

The complaint

Mr C has complained about the way West Bay Insurance Plc dealt with a claim he made for damage under his car insurance policy. Mr C also complained about delays and poor communication.

What happened

In May 2023 Mr C reported that his car had suffered damage while he was driving on a motorway. He said he felt something hit the underneath and saw smoke coming from underneath his car. An engine warning light came on the dashboard.

Mr C said he stopped when it was safe to do so and arranged recovery of his car. He reported the damage to his insurer, West Bay.

West Bay arranged for Mr C's car to be inspected twice: in June 2023 and August 2023. But it said it couldn't establish the cause of damage. West Bay said it expected to see the impact of debris in more than the one area – a small hole in the engine sump – given the circumstances of the incident as Mr C described. West Bay said it couldn't rule out that the damage wasn't caused by mechanical failure or wear and tear, which is excluded from cover under Mr C's policy.

West Bay wanted to inspect Mr C's car for a third time, and for permission to dismantle the engine sump to examine the inside of the sump.

Mr C didn't agree to this – and in or around October 2023 he arranged for a garage to weld the hole in the sump, add oil and attempt to start the engine. Mr C told West Bay the garage advised that these repairs failed. He wanted West Bay to pay a total loss settlement for his car – as he said the engine cannot be replaced.

West Bay said that because Mr C had arranged for repairs to be carried out, he had prejudiced his position and so West Bay could not consider his claim any further. So it declined his claim.

Mr C complained that the Independent Assessor (IA) from the second inspection told him to carry out the repairs he had done to weld the engine sump. West Bay didn't uphold this complaint. It said the IA denied having told Mr C this.

Mr C had complained about delays and poor communication. West Bay upheld this complaint. In two final response letters sent in October 2023 and February 2024, West Bay paid a total of £400 compensation for the distress and inconvenience caused by its poor communication and delays.

Our Investigator recommended Mr C's complaint should be upheld. He thought West Bay had been given sufficient opportunity to inspect Mr C's car on two previous occasions. And he didn't think it was reasonable of West Bay to apply the exclusion of mechanical failure/wear and tear – as it hadn't shown this was the cause of damage.

The Investigator made the following recommendations:

- West Bay to consider Mr C's claim in line with the remaining terms and conditions of the policy.
- Reimburse Mr C for recovery and garage invoice costs totalling £385 subject to

reasonable proof of payment, with interest at 8% simple interest a year.

- Pay Mr C £300 compensation in addition to the compensation already paid. For the distress and inconvenience caused.
- If Mr C can provide reasonable proof, consider his claim for storage costs.

Both parties replied. Mr C said he expects West Bay to pay him £30,000 as the amount he paid for his car. He says he holds an agreed value policy. Mr C says £300 doesn't reflect the hours of his time and the distress caused by West Bay. He asked that his claim for loss of use by not being able to use his car at weekends be considered.

West Bay didn't agree and have reiterated its reasons why it rejected the claim. These are:

- West Bay attempted to arrange for the engine sump to be removed in order to establish a cause of damage, and attempted to have the car moved to a specialist garage, but both requests were refused by Mr C.
- Mr C arranged repairs which now prevents West Bay from being able to consider his claim. So West Bay wasn't given the opportunity to ascertain whether an insurable event had occurred.
- It's in house engineer (IHE) reviewed photos provided by Mr C of the engine sump and the hole damage. The IHE said there is no evidence of any external damage to the underside of the car that would be considered consistent with a high-speed impact with an object on the motorway. If the hole in the sump had been caused by hitting an object on the road, they would expect to see additional visible damage to the forward-facing components in the same area/centrally located initial impact evidence to at least the lower painted front valance panel which sits at a much lower position to the road surface than the bottom of the engine sump does. They would also expect to see the whole of the underside from the engine backwards to be covered with oil residue from the assumed immediate high-pressure escape of oil whilst travelling at speed. However, no such damage is evident.
- Regarding the oil having since burnt off the exhaust, this may be the case, but they would still expect to see evidence of oil escape/residue on the floor panel/undertrays/surrounding components from the engine sump to the rear, there was no evidence of this. It is appreciated that at running temperature the viscosity of the oil will be different to inspecting when cold making the loss of fluid different and that the age & run time of oil will also alter its condition.
- Even if the car has been cleaned it is normal to find oil in places where capillary action has drawn the oil between two flanges. Also to consider is the line of sight for debris to hit the sump with sufficient force to damage it, yet the projectile has no exit, no fragments of foreign materials have been noted around the sump such as a piece of metal or material sufficiently sharp enough to penetrate the alloy sump leaving no trace of contact.
- Regarding the suggestion that the gauze visible through the hole in the sump is the oil strainer. While this may indeed be part of the oil strainer, the proximity to the lower inside area of the sump pan indicates that the oil strainer has likely been destroyed during a mechanical failure. What the IHE sees is probably the remnants of the oil strainer gauze resting at the bottom of the sump. The concave/cone shape of the hole further suggests that this resulted from an inward force from within the sump pan, rather than an external force.
- For an object in the road to have caused such damage to the sump it would be highly unlikely that there would be no other damage caused, especially, given that the car was travelling at speed. It would be impossible for something to have

just jumped up from the road without it initially being struck by the car and thrown up, there is no consistent evidence of this.

- The two previous inspection reports were inconclusive: no definitive answer was given as to the causation of the engine failure.
- The purpose of further inspection and removal of the sump was to identify from within whether or not the cause was impact damage or wear and tear, this could be confirmed by closer inspection of the internal components such as the crankshaft and the piston connecting rods as these would show signs of prolonged wear if mechanical failure had occurred.
- Allowing our specialists to review the damage would have confirmed the cause of sudden loss of oil and dependent on the condition of residual oil may have assisted in evidencing how the damage arose, by internal failure or external impact.
- West Bay's requests to examine the car have been declined by Mr C, and given the lapse in time, it is possible that several people have looked at the damage possibly removing any contact trace evidence inadvertently.
- West Bay tried for some time to get the car forensically examined. The question around liability was founded around how the damage could occur during a normal journey as described. The location of the sump and damage does not lend itself for strike either direct or indirectly – engine undertrays would be visibly damaged alongside entry and exit abrasions evident, none of this was provided. Without co-operation West Bay says it cannot provide a more detailed report, this is not possible without supervised and documented evidence.
- From the evidence available, West Bay firmly believes that the engine failed due to an internal mechanical issue, causing a component to breach the sump panel from the inside out.

I issued a provisional decision on 16 October 2024. I said I needed more information from both parties before reaching a final decision as I found both arguments plausible as to the cause of damage.

I intended to ask West Bay to do the following:

- provide details of three independent engineers to carry out an inspection of Mr C's car, with the removed engine sump, to establish a cause of damage.
- Allow Mr C to choose which of the three engineers should carry out the inspection.
- West Bay should pay for the inspection and associated costs to move Mr C's car to the required location for inspection.
- On the outcome of the inspection, if an engineer identifies accidental damage, West Bay should reassess Mr C's claim in line with the remaining terms and conditions of the policy.

On receipt of the outcome of the independent report, if Mr C remains unhappy with West Bay's decision, he can raise a new complaint.

Both parties replied to my provisional decision. I've added to my findings below to take into account what they have said.

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 provisional findings were:

"I find that Mr C's testimony as to how the damage occurred is plausible. He has provided photos and opinions from garages as to the repairs needed to his car and how the damage might have occurred. Mr C's evidence suggests it isn't possible to repair his car as it is a rare car that is twenty years old and so a replacement engine is no longer available to buy.

However, I also find that West Bay's reasoning as to why it declined the claim plausible. I find that West Bay caused unreasonable delays in dealing with the claim. But I also find no evidence to show that Mr C was advised by the IA to carry out repairs. It isn't clear, but it seems that the weld repairs were carried out during the time West Bay was in contact with Mr C attempting to arrange a third inspection, with the engine sump removed. Mr C didn't agree to his car being dismantled.

West Bay hasn't reasonably shown that mechanical failure is the cause of damage. Mr C has provided recent video footage of the engine sump being removed from his car by a mechanic. This is something West Bay requested since June 2023 in order for an IA to be able to inspect the engine sump further. We have sent a copy of this footage to West Bay but it hasn't provided any comment on the footage. Mr C didn't agree for West Bay to be involved when he arranged for the removal of the engine sump.

I don't have enough evidence at this stage to reach an impartial, fair and reasonable outcome. It's not possible to make a finding on whether West Bay has acted fairly or not as both parties have plausible arguments. So in this case I'm satisfied the fair answer is for another inspection to be completed.

So I intend to decide that West Bay provide details of three independent engineers to carry out an inspection of Mr C's car, with the removed engine sump, to establish a cause of damage. I think Mr C should be able to choose which of the three engineers should carry out an inspection.

West Bay should pay for the inspection and associated costs to move Mr C's car to the required location for inspection.

Once the inspection has been carried out, if the damage is identified as accident related damage, West Bay should reassess the claim under the remaining terms and conditions of the policy.

There are a number of issues that I need further information on before deciding a fair and reasonable outcome to Mr C's complaint.

It would be very helpful if, in response to my provisional decision, both parties could confirm the location of both inspections in June and August 2023. Given the location of the damage was underneath the car, it's not clear to me as to why the first inspection was carried out at a location where a ramp facility wasn't available.

It would be helpful if Mr C could confirm who "retro classico" is as he has made a claim for storage costs under this business name for £1,875. The account name for receipt of reimbursement is in Mr C's name. Mr C says there are substantial storage costs for his car which have accrued beyond this amount. I ask Mr C to provide evidence to support this.

I need to understand what the invoice costs of £195 charged by (name of garage A inserted here) are in respect of, so I ask Mr C to provide a dated VAT invoice from (garage B name inserted here) with a breakdown and dates of what works this invoice is for.

Mr C has provided an estimate from garage (name of garage B inserted here) which includes steering rack repairs. According to West Bay's notes, Mr C told the IA on the second inspection that the steering rack repair costs are outside of his claim as they are not incident related. Can both parties clarify this.

I can see from West Bay's notes that it asked both Mr C and garage ('B') during October 2023 to provide evidence of the date and breakdown of repairs carried out to weld the

engine sump. But Mr C hasn't provided this as far as I can see. It would be helpful if Mr C could provide this in response to my provisional decision.

At this stage, I think West Bay has paid a reasonable amount of compensation for the distress and inconvenience its delays and poor communication has caused Mr C. But until further evidence is available to establish a cause of damage, I'm unable to consider any further award. It's not clear enough from the invoices and inspection reports provided by Mr C to support his claim for losses.

Mr C says that West Bay made an error in stating an engineer had inspected his car following the engine weld repairs. He says this didn't happen. It was a phone call where the engineer said there was no point inspecting the car now that the weld repairs had been done.

I agree with Mr C that West Bay made an error here as an engineer didn't inspect Mr C's car after the weld repairs were completed. West Bay's notes show the engineer called Mr C to book a third inspection, and it was during this call it was established that the weld repairs had been done. But I don't think it makes a difference here. Whether the engineer had attended or not, the outcome West Bay reached would have been the same. So I've set out my provisional recommendations below."

Mr C is unhappy with my provisional decision. He says he already provided evidence of his losses to West Bay. He says West Bay hasn't met the costs of the second inspection, so is unhappy about having to contact it to arrange a third inspection.

As my provisional decision explained, I have reviewed the evidence Mr C provided to West Bay, but I asked for further information in order to consider his claim for losses. Mr C hasn't provided this. So I haven't made an award for West Bay to meet Mr C's claim for losses in relation to his claim. Mr C can provide further evidence to West Bay of his losses to consider.

Mr C has reiterated that the IA advised him to get the sump repaired. He also says he arranged the repairs out of sheer frustration with West Bay.

As set out in my provisional decision, there is no evidence the IA made this suggestion to Mr C – and it doesn't match the actions of West Bay at the time. Their notes show they were in contact with Mr C to arrange a third inspection.

Mr C says he understands my final decision rests on the outcome of a further inspection. It doesn't. As I explained in my provisional decision, if Mr C is unhappy with the outcome of a further inspection, he will need to raise this as a new complaint.

West Bay says the first inspection was carried out at Mr C's home garage. The second inspection was carried out at garage 'B'.

West Bay has viewed the footage provided by Mr C. It reiterates its position that as repairs have been completed, evidence of cause of damage has been destroyed. And in any event, from viewing the footage - although limited - West Bay says it supports their view that the damage wasn't caused by an incident.

Both parties remain in disagreement for broadly the same reasons they set out before my provisional decision. So my final decision is along the same lines as my provisional decision. I find this to be the fairest outcome I can reach in this case.

My final decision

My final decision is that I uphold this complaint in part and require West Bay Insurance Plc do the following:

- provide details of three independent engineers to carry out an inspection of Mr C's car, with the removed engine sump, to establish a cause of damage.

- Allow Mr C to choose which of the three engineers should carry out the inspection.
- West Bay should pay for the inspection and associated costs to move Mr C's car to the required location for inspection.
- On the outcome of the inspection, if an engineer identifies accidental damage, West Bay should reassess Mr C's claim in line with the remaining terms and conditions of the policy.

On receipt of the outcome of the independent report, if Mr C remains unhappy with West Bay's decision, he can raise a new complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 December 2024.

Geraldine Newbold
Ombudsman