

The complaint

Mr W had a motor insurance policy with West Bay Insurance Plc. He says it misled his son during a call, which meant Mr W was also misled and later faced financial detriment.

What happened

Mr W's policy didn't cover Mr W2, and he was driving Mr W's car under the 'driving other cars' ('DOC') cover on his own policy when an accident happened. He contacted 'garage S' to collect the car, but it said it needed a claim number first, so Mr W2 called West Bay.

Mr W2 told the advisor he wasn't on the policy, so he wasn't calling to make a claim. He says she told him that the car was covered by West Bay (as was the other car involved in the accident) so West Bay would handle both claims. Mr W2 says she then gave him a claim number, which he gave to garage S. It collected the car and assessed the damage. In fact, the number Mr W2 had given it was the telephone number for the claims team. Later, West Bay wouldn't cover any costs, so Mr W had to pay a total of £753 to the garage and to have the car delivered home. He wants a full refund from West Bay.

West Bay said that due to a technical fault, the call between Mr W2 and the advisor wasn't recorded. But it said the notes she made at the time show that he didn't make a claim during it, as he wasn't covered by the policy. So it didn't think it was liable for Mr W's costs.

One of our investigators reviewed Mr W's complaint and thought it was unlikely that Mr W2 was told by West Bay that the damage to Mr W's car would be covered. He said the notes recorded at the time said the reason for a claim *not* being made during the call was due to there being no cover. The investigator didn't think West Bay was liable for any costs, but he thought it had provided poor service by wrongly writing to Mrs W, rather than to Mr W, as the policy holder. He said West Bay should pay Mr W £100 compensation for that.

West Bay accepted the investigator's view. Mr W said the advisor had convinced Mr W2 that *the car* was covered (regardless of the fact that Mr W2 wasn't insured on the policy) as she said both cars were insured by West Bay. He pointed out that part of his complaint was that West Bay hadn't investigated the complaint fully, as there was no call recording. As the investigator didn't change his view, the complaint was passed to me for review.

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 W2 wasn't insured by the policy that covered Mr W's car, he and Mr W knew that the car wouldn't be covered should there be any damage to it when Mr W2 was driving it. The DOC cover in Mr W2's policy only covered any third-party damage that might occur in an accident. So Mr W took the risk that if he allowed Mr W2 to drive his car, and Mr W2 had an accident, then Mr W would be left to pay any costs arising from any damage to it.

I don't think it's clear why Mr W2 called West Bay for a claim number. I think most consumers would have called their own insurer for advice. In this case, Mr W2 had third party cover, and there was damage to a third party's car. So I think that was the obvious thing to do. Or he could have called Mr W. Regardless of what was in Mr W2's mind at the time, he knew he wasn't insured under the policy with West Bay. As he knew he wasn't able to make a claim on the policy, I can't see why he thought he'd get a claim number by calling West Bay. And Mr W2's statement shows that he wasn't in any doubt about not being able to make a claim.

The best evidence about what happened next would have been in the call recording between Mr W2 and West Bay. In the absence of that, the relevant evidence is the notes recorded by the advisor and the statement provided by Mr W2 several months later.

I don't think West Bay can be said not to have investigated the complaint properly just because the call recording isn't available. It isn't particularly unusual for calls meant to be recorded by insurers not to be recorded. West Bay searched for the recording and has shown that it then found a technical problem caused the failure to record. So it looked at the other available evidence. I can't see what else it could have done. Mr W seems to think that had the recording been available, it would have shown that the advisor was at fault. But it could also have shown that Mr W2 simply misunderstood what was said.

West Bay's notes were made by the advisor at the time of the call. She recorded that the answer Mr W2 gave to the question "*Are you claiming for damage to your own vehicle as a result on the incident?*" was "*No*" and that the reason given for that was the level of cover / DOC. So there was no misunderstanding between the parties on these points – Mr W2 wasn't calling to make a claim because he knew he couldn't do so.

Mr W says the point is that - regardless of the fact that Mr W2 knew he wasn't able to make a claim - the advisor convinced him the car was covered. But that makes no sense in the circumstances here. I think it's likely she told him that both cars were *insured* by West Bay, which would have been an accurate statement, and she then asked about the circumstances of the accident. West Bay says that was to help to establish whether the third party was at fault for the accident. I think that was reasonable.

I don't think there's any evidence to show that the advisor told Mr W2 the damage to Mr W's car would be covered, as the car was insured by West Bay. The car was only covered when a driver named on the policy was driving it. And I think it's very unlikely she'd have said the damage was covered (which would involve a claim being made on the policy) whilst recording that a claim hadn't been made. Mr W2 said in his statement he thought it was odd that the advisor seemed to be saying West Bay would deal with both claims. But it appears that he didn't query it. And Mr W says there was a language difficulty between Mr W2 and the advisor. If so, it would have been even more vital for Mr W2 to check his understanding – and to advise Mr W what he thought had been said, so he could check too.

I think it's reasonable to assume that Mr W2 would have been at least moderately affected by the accident, given that his car skidded, hit another vehicle and then tipped over. Many consumers are greatly affected by such incidents for a considerable period of time. Mr W2 said in his statement that his recollection was that he was "*..somewhat in shock....*" at the time he called West Bay. That may explain why he gave the telephone number he'd used to contact West Bay to garage S as a claim number, despite not having made a claim. There's nothing to show that the advisor gave him that number, or said it was a claim number, and there would have been no reason for her to have done so.

I can only base my opinion on the available evidence and on what I think is more likely than not to have happened. I think it's likely that Mr W2, probably in a state of shock - and upset by the accident, misunderstood the advisor and became confused. There's certainly nothing to show that he was misled, so I don't think West Bay can be held accountable for Mr W's costs. West Bay has agreed to pay £100 for distress and inconvenience, given its error in writing to Mrs W. I think that's reasonable, so I'm not going to require it to pay more.

I know Mr W will be disappointed with my decision, but as I don't think he's shown that West Bay acted unreasonably, I can't uphold his complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 May 2023.

Susan Ewins
Ombudsman