

## The complaint

Mr M complains that West Bay Insurance PLC (formerly Zenith Insurance PLC) mishandled a claim on a motor insurance policy.

Where I refer to West Bay, I refer to the above-named insurance company and I include employees and others insofar as I hold West Bay responsible for their acts or omissions.

## What happened

The subject matter of the claim and the complaint is a hatchback car, first registered in about 2017.

Through an intermediary, Mr M took out a comprehensive policy with West Bay to cover the car for the year from 5 November 2021. The policy documents said that any claim for damage (except a glass claim) was subject to a standard excess of £100.00 and a voluntary excess of £250.00. In the event of Mr M using a repairer of his choice, there was an additional excess of £200.00.

Unfortunately, on 12 November 2021, the car and a third party's vehicle were involved in an accident. Mr M contacted West Bay. He later got an estimate from a repairer of his choice. On 27 November 2021, West Bay authorised the repairer to do the repair.

Mr M complained to West Bay. By a final response dated February 2022, West Bay summarised that complaint as follows:

*"When you called us on 10 December 2021, your call dropped several times. You were passed to different departments when you called us on occasions about your claim. We didn't call you to advise the repairs were authorised, despite us advising we would. You've had to send images in support of your claim more than once."*

West Bay didn't uphold that complaint, but it said that it was sending a cheque for £50.00. Mr M complained to West Bay again. By a final response dated April 2022, West Bay summarised that complaint as follows:

*"We haven't yet paid your garage for the repairs to your car. We didn't advise you of the applicable excess. You don't feel the excess should be applied, as you feel we should've chased the other insurer more proactively for an admission of liability."*

West Bay said that the repair garage hadn't submitted an invoice. West Bay partly upheld the complaint on the basis that it hadn't confirmed the correct excess amount to Mr M when he decided to use a repairer of his choice. It apologised and said it was sending a cheque for £75.00 compensation.

Mr M brought his complaint to us on about 21 April 2022. We summarised that complaint as follows:

*“...The consumer's car was hit by someone in a rental car in the rear. The business asked the consumer to take his car to a garage for repair. When he went to collect the car he was asked to pay for the repair (£550) as that was the amount of his excess. As his policy was fully comprehensive the consumer expected the other sides insurance to cover the cost of the damage. The consumer has always had policies with an excess of £250 as it's the amount he would be able to afford. The business awarded the consumer £75, but he's been left with a debt of £550 through no fault of his own. The consumer paid his insurance upfront, but he's had no support from the business. The consumer believes the car rental company should accept liability if the driver hasn't. The consumer told the business that he can't read and write. And he thinks they are abusing him because of this disability. This includes him ending up with a policy with an excess greater than he would've wanted.”*

Mr M complained to West Bay again. By a final response dated mid-June 2022, West Bay summarised that complaint as follows:

*“We haven't chased the third-party's insurer for a liability decision.  
You felt pushed into using your own chosen repairer.  
We didn't investigate potential CCTV evidence.  
A member of staff released your call on 21 April 2022.  
We rejected your Bodyshop's' invoice.”*

West Bay didn't uphold that complaint.

Our investigator recommended that the complaint should be upheld in part. He thought that Mr M required additional support and that he was relying on West Bay to explain policy information. West Bay wasn't clear about the additional £200.00 excess. The investigator recommended that West Bay should - in addition to the £75.00 already paid - reimburse the £200.00 to Mr M.

West Bay agreed with the investigator's opinion.

Mr M disagreed with the investigator's opinion. He asked for an ombudsman to review the complaint. He says, in summary, that:

- Liability has been outstanding for a year and it can't be left like this indefinitely.

### **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.

The intermediary rather than West Bay was responsible for selling the policy to Mr M. So I don't hold West Bay responsible for any miscommunication (including about the excess) during the sale of the policy.

An insurer may make an outlay in settling a claim from its policyholder. Where it has made an outlay, it's common practice for that insurer to treat the claim as an open claim or as a fault claim against its policyholder unless and until it recovers its outlay in full (typically from a third party).

Most motor insurance policies contain a term providing that the insurer may decide how best to deal with a claim involving a third party. West Bay's policy terms included the following:

*"We are entitled under this policy to:*

- Take over and conduct the defence and settlement of any claim in your name...*
- Instigate proceedings at their own expense and for their own benefit but in your name...to recover any payment that they have made under your policy..."*

That seems to me to contain conflicting pronouns "*We*" and "*they*". Nevertheless, I consider that the effect of the term is that – on a question of liability involving a third party – West Bay's view would prevail over the policyholder's view.

The excesses of £100.00 and £250.00 applied to any claim. They would be uninsured losses that Mr M might seek to recover from a third party who was responsible for any damage.

The accident and a claim were, in my view, bound to involve some inconvenience in providing information and making calls. From what I've seen and heard, Mr M found the process more frustrating than most people, with his difficulty in reading and writing.

I don't find any evidence that Mr M told West Bay of any source of CCTV images. So I don't consider that West Bay had any leads to follow.

West Bay didn't tell Mr M in his first call that there would be an additional £200.00 excess if he used his own choice of repairer. I consider that it should've done so, as he had mentioned using his own repairer. But I haven't found enough evidence that West Bay pushed Mr M into making a claim or into using his own repairer.

Nor have I found enough evidence that West Bay mishandled any calls or requests for information. On occasion, Mr M rang a customer services number and West Bay transferred him to its claims team. I don't find that unreasonable.

I accept that West Bay was clear in its request for photographic images, although Mr M ended up duplicating some.

Mr M's repairer submitted an estimate of £690.00 including VAT. So the excesses totalling £550.00 were a high proportion of that.

I wouldn't expect an insurer to tell the policyholder when it had contacted the repairer to authorise repairs. I haven't seen enough evidence to show that West Bay said that it would do so. In any event, by 10 December 2021, Mr M knew that West Bay had authorised the repair. And Mr M was considering not getting his car repaired after all.

I accept that on 21 April 2022, West Bay ended a telephone call. I don't find that unreasonable as the call had broken down.

West Bay has said that it hasn't received a final invoice from Mr M's repairer, so West Bay hasn't made any outlay. I accept that West Bay is unable to pursue the third party for reimbursement of any such outlay. Also, I don't hold West Bay responsible to pursue any claim for uninsured loss including the excesses.

In any event, a claim against the car rental company would be unlikely to have any prospects of success, as the company isn't likely to be responsible for the acts or omissions of the driver.

## **Putting things right**

West Bay has said that it has sent Mr M cheques for £50.00 and £75.00. West Bay has agreed with the investigator's recommendation to pay Mr M £200.00 in respect of the additional excess. I find that a fair and reasonable outcome to this complaint. As Mr M hasn't provided evidence of the date he paid the excess to the repairer, I don't find it fair and reasonable to direct West Bay to add interest.

## **My final decision**

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct West Bay Insurance PLC (formerly Zenith Insurance PLC) to pay Mr M - in addition to the £50.00 and £75.00 already paid - £200.00 in respect of the additional excess.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 February 2023.

Christopher Gilbert  
**Ombudsman**