

## **The complaint**

Mrs M complains about West Bay Insurance Plc's handling of a claim which was made on her motor insurance policy.

## **What happened**

Mrs M insured her car with West Bay. Her partner was driving the car and collided with a third party. Mrs M's partner wasn't insured to drive the car as a named driver on Mrs M's policy.

Mrs M contacted West Bay and said she believed her partner was covered to drive the car on his own policy held with a different insurer. It subsequently transpired that her partner's cover didn't allow him to drive Mrs M's car.

West Bay settled the third party's costs, as it considered Mrs M's partner had been at fault for the collision. It then contacted Mrs M to request repayment of its settlement as the insurance policy didn't cover her partner driving the car.

Mrs M complained to West Bay. She was unhappy about West Bay's request for payment and the way the claim had been handled. West Bay said it had done what the law said by paying the third party's costs and was entitled to recover its outlay from Mrs M. It did acknowledge Mrs M had been told she'd receive a phone call about her complaint but she hadn't been contacted, and offered £100 compensation to recognise this.

Our investigator thought West Bay's response to the complaint was fair. Mrs M didn't agree and has asked for an ombudsman's decision.

## **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.

One significant point which is relevant to my decision here and isn't disputed is that the policy held by Mrs M didn't include her partner as a named driver. Similarly, it doesn't seem to be disputed that the policy Mrs M's partner held with another insurer for a different vehicle didn't include an extension to cover which permitted him to drive other vehicles with the owner's permission.

The combined impact of these two points is that when Mrs M's partner was driving the car, he wasn't properly insured to do so.

Section 151 of the Road Traffic Act 1988 outlines an insurer's obligations, and rights, in respect of liabilities and settlements where a vehicle involved in a collision is insured but the driver isn't insured to drive that vehicle.

In summary, the legislation says the insurer (in this case West Bay) has a duty to settle liabilities owed to a third party if it is the insurer of the vehicle, but that it has a right to recover such settlements from its policyholder (in this case Mrs M).

What this means in this case is that, as West Bay concluded Mrs M's partner was at fault for the collision, it has a duty to settle the third party's claim. However, it's entitled to recover the amount it paid from Mrs M.

This is what West Bay has done here. There was contact between West Bay, Mrs M's partner's insurer and the third party insurer. Once it was established that Mrs M's partner wasn't insured through his own policy, West Bay agreed to cover the third party's claim. Having done so, it contacted Mrs M to seek recovery of its outlay.

I'm aware Mrs M is unhappy that West Bay accepted liability for the third party's claim. One of the conditions of the policy, in common with many motor insurance policies, allows West Bay to settle claims and accept liability without needing the permission of the policyholder.

It would appear that West Bay believed the circumstances of the collision meant that, if the matter proceeded to court, Mrs M's partner would be held liable for the collision. As that's the case, it would be sensible, and reduce the overall cost of the claim, to accept liability at an early stage. I haven't seen any evidence which has been put forward to refute the suggestion that Mrs M's partner was at fault. I'm satisfied that West Bay acted reasonably when it accepted liability for the third party's claim.

I'm aware it took a number of months before the issues of liability and which insurance company was required to settle the third party claim were resolved. While it doesn't seem that West Bay were keeping Mrs M regularly updated on these matters, equally she would appear to have believed it was being sorted by her partner's insurance. Until such a time as West Bay had established it was liable for the claim, and that Mrs M would need to repay its settlement, I can understand why there wasn't a regular dialogue with her.

Similarly, while the claim did take time to resolve, I don't believe there were any avoidable delays on the part of West Bay. I'm satisfied it acted appropriately in contacting Mrs M's partner's insurer and had an appropriate level of contact with them in order to progress the matter. I also can't see any evidence that the costs Mrs M was liable for increased as a result of the time taken to resolve matters around liability and the correct insurer.

I'm also aware a letter sent by West Bay wasn't received by Mrs M. She'd moved from the address the letter was sent to after her policy with West Bay had expired. It's understandable she hadn't updated West Bay with her new address but that doesn't mean I can say West Bay did anything wrong by sending a letter to the address it held on file for her.

West Bay has acknowledged it promised Mrs M a phone call about her complaint but didn't do so. It's offered £100 compensation for the distress and inconvenience caused to her. Mrs M was expecting a call and would have been upset by not receiving this and caused inconvenience by needing to contact West Bay again in order to discuss her complaint. The offer of £100 is appropriate to recognise that the customer service given to Mrs M was below the required standard but also that the impact of not calling Mrs M as agreed wasn't significant in respect of the claim or Mrs M's liability for the settlement made by West Bay.

### **My final decision**

I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 July 2024.

Ben Williams

**Ombudsman**