

The complaint

Mr O has complained about the way his motor insurer West Bay Insurance Plc ('West Bay') dealt with a claim he made on his policy including the quality of the repairs carried out on his car.

West Bay is the underwriter of this policy i.e., the insurer. During the claim Mr O also dealt with other businesses who act as West Bays' agents. As West Bay has accepted it is accountable for the actions of its agents, in my decision, any reference to West Bay includes the actions of the agents.

What happened

In September 2023, Mr O was involved in a road traffic accident where another car collided with the back of his car. Mr O made a claim on his policy with West Bay. The car was initially deemed to be a total loss but then West Bay decided it was repairable so it was taken to a garage for repairs.

Mr O raised a complaint as there was an initial delay in the repairs being carried out as he wanted them to be done by a manufacturer approved repairer but also wanted to ensure that he had a courtesy car while the repairs were being done. West Bay said the only suitable repairer didn't have a courtesy car for Mr O to use immediately so the repairs were delayed further.

Towards the end of October 2023, Mr O complained to West Bay about further delays and the stress this caused him. He also said that the engine light on his dashboard had come on advising him to take the car to the manufacturer.

West Bay responded to Mr O's complaint around a month later and offered him £200 compensation for the delays he'd experienced. In December 2023, West Bay authorised repairs to be carried out.

Mr O raised a further complaint in February 2024 and said the car hadn't been fully repaired, that he wanted a courtesy car, that the engine light was still on and that part of one of the side steps was missing. West Bay referred the matter to one of its engineers who said that the side step must have been knocked off somehow, but not by the repairers.

Further repairs were completed at the end of February 2024. In March 2024 West Bay said that the error with the battery/the engine light was not accident or repair related but down to wear and tear and therefore not covered under the policy. It said it arrived at this conclusion having considered a diagnostic report prepared by the garage which showed no faults with the car and also due to the high mileage the battery had done.

In March 2024 Mr O raised a further complaint and said that the car should have been with the manufacturer from the start. He also said he wanted to keep the courtesy car he'd been provided with but West Bay said it would be cancelled within a few days and reported stolen unless returned.

West Bay responded to Mr O's March 2024 complaint and offered him a further £150 compensation. It reiterated that it wasn't responsible for the damage to the side step and said that it didn't consider it was liable for delays in finding a garage. It accepted that it was responsible for delays caused by the car needing further repairs and also the further delay in confirming its decision about the battery/engine light and the courtesy car needing to be returned. It repeated that the issues with the battery were due to wear and tear and not covered under the policy. It said that if Mr O was able to obtain a report from the manufacturer it would consider it. If the report said that the battery fault was down to the accident it would reimburse him for the cost of the report.

Mr O didn't agree with West Bay's final response. He provided a manufacturer's report which said the damage to the battery could have been due to water in the boot and that this was possibly down to the repairs to the rear of the car.

West Bay responded to say that the battery is a sealed unit and wouldn't be damaged by water. Also, it said it is located away from the point of impact so it is unlikely the accident caused the damage. Its engineer added that the battery had already covered 138,000 miles with a typical life expectancy of about 150,000.

In May 2024 West Bay agreed to pay for the cost of the side step, after Mr O provided camera footage which showed that the side step was intact when it went in for repairs. It also increased its compensation from £150 to £250 so, overall, it paid him £450.

Mr O brought his complaint to our organisation. He said the body work was eventually repaired but the engine light was still on and he felt his car was not safe to drive. He wanted the repairs to be carried out by a garage of his choice.

While one of our investigators was reviewing the complaint, Mr O paid for the battery to be repaired as he said he was concerned about the car's safety and it failing its MOT.

Our investigator thought the complaint should be upheld. He didn't think that the garage's diagnostic report said the issue was down to wear and tear. He also didn't agree that the impact area was well away from the battery and noted that the third-party car had sustained significant damage and that the accident had happened at high speed. Our investigator was also persuaded by the fact that the car had passed its MOT weeks before the accident and that it would have failed had the error message been showing on the dashboard at the time.

West Bay obtained an independent engineer's report and though this was after the car had already been repaired which made the diagnosis more difficult, the engineer said that the error with the engine was unlikely due to the accident or the repairs. The engineer said that as the error was showing before the repairs were undertaken but after the MOT was

conducted, this shows that the failure wasn't down to the repairs. The engineer concluded the damage was likely due to wear and tear.

Mr O then provided a further report from the manufacturer, from August 2023, which showed that the battery had been assessed at the time and as there were no issues, the warranty had been extended by another year or 10,000 miles. The manufacturer later said that it would have replaced the battery under the warranty had it not been damaged in the accident.

West Bay didn't agree and said that the manufacturer's report didn't say that the vehicle had been inspected and that it seemed to be simply using the terms and conditions to reject a claim under the warranty.

Our investigator thought the manufacturer's report indicated that the battery was fully functioning with no signs of deterioration at the time which was five weeks before the accident. He also thought the report showed that the battery system had been assessed and deemed to be in a condition which allowed the manufacturer to extend the warranty. He thought this meant it was unlikely that it failed due to wear and tear five weeks later and so he was more persuaded that the damage was accident related. He said West Bay had the opportunity to inspect the battery, but it didn't.

West Bay didn't agree. It said the error code on the dashboard suggested there was corrosion within the battery or cell failure. It said its engineer said that the battery cell can fail at any time. It added that there was a second battery which is directly behind the area of impact which wasn't damaged and felt the battery failure was an unfortunate coincidence.

Our investigator ultimately thought that West Bay should pay for the cost of the battery repairs plus interest as well as a further £250 compensation for the delays Mr O experienced. Mr O agreed with our investigator's view. West Bay didn't agree to cover the cost of the battery and asked for an ombudsman's decision. It did, however, agree with the £250 compensation award.

The matter was then 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.

I note that a number of the issues Mr O raised initially have now been resolved so in this decision I will only address issues which are still outstanding. For example, the issue of the side step has since been resolved, and I also note that both parties have agreed to the further £250 distress and inconvenience compensation our investigator awarded. So, what is left for me to determine is the issue with the battery and whether this was accident or repair related or a result of wear and tear.

Under the policy, West Bay will provide cover for repairs that resulted from the accident. But if the battery error was down to wear and tear, this is not something that it needs to cover under the policy. Also, if the damage to the battery is due to an error made by its repairers

this is something I would expect it to rectify.

West Bay's evidence

West Bay's appointed garage inspected the car and prepared two reports, one in September 2023 and one in November 2023. The first inspection which took place less than two weeks after the accident, noted that the car's mileage was 130,476. From the photographs taken there was no engine light on at the time. By the time of the second inspection the mileage was 138,183 and the engine light was illuminated.

A diagnostic report for the car was carried out by the garage in February 2024 which showed no error messages.

West Bay consulted an in-house engineer in July 2024 regarding the battery. The engineer said that the location of the damage and the age of the battery made it more likely than not that the error was due to wear and tear. In relation to potential water ingress, the engineer thought this was unlikely as the battery is in a sealed unit.

West Bay also obtained an independent engineer's report in September 2024. The engineer noted that they were no longer able to examine the battery to determine the reason for its failure but thought it was likely due to wear and tear. The engineer said that the car would not have passed its MOT had the engine management light been illuminated. They also noted that the failure was likely to have occurred after the MOT but before November 2023. So they thought the failure is unlikely to relate to the repairs. They also said that the damage to the car was not within the battery area.

West Bay's in-house engineer as well as the independent engineer maintain that the damage to the battery was due to wear and tear and not due to the accident or the repairs.

Mr O's evidence

Mr O says that the error with the battery appeared on his dashboard after the accident. And the error said that he should take the car to the manufacturer. Mr O arranged for the battery to be replaced by the manufacturer and paid for this himself.

Mr O provided a report from the manufacturer which says that the boot had water inside which was a possible reason for the battery failure. The report also noted that the failure could be down to the repairs.

Mr O has also provided a document dated August 2023, weeks before the accident, which showed that the car had passed a health check which included the battery passing various checks. This extended the battery warranty by a year or a further 10,000 miles, which would cover the date of the accident. This was supported by a subsequent email from the manufacturer which stated that as the battery had issues from the accident it wasn't covered under the terms and conditions of the warranty which excludes accidents.

Should West Bay cover the cost of the battery

Mr O said that the engine light which indicated that there was an issue with the battery came on shortly after the accident. From the engineering evidence available, it seems that it came

on after the first inspection in September 2023 but before the second, in November 2023. Furthermore, Mr O complained about the light as early as September 2023 so on balance the light came on around the end of September 2023.

The first repairs were carried out in December 2023 so, on balance, the damage to the battery wasn't due to the repairs. And for the same reason I think it is also unlikely it was due to water ingress during the repairs.

The engineering evidence from the parties is conflicting. In cases such as this where the evidence is contradictory, we compare the different expert evidence in order to decide which opinion we find to be the most persuasive. This can depend on various factors such as the detail contained in a report, the expert's area of expertise etc.

The first report West Bay obtained from its in-house engineer was informal in nature, it was an email, where the engineer gave his thoughts regarding the issues with the battery. It was based on the engineering evidence that was available at the time including the diagnostic report. The engineer said because the diagnostic report showed no faults, he concluded that the issue was down to wear and tear. The engineer supported this by saying that the battery had covered a lot of mileage and was coming to the end of its life span.

I have considered the diagnostic report and it doesn't show any faults but, as our investigator said, it also doesn't say that the error was down to wear and tear. So I'm not persuaded by the engineer's argument but I find the argument about the age and mileage covered more persuasive.

The independent engineer's report provided by West Bay is a formal report and the engineer explains why they feel the battery was damaged due to wear and tear. There were some errors in the engineer's original report which our investigator pointed out. For example, the engineer said that there was no information as to when the fault first occurred but our investigator pointed out that it was after the MOT in August 2023 when the battery had covered 127,791 miles. He said the error occurred around 3,000 miles after the MOT and this was because Mr O provided a video which showed the fault in September 2023 when the mileage was 130,886. The engineer said this indicates it wasn't due to the repairs. The engineer agreed that the car would not have passed the MOT if this light had been on. The engineer also said that the battery is not within the area where the repairs were carried out so it was more likely to be due to wear and tear.

Neither engineer examined the battery and the independent engineer acknowledged that this prevented him from confirming his opinion but said he felt it was likely wear and tear.

By contrast, the evidence Mr O provided was from the manufacturer who examined the battery in question a few weeks before the accident. The battery showed no issues and the manufacturer agreed to extend the warranty on this basis. This evidence shows that the battery was in a good condition and, in my view, it makes it less likely that the battery failed a few weeks later due to wear and tear on account of its age and mileage- as argued by West Bay.

I agree with our investigator that the above supports Mr O's argument that the battery was damaged due to the accident. I say this because the battery had been deemed to have no

issues shortly before the accident but developed issues shortly thereafter. West Bay's engineer said the battery can fail at any time, but the timing of the failure in addition to it being in a seemingly good condition, suggests to me that the accident was more likely the cause of the damage.

The manufacturer, who carried out the repairs to the battery, said it wasn't able to do so under the warranty due to issues the battery had as a result of the accident. Though this report isn't as detailed as that of the independent engineer I find it more persuasive because the manufacturer had seen the battery and was the one who carried out the repairs. I also think the manufacturer would have more specialist knowledge and have more experience in dealing with the specific type of battery than other engineers. I think it would be difficult for me to ignore this evidence in favour of the opinion of other engineers who didn't examine the specific battery.

The manufacturer also didn't seem to consider that the area of impact meant that the battery could not have been damaged in the accident.

I think the evidence is finely balanced but as I said above, I find the manufacturer's evidence more persuasive because they examined the battery as opposed to West Bay's engineers who didn't. I appreciate that West Bay would have liked for at least the independent engineer to have been able to examine the battery but, as our investigator pointed out, West Bay had opportunities, before Mr O had the battery repaired, to examine it and it failed to do so. Mr O raised this issue in September 2023 and waited months before he had it repaired. And I can understand why Mr O wanted to repair the issue so his car could pass its MOT and so it was safe to drive.

For the reasons above, in these specific circumstances, on balance I think the damage to the battery was caused by the accident the car was involved in in September 2023. It follows that I think West Bay should cover the cost of the battery repairs under the terms and conditions of the policy. Mr O paid £2,023.20 in total in three instalments, and I think West Bay should pay 8% simple interest from the date each instalment was paid to the date it pays Mr O.

My final decision

For the reasons above, I have decided to uphold this complaint. West Bay Insurance Plc must pay Mr O £2,023.20 for the cost of the repairs to the battery plus 8% simple interest per year from the date each installment was paid to the date it pays Mr O.

It must also pay Mr O a further £250 compensation (in addition to the £450 it has already paid) for the distress and inconvenience it caused him. It must pay the compensation within 28 days of the date on which we tell it Mr O 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.

If West Bay Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr O how much it's taken off. It should also give Mr O a tax certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 25 February 2025.

Anastasia Serdari
Ombudsman