

The complaint

Mr K complains that Nelson Insurance Company Ltd declined his claim made on his commercial motor insurance policy following the theft of his car by a family member.

What happened

Mr K's car was taken by a family member and damaged in an accident. The car was later deemed to be a total loss. Mr K reported the theft to the police and made a claim on his policy. But Nelson declined his claim as it said theft by family members was excluded from cover by the policy's terms and conditions.

Our Investigator recommended that the complaint should be upheld. She agreed that the exclusion was included in the policy's terms and conditions. But she thought most policies had an exception from the exclusion if the policy holder co-operated with the police. Nelson's policy didn't contain this exception, so she thought it should have been brought to Mr K's attention when he bought the policy. But it wasn't and she thought that if it had been drawn to Mr K's attention he would have sought cover elsewhere.

So she thought it was unfair and unreasonable for Nelson to rely on the exclusion to decline the claim. She thought it should now settle the claim, with interest, and pay Mr K £300 compensation for the trouble and upset caused.

Nelson replied that Mr K had a commercial policy and only he was named to drive his car. It said the policy didn't provide cover in the theft circumstances.

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.

Mr K has told us that the loss of his car has left him unable to work and this has caused him financial hardship. I was sorry to hear this and I can understand that he feels frustrated that Nelson declined his claim. Mr K also raised two other concerns about his claim. But, as our Investigator has explained, he will have to firstly raise these with Nelson as complaints to give it a chance to respond. So I can't consider these here.

Our approach in cases like this is to consider whether the insurer's acted in line with the terms and conditions of the policy and fairly and reasonably. Nelson relied on the following exclusion from cover, found on page 18 of the policy booklet:

"Loss or damage to your vehicle if it is taken or driven without your permission by any member of your family or partner, anyone living in your home or anyone known to you."

This is a common exclusion in motor insurance policies that we don't think is unusual or significant and so it doesn't have to be especially highlighted to draw it to the policyholder's attention. So I think it would usually be fair and reasonable for Nelson to rely on the exclusion to decline a claim.

However, many policies have an exception that says the insurer will consider these claims if the customer agrees to cooperate with the police in investigating or prosecuting the relative

or household member. If the customer cooperates with the police but the police decide not to take any action, we'd normally expect the insurer to settle the claim.

Nelson's policy doesn't contain this exception, and it says it has a blanket exclusion regardless of whether the customer cooperates with the police. We consider this unusual and would expect Nelson to highlight it very clearly in a summary or key facts document within the policy.

This is because the customer might have chosen a different policy if they'd known Nelson weren't going to cover them for this. Our approach is that if the insurer didn't make this clear and we think the customer would have bought a different policy that would have covered this, we may well uphold the customer's complaint.

I can't see that the lack of exception was drawn to Mr K's attention when he bought his policy. And I'm satisfied that if it had been, then he would have bought different cover. This is because Mr K was under the impression that his policy covered everything and was comprehensive. And Mr K made it clear that he would co-operate with the police and press charges against the family member.

Nelson thought this approach shouldn't apply as Mr K held a commercial policy. But our approach doesn't distinguish between commercial and private motor insurance policies. So I can't say that this is a reason not to follow our approach.

So, I'm not satisfied that Nelson made it clear that there wasn't an exception to the exclusion from cover if the car was taken without consent by a family member. I think that if it had done, then Mr K would have found cover elsewhere. So I think it's unfair and unreasonable for Nelson to rely on the exclusion to decline the claim and I think it should now reconsider it.

Mr K has been without his money for some time, so I think Nelson should reasonably add interest to any settlement. And, as this matter has caused Mr K significant trouble and upset, I think Nelson should pay him £300 compensation for its unfair repudiation of his claim. This is in keeping with our published guidance where an error has had an impact lasting over a significant period.

Putting things right

I require Nelson Insurance Company Ltd to do the following:

1. Re-consider Mr K's claim, taking into account the remaining terms and conditions of the policy.
2. If any payment is made to Mr K, interest should be added at the rate of 8% simple per annum from the date the claim was declined to the date of settlement†.
3. Pay Mr K £300 compensation for the distress and inconvenience this matter has caused him.

†If Nelson considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr K how much it's taken off. It should also give Mr K a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require Nelson Insurance Company Ltd to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 24 September 2024.

Phillip Berechree
Ombudsman