded what they observed.*

*N's second inspection report is dated 24 May 2023 and the location is recorded as the manufacturer dealer to which the vehicle was taken (from C). The Damage and Condition sections record the same comments as N's first inspection report. The report concludes:*

*"There are no signs of forced entry to the vehicle and all door locks are in good working order and the spare key was with the repairer [R].*

*Both front and rear doors have not been damaged by an attempted theft.*

*As stated in the previous report the ignition key is stuck in the barrel and can't be removed and has not collapsed but would appear to have broken due to wear and tear.*

*It does appear strange in our opinion why three wheel nuts have been removed from each of the four wheels. This would not have triggered a theft mode on the vehicle as it does not exist or affect the ignition lock barrel.*

*In our opinion the claim from the insured should be repudiated as it is not attempted theft and is in our opinion due to wear and tear."*

*The photographs in the report look very similar to those in the first report from N, suggesting the condition of the vehicle was similar, if not the same as its condition at the time of the first inspection and report.*

*I've then looked at the photographs provided by Miss M, both of her vehicle before the attempted theft incident and after the vehicle was returned to her – including the ones she sent to Watford on the day the vehicle was returned to her. The former show no obvious damage to the exterior or (from a limited view) to the interior. However, the latter show significant scratching to the exterior, including both front and rear bumpers. There is also significant disruption to the interior, with lower dashboard panels around the driver footwell removed and exposed, hanging wiring. There also appears to be a wiring loom left on a seat. Some of this damage is noted in N's first report on 9 May (as set out above). But some of it wasn't, particularly the damage to the interior (which similarly wasn't evident in the photographs from N's inspection on 24 May).*

*Given these points, it seems to me the exterior damage occurred before N's first inspection, while the interior damage occurred after the second report (when the vehicle was with R). On the specific damage to the driver's seat surround, that appears in the photographs in C's report, suggesting it was present when the vehicle was recovered to C. as was the dislodged surround to the gear lever.*

*I've also considered the reports from the recovery agents. As part of my consideration of the case, I asked Watford for the recovery report for the initial recovery of the vehicle to C (24 April). However, Watford haven't provided it. While this means there's a gap in the evidence and information available, I have seen the subsequent recovery reports when the vehicle was recovered from C to R (May 2023) and from R to Miss M (June 2023).*

*The recovery report from the recovery of the vehicle from C to R (16 May 2023) indicates), from annotations to an outline generic image of the vehicle, damage to the front and rear of the vehicle, specifically the bumpers and to the wheels. The accompanying photographs are consistent with the report, showing the front and rear bumpers, missing wheel nuts on the wheels. The photographs also show damage to the surround on the driver's seat and the loose gear lever surround. But I've noted there are no photographs of the interior showing any other damage, suggesting there was none present at this point. The report is signed by the receiving party (R) to indicate they accepted the vehicle in the same condition as recovery and that no additional damage was recorded. This indicates the damage was present at the time of recovery.*

*Turning to the report from the return of the vehicle from R to Miss M (22 June 2023), again from annotations to an outline generic image of the vehicle, it records damage to the front bumper area and what appears to be the offside rear passenger door and the nearside front wing. It doesn't record damage to the rear bumper or the wheels (both of which were present in the report of the vehicle recovery from C to R). Nor is there any reference to interior damage. Again the report is signed by Miss M, with the same standard, acceptance statements.*

However, photographs of the vehicle that refer to the recovery report [job number] indicate damage to the bumpers and the interior of the vehicle, including the gear selector surround and removal of a driver footwell lower dashboard panel, revealing exposed, hanging wiring.

As I've noted earlier, Miss M included photographs of the vehicle when it was returned to her on 22 June 2023, which she included in an email to Watford the same day. They show the same damage to the rear bumper and removal of a driver footwell dashboard panel and exposed wiring hanging down. There's also a mark (or scratch) on the windscreen.

While the absence of the recovery report when Miss M's vehicle was first recovered to C in April 2023 means there's a gap in the evidence and information to decide what I think is likely to have happened, based on what I've set out above, these are my conclusions. On the exterior damage, on balance I think Watford (C) can be held responsible for the damage to the front bumper (which they accept) and the rear bumper (which they don't). I also think it likely the windscreen scratch or mark (if that is what it is) can also reasonably be held to have happened while the vehicle was away from Miss C – so either with C or with R. Watford accept – and have offered to replace – the wheel nuts were missing when they first inspected the vehicle. I don't think there's enough evidence to conclude Watford can be held responsible for any other exterior damage, such as scratches.

On the interior damage, I think the gear lever surround was displaced to enable the vehicle to be recovered to C. So, it would be the responsibility of Watford. On the driver seat surround, I think this likely to have been pre-existing, as it was evident when the vehicle was recovered to C, so I can't conclude the damage would be the responsibility of Watford.

Regarding the damage to the driver footwell lower dashboard and the exposed, hanging wires (and potentially removed wiring), I think this happened while the vehicle was with R, before its return to Miss M. Perhaps as part of the need to carry out an electrical check. I accept Watford's view that C wouldn't have had reason to touch the wiring, and the evidence indicates the damage wasn't present at the point the vehicle was taken from C to R.

Given these conclusions, I've also considered the extent to which Watford can be held responsible for the various damage to the vehicle. As their salvage and engineering agent, I think they can be held responsible for the damage whilst the vehicle was with C. But their final response suggests they don't accept any responsibility for what may have happened whilst the vehicle was with R, before its return to Miss M.

However, I don't think this is fair and reasonable. I say this because it was Watford's decision to arrange for the vehicle to be taken from C to R, to enable an electrical check and a second inspection by N. So, I think it reasonable to say the vehicle was under Watford's care and control from the initial recovery from Miss M to C in April 2023 through to the vehicle being returned to her in June 2023. Watford had control of the claim and inspections during this period, when Miss M says the damage occurred. So, I think R is effectively an agent of Watford as it was acting on their instructions, regardless of whether that was to store the vehicle to facilitate the further inspection by N and/or perform the electrical check or any other work on the vehicle. I haven't seen any evidence of a break in the chain during this period to suggest R wasn't an agent of Watford whilst the vehicle was with them. Given this conclusion, I think it's reasonable to see R as acting as an agent for Watford, meaning Watford can reasonably be held responsible for any damage during the time the vehicle was with R.

Taking all these points together, I've concluded Watford haven't acted fairly towards Miss M because of the damage I've concluded occurred to her vehicle whilst it was away from her and with C and then R.

*Having reached this conclusion, I've considered what Watford should do to put things right. Having concluded they can reasonably be held responsible for the damage to Miss M's vehicle as I've concluded above, then I think they should:*

- Arrange for the damage to the front and rear bumpers, scratch/mark to the windscreen to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.*
- Arrange for the damage to the interior of the vehicle, including to the electrical system or wiring, to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.*

*Miss M has also provided evidence of her having the vehicle inspected and assessed by engineers/repairers. As I've concluded Watford can reasonably be held responsible for the damage caused the vehicle as I've set out (and for putting it right) then I think it would be reasonable for Watford to reimburse Miss M for the invoiced cost of those inspections and assessments.*

*I've also considered the impact of what has happened on Miss M, given my conclusion Watford haven't acted fairly towards her. She's spent considerable time and effort in pursuing her claim and concerns, as well as having her vehicle returned in a poor condition. This will have meant considerable distress and inconvenience. I've considered this in the specific circumstances of the case and the published guidelines from this Service on making awards for distress and inconvenience. Taking these factors into account, I think £250 for distress and inconvenience would be fair and reasonable.*

*My provisional decision*

*For the reasons set out above, it's my provisional decision to uphold Miss M's complaint. I intend to require Watford Insurance Company Europe Limited to:*

- Arrange for the damage to the front and rear bumpers, scratch/mark to the windscreen to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.*
- Arrange for the damage to the interior of the vehicle, including to the electrical system or wiring, to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.*
- Reimburse Miss M for the invoiced cost of the inspections and assessments of her vehicle by engineers/repairers.*
- Pay Miss M £250 in compensation for distress and inconvenience.*

Both Miss M and Watford responded to say they accepted my provisional decision, Watford adding that they would liaise with Miss M.

### **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.

My role here is to decide whether Watford have acted fairly towards Miss M.

As both Miss M and Watford accepted my provisional decision, my final decision remains the same as my provisional decision, for the reasons set out in the provisional decision.

## **My final decision**

For the reasons set out above, it's my final decision to uphold Miss M's complaint. I require Watford Insurance Company Europe Limited to:

- Arrange for the damage to the front and rear bumpers, scratch/mark to the windscreen to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.
- Arrange for the damage to the interior of the vehicle, including to the electrical system or wiring, to either be repaired; or reimburse Miss M for the cost of repairing the damage; or make a settlement offer to enable Miss M to have the damage repaired.
- Reimburse Miss M for the invoiced cost of the inspections and assessments of her vehicle by engineers/repairers.
- Pay Miss M £250 in compensation for distress and inconvenience.

Watford Insurance Company Europe Limited must pay the compensation within 28 days of the date on which we tell them Miss M accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 April 2024.

Paul King  
**Ombudsman**