

## The complaint

Mr S has complained that his commercial vehicle insurer, Nelson Insurance Company Ltd ('Nelson'), agreed to deal with a third-party claim in relation to an accident he says he wasn't involved in.

## What happened

In February 2024, a third party made a claim against Mr S's commercial vehicle policy and said that Mr S collided with their car causing it damage and then fled the scene. Nelson made Mr S aware of the claim, but he denied any involvement.

Nelson continued to dispute liability. It later obtained an engineer's report to determine whether there was any damage to Mr S's car and if so, whether it was consistent with the third-party damage. Based on the report, which said that there was evidence of consistent damage to both cars, Nelson agreed to deal with the third-party claim on a "without prejudice" basis.

Mr S wasn't happy about this and complained. He insisted that his car had no damage and that he wasn't involved in the incident. He provided evidence by way of photographs and job sheets to show that he wasn't working using his car on the day in question.

Nelson didn't uphold the complaint. It said it required Mr S to provide a statement and supporting evidence regarding his whereabouts on the specific date if he wished it to defend the claim.

One of our investigators reviewed the complaint but didn't think Nelson had to take further action. Our investigator said that based on the evidence available, the decision to settle the third-party claim on a without prejudice basis was fair and reasonable.

Mr S didn't agree and asked for an ombudsman's decision. He provided a copy of his taxi licence and a recent MOT and said that the car wouldn't have passed its MOT or had its licence renewed if it had been damaged. He also provided an invoice for repairs carried out further to a separate incident Mr S was involved in on 17 February 2024, five days after the accident in question. He said the photographs provided by the repairing garage show that there was no damage to the right-hand side contrary to the engineer's report.

Our investigator reviewed Mr S's additional evidence but didn't change his view. Our investigator didn't think, on balance, that either the MOT or the licence would have been refused if the car had light damage.

The matter was then passed to me to decide.

## **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 S raised a number of points, and I have considered all the evidence provided by both parties. However, in this decision I focus only on what I consider to be the key issues. No discourtesy is intended. We aim for our decisions to be as concise and to the point as possible.

Like most motor insurance policies I am aware of, Mr S's states that Nelson may at its discretion take over and conduct in his name the defence, prosecution or settlement of any claim for its own benefit. And that it will have full discretion over the conduct of any proceedings and settlement of claims.

This isn't a term we consider to be unfair, and we think insurers should be able to rely on it as long as they are acting fairly and reasonably in doing so. And in order to demonstrate this we expect insurers to show that they conducted a thorough investigation before reaching the decision to deal with or settle a claim on their insured's behalf.

Nelson was contacted by the third party's solicitors who had obtained Mr S's car details and registration from their client. The solicitors said Mr S collided with the third-party car when he changed lanes from a bus lane which is on the left to the right lane where the third party was. This caused damage to the left-hand corner of the third-party car. The third party said Mr S fled the scene and so they weren't able to get any further details.

Mr S told Nelson that he wasn't involved in this accident and so Nelson initially disputed liability on his behalf. I thought this was fair and reasonable especially as it was still carrying out its investigation. Mr S provided his job sheets which showed he wasn't working as a taxi driver on the day in question. The third party argued he could still have been using the car privately, which Nelson accepted as the policy covered both business and personal use. So, it made further enquiries which I, again, thought was fair and reasonable. In order for Nelson to be able to continue to dispute liability it required further evidence to support Mr S's assertion that he wasn't involved.

Nelson asked Mr S to provide a statement confirming his whereabouts, who had access to his keys, and any supporting evidence such as bank statements or receipts. Mr S did not provide this. He said he was not refusing to cooperate but was concerned the statement might later be misused. I understand his concerns, but for Nelson to dispute liability on his behalf it reasonably required this information. In mistaken-identity cases, insurers commonly ask for confirmation of the insured's whereabouts, and only Mr S could provide this.

Mr S provided other evidence in support of his claim that he wasn't involved. He provided photographs taken by a repair garage which repaired his car a few days later for a separate accident. He said the photographs showed that there was no damage to the right-hand side of the car. I reviewed the images but could not clearly identify whether any minor damage was present. Given the limitations of photographs and the fact the alleged damage was minor, I consider it reasonable that Nelson instructed an independent engineer to inspect the

car. I think this would provide a far more accurate view of the condition of the car.

An independent engineer inspected Mr S's vehicle in early June 2024. The report stated there was very light damage to the right-hand front bumper of the car. A supplementary report dated the same month, confirmed that the engineer reviewed the third party's engineers report and images. It stated that the third-party vehicle had light damage to the left-hand front. It also said that both vehicles may have collided and sustained damage and that the patterns of damage to both vehicles suggested a potential collision between them. It added that this was supported by the location of the damage and its nature. The report concluded that the damage to the two vehicles was consistent.

Nelson wrote to Mr S and said that based on the engineer's findings and the lack of evidence to support that he was not involved in the accident it decided to settle the third-party claim on a without prejudice basis which meant that if he wanted to dispute liability through his own solicitor he would be able to do so privately. It said it believed that this was the best way to avoid litigation and prevent costs from escalating.

Having considered the engineer's report and the evidence available to Nelson at the time, I am satisfied that settling the third-party claim on a without-prejudice basis was fair and reasonable. The third party's statement held Mr S at fault, and the independent engineer found consistent damage. On balance, I don't think there was sufficient evidence to enable Nelson to defend the claim in full particularly as it wasn't able to confirm Mr S's whereabouts on the date in question. I don't think Nelson could have relied on the evidence Mr S did provide i.e. the photographs because an engineer's opinion would carry more weight than photographic evidence especially as the engineer, who is an expert in the field, inspected the car in person. And dealing with the claim on a without-prejudice basis still allowed Mr S to challenge liability separately while avoiding potentially costly litigation.

Mr S said he didn't think the engineer's report conclusively established he was at fault for the accident. He said he had provided his own photographs of his vehicle which showed no damage. He also thought there was a disparity between the repair costs for the two vehicles (£2,227.63 compared to £846.86). I have considered Mr S's concerns, however, the engineer concluded that the vehicles' damage was consistent, and there is no expert evidence to contradict this. I therefore consider it reasonable that Nelson relied on the report when deciding to deal with the claim.

Mr S also said the other's side's version of events was inconsistent with the damage it sustained but I didn't find that to be the case. The other side said Mr S collided with them when he changed lanes from left to right. Their damage is to the left-hand side towards the front of the car which would make it consistent with the events they described.

Mr S also said the car passed its MOT in March 2024 and wouldn't have done so if it had been damaged. Like our investigator I have considered this and my understanding is that an MOT would only check specific things related to the safety and structural integrity of the car and wouldn't necessarily pick up on minor cosmetic damage. And the same with Mr S's taxi licence.

I appreciate Mr S will be disappointed with my decision. I understand he feels very strongly that Nelson should not have dealt with the third-party claim. But from the available evidence,

I think Nelson's actions as Mr S's insurer, were fair and reasonable.

**My final decision**

For the reasons above I have decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 February 2026.

Anastasia Serdari  
**Ombudsman**