

The complaint

Ms W complains about how West Bay Insurance Plc (“West Bay”) handled a claim she made on her insurance policy following an accident that wasn’t her fault.

West Bay is the underwriter of this policy, i.e. the insurer. Throughout the claim Ms W was dealing with other companies who act as West Bay’s agents. In my decision any reference to West Bay includes its agents.

What happened

Ms W has a comprehensive car insurance policy with West Bay that renewed in September 2022.

Unfortunately in June 2023 Ms W was hit by an uninsured driver while she was changing lanes in slow moving traffic, and so she made a claim on her policy. There was damage to her bumper, door, wing mirror and front wheel light.

West Bay failed to collect her car from the crash site and so Ms W arranged for her breakdown recovery service to collect it and take it to a garage. Ms W says West Bay weren’t happy the car wasn’t taken to its approved garage, and so said her excess would increase by £200. Ms W says she wanted it to go to her own garage so the warranty on her car wouldn’t be affected.

West Bay provided Ms W with a courtesy car but she says she had to arrange her own insurance for it.

Ms W says she learned the accident was attributed to being 20% her fault despite her own car being stationary with the hazard lights on at the time. Ms W was unhappy with West Bay’s handling of the claim and so she complained.

West Bay said there were two conflicting version of events and, as her insurer, West Bay supported her version of events. But since there was no evidence to hold the third party fully at fault the best possible outcome that could be achieved was 80/20 settlement in her favour.

West Bay offered Ms W £75.00 but she says this isn’t enough to reflect the impact of what’s happened. She says she wants West Bay to re-investigate the claim and accept the accident was the third party’s fault. West Bay said the matter would be recorded as a fault claim and so Ms W’s no claims discount would be affected. West Bay explained Ms W would be able to reclaim 80% of the policy excess and uninsured losses from the Motor Insurance Bureau (MIB).

Ms W wasn’t satisfied with the response from West Bay so she referred her complaint to this service. One of our investigator’s looked into things for her. She said looking at the evidence she thought West Bay had provided Ms W with the service she would have expected under the terms of the policy. She said the offer of compensation was fair and she didn’t agree Ms W had been treated unfairly.

Ms W didn't agree with the investigator's outcome and so the complaint has come to me to decide.

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.

Having done so I'm not upholding it, I know this will come as a disappointment for Ms W. So I've explained my reasoning below.

My decision only looks at the issues Ms W raised with West Bay and was responded to in its final response in September 2023.

It's clear how strongly Ms W feels about this complaint. I want to assure her that I've carried out an independent review and considered everything both parties have submitted. We provide an informal complaints handling service as a free alternative to the courts, and this is reflected in the way I've approached this complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome – this means I might not mention everything Ms W has said. But I will comment on anything that makes a difference to the outcome of the complaint.

I know Ms W says she feels West Bay didn't protect her position and acted unfairly in its handling of her claim. For ease of reading I have separated the complaint and responded under the relevant headings.

Recovery

The claim notes provided by West Bay show Ms W had instructed her breakdown provider to recover her vehicle. Because the breakdown provider didn't arrive in time Ms W requested West Bay collect the car. According to the notes when West Bay arrived the car had already been recovered by the breakdown provider and so West Bay cancelled its recovery request.

I can't say West Bay did anything wrong here since Ms W confirmed she'd already instructed someone to recover the car when she contacted the insurer to report the incident. When she did ask West Bay to collect her vehicle it instructed its agent to do so. And this is what I would have expected it to have done here.

Repairs and excess

The policy says, *"at your option you can arrange for a repairer of your choice to carry out the repairs. An additional excess applies if you choose to use a non-recommended repairer."*

Ms W chose to recover her car to her car manufacturer's garage but this meant an additional excess would apply. The notes of a conversation with West Bay show it was explained to Ms W that the additional excess wouldn't apply if the car was taken to an approved repairer. But Ms W chose to keep it where it was and so the additional excess was due. Since West Bay acted in line with the terms of the policy I can't say it did anything wrong here.

Courtesy car

The terms of the policy confirm Ms W is entitled to a *"courtesy car whilst an approved repairer fixes your car."*

Miss W chose to use her own garage to carry out the repairs. The terms of the policy stipulate that a courtesy car is provided while an approved repairer carries out the repairs. Since Ms W didn't use an approved repairer she wasn't entitled to the benefit of a courtesy car. I know this will be disappointing to Ms W but I can't say West Bay have acted unfairly here since its acted within the terms of the policy.

Uninsured losses

Claims for loss of earnings and other uninsured losses aren't made on the insurance policy in the same way as insured losses are. Uninsured losses are submitted to the third-party insurer for their agreement to pay. West Bay explained to Ms W that since there was no third-party insurer there was no one to submit a claim for uninsured losses to. It did explain she was able to submit a claim to the MIB in order to try and recoup some of her losses.

I know Ms W wants West Bay to pay for her uninsured losses however this isn't something she is automatically entitled to under the terms of the policy so I'm not able to compel West Bay to pay this.

Claim liability

In the terms and conditions of the insurance policy West Bay is "*entitled under this policy to take over and conduct the defence and settlement of any claim in your name.*" And this is what it has done here. Because of this West Bay doesn't need Ms W's agreement or approval to accept liability. But I would expect West Bay to base any decision on things such as the testimony provided by Ms W and the third-party, evidence provided to support of challenge the version of events, legal precedent, legislation, and the Highway Code.

Ms W maintains the third-party drove into her car, and the third party's evidence is that Ms W drove into its path and collided with their vehicle. There are no independent witnesses and no CCTV. While police did attend the scene West Bay hasn't received its report yet. And Ms W has confirmed she doesn't have the witnesses details so West Bay were unable to approach any witness for their statement.

I have seen from the notes that the claim was reviewed and an option considered was to accept liability on an 80/20 basis in Ms W's favour. But Ms W disagreed. And so West Bay denied liability and said it would need to take a detailed statement from Ms W, which I understand it has now done.

West Bay took a view that in the absence of independent evidence to prove Ms W's version of events the best outcome would be to agree split liability for the incident. I don't think West Bay acted unreasonably here since it looked at the evidence before it in order to come to that decision. West Bay has indicated that should any further information or evidence come to light it would look at the claim again, and I think that's fair.

I have considered the comments made my Ms W after our investigator sent her view. And I understand why she feels the way she does. She has complied with her legal requirement to have an insurance policy in place and provided clear and compelling testimony about the incident and what happened. So I can understand why she thought her insurance policy would protect her interests here. But, as explained West Bay have acted within the terms of the insurance policy and so I can't say it's done anything wrong in its handling of the claim.

I've considered the information provided to me by Ms W. I must say that I empathise with the position she now finds herself in. Unfortunately I don't think this is due to West Bay and its handling of the matter.

It's inevitable some inconvenience will be caused as a result of having to make a claim, and that isn't West Bay's fault, but overall I think it's payment of £75 is fair and reasonable compensation to reflect the distress and inconvenience.

I know my answer will be disappointing for Ms W but overall I think West Bay has acted in line with the policy terms and conditions. And so, I won't be asking it to do any more to resolve this 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 Ms W to accept or reject my decision before 29 March 2024.

Kiran Clair
Ombudsman