

The complaint

Mr M has complained about the way Nelson Insurance Company Ltd has handled his claim under his Private Hire Insurance policy.

Any reference to Nelson includes its agents.

What happened

Mr M's car, which he used as a taxi, was stolen at the end of June 2023. He put in a claim to Nelson. It considered the claim and sent a settlement letter to Mr M on 22 August 2023. Mr M called Nelson on 24 August to discuss the settlement amount. It said this should be based on the market value of his car at the time he was stolen, i.e. the cost of replacing it, being £14,750. And, according to Nelson's file notes, Mr M said he'd speak with the company providing the finance for his car, who I'll refer to as H. On 29 August Mr M sent an email to Nelson with a settlement letter from H. Nelson then paid off the premium instalment plan for Mr M's policy with part of the settlement amount due to him. It then paid the remainder to H towards what was outstanding on the finance. But this amount did not cover everything that was outstanding and left Mr M owing H around £8,000.

Mr M called Nelson on 1 September 2023 to say he wasn't happy with the amount it had paid in settlement of his claim. Nelson asked its motor engineer to reconsider the valuation of Mr M's car. He decided that the valuation was correct. Mr M remained dissatisfied. His car was then recovered by the police on 7 October 2023. And Mr M told Nelson he wanted the car back. According to Nelson's file notes Mr M said he'd called H and asked it to refund what Nelson had paid in settlement of his claim. But when Nelson called H it told him Mr M hadn't done this. So Nelson instructed its salvage agent to collect his car. It then sold the car to its salvage agent on 14 November 2023.

Mr M complained to Nelson about how it had handled his claim in February 2024 and it issued its final response on 22 February 2024. It didn't uphold his complaint on the basis its valuation was correct and that he hadn't asked H to refund what it had paid in settlement of his claim. And it said this meant it wasn't obliged to return his car to him. It pointed out that it says in the policy that if it settles a claim on the basis an insured vehicle is a total loss, the vehicle becomes its property.

Mr M wasn't happy with Nelson's response to his complaint, so he asked us to consider it. One of our investigators did this. She said Nelson shouldn't have sold Mr M's car to its salvage agent, as he had made it clear he wanted it back. And that it should have given him the opportunity to get H to refund what it had paid and to have his car back and get it repaired. She said Nelson should provide Mr M with the money to buy a replacement car and that it could recover what it had paid to the finance company. She also suggested it should cover the additional cost to Mr M of hiring a replacement car and compensation for distress and inconvenience.

Nelson did not agree with the investigator's view and asked for an ombudsman's decision. It said Mr M didn't say that he disagreed with its valuation of his car prior to it paying H. And it questioned why he sent the settlement letter from H if he wasn't happy with its valuation. It

also pointed out it was not in a position to claim back what it had paid H and it would be for Mr M to request this and arrange a revised payment plan.

I issued a provisional decision on 18 September 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.

Having done so, I've decided to uphold it, but I think the way Nelson needs to put things right should be different to what our investigator suggested. I've explained why I think the complaint should be upheld and what I think Nelson needs to do below.

Nelson has not provided recordings of the telephone conversations Mr M had with its claim handling agents. So, I cannot be sure that he only said he was unhappy with its valuation after Nelson had paid H. Mr M has told me he did say he wasn't happy with it prior to this and he only sent the settlement letter from H because Nelson's agent asked him to do so.

However, bearing in mind Mr M's car wasn't actually recovered until over a month after Nelson made the payment, I think the reality is that, even if Mr M did say he disagreed with its valuation before Nelson made the payment, all that would have happened is that Nelson would have told him it would need to make the payment as an interim settlement and leave him to complain about its valuation of his car if he wanted to. This having been said, I would have expected Nelson to pay the full claim settlement amount to H and not use part of it to clear Mr H's instalment plan for his policy premium, which it should have left to continue.

But, if Nelson had paid H and left Mr M to complain, when his car was recovered, he still needed to ask H to refund what it had paid back to Nelson. According to Nelson's notes H told it Mr M hadn't asked it to refund what it had paid. But, again, I do not have a recording of the call Nelson's agent made to H, so I can't be sure of this. And Mr M has said he did ask H to do this. And I think where Nelson went wrong was in selling Mr M's car to its salvage agent when it knew he wanted it back. Even though it didn't think Mr M had asked H to refund what Nelson had paid to it, I think Nelson should have gone back to Mr M and told him this and arranged for him to provide some sort of written authority, which it could have sent to H. Instead of this it simply carried on and sold Mr H's car.

I actually find it surprising that Nelson sold Mr M's car to its salvage agent when he still owed around £8,000 to H in respect of it. As I think this meant that, in effect, Mr M still owned part of it. It also meant H still had an interest in it. So, I'm not sure that legally Nelson was entitled to sell the car. And it is interesting that according to Mr M, DVLA still thinks he owns it. I appreciate that the policy says if Nelson treats an insured vehicle as a total loss it becomes its property. But it does say this will happen unless it agrees otherwise. And in Mr M's case, I think it should have agreed otherwise and simply paid the market value of the car less the policy excess in accordance with the rest of the policy terms. This would have meant when the car was recovered it could have gone back to Mr M and, provided H was willing to refund what Nelson had paid to it, Nelson could then have paid for it to be repaired. I appreciate Mr M did say to Nelson when it was recovered he didn't intend to claim the cost of repairing it. But the damage to it was extensive and it would have cost around £9,000 to repair it. So, I think in reality Mr M would have had to claim for the cost of getting it repaired.

I can't really see any reason why H wouldn't have agreed to refund what Nelson had paid it if it had been asked to do so in October 2023, as it doesn't appear to have suggested it wouldn't do this when Nelson's agent spoke with it. And – provided it knew Mr M had his car back and was going to get it repaired - it would have been satisfied it had it as security against the credit it was continuing to provide to Mr M.

This means if Nelson had acted appropriately Mr M would have had his car back and repaired by the end of November 2023. I say this because it was recovered on 7 October 2023 and I can't see any reason why it couldn't have been taken to a repairer, assessed, and repaired by this stage. Instead, Mr M has not got his vehicle back and has had to continue paying H for what was left outstanding on the finance, as well as hiring a car at between £150 and £230 per week so he could continue working as a taxi driver.

Our investigator suggested that to put things right Nelson should pay Mr M what he would need to buy a replacement car the same as his now. However, this would mean Nelson would want to recover what it paid to H. And it would mean H would need to draw up a new finance agreement with Mr M and have the replacement car he purchased as security for the credit it was providing him. I think, in reality, this would be complicated and I also think it is quite unlikely H would agree to it at this late stage.

In view of what I've said, I think a different way of putting things right is needed. As I've already mentioned, instead of having his car back repaired at the start of December 2023 Mr M had to hire a car and still pay a monthly amount to H for the remaining finance. And he is still having to do this, although he has had a couple of periods where he has been away or on jury service and hasn't had to hire a car. In the circumstances, I've worked out he has had to hire a car for a period of 34 weeks in total.

What did Mr M pay each month as a result of not getting his car back?

From what Mr M has told us, which I have no reason to doubt, it seems he was paying around £165 per week on average for a hire car in this period. This is because until May 2024 he was hiring it without insurance at about £150 per week. And from May he was hiring it with insurance and paying between £190 and £230 per week depending on how many miles he did. He also had to make his revised payment to H, which was around £65 per week during this period (around £280 per month). This means he was paying out around £230 per week in the period he was hiring a car.

If Nelson had done things properly (including not paying anything to clear his outstanding insurance premium), and if Mr M had got his car back, he'd have then continued paying the monthly amount he was paying prior to his car being stolen to H of around £520 per month and his insurance premium payment of £274 per month. This would have worked out at around £175 per week.

This means in the period of 34 weeks he was hiring a car Mr M paid around £65 per week more than he should have done, i.e. instead of paying out £175 per week he was paying out £230 per week, which is around £2,200 in total more than would have been the case if Nelson had given him his car back and paid for it to be repaired.

What would Mr M have paid out each month if he had got his car back?

In the period from October to December 2023, if Mr M's car had gone back to him, he would have been paying £270 per week, as at this point what Nelson paid to H would have been refunded and Mr M's monthly payments for his finance would have reverted to around £520 per month (£120 per week). But, he would still have needed to hire a car while his car was assessed and repaired, as he would not have been entitled to a replacement car under the terms of his policy.

Whereas Mr M was actually only paying £65 per week for his outstanding finance at this point and nothing for his insurance premium, as his instalment plan for this had been cleared. So, due to Nelson's failings Mr M actually saved around £55 per week in this period

of around seven weeks, i.e. around £385 in total.

According to Mr M there were also a couple of periods totalling about eight weeks where he was away and didn't need to hire a car. In these periods he was paying around £65 per week for his revised finance agreement, although he did pay a bit less than this after a while as he made a payment in at some point. But I've not factored this in as he did have to use his own money for it. This means in these weeks instead of paying out £270 per week as would have been the case if Nelson had got things right, Mr M actually paid out only £65 per week. This means in these weeks because of Nelson's failings he actually saved around £205 per week, i.e. around £1,640 in total. And if this is combined with what he saved in the period between October and December 2023, it means Mr M has paid out around an extra £2,200 in the period since his claim, but has actually saved around £2,000. This means Mr M only actually lost out by around £200 financially due to Nelson's failings.

What should Nelson pay in compensation for the fact Mr N hasn't got his car back?

So, in terms of compensating Mr M for the financial loss he has experienced as set out above, I've provisionally decided Nelson only needs to pay him £200, plus an amount to compensate him for being without this money. Mr M has been without this money for a long period and would be entitled to interest on it. But – in reality – it would be very complicated to work out what the amount of interest should be. But I'm satisfied that a further £30 to reflect likely interest is appropriate. This means an overall payment of £230.

I appreciate my explanation and calculations are complicated and that they could be hard to follow, but I think they are right. And I also appreciate it may not seem to Mr M that the financial impact on him was as small as I've suggested. And it also does not account for the significant distress and inconvenience Nelson's failings have caused him. But the reality is that the impact on him financially isn't actually as great as he might have imagined. This is mainly because of what he saved monthly by not paying his insurance premium instalments and because of his reduced monthly payment on his finance over a long period. Also, because for some of this period he was away.

Of course, as I have already said, there is really now no way for Mr H to get his car back repaired. And he will of course now have to buy another one; presumably on finance. And, in doing so he will probably have to pay a higher interest rate, as rates have gone up in recent times. Although this can be balanced against the fact that if he buys another car the same age as his would have been by now if he had it back it will cost him less for the actual car. However, it is very difficult indeed to know what the actual financial impact to Mr M of doing this will actually be. And Nelson's poor claim handling has in reality now put him in a very awkward position. And it has made it very difficult for me to work out the best way of compensating Mr M so as to enable him to buy a replacement car. So, what I've provisionally decided to do is make Nelson pay Mr M a further £1,000 to cover the likely extra cost of a replacement car in terms of interest and the sort of finance deals available. I appreciate Nelson and Mr M may think this figure is a bit arbitrary. But I think it is the best and safest way of making sure Mr M is appropriately compensated.

What should Nelson pay for the distress and inconvenience Mr M has experienced?

Instead of having his car back and repaired and being able to continue using it for his work, Mr Nelson has had the worry of having to hire a car and not knowing when he is going to be back to having his own car. He's also had the frustration of Nelson seemingly selling his car when he still in effect owned part of it. This has clearly caused a lot of stress for him over a very long period; all of which flows from Nelson's poor claim handling. So, I think a payment

of £1,000 in compensation is appropriate for distress and inconvenience.

Was what Nelson paid for Mr M's car enough?

I've checked the guides we use for valuing cars. And the highest of these places a value of £15,290 on Mr M's car at the point it was stolen. Mr M's policy required Nelson to base its settlement on the market value of it at this time, which is the cost of replacing it with one of the same year, make, model and mileage. And, while I can see Nelson thought the value it based its settlement on was correct, I do not think it was. This is because the cost of replacing cars can depend very much on availability and I think the only way to be sure the replacement amount is correct is to use the highest guide value, unless there is a substantial amount of other evidence to suggest the correct replacement cost is less than this. And, while I've seen lots of adverts for similar cars, I've not seen many of the same year and mileage as Mr M's. So these don't persuade me it would be wrong to use the highest guide value.

This means I think Nelson paid £540 less than it should have done in settlement of Mr M's claim. And it follows that I consider it should now pay him this amount. I think to compensate him for being without this amount and having more remaining on his finance because of it, it would be fair for Nelson to pay interest at 8% per annum simple on this amount from the date it paid the settlement amount to H to the date of actual payment.

In summary, I consider the fair and reasonable outcome to Mr M's complaint is for Nelson to do the following:

- *Pay him £230 to cover the financial loss to him as a result of not getting his vehicle back and repaired.*
- *Pay him an additional amount of £540 in settlement of his claim, plus interest at 8% per annum simple from the date it paid the settlement amount to H to the date of payment.*
- *Pay him £1,000 to compensate him for the likely additional cost of having to purchase a replacement vehicle on finance.*
- *Pay him £1,000 in compensation for distress and inconvenience.*

I gave both parties until 2 October 2024 to provide further comments and evidence in response to my provisional decision.

Mr M has responded to say that he accepts my provisional decision. Nelson has not provided any further comments or evidence.

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.

As Mr M has said he accepts my provisional decision and Nelson hasn't provided any further comment or evidence, I see no reason to reach a different conclusion on the fair and reasonable outcome to Mr M's complaint to the one I set out in my provisional decision.

Putting things right

For the reasons set out in my provisional decision dated 18 September 2024, I have decided to uphold Mr M's complaint and make Nelson Insurance Company Ltd do the following:

- Pay Mr M £230 to cover the financial loss to him as a result of not getting his vehicle back and repaired.

- Pay Mr M an additional amount of £540 in settlement of his claim, plus interest at 8% per annum simple from the date it paid the settlement amount to H to the date of payment.*
- Pay Mr M £1,000 to compensate him for the likely additional cost of having to purchase a replacement vehicle on finance. Nelson must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.
- Pay Mr M £1,000 in compensation for distress and inconvenience. Nelson must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

* Nelson must tell Mr M if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Mr M if asked to do so. This will allow Mr M to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

My final decision

I uphold Mr M's complaint about Nelson Insurance Company Ltd and order it 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 M to accept or reject my decision before 4 November 2024.

Robert Short
Ombudsman