

## **The complaint**

L has complained about the delay repairing one of its vehicles following a claim under its Taxi Insurance policy with Society of Lloyd's (SOL). L is represented by Mr N, who is the sole director of the company.

L's claim was against a syndicate which is part of SOL; and at times the claim was handled by a claim handling agent, but for ease I have referred to Society of Lloyd's (SOL) throughout this decision.

## **What happened**

A vehicle owned by Mr N was insured under a taxi policy in the name of L with SOL. It was damaged in an accident on 12 July 2021 and L put in a claim under its policy. SOL agreed to have it repaired and appointed an approved repairer, who I'll refer to as A, to do this. A provided an estimate to SOL on 13 July 2021. SOL approved this on 20 July 2021 and A were told they could go ahead with the repairs. It seems that around this time A ordered the parts needed to complete the repair and were told the replacement sidestep was on back order and wouldn't arrive until 17 August 2021.

There was then a dispute between SOL and A, which eventually resulted in A refusing to do the repair. This meant SOL had to find another repairer to carry out the repair. And the vehicle didn't actually go in for repair until 4 October 2021.

Mr N has said that L lost revenue due to having to refuse work while his vehicle was off the road due to the unnecessary delay in SOL arranging and carrying out the repairs. Mr N complained to SOL on behalf of L. They upheld the complaint and paid £250 in compensation for inconvenience, as well as waiving the £250 policy excess and covering the amount L paid to hire a vehicle.

Mr N wasn't happy with SOL's payments, so he asked us to consider his complaint.

One of our investigators did this and asked Mr N to provide evidence of L's losses. He submitted detailed evidence to show what he considered these were.

Our investigator put this evidence to SOL and asked them to consider paying the amount Mr N had suggested. This was based on a loss of business for a period of 37 days, which represented the time between when L made the claim and the time SOL appointed the second repairer.

SOL wouldn't agree to do what our investigator had suggested. So, she referred the complaint to me for a formal decision.

I issued a provisional decision on 6 July 2023 in which I set out what I'd provisionally decided as follows:

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

*It is clear that SOL's initial handling of L's claim was poor. It seems to have taken them a week to approve a repair estimate from A, when they told Mr N this would only take two days. SOL then entered into a dispute with A, which I don't think should have happened and this unreasonably delayed the repair. This eventually led to A refusing to carry out the repairs. This was unacceptable as it left L without the use of Mr N's vehicle for longer than should have been the case. I consider SOL are responsible for this delay and any losses to L that flow from it due to the fact A were their agent and the issue with them not wanting to do the repairs was SOL responsibility. And, because of this, I think they should compensate L for any losses flowing from this delay.*

*However, I do not consider the period between when Mr N made L's claim and when SOL appointed the second repairer is the right period for working out what L's losses are. And I don't consider making OL compensate L for all the losses Mr N has suggested it suffered would produce a fair and reasonable outcome to this complaint. I'll explain why. I think SOL should have approved the estimate provided to A by 16 July 2021. This is because two full working days seems a reasonable time for me for an insurer to do this and this is how long SOL told Mr N it should take. If this had happened and there hadn't been a dispute between SOL and A, A could have ordered the parts needed to repair Mr N's vehicle on 16 July. There was a delay in obtaining one of the parts, which I think would have been unavoidable, as it was most likely due to a shortage of this part. But, if A had ordered the parts on 16 July, instead of 20 July (which it does seem from SOL's notes was the most likely date they did this), I think they would have arrived by 13 August, as opposed to 17 August.*

*This means L's vehicle should have gone in for repair on 13 August at the latest. And at this point Mr N would have been provided with a suitable replacement vehicle under his replacement vehicle policy. This would then have enabled L to provide its normal services. As it was Mr N's vehicle did not go in for repair until 4 October 2021. This means that, as a result of poor claim handling by SOL, L was without a suitable undamaged vehicle to use for its business for a period of 51 days.*

*This means I think SOL needs to compensate L for the revenue it lost for this period of 51 days. I've considered the information provided by Mr N and L's accountant and I'm satisfied is fair to say that L's average revenue per day in this period would have been £268. Mr N has recently provided a document setting out what he thinks L's revenue was in this*

*period, along with other figures and I've asked our investigator to provide a copy of this to SOL along with this provisional decision, so they can consider it before responding. My calculation is based on the information Mr N has provided and is based on a likely annual revenue of £97,820 (rounded), as I'm satisfied this was N's revenue for the period between November 2021 and November 2022. It's possible the revenue in the summer period could have been greater. However, I am considering what is fair and reasonable in all the circumstances, so I think it is appropriate to use the annual revenue for L for this period and divide it by 365, then multiply it by 51 days to get the amount of revenue L is likely to have lost as a result of being without Mr N's vehicle for 51 days. I make this £13,668.*

*This having been said, there were clearly savings for L in this period, as it didn't have to pay mileage to Mr N and it fulfilled some jobs, albeit with the help of sub-contractors on occasions. And these savings need to be deducted. I appreciate Mr N sees the mileage amount that would have been paid to him as a loss, but it is actually a saving for L, as it didn't have to pay it. So, in working out compensation to L as the complainant in this case, I think it needs to be deducted.*

*Working on the same basis as revenue the monthly average mileage paid by L, according to*

Mr N's calculations in the period November 2021 to November 2022 was £3,360. This works out at £110 per day rounded over the course of a year, so I think it is fair to use this for the period L was without Mr N's vehicle. And make a deduction of £5,610 for this period of 51 days. But Mr N has provided evidence, which I will also ask our investigator to send to SOL, that shows L made payments to Mr N instead of mileage in this 51 day period totalling £4,233. So I think this can be taken off the saving for mileage, leaving a deduction to be made from the lost revenue resulting from L not having the use of Mr N's car of £1,377. Also, revenue actually received needs to be deducted. But I think this needs to be net of sub-contractor costs in the period in question, as this is what L actually made from any jobs it fulfilled either itself or using subcontractors. Mr N has provided figures for revenue in this period along with sub-contractors costs and this works out at £1,972 net. So, this amount also needs to be deducted from the lost revenue figure above.

In summary, this means I think it is fair to say the net income L lost in the period of 51 days I've identified is £10,319, ie £13,688, less £1,377, less £1,972. And I think SOL needs to pay this in compensation to L, plus interest at 8% per annum simple. This is because L was deprived of these funds due to poor claim handling by SOL and I can see from bank statements it was using its overdraft at this time. I think this payment should be from 4 October 2021, as from this point onwards L should have had the revenue.

I don't think the loan a member of Mr N's family made to L is a loss to L, as this is just money that came in and needed to or will need to go back out to repay the loan. But, Mr N has provided a loan agreement, a copy of which I have also asked our investigator to send to SOL. This shows that L agreed to pay interest on the loan at 8% per annum simple. As I accept this loan was only needed due to the drop in revenue caused by SOL's poor claim handling I think it's fair and reasonable for SOL to cover this interest. Mr N has provided a calculation for the interest of £416 up to 5 July 2023, which I'm satisfied with. I've also asked our investigator to send a copy of this to SOL.

I also think L suffered a great deal of inconvenience as a result of not having Mr N's vehicle available. This could well have cost them new clients, who could have generated future income or put some existing clients off, or resulted in them moving to other service providers. So, while it is impossible to quantify this loss, I do think a compensation payment for the inconvenience caused to L for being deprived of a large amount of revenue is appropriate. I have to bear in mind that SOL has already waived L's excess of £250 and paid them £250 in compensation for inconvenience. Plus, SOL have reimbursed £642 for hire costs to L in the period before I think Mr N's vehicle should have actually gone in for repair. So, I think it's fair to say L has already – in effect – received compensation of £1,142 for inconvenience.

Mr N has put forward a number of reasons why he thinks L should receive a lot more than this for inconvenience. These are as follows:

- There was no spare cashflow in L.
- L has been unable to pay back other business loans (and Government Covid loans) earlier.
- L has been unable to afford to set up a second golf transport focused business.
- L has been unable to invest in a second, larger, 7-seat Mercedes V-Class vehicle for golf groups. And therefore unable to take on an increased levels of golf tour bookings.
- L has been unable to expand its golf tours further, which has been a large reason for their growth, as it has been the key source of doubling revenue from pre to post-Covid trading periods.
- In addition to lost new business/and referral growth during the 3 month period the car could not be utilised/optimized.

- *The claim has inevitably increased L's chauffeur insurance premiums. Had the business known these events/delays were going to happen, it could have paid for the repairs directly and not suffered any of these business losses, or suffered increased insurance premium payments. It could have instead expanded the business and would be benefiting from the associated increased revenues from additional golf tour bookings and the additional revenue a second vehicle would generate.*

*I've noted what Mr L has said about increased insurance premiums, but I think L would have faced these anyway, as it was always going to claim for the damage to Mr N's vehicle. It is only with the benefit of hindsight that Mr N is suggesting L wouldn't have claimed.*

*I also appreciate L couldn't utilise Mr N's car for a period because of the delay in it being repaired. But this is what the compensation for lost revenue reflects, so I do not consider a further payment for the inconvenience of this would be appropriate.*

*I do however accept that the impact of the delay in repairing Mr N's vehicle could have affected L's ability to expand its business and take on new clients, which could well have affected the revenue it received even after Mr N's vehicle had been repaired. And this and losing a large amount of revenue was clearly very inconvenient. So I think a very significant payment for inconvenience is appropriate. And I've provisionally decided this should be £2,500 in total. As SOL have already – in effect – paid £1,242, this means they will need to pay a further £1,358.*

I gave both parties 14 days to provide further comments and evidence in response to my provisional decision.

Mr N came back on behalf of L to say he didn't have any further comments or evidence. However, he did ask if he could have the opportunity to comment on any further comments or evidence SOL provided in response to it.

SOL asked if they could appoint a forensic accountant to review the evidence and provide comments. I agreed to this and they subsequently provided a report from the accountant with a covering letter. He made a number of points and I've set out what I consider to be the key ones below:

- He utilised a loss period of 51 days, ie 14 August to 3 October 2021 ("the 51 day period").
- Based on the information provided his assessment of L's entitlement for its business interruption claim would be nil. This is because he considered it unsubstantiated due to insufficient documentation being provided.
- He hadn't been provided with any financial documentation to confirm L had a gross revenue of £97,893 in the year ended 30 November 2022 and whether this figure is inclusive or exclusive of VAT.
- From L's website it appears it leased other vehicles in the 51 day period and to calculate any loss he'd need a breakdown of gross income for the other vehicles. As far as he can see the gross revenue figure includes revenue from all vehicles available for L to use. He then suggested a reduced figure after the deduction of VAT and a reduced average daily revenue based on this figure.
- This meant based on the actual income L received in the year ending 30 November 2022 L's he thought gross loss of income in the 51 day period was likely to have been £8,366.
- He suggested a deduction should be made for subcontractor costs incurred in the 51 day period, as it's clear L normally incurred sub-contractor costs.
- He suggested a deduction for saved mileage payments to Mr N of £4,678.50, which factored in what he thought actual mileage in the 51 day period was likely to have been.
- He did not think the payments L had said it made to Mr N instead of mileage payments

- should be deducted, as Mr N is a director of N and could have taken these at any time.
- He suggested savings in fuel costs should also be deducted and he provided a figure of £1,361.
- He didn't think the need for a loan to L had been substantiated financially and he considered a more appropriate interest rate for it would have been 2.5%.
- In summary, he concluded L's likely loss for the 51 day period was £2,383.

I gave Mr N the chance to comment on the accountant's findings. And, having considered his further representations and what the accountant had said, I made the following points in an email to SOL:

*I've noted what the forensic accountant (the accountant) appointed by SOL has said, but I do not agree that the loss he has suggested is a fair reflection of what L actually lost as a result of Mr N's vehicle being off the road for 51 days due to the poor handling of L's claim by SOL.*

*Firstly I should clarify that the period I am considering is 51 days as it is exclusive and not inclusive of 13 August and 4 October 2021. This is because if SOL had dealt with the claim as it should have done Mr N would have had the vehicle back at some point on 13 August, but was unlikely to have been able to use it that day. And 4 October was when he first got a replacement vehicle, so L did have a vehicle available for jobs from this day.*

*I should also make it clear that I'm satisfied with the gross revenue figure for the corresponding period of 51 days in 2022 provided in Mr N's latest spreadsheet (attached). I do not accept the accountant's view that the revenue figures are unsubstantiated, as Mr N has provided L's bank statements and these show the revenue it received in 2022; so these can be used as a comparison.*

*The actual revenue received in the corresponding 51 day period in 2022 was £21,259.54. And I now consider this should be the starting point for working out what L lost as a result of having Mr N's vehicle off the road between 14 August and 3 October 2021. This is because Mr N has explained to me that had L had the vehicle available in this period it would have taken on similar golf and wedding business as it did in 2022, as August and September is what might be best described as the 'golf and wedding season'. And I accept it was likely to have been a 'busy' period for L because of this and the fact COVID restrictions had been lifted and people were keen to get out and go on holiday.*

*However, as I am using this higher gross revenue figure from the corresponding period in 2022 as the starting point, I consider it is also appropriate to use the actual mileage figure of 8091, which is also shown in Mr N's latest spreadsheet. This means a deduction has to be made to reflect the fact that L did not have to pay Mr N £8,901 at £1 per mile in this period.*

*However, I do not agree with the accountant's view that the £4,233 L paid to Mr N instead of mileage shouldn't be deducted from what L saved in mileage costs. The accountant has suggested that – as a director – Mr N could have taken these payments at any time. But my point is that I'm satisfied L would not have made these payments at all to Mr N if his vehicle had been available in the 51 day period, ie it only made them because it wasn't and Mr N didn't get his usual mileage payments in this period. This means I think the actual deduction for the saving in mileage costs should be £4,668.*

*I have checked with Mr N and he has explained that the only vehicle that would have been available to L in this period was Mr N's vehicle. It did have numerous other vehicles listed as available on its website, but these belonged to sub-contractors and L could sub-contract these if a client wanted one of them as opposed to Mr N's vehicle. So I am satisfied from what Mr N has said and L's bank statements that it didn't earn more revenue in the period 14 August to 3 October 2021 than Mr N has suggested.*

Any revenue L did actually earn in the 51 day period in August to October 2021 does need to be deducted. But this needs to be net of sub-contractor costs, as part of the reason L earned it was as a result of using sub-contractors. And I do not agree with the accountant that more than the amount I suggested in my provisional decision needs to be deducted for sub-contractor costs. This is because Mr N has provided bank statements covering the relevant period and it can be seen from these what sub-contractor costs actually were. So I do not consider it is necessary for Mr N to provide any more evidence on sub-contractor costs or for the deduction to be based on an average of these in a normal year. So I remain satisfied a further £1,972 needs to be deducted to reflect subcontractor costs.

The accountant has reduced the revenue I suggested L had lost on the basis it was VAT registered. Mr N has confirmed L was not VAT registered and the accountant could easily have checked this. I am satisfied it was not and therefore I'm satisfied the income it lost in the period of 51 days in question should be based on a gross revenue figure for the corresponding period in 2022 as per Mr N's latest spreadsheet.

I also disagree with the accountant's suggestion L did not mitigate its losses by taking a loan at a lower interest rate. The accountant hasn't provided any compelling evidence that business loans to a business like L were available at the sort of rate he has suggested in the same period L borrowed the money from a member of Mr N's family. And, I'm satisfied from the evidence Mr N has provided that L did borrow this money at an interest rate of 8% per annum and should be compensated for this. However, bearing in mind we are now at 17 August, I think it is fair and reasonable for the interest to be calculated up to the point SOL actually pays it to L.

I do not consider fuel costs need to be deducted, as these are in effect paid by Mr N from his mileage allowance. I appreciate some of them are paid via L's bank account, but these are in effect a loan by L to Mr N and he pays them back via his director's loan account. I have attached an email from Mr N forwarding an email from his accountant explaining this.

But I do think parking and congestion fees need to be deducted from gross revenue. This is because Mr N has explained that these are billed to the client having been paid by L and they are included in the gross revenue figure Mr N has provided. The amount L paid in fees in the corresponding period in 2022 was £483.87. So I think it is fair to deduct £490 from the gross revenue figure for 2022 to reflect what these are likely to have been in the corresponding period in 2021.

The only other thing I consider needs to be deducted is the amount L saved in subsistence payments. This is because Mr N has explained that these are made for him by L and not charged back to him. In the corresponding period in 2021 these were £214.03, so I consider it fair for £215 to be deducted to reflect likely subsistence costs in the corresponding period in 2021.

This means the total deduction that I think needs to be made from the gross revenue figure I now think should be used of £21,260 (rounded up) is £7,345 (£4,668 for the mileage saving, £1,972 net for actual revenue, £490 for parking and other fees and £215 for subsistence). This means that I now think the total amount due to L for loss of profit/net revenue as a result of Mr N's vehicle being off the road between 14 August and 3 October 2021 is £13,915.

In summary, I now think the fair and reasonable outcome to this complaint is for SOL to pay L £13,915 as compensation for lost net revenue/profit, as well as reimbursing the interest on the loan it took out from a family member as explained above. However, I don't think SOL needs to pay as much in compensation for inconvenience, bearing in mind the revenue

*figure I have used now actually reflects the likely gross revenue L would have received in the 51 day period in 2021. I do however still think it has suffered inconvenience as a result of potentially losing additional business from the new clients it could have picked up earlier if it had had Mr N's vehicle available in the golf season in 2021. As I explained in my provisional decision SOL have in effect already paid £1,242 in compensation for inconvenience by waiving L's excess, paying £250 and covering hire charges they were not – in my opinion – obliged to cover. I think £1,500 overall is enough compensation for inconvenience, which means that I think SOL needs to pay a further £258 as compensation for inconvenience.*

SOL made several points in response to this email. I've not detailed them here, as many were either repeating or re-iterating what he'd said previously. However, they did make one additional point about deducting subcontractor costs from the gross revenue figure for the corresponding 51 period in 2022, based on an average of subcontractor costs for the period ending 30 November 2022.

Having considered these comments, I put it to Mr N that it was appropriate to also deduct an average cost for sub-contractors as above, as the gross income figure I was now using did reflect income that would have been generated by sub-contractors.

Mr N has responded to say he accepts this, but has pointed out that the gross revenue figure he provided for the corresponding 51 day period did not include tips. And, as L would have received tips due to providing transport for golf tours, he thinks these need to be included.

Mr N also suggested the payment L receives for inconvenience should be higher to reflect the impact of SOL's refusal to accept that their handling of the claim caused L a significant loss. And that this had a knock-on effect on income. He also mentioned the amount of time he has had to spend on substantiating the loss after bringing L's complaint to us, rather than earning income for L.

### **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.

It is not in dispute that SOL's poor handling of the claim for repairs to Mr N's vehicle caused a loss of income and inconvenience to L. The main difficulty in this case for me has been establishing what I consider to be appropriate compensation for this loss of income.

It will be clear from what I said to SOL in my more recent email why I think it is fair to use a gross revenue figure for the corresponding 51 day period in 2022 as a starting point. And what I think should also be taken into account to get to what I consider to be a fair and reasonable compensation amount to L for loss of income in the 51 day period in 2021.

And it remains my view that there should be an additional deduction for sub-contractor costs from the gross revenue in the corresponding period in 2022. This is because part of this revenue in this period was generated by the use of sub-contractors and I think the compensation figure should reflect this. And I think this should be based on an average for the year ending 30 November 2022. This is because it is difficult to know exactly what would have happened with regards to sub-contractor costs if L hadn't lost income in 2021. This is because Mr N has explained L may have purchased a vehicle it could have used or charged out as a second vehicle to a new company he was considering setting up. And this may have generated more income without sub-contractor costs. But it is difficult to know exactly what impact this would have had and there would of course have been a cost attached to it. So, I think overall deducting an average cost for sub-contractors is fair. I have calculated this to be £2,641.

Mr N has suggested I deduct an average sub-contractor cost from the actual income L received in the 51 day period in 2021. But I don't think this is appropriate, as the figure I am deducting from the gross revenue L received in this period in 2022 is meant to reflect actual net income earned by L in this period after the deduction of costs. This means I'm satisfied that actual payments to sub-contractors to generate this income should be deducted.

Mr L has also suggested tips in the corresponding period in 2022 should be added to get the right gross income figure, as the period was in the golf season and tips were high as a result of this. It is of course difficult to know what tips L would have received, but this was part of its taxable income. So I think the fairest way to take them into account is to add on average tips to the gross income figure I use from the corresponding 51 day period in 2022. This then matches the fact I have used average sub-contractor costs for this period. Rounded up to the nearest £100 and based on the figures Mr N has recently provided, which in the circumstances I think is fair, means £300 needs to be added to the gross revenue in the corresponding 51 day period for tips. This means – after appropriate deductions I have calculated fair compensation for L's loss of income to be £11,574 and I have set out below how I have calculated this. Interest will need to be added to compensate L for being without this income.

I also still consider it is appropriate for L to be compensated for the cost of the loan of £3,000 by a family member for the reasons I've set out previously. This payment should be at a rate of 8% per annum simple from the date of the last loan payment made to L of 7 October 2021 to the date of actual payment.

I've given it some further thought and still don't think it is fair for me to increase the award for inconvenience above £1,500.

My reasons are as follows:

I've noted what Mr N has said about the inconvenience and impact to L as a result of the loss of revenue flowing from the delay on SOL's part in repairing the vehicle. I've also noted the impact it has had on his time. However, I can't compensate L for time Mr N has spent on substantiating L's losses even if it did mean he wasn't earning income for L during some of this time, as this is part of him making a complaint on behalf of L and not something I am able to award compensation for. And it's only appropriate for me to compensate L for losses that were reasonably foreseeable and I can see flowed directly from SOL's poor handling of its claim.

I am not able to quantify the knock-on effect of the poor handling and I do not consider it could be said that it is clear what this effect actually was. Plus, I do not think it was a reasonably foreseeable consequence of the poor handling of L's claim. Also, if L had bought a vehicle and cross-charged it to a new company that would mean at least part of the revenue it generated would have gone to that company. And it would have had to pay to lease and insure it and cover any other costs relating to it. And I don't consider it appropriate to compensate L for the inconvenience of not being able to do this when much of the impact could well have been on a new unformed company.

The other thing I need to consider when it comes to an award for inconvenience is the fact that I have given some leeway to L in calculating its loss. I say this because I have used the revenue from a period in 2022 when sub-contractors were more readily available than Mr N has said they were in the same period in 2021. I've also only deducted average sub-contractor costs based on the yearly cost to L for these in the year ending 30 November 2022, when it is possible sub-contractor costs would have been higher in the 51 day period I have used.



So, overall, I do not think it would be appropriate to award more than £1,500 to L for inconvenience. The reason I have deducted the hire costs SOL covered from this amount is that SOL were not obliged to cover these costs. This is because they were incurred in a period where if the claim had been handled as it should have been Mr N's vehicle would have been off the road. And he would not have been entitled to a vehicle under his replacement vehicle policy, as this only allowed for one once his own vehicle went in for repair. Therefore, allowing for the excess and the amount SOL have already paid, they will only have a further £258 to pay to make up the £1,500 I think should be paid to L as compensation for inconvenience.

### **Putting things right**

For the reasons set out above, in my provisional decision and in my email to SOL detailed above, I've decided to uphold L's complaint and I've set out below how I have worked out the compensation I consider it is fair and reasonable for SOL to pay for loss of net revenue to L, as well as the other amounts I consider they should pay:

Gross revenue £21,260 for the corresponding 51 day period in 2022

Less likely sub-contractor costs based on a daily average of £51.78 = £2,641

Starting net revenue figure - £18,619

Less actual net revenue £1,972 (after actual sub-contractor costs are deducted)

Plus £300 for tips

Final estimated revenue figure £16,947 for the 51 day period

Savings

Net mileage costs (after deduction of payments to GN) £4,668

Parking fees £490

Subsistence £215

Total compensation due = £11,574, plus interest at 8% per annum simple from 4 October 2021 to the date of actual payment.

I also consider that SOL should cover the interest L has to pay on the loan it had from a family member at 8% per annum simple from the date of the loan to the date of actual payment.

As I've explained, I still consider that a further payment of £258 for inconvenience to L is appropriate.

### **My final decision**

My final decision is that I uphold L's complaint against Society of Lloyd's and order them to pay the following to L:

£11,574, plus interest at 8% per annum simple from 4 October to the date of actual payment.

The interest L has to pay on the loan it had from a family member of £3,000 at 8% per annum simple from 7 October 2021 to the date of actual payment.

A further £258 in compensation for inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 27 September 2023.

Robert Short  
**Ombudsman**