

The complaint

Miss I has complained about her car insurer West Bay Insurance Plc regarding repair of her car following an accident.

What happened

Miss I had an accident in March 2021 whilst driving on the motorway. She was hit by another driver who did not stop. West Bay agreed to repair Miss I's car but she told its repairer she wanted to use a garage of her choice. She later told West Bay she wanted to use a manufacturer approved repairer near her home. West Bay said its nearest manufacturer approved repairer was over an hour/45 miles away – but it thought it would be best for Miss I if she did use its garage.

Contact between the parties rumbled on during 2021. In 2022 Miss I sent an updated estimate to West Bay. It felt it would likely offer her cash to settle the claim in lieu of it doing any repairs. In May 2021, in a final response, it said it was waiting for her to tell it whether she would use its approved repairer or accept a cash in lieu settlement for the repairs.

Miss I was unhappy – she felt her claim had been going on for over a year with no progress. She said she'd had to replace tyres which were part of the claim. Miss I complained to the Financial Ombudsman Service. She said she wanted West Bay to agree for her car to be repaired at a garage of her choice and for a courtesy car to be provided. Miss I said she felt that all costs other than her policy excess should be covered by West Bay.

Our Investigator felt West Bay had likely caused some delay during 2021. But he felt that hadn't changed the outcome or course of the claim. So he didn't uphold the complaint.

Miss I was unhappy. Her complaint was referred for an Ombudsman's decision.

I reviewed the complaint. I asked our Investigator to obtain some clarification from West Bay as I'd noted its file seemed to suggest there might be repair work in the estimates submitted by Miss I that it didn't feel was claim related. I also wanted to understand what offer in cash had been made to Miss I in 2022, and why an offer hadn't been made before in 2021 – given Miss I had wanted to use her own garage.

West Bay said no monetary sum had been put to Miss I for settlement. It said the main difference was that Miss I's garages had quoted to replace all four tyres and one wheel. Whereas it felt the wheel and three tyres didn't need replacing. It also felt work to repair a side panel and sill were overstated and that replacement would be more cost effective. It said that, using an updated hourly labour rate, it would cost it £5,431.96 (net of VAT) to complete the repairs and it would offer this to Miss I in settlement.

It said it hadn't offered a cash settlement to Miss I in 2021 as it understood she was happy to use its manufacturer approved repairer (which it still believes is her best option). But when it tried to progress things with her, she didn't reply.

I considered the complaint in light of West Bay's further comments. I felt it had handled the claim poorly – that it should have made a cash offer to Miss I in 2021. My provisional findings were:

"The accident occurred in March 2021. As early as April 2021 West Bay was told Miss I wanted to use her own garage. It received estimates from her two chosen garages (in line with what the policy requires) in early May 2021. But as of May 2022, the claim was still unresolved, with West Bay still not having clearly told Miss I what it would pay her for repairs to be done at her garage.

I can't see why West Bay didn't tell Miss I on 11 May 2021 exactly what work and costs it had issues with within her estimates. It had her costs, its own costs and its own assessment of what work was needed. It could have given Miss I a very clear choice at that time –

- we'll pay you £X for the repairs – which is our cost for agreed work less your policy excess,*
- or;*
- we'll do the agreed repairs, at our garage, and you'll just have to pay the policy excess.*

That would have left Miss I with a very clear choice to make. As it was she did her best to try and understand the position she was in by, for example, asking West Bay for its repair estimates. And, at one stage, she did agree to consider using another of West Bay's garages. But I think she thought that garage could or had already presented an estimate to West Bay (which she wanted to see) – when really they needed to see the car. I don't think that confusion was helped when, during one web-chat with West Bay, Miss I was told there was an estimate available from this garage.

I also think though, involvement of this garage was never going to be entirely acceptable to Miss I because of its distance from her home. But again, had West Bay clarified her options, she could have decided which was better for her – travelling to use that garage or covering the difference in costs between West Bay's cash offer and what her chosen garage would charge for repairs.

I've read all of the emails and contacts between the parties, and I've considered West Bay's view that it did all it could, that it was waiting for Miss I to decide and/or get back to it. I don't think that is a reasonable assessment of what went on. In my view West Bay had all the information it needed on 11 May 2021, when it wrote to Miss I, to put a reasonable claim settlement offer to her, but it did not do so.

Further, because it did not do so, that allowed the claim to drift for months whilst Miss I tried to make an impossible decision. The decision was only impossible because West Bay hadn't given her all of the pieces of the puzzle needed for an informed decision to be made. West Bay may have felt it knew what the right thing for her was – but it shouldn't have been trying to make that decision for her. Rather it should have been giving her detail so she could decide what the best option was for her.

West Bay has now offered to pay Miss I £5,431.96 for repair of her car, less the policy excess of £550. That does not include VAT. If Miss I accepts this offer, gets her car repaired and presents VAT invoices to West Bay, it should reimburse her VAT cost up to £1,086.39 (the amount due against this repair sum). If Miss I accepts this sum and uses her own garage for repair, West Bay wouldn't be liable for provision of a courtesy car and it'd have no liability for the quality or timely completion of repairs. I do think this offer could've been made before, in May 2021, so I'll award it with interest, as an option for Miss I to accept. I think awarding interest is fair here because Miss I should have had the benefit of that money at that time.

If Miss I would rather have West Bay's garage complete the work, she should contact it to arrange that. If West Bay's garage completes repairs, the policy does entitle Miss I to a courtesy car. I understand she'd need current insurance to be able to use a courtesy car – but I can't see anything that, for a courtesy car to be provided to Miss I, requires her to have current insurance with West Bay. Of course a courtesy car is often subject to availability and will not necessarily be the same model as Miss I's car.

Because West Bay hasn't been clear with Miss I about the concerns it has had about the extent of repairs, she hasn't had a chance to fully consider its points in these respects. I note she was aware of the argument about tyres though. On that note I think West Bay reasonably declined liability for all but three tyres. Its repairer in April 2021 noted all tyres had 4mm of tread left. Miss I continued to use the car. It was around eight months later, and 4,000 miles, when Miss I, during her annual MOT, was told two were dangerous (bald) and the other two would soon need replacing (as they were nearing the legal tread depth limit). By that time the tyres were noted as significantly worn. I can't reasonably attribute this to the accident when they weren't so worn then.

The wheel in dispute was the left front one. The accident didn't seem to involve this wheel being hit. I think West Bay was entitled to rely on its garage's assessment of damage which did not include replacement of this wheel.

The other two main issues of concern for West Bay were repair of the sill and side panel. Its garage allowed significantly less time for repair than Miss I's. Miss I's felt it would take twelve hours to repair the side panel, for example. In its current costing, West Bay has swapped that repair, and that for the sill, for replacement as it would take significantly less time. I think that indicates that West Bay accepts that the minimal amount of time initially allowed by its garage for repair, of three hours, might not have been realistic for an effective repair. I think swapping the work seems like a pragmatic, reasonable response from West Bay.

As I've said, West Bay's offer of £5,431.96, is based on these adjustments and its updated hourly rate. It's quite normal for the cost to an insurer for repair to be less than that charged privately to a car owner by a garage. Miss I's policy allows for West Bay settling at its cost, and it is still prepared to complete the insured work itself. So I'm satisfied it looking to base the optional cash settlement on its own rates is fair. If Miss I wishes to dispute the extent of West Bay's offer, I'll consider any additional evidence she has in respect of repairs.

As I said above, I think West Bay's lack of clarity on this claim is what has caused it to be ongoing for a year to the date of the final response letter in May 2022. Miss I was worried in the meantime about renewal – but this fault claim was always going to affect her renewal price. But I do think that Miss I would have made a definite choice in May 2021 if a clear option from West Bay had been given to her. All the chasing she did from June 2021 onwards, trying to make sense of what her options were, and what the impact of each might be on her, was all avoidable. For around a year of delay, confusion, frustration and continued unnecessary contact, I think £500 compensation is fairly and reasonably due."

Miss I said she generally agreed with my decision. But she said if she'd known about the view of replacing some parts rather than repairing, she could have got prices for that and been better able to make an informed decision. Her tyres were damaged by the accident, and West Bay's repairer did recommend one wheel was replaced (the left rear). She'd like the current cash offer of settlement to reflect current prices, where increases to the cost of parts and labour have out-paced even an interest award of 8%. She said it's been extremely stressful dealing with this matter and driving around in her undamaged car unable to sell it.

West Bay said it was prepared to accept the compensation award but maintained that it had acted reasonably in 2021 in not making a cash offer because Miss I had indicated she might use its repairer. It said it didn't think an application of interest was fair because Miss I hadn't paid for repairs, the offer had been calculated at current rates and compensation would cover for the inconvenience.

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.

I acknowledge this has been a difficult time for Mrs I. I know West Bay thinks it acted reasonably in 2021. But I think it's missing the point that it is the expert in the claims process. I emphasize that, in my view, West Bay did not treat Miss I fairly in 2021 because it did not give her enough information to make an informed decision about how to progress the claim.

The wheel in dispute, as I said provisionally, was the left front one. And West Bay did agree one tyre was damaged by the accident. I don't doubt Miss I believes all four were damaged, I'm certainly not suggesting (and nor is West Bay) that she was knowingly seeking to claim for repairs that were not related to the accident. But the evidence from the initial assessment undertaken shortly after the accident was that the tyres had good tread depths and only one (the left rear) was damaged by the accident. There's no evidence to show the others were damaged and when both rear tyres needed replacing at the point of MOT, and the front two only just passed, it was reportedly due to their overall tread depth.

I note West Bay is agreeing to pay compensation. That is awarded to make up for the distress and inconvenience caused to Miss I by its failure. And I do think the sum I've awarded is fair and reasonable in that respect.

My interest award is made because Miss I did not have the benefit of the settlement at the point she should have had it. I appreciate that Miss I feels her cost to repair will have increased beyond the sum accounted for by my interest payment. But there will always be a shortfall for her between the cost to West Bay to repair and what she will have to pay privately. And as West Bay has said, it has recalculated the cost of repair. Of course whether or not interest becomes applicable will depend upon which settlement option Miss I chooses. West Bay won't have to pay anything in settlement of the claim to Miss I if she chooses to use its garage for repair.

Having considered the parties' replies, my provisional view on the complaint has not changed. My provisional findings, along with my comments here, are now the findings of this, my final decision.

Putting things right

I require West Bay to:

- Settle Miss I's claim, at her choice, by either;
 - paying her £4,881.96 (£5,431.96 less the policy excess of £550), plus interest* from 11 May 2021 until settlement is made; and
 - upon provision of VAT invoices from Miss I, reimbursing her VAT spent up to £1,086.39 being the VAT due on the repair sum of £5,431.98.
- or;
- arranging to repair Miss I's car at one of its garages, with Miss I to pay it the policy excess of £550; and

- subject to availability, and Miss I showing a valid certificate of insurance, arranging a courtesy car for the period of repair.
- Pay Miss I £500 compensation.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require West Bay to take off tax from this interest. If asked, it must give Miss I a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require West Bay Insurance Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss I to accept or reject my decision before 5 December 2023.

Fiona Robinson
Ombudsman