

## The complaint

Mr W is unhappy with how West Bay Insurance Plc (“West Bay”) determined liability when he made a motor insurance claim.

Any reference to West Bay includes the actions of its agents.

## What happened

The circumstances of this complaint are well known to both parties, so I’ve summarised events.

- Mr W has a motor insurance policy which is underwritten by West Bay. He made a claim on the policy following a motor incident with a third-party vehicle. Mr W is unhappy West Bay recorded the claim as a fault claim against him.
- Mr W complained about how West Bay had decided liability, saying its decision was unfair as the other driver was at fault. He said this was supported by dash-cam footage at the time of the incident. He also didn’t consider the independent witness’ statement – provided by the third-party insurer - to be accurate, and so, didn’t think it could reasonably be relied upon.
- Mr W also had concerns that West Bay had initially categorised his vehicle as a “total loss” but subsequently repaired it and sold it under a different category (category S).
- In its final response letter, West Bay maintained its decision to determine liability as a “fault” claim. It was satisfied the independent witness had identified Mr W was in the wrong, and that the incident occurred when Mr W was changing lanes. It added that the video clips it had seen didn’t suggest the third-party was at fault.
- With regards to the categorisation of Mr W’s vehicle, West Bay explained its agent had initially assessed Mr W’s vehicle as being a “total loss Category B” – meaning it was irreparable. This decision was reviewed by one of West Bay’s engineers who considered it should be deemed a Category S.
- West Bay accepted the correct categorisation should have happened at the first inspection and so, offered £50 compensation to acknowledge the impact this had. But it was satisfied Mr W hadn’t suffered any financial loss because the claim had been settled on the pre-accident condition of his vehicle – and it would have always been settled as a “total loss” owing to the cost of the repair.
- Mr W remained unhappy, and so, brought a complaint to this Service. An Investigator considered it and upheld it. She said West Bay needed to pay an additional £100 compensation to Mr W.

West Bay accepted the Investigator’s findings, but Mr W disagreed and so, the complaint has been passed to me for a final 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.

I've also thought about the responsibilities placed on West Bay by the Insurance Conduct of Business Sourcebook (ICOBS). Having done so, I agree with the outcome our Investigator reached.

Before I explain why, I want to say I have reviewed the information provided by both parties, but I'm only commenting on those issues I consider to be key to determining this complaint. My intention isn't to be discourteous or curt but reflects the informal nature of our service.

### *Claim liability and the independent witness statement*

It's for West Bay to determine how the claim should be settled and the terms of the policy allow it to do so. This Service doesn't decide who's at fault for an incident. That's the role of the courts. Instead, we look at whether the insurer acted in line with the policy terms and made a fair and reasonable decision.

Mr W's policy terms allow West Bay to take over and carry out any negotiation, defence, or settlement of any claim on his behalf. That means it might make a decision he disagrees with, but the policy allows it to do so. I can consider if it's decision to do so was reasonable.

Mr W's main concern in respect of this claim is that he considers the third-party driver to be responsible for the incident. He's also unhappy with how West Bay investigated the claim as he doesn't think it considered the evidence fairly.

It's not in dispute that Mr W manoeuvred his vehicle from the left-hand lane of traffic into the right-hand lane, and it was at this point, his vehicle made contact with the third-party vehicle.

When determining liability, West Bay has explained it based its decision - to hold Mr W at fault - on an independent witness' statement, and there being a lack of evidence to show Mr W had moved safely into the right-hand lane. Insurers are expected to consider all the available evidence when determining which party is at fault. An independent witness statement is key information, and so, I find West Bay has acted appropriately by taking it into consideration.

But Mr W says the statement can't reasonably be relied upon because it says Mr W drove into the right side of the third-party's vehicle, when it was in fact the left hand, passenger side. In addition, he says the statement incorrectly describes the road layout as being two lanes. So, I've thought about this.

Whilst the independent witness statement does, on page one, say the damage occurred to the *right side* of the third-party's vehicle, the image drawn by the witness – depicting the incident – shows it occurring to the left, passenger side of the third-party's vehicle. And this corresponds with the witness' description on page two of the statement document. I've included the relevant extract below. Because the third-party insurer provided the independent witness statement, reference to "your client" (below) refers to the third-party driver. The statement says:

*"I was in the car behind the guy who drove into your client, in the left lane. It was a two-lane section of road, and your client was coming down the right hand lane. The guy in front of me, pulled out to change lane without checking and drove into the side of your client who was coming down the right hand lane [...]"*

So, although incorrect information was provided on page one, because the drawing and description on page two tallies with Mr W's version of events, I'm not persuaded West Bay has acted unreasonably by relying on the independent witness' statement to determine liability. I agree with our Investigator that the incorrect information on page one, doesn't mean the witness statement should be discounted.

I appreciate Mr W says he checked his surroundings and signalled before manoeuvring into the next lane. I also understand his strength of feeling about this claim – given his driving history and the comments from third parties he says he's spoken to (which he says support his position that he wasn't at fault). But this doesn't persuade me West Bay shouldn't have placed more weight on the witness statement when determining liability.

Whilst I agree West Bay could have done more to access the dash-cam footage of the incident (having had technical difficulties), even if it had done this, I'm not persuaded the outcome it reached regarding liability would have been different.

I say this because West Bay has explained it recorded the claim as a "fault claim" having received the independent witness statement. And it didn't think - having read the statement - it would be able to successfully defend the claim on Mr W's behalf. It explained to Mr W that it has an obligatory duty to deal with the matter on the best possible terms, and that it had no option but to deal with the third-party claim in full.

So, when I consider the above, I'm satisfied West Bay had reasonably considered the available evidence before deciding liability.

#### *Vehicle repair categorisation*

Mr W alleges West Bay acted fraudulently by miscategorising his vehicle as a "*total loss Category B*" but then changing it to "*Category S*", before repairing the vehicle and selling it. He says he would have retained the vehicle if he'd known it was repairable and says West Bay has unfairly profited from its mistake.

West Bay's agent initially categorised the vehicle as a total loss, but when this decision was reviewed, it was deemed "structurally damaged but repairable". West Bay has explained that owing to the cost of the repair, Mr W's vehicle would have always been considered a "total loss", so the incorrect categorisation, didn't impact how the claim was settled. So, I don't think the change in categorisation means West Bay were acting fraudulently.

Whilst Mr W has said he would have retained the vehicle, the policy says, "*when you accept the insurer's offer for total loss [...] the Insured car will belong to the insurer*". So, Mr W wouldn't have automatically been entitled to keep the vehicle. West Bay may have considered a request from Mr W to retain the salvage, but it didn't have to under the policy terms and so, it wasn't guaranteed.

Given Mr W was given the "market value" for his vehicle – which the policy says is "*the cost of replacing the insured car with one of the same make, model, age, mileage, specification, and condition at the date of accident or loss*" – and he accepted a total loss payment (which would have been offered to him regardless of categorisation), I'm not persuaded there's been any financial detriment.

However, West Bay could have prevented the distress its handling of this part of the claim caused Mr W, and so, I would have – if it hadn't already done so – directed it to pay compensation to reflect this.

#### *Customer Service*

Mr W has said West Bay misquoted him in its final response. He says it incorrectly said he'd raised concerns about a "conflict of interest" with the independent witness' statement because the witness was travelling in the third-party vehicle, but Mr W says he didn't. Our Investigator explained West Bay has since said it didn't have a record of Mr W mentioning a conflict of interest.

So, it seems, on the balance of probabilities, Mr W's concerns about the credibility of the independent witness – which he did have - have been misinterpreted. Arguably, the mistake in West Bay's final response could have been avoided. And understandably, it would have been frustrating for Mr W to receive a final response which didn't accurately reflect his concerns.

There's also the matter of Mr W receiving emails from West Bay about his claim in quick succession, but which were contradictory in content. The first email asked Mr W to provide dash-cam footage because liability hadn't been determined. The second email – sent a few minutes later - said the claim had been settled as a "fault" claim.

Understandably, this caused Mr W to question the investigation into his claim, but West Bay has explained it had reviewed the witness statement in the interim and this ultimately, led it to conclude the claim would be settled as a "fault" claim. I've already explained why I consider it reasonable for West Bay to rely on the witness' statement, but it could have handled things better when explaining its position. And so, I'm satisfied compensation should be paid to recognise this.

West Bay has already paid £50 compensation. Our Investigator said it needed to pay an additional £100. In light of the additional shortcomings identified, which have caused Mr W distress, I consider this to be fair and reasonable in the circumstances.

### **My final decision**

My final decision is I uphold this complaint and direct West Bay Insurance Plc to pay Mr W an additional £100 compensation.

West Bay must pay the compensation within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 October 2024.

Nicola Beakhust  
**Ombudsman**