

The complaint

Ms P has complained about the way West Bay Insurance Plc decided not to pursue the other driver's insurers for its costs and her uninsured losses following an accident under her motor policy. She is particularly aggrieved it failed to obtain the relevant CCTV footage of the accident.

What happened

Ms P was involved in an accident on 20 January 2023 when she was emerging from a side road into a main road. She maintains the traffic had stopped to let her emerge halfway across waiting for a gap in the traffic coming the other way. Then the driver who had allegedly let her emerge then decided to overtake her and she crashed into him.

West Bay did acknowledge it failed to gain the relevant CCTV footage which would probably have showed the crash happening. However, it said that footage might not have assisted liability wise given the onus was on Ms P to ensure it was safe to emerge from a side road into a main road. It recorded the accident as a 'fault' accident and disallowed Ms P's No Claims Discount. It did however think its service and communication to Ms P wasn't good enough, so it paid her a total of £380.48 compensation.

Ms P didn't think it was fair that the accident was deemed her fault. She incurred uninsured losses plus her premium had significantly increased. So, she brought her complaint to us. The investigator was of the view that West Bay didn't need to do anything more. Ms P disagreed so her complaint has been passed 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 this complaint. I'll now explain why.

I do appreciate and understand the depth of Ms P's feelings on the matter, and I do understand she will be deeply disappointed with my decision also.

First, this service doesn't decide who is liable for causing an accident as that can only be decided in a court of law. Therefore, all we can do in complaints of this nature, is to see if the insurer West Bay here adhered to its own policy terms and conditions, reasonably and fairly. That also means we do not get involved with obtaining independent legal opinions or instructing independent experts for either consumers or businesses. We have no funding, remit, or authority to do this on behalf of any party to a complaint. Where a party has obtained their own legal advice, we will of course take that into consideration.

In Ms P's policy along with virtually every other motor policy, there is the following term under the General Conditions section which says the following:

*'The **insurer** is entitled under this **policy** to:*

- Take over and conduct the defence and settlement of any claim in **your** name or in the name of any other person insured by **your policy**.*
- Instigate proceedings at their own expense and for their own benefit but in **your** name or in the name of any other person insured by **your policy** to recover any payment that they have made under **your policy**.*
- Recover from **you** the amount of any claim that they are required to settle by law which the **insurer** would not otherwise have paid under this **policy**.*
- Pay the legal owner of **the car** in the event of a loss.*
- Require proof of ownership and value of the insured property in the event of a loss.'*

Effectively this permits West Bay to decide itself whether to accept Ms P most likely did cause the accident or instead that it should make a claim to the other driver's insurer. This is a standard clause in motor insurance policies, so I don't find it unusual or significant.

The reason for this clause is that insurers are dealing with road traffic accidents daily. They have coherent in-depth knowledge of what cases might be successful in court or otherwise as their business model is dependent on this to a considerable extent and likewise this in turn affects their premium prices for the risks they wish to cover. It's also their decision as to whether they involve legal advice or not, given effectively they will have to fund the same. If a policyholder wishes to obtain legal advice following an accident, they can of course do so. But the policy itself doesn't demand that West Bay provides that legal advice for Ms P. Furthermore, and importantly West Bay is entitled to decide for itself if it wishes to claim from another insurer on behalf of its policyholder.

This is all permitted by the regulator the Financial Conduct Authority, for all motor insurers. I appreciate Ms P believes her case was dealt with by admin staff who surely couldn't know the legal ins and outs of the matter. However, motor insurers are in the business of insuring motorists and therefore have extensive experience with dealing with the aftermath of accidents and indeed who the court is likely to find caused it. Plus, they are compelled by varying Court protocols to ensure court time isn't unnecessarily wasted.

Here given Ms P was emerging from a side road into a main road the duty of care to ensure she could join the main road rests with her, not any other driver, given the Highway Code. The Highway Code states the following:

'You should also watch out for signals given by other road users and proceed only when you are satisfied that it is safe.

Never assume that flashing headlights is a signal inviting you to proceed. Use your own judgement and proceed carefully.

Look all around before emerging. Do not cross or join a road until there is a gap large enough for you to do so safely.

If the central reservation is too shallow for the length of your vehicle, wait until you can cross both carriageways in one go.

Take great care when turning into a main road; you will need to watch for traffic in both directions and wait for a safe gap.

You MUST stop behind the line at a junction with a 'Stop' sign and a solid white line across the road. Wait for a safe gap in the traffic before you move off. Laws RTA 1988 sect 36 & TSRGD regs 10 & 16.

The approach to a junction may have a 'Give Way' sign or a triangle marked on the road. You MUST give way to traffic on the main road when emerging from a junction with broken white lines across the road. Laws RTA 1988 sect 36 & TSRGD regs 10(1), 16(1) & 25.'

I'm merely detailing these to show the extent of the burden of duty of care of a driver in Ms P's position. And further to provide some explanation of how that consequently influences what action an insurer like West Bay might take given Ms P was emerging from a side road into a main road. And on that basis, I don't consider West Bay did anything wrong in not obtaining specific legal advice for itself in the particular circumstances here, as I consider legal advice would have been unlikely to have changed the outcome in any meaningful way.

I agree with Ms P that West Bay should have at least known it was for it to obtain the CCTV footage and indeed it should have obtained it. However, given the events of the accident as described by Ms P, I can't see how that would have changed matters if it showed the accident as she described, since Ms P emerged from a side road into a main road.

Ms P's policy does provide Motor Legal Protection which is administered by another insurer and her policy details what is covered and how to make a claim. However, it primarily deals with issues arising out of the accident where the accident is deemed not the insured's fault which is not really the case here. It does appear the other driver made no claim on Ms P's policy either. However, there is nothing stopping Ms P making enquiries with this provider of this cover.

I should point out that the use of the word 'fault' in motor insurance terms technically means the insurer hasn't recouped the outlay it gave Ms P for her claim namely the costs of the repair of her car or the market value of her car. Here based on the circumstances of the accident as detailed by Ms P, West Bay took the decision not to pursue the other driver's insurer for these costs, as it was of the view it would not be successful in doing so.

So, on that basis the accident therefore gets logged on the Claims and Underwriting Exchange as a 'fault claim'.

There is no duty on West Bay to refund Ms P any of her uninsured losses as they aren't covered by the policy.

West Bay acknowledged it delayed getting its engineers to assess the damage to Ms P's car, which delayed matters for Ms P. And it acknowledged its failures in getting the CCTV footage. It paid Ms P a total of £380.48 compensation to include interest. This is in line with our approach to compensation for these sorts of failings, so I consider it's an adequate compensation amount.

So, on this basis I consider that West Bay doesn't need to do anything more here.

My final decision

So, for these reasons, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 6 May 2024.

Rona Doyle
Ombudsman