

## **The complaint**

Mrs K complains that West Bay Insurance Plc (West Bay) unfairly accepted liability and recorded a fault claim against her when she made a claim on a motor insurance policy.

Mrs K is represented in her correspondence with our service by her husband, Mr K. Where I refer to Mrs K within this decision, this should be taken to include Mr K.

## **What happened**

Mrs K held a motor insurance policy with West Bay. She was involved in a collision with a third party and made a claim. She believed the third party had been at fault and told West Bay this.

West Bay agreed to cover Mrs K's claim but recorded a fault claim against her. It said as she'd been reversing at the time of the collision it would be unable to hold the third party at fault.

Mrs K was unhappy with this and complained to West Bay. It rejected her complaint but acknowledged it could have requested CCTV footage of the collision sooner and offered £100 compensation.

Mrs K remained unhappy. She said the compensation offered was insufficient as her insurance premium was going to increase because of the fault claim and she'd paid a £400 excess as part of the claim.

Our investigator thought the compensation offered by West Bay was reasonable and it had made a fair decision when it recorded a fault claim against Mrs K.

Mrs K didn't agree with our investigator and 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.

My role here isn't to decide who I think was at fault for the collision. What I need to do is decide whether West Bay acted reasonably when it recorded a fault claim against Mrs K, in light of the evidence it obtained, or should have obtained.

Certain aspects of what happened here aren't disputed, particularly that the collision occurred when Mrs K was reversing. The third party insurer said they believed Mrs K to be at fault as the onus was on her, as the reversing car, to ensure it was safe to complete the manoeuvre. West Bay agreed with that conclusion, accepted liability and recorded a fault claim.

West Bay's starting point here would appear to be that it accepts Mrs K was under a duty ensure it was safe to reverse her car and that in the absence of other evidence to show the third party was at fault it would have to accept liability for the claim. I think that's a fair

position to take. I'm satisfied a reasonable person would say a person reversing is under a duty to ensure that their surroundings are clear and it's safe to reverse, and that's supported by the Highway Code.

I know Mrs K says she did check both before and while reversing and hadn't seen anything, and that the third party joined the road unsafely, causing the collision. The third party disputed that. I've therefore considered whether there was additional evidence which supported Mrs K's account, and how this impacted on West Bay's assessment of liability.

Mrs K provided a statement from a witness who said they'd heard (but not seen) the collision, and when they looked concluded the third party to have been at fault. Unfortunately, as the witness hadn't seen the collision, I think West Bay fairly concluded it couldn't rely on this account to dispute liability.

The police were informed of the collision, but it's been confirmed they aren't undertaking any further investigations into it, and so the police aren't in a position to confirm how the collision occurred or who was at fault.

Mrs K also points to the actions of the third party after the collision as indicating they were at fault. The third party left the scene very soon afterwards and didn't return. While I appreciate Mrs K believes this was because they knew they were at fault, I can't conclude that their actions after the collision mean they were at fault for it. There's no admission of liability from the third party, either at the time of the collision or afterwards.

I'm also aware that West Bay was informed that shops near where the collision happened may have had CCTV footage of the collision. West Bay did request the footage, but that request was made over a month after the collision. Unfortunately, no response was received to the request.

While the delay in requesting the CCTV footage wasn't acceptable, I can't conclude that this means the decision to accept liability was unfair. I can't say what the footage would have shown, or even that the cameras identified would have shown the collision. I also can't say that if the footage had been requested sooner then the shops would have responded.

West Bay offered £100 compensation to recognise the unnecessary delay in requesting the CCTV footage. I'm satisfied that adequately recognises the distress and inconvenience caused by the delay to the claim and was a fair offer.

On balance, I can't conclude there was sufficient evidence for West Bay to further dispute liability with the third party's insurer. The assumption in the circumstances described would be that Mrs K was at fault and there wasn't any independent evidence, such as CCTV footage or a witness who had seen the collision, to show the third party had been at fault. On that basis, I think West Bay fairly concluded that they couldn't dispute liability any further, so agreed to accept liability and record a fault claim against Mrs K.

I know Mrs K's unhappy that a fault claim will impact her premiums, but as I've said West Bay acted reasonably in recording the claim as such. She also says the £100 compensation is insufficient given that she paid a £400 policy excess as part of the claim. The compensation was offered as recognition for the poor service, whereas the policy excess is a condition of the policy and is highlighted in the terms and conditions. Mrs K doesn't appear to be saying the excess wasn't highlighted to her or not included in her policy documents, and in any case such an argument wouldn't form part of this complaint.

**My final decision**

I don't uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 28 November 2024.

Ben Williams  
**Ombudsman**