

The complaint

Miss A complains about how West Bay Insurance Plc (“West Bay”) handled a claim under her car insurance policy. When I mention West Bay I also mean its suppliers and inspection services.

What happened

Miss A had a motor insurance policy with West Bay covering her car. In October 2022 she was informed by West Bay that a third party alleged she’d hit their parked car. The collision was alleged to have happened in May 2022.

Miss A denied the collision. She asked for more details about the location and timing of it.

West Bay didn’t have this information. It asked to inspect Miss A’s car, but Miss A didn’t agree until West Bay provided her with the date, time and location of the alleged collision.

In January 2023 West Bay obtained these details from the third-party insurer.

Miss A denied being at the location, which was close to her home, at the time and date provided.

Miss A complained that she could not have been involved in the collision. She also said West Bay’s service was poor, she was promised calls back and she was hung up on by one member of staff.

West Bay inspected her car and found some areas of damage on the rear nearside light cluster and bumper. It said these were consistent with the collision. Miss A said some of the damage was on the car when she’d bought it.

Miss A’s renewal premium increased and her No Claims Discount (NCD) was reduced.

West Bay paid the third-party’s claim on a “without prejudice” basis.

West Bay upheld Miss A’s complaint in part. It agreed some of its service hadn’t been good enough, but it said a lot of the delays were caused by the delayed notification of the claim and responses by the third-party insurer. It paid Miss A £100 compensation for her distress and inconvenience.

Miss A remained unhappy and brought her complaint to this service. She asks for compensation and an apology from West Bay, and that it changes its claims handling procedures.

Our investigator looked into the complaint and upheld it. He didn’t think West Bay had investigated the collision fairly given that it took five months for the claim to be made. He also said West Bay’s engineer had said the third-party car needed inspection to match the damage and that West Bay should have obtained a report from the third-party insurer.

He said West Bay should remove the claim from a database of claims, and awarded an

additional £200 compensation to Miss A. He said that Miss A's NCD should be reinstated.

West Bay didn't agree and asked that this complaint was reviewed by an ombudsman, so it's been passed to me to make a final decision.

I issued a provisional decision to allow both parties to consider this further:

Having read the file of evidence I've been provided, I'm intending to uphold Miss A's complaint in part. I'm issuing this decision on a provisional basis because I don't think West Bay investigated her claim effectively, causing her distress and inconvenience, but I also don't think this has prejudiced Miss A's position.

This means that I have reached a different decision to our investigator and the remedies I'm proposing are different. I'd ask that both parties consider this provisional decision carefully and provide their responses.

I can see Miss A has asked that West Bay change its claims handling procedures in her complaint. This service isn't the regulator and I'm not able to require West Bay to do this. Instead, I can look at what it's done during the claim and decide if its actions have been fair and reasonable.

West Bay agreed to settle the third party's claim for damage to their vehicle on the basis that its insured had provided Miss A's name, address and vehicle registration number to it. It said this was enough reason to think that Miss A had reasonably caused a collision and that if challenged in court West Bay would expect to lose the case.

I've thought about this carefully. On the one hand, West Bay has a responsibility to settle claims quickly, as by doing so it will help keep its costs low. But it's also got to make reasonably sure that it's only paying valid claims or it might put its own policyholders at a disadvantage.

In this case, West Bay said:

"The third party has provided details of our insured and the damage to our policyholder's vehicle is consistent with the incident. We settled the third party claim on a without prejudice basis, in order to mitigate costs. We have not accepted liability & this remains outstanding. We have been trying to obtain the third party engineer's report."

West Bay has said that the damage to Miss A's car is consistent with the incident. But the only description it had said that Miss A was alleged to have hit a parked vehicle.

I asked West Bay to get the vehicle inspection report from the third-party insurer, and it was able to get this quite quickly.

I can see from both of the vehicle inspection reports that there's damage to both vehicles, and the damage to Miss A's might have happened when it contacted the third party's car.

By that, I mean that the damage to one corner of the rear of her car seems to be approximately the correct height for it to have contacted and damaged the centre-rear of the third party. The damage seems minor and it would seem to me to have been the result of a low speed, possibly parking-related, incident.

So taking that into account, I can understand how the third party could have alleged their car was contacted by Miss A's.

Having looked at the evidence I'm minded to agree with West Bay that enough evidence exists, on the balance of probabilities, to say Miss A caused the damage. So I think its decision to settle the third-party claim is fair and reasonable. I know Miss A feels particularly strongly about this, but West Bay has to take into account its likelihood of success in court and West Bay will have significant experience in cases like these and will know how the case is likely to result.

It's important that I also mention West Bay settled the third-party claim 'without prejudice' which means it can recover the amounts it paid if further information is found which changes the likely position on liability.

I've also thought about our investigator's view saying that this claim should be removed from Miss A's records and her NCD reinstated. I know this will disappoint Miss A, but I'm not going to ask West Bay to do either of these. I say that because I've said I think West Bay has acted fairly and in line with its terms and conditions when it settled the claim, so it should stay on Miss A's records both within and external to West Bay. I therefore can't ask West Bay to change those records or her NCD given that it's paid a claim on her behalf.

That also means the claim will be what is commonly regarded as a "fault" claim because West Bay isn't able to recover its costs from anyone else.

But I also think West Bay failed to investigate the claim well enough. It took about five months for the claim to be made against Miss A and the third-party engineer's report (which is dated May 2022) wasn't available until I asked for it. West Bay's engineer also said it needed to be compared with the third-party's vehicle inspection report, but West Bay didn't do this.

I can see there was a delay of a few months in the middle of the claim when Miss A wouldn't let West Bay inspect her car as it didn't have any further information about when or where the collision had taken place. I think it's fair to say that West Bay should already have had this information as it's a basic part of verifying who might be liable for a collision.

Taking everything into account, I don't think West Bay has investigated this claim sufficiently or early enough. I appreciate West Bay has a responsibility to mitigate its costs, but it also has a duty to act fairly towards its policyholder, Miss A.

But I also don't think Miss A has been prejudiced by its actions because I think West Bay's decision on liability is fair and has been taken in line with its terms and conditions. By not investigating the collision earlier and more effectively, I think West Bay has caused distress and inconvenience to Miss A during an extended period, so I think it needs to pay her an additional £200 for her distress and inconvenience, making a total of £300.

Responses to my provisional decision

Miss A responded and said she was disappointed by my provisional decision. She asks further questions about the circumstances of the collision and West Bay's investigation. I'll deal with these questions below.

West Bay also responded. It agreed that it would pay £300 to Miss A for her distress and inconvenience. It also provided evidence that its engineer had now looked at both vehicle reports and said they didn't think the damage was consistent across the two vehicles. It has approached the third-party insurer and asked for further evidence from it that Miss A caused the damage.

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.

In my provisional decision I talked about an insurer's responsibility to investigate matters sufficiently well on behalf of its policyholders. I think West Bay's response demonstrates that it recognises it didn't carry out enough investigation of the incident when it was notified, as one of its engineers has now looked at the matter further and identified some discrepancies with the locations of the damage. This happened following this service's request for the third-party damage report.

Miss A asks in her response to my provisional decision whether video evidence has been obtained from things like doorbell cameras. I've not been provided with evidence of this and I'd suggest to Miss A that she may be best placed to enquire about any existing evidence of this in the location where the damage happened, given that she also has the date and time of the incident. If she's able to do this, and provide the footage to West Bay, it may be useful in clarifying whether her car was present or was involved in the incident.

I can also say that West Bay has provided the third-party inspection report to this service so Miss A may be able to access this from West Bay.

I mentioned a delay during the claim when Miss A wouldn't let West Bay inspect her car because it couldn't tell her when or where the incident was alleged to have happened. For the avoidance of doubt, I meant no criticism of her regarding this and I as I said in my provisional decision "I think it's fair to say that West Bay should already have had this information as it's a basic part of verifying who might be liable for a collision."

Taking everything into account, I don't think West Bay's service in investigating the claim and dealing with Miss A was good enough. I can see there's been an impact on Miss A and because this distress has taken place over an extended period I think a total of £300 compensation is appropriate and in line with this service's guidelines.

I can see West Bay are now investigating the damage further and have approached the third-party insurer with its further evidence. I hope Miss A and West Bay are able to work together with the third-party insurer to clarify which party may be at fault for the damage.

It's important that I say Miss A may still be found at some 'fault' for the damage. What I mean by this is that West Bay might not be able to recover its costs from the third party, so Miss A will have a percentage of 'fault' applying to her records.

If this happens, then my provisional decision talks about the impact on her NCD and claims history.

But if Miss A is found to not be at fault for the damage, then I'd expect West Bay to amend records of the claim from her internal file and any external databases it's updated, and reinstate her NCD accordingly.

My final decision

It's my final decision that I uphold this complaint in part. I direct West Bay Insurance plc to pay Miss A £300 in total for her distress and inconvenience caused by its failure to investigate the claim effectively. It's my understanding that £100 has already been paid, so this can be deducted.

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

Richard Sowden
Ombudsman