

## **The complaint**

Mr Y complains about West Bay Insurance Plc's handling of his car insurance claim.

West Bay has been represented by its agents during the claim. All references to West Bay include its agents.

Mr Y has also been represented on the claim by his spouse and the named driver. But for ease of reference, I shall refer to anything they said on Mr Y's behalf to have been said by Mr Y.

## **What happened**

In April 2023, Mr Y's car was damaged by a third-party while it was parked. Mr Y made a claim with West Bay. From April 2023, West Bay chased the third-party (TP) and its insurer (TPI) for an admission of liability (AOL).

In August 2023, West Bay completed repairs to Mr Y's car. Mr Y paid his policy excess of £625, but there was still no AOL from the TP or TPI. In August 2023, West Bay contacted the TPI to request repayment of the repair costs, including Mr Y's policy excess.

Mr Y complained in October 2023. He said he was not told his excess is an uninsured loss and that West Bay was not obliged to recover this for him.

West Bay issued a complaint response in December 2023. It said it could only reimburse Mr Y's excess if an AOL was received from the TP and the claim was settled as non-fault. It said the AOL was beyond its control. It accepted it could have given Mr Y more thorough and regular information, and that he was kept on hold for a long time on the phone, which would have been frustrating. So it paid him £150 compensation.

Mr Y referred his complaint to the Financial Ombudsman Service. He said West Bay should have been more proactive in recovering the costs. He was unhappy with West Bay's communication and he wanted West Bay to reimburse his excess and compensate him for the stress and inconvenience caused.

He also said West Bay could have collected CCTV and witness evidence at the time of the accident or soon after, but it didn't. He said there was a witness who was an employee of the parking company that shared the car park with the TP that caused the damage.

The Investigator upheld the complaint. They were satisfied Mr Y was made aware of the excess being payable when making a claim. But because Mr Y wasn't asked about the CCTV or witnesses, they felt this likely affected how the claim was settled and that West Bay had prejudiced Mr Y's position. So they asked West Bay to record the claim as non-fault, with Mr Y's no claims discount (NCD) allowed, and to pay Mr Y a further £300 compensation.

West Bay didn't reply. Mr Y said he may not have got his car repaired given the age of the car and the nature of the damage. He said he only repaired it as West Bay told him it would

pursue the TP to reimburse his excess if he paid it.

Because the complaint couldn't be resolved, it's been passed to me to decide. West Bay issued its final response on 4 December 2023. So my decision will cover matters till this date. If Mr Y is unhappy with West Bay's actions since this date, he can contact West Bay directly about this.

I issued a provisional decision. In it I explained why I didn't intend to uphold Mr Y's complaint. The provisional decision's reasoning forms part of this final decision, so I've copied it below. I invited Mr Y and West Bay to provide any further comment or evidence they would like me to consider before issuing this final decision.

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

#### *CCTV and witness*

*Mr Y said West Bay could have collected evidence from CCTV and there was a witness. The Investigator said this likely affected how the claim was settled and West Bay prejudiced Mr Y's position. But I don't agree, and I'll explain why.*

*I've listened to the call in April 2023, when the claim was first made. Mr Y was asked for the TP vehicle registration, but he said he didn't have it. He said he only had the crime reference number and the TP company number and insurance details. This was despite Mr Y confirming he spoke to the parking company he used, that shared the space with the TP.*

*I accept West Bay didn't ask Mr Y directly about any witnesses or CCTV, and I think it should have. But even if it had, I'm not persuaded this would have affected how the claim was settled, or that it prejudiced Mr Y's position.*

*I think if there had been CCTV of the incident, or a witness who had seen the incident occur, it's more likely than not that Mr Y's parking company would have informed Mr Y of this, and Mr Y would have been able to provide the TP vehicle registration when he was asked, or shortly afterwards. But Mr Y didn't provide this.*

*I've explained above why I don't think it's likely there was CCTV. But even if there was, cameras in the area may not have been operational. They may not have been focused on the incident location at the relevant time. I've also explained above that had there been a witness, I think it's more likely than not that they'd have been able to confirm the TP vehicle registration. Mr Y has given us evidence to show the TP/TPI couldn't be pursued further as the TP driver or vehicle couldn't be identified. So I can't fairly say that if West Bay had asked about CCTV or witnesses, the outcome of the claim would most likely have been different.*

*I think if Mr Y was aware there was likely CCTV footage or a witness, he ought reasonably to have told West Bay. Mr Y was aware West Bay was in contact with the TP and TPI since April 2023, and he first mentioned CCTV and a witness in August 2024, more than 13 months later. I don't think this was reasonable, and I don't think it's fair to hold West Bay responsible for the time it took Mr Y to raise this.*

*For the reasons outlined above, I won't direct West Bay to record Mr Y's claim as non-fault, or allow his NCD.*

#### *Excess*

*Mr Y said he wasn't told his excess is an uninsured loss, and West Bay isn't required to recover this for him. He's said he was not told the excess is payable no matter what, and he proceeded with repairs through West Bay because it said it would pursue the TP.*

*I've reviewed the welcome documents Mr Y received in February 2023, and I'm satisfied they made the policy excess clear to Mr Y.*

*The schedule of insurance outlined the total excess of £625, and the policy wording defines excess as "The amount you must pay towards any claim, this can include both compulsory and voluntary excesses in which case we will add them together". Furthermore, under "what is not covered" for "damage to the car" it says "The total excess shown in your Schedule of Insurance".*

*So I think it was made clear to Mr Y that his policy excess was £625, that he would need to pay this on any claim and that West Bay was not required to recover this from the TP or TPI. I've also reviewed Mr Y's communication with West Bay following his claim, and I've not seen evidence to show he was told, or led to believe, the excess would be reimbursed without an AOL from the TP or TPI.*

*West Bay's notes indicate Mr Y had asked for the claim to be put on hold, and West Bay explained that it couldn't do so indefinitely. It said that Mr Y would need to decide to either proceed with or cancel the claim. I don't think West Bay was wrong to point this out to Mr Y, and I think Mr Y would have been aware he had the option of cancelling the claim if he wanted. And because I think the information about his excess was made clear to him, in deciding to proceed with the repairs and pay his excess, I think Mr Y ought reasonably to have known his excess may not be reimbursed.*

*Mr Y said he only agreed repairs because West Bay said it would try to recover his excess. The evidence I've seen shows West Bay did contact the TPI following the repairs, to request payment for the repair costs, along with Mr Y's excess. So while West Bay wasn't required to recover Mr Y's excess for him, I'm satisfied it did contact the TPI to request this. And West Bay isn't responsible for the actions or response of the TPI.*

#### *Delays*

*Mr Y said West Bay should have been more proactive.*

*I've reviewed the evidence and I can see that it contacted the TPI in April 2023, based on the information Mr Y provided. It chased the TPI in May, June and August 2023, before repairs were completed in August 2023. It also contacted the TP directly in August 2023.*

*Shortly after repairs were completed it sent details of the repair costs and Mr Y's excess to the TPI in August 2023. In December 2023, West Bay agreed to continue to pursue the TPI for recovery of its outlay. West Bay isn't responsible for the actions of the TPI, so overall, I think up until December 2023, West Bay acted reasonably, and I've not seen evidence of avoidable delays on its part.*

*West Bay did accept Mr Y was kept on hold for a long time on the phone, and that it could have given him more thorough and regular information. I accept this would have caused Mr Y some distress and inconvenience, but I think the £150 West Bay paid him is fair in the circumstances.*

## **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.

West Bay accepted my provisional decision. Mr Y didn't accept, and provided further comments. As this is an informal service, I'm not going to respond here to every point Mr Y made in response to the provisional decision. Instead, I've focused on those I consider to be key or central to the complaint. But I would like to reassure Mr Y that I've considered everything he's provided.

Mr Y said Solicitors told him there wasn't enough evidence without CCTV footage or witnesses. He's said he would have requested this if he'd known it was necessary, and West Bay ought to have asked for this itself.

I've still not been given evidence to show there was CCTV footage, or a witness who saw the incident occur. Mr Y has said he wasn't aware there was likely to be either, and he hasn't provided evidence to persuade me there was. I'd explained in my provisional decision that even if there was CCTV, cameras in the area may not have been operational, and may not have been focused on the incident location at the relevant time.

So overall, I'm still not persuaded that had West Bay asked about CCTV footage or witnesses when the claim was first made, this would likely have led to information being obtained, that would have affected how the claim was settled. For this reason, I still won't direct West Bay to record Mr Y's claim as non-fault or allow his NCD.

Mr Y says he was aware his policy excess was an uninsured loss that he would have to pay. But he said he only proceeded with repairs through West Bay because it said it would take action to recover costs, including his excess. Mr Y feels West Bay didn't do enough to recover the costs.

Given Mr Y was aware of the excess being an uninsured loss, I think he'd likely have been aware there was no guarantee this would be reimbursed. And I think he'd have been aware of his option to cancel the claim if he wanted to. So I think Mr Y agreed to proceed with the repairs knowing there was a chance the costs, including his excess, may not be recovered.

As explained in my provisional decision, West Bay did contact the TP and TPI to get an admission of liability and to recover the costs, including the policy excess. This included appointing Solicitors to consider further action after the TP and TPI didn't respond to West Bay's contact.

So I still think West Bay did take reasonable action to try and recover the costs. And I don't think West Bay contacting the TP or TPI further between October and December 2023, or it referring the matter to Solicitors at this time, would've affected the claim outcome. I say this because the TP and TPI didn't respond to West Bay when it did make contact. And there's insufficient evidence to show there was CCTV of, or a witness to, the incident, that would have identified the TP driver or TP vehicle, and impacted the Solicitors' decision.

I do agree Mr Y received poor service from West Bay. Whilst I don't agree this affected the outcome of his claim, I do accept it would have caused him distress and inconvenience. But I still think the £150 compensation West Bay paid him is fair in the circumstances. So I won't direct it to pay more.

For the reasons outlined above, I've come to the same conclusions as I did in my provisional decision.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 21 January 2025.

Monjur Alam  
**Ombudsman**