

The complaint

Mr H complains about West Bay Insurance Plc's decision to cancel his car insurance policy.

What happened

Mr H made a claim on his car insurance policy with West Bay in November 2021. West Bay paid Mr H a settlement but following investigations, it cancelled his policy in March 2022, with no refund. It said this was because Mr H failed to disclose a previously cancelled motor insurance policy and because of a previously refused mobile phone insurance claim.

Mr H complained in April 2022. He was unhappy with West Bay's decision to cancel his policy and he said he was led to believe he could have it reinstated.

Because West Bay didn't respond to the complaint in time, Mr H referred his complaint to the Financial Ombudsman Service in June 2022. He wanted a partial refund of his cancelled policy and for West Bay to remove details of the cancellation.

West Bay issued a complaint response in June 2022. It maintained its decision to cancel the policy. It said this was because Mr H didn't disclose cancellation of a previous insurance policy despite being asked about it when he took out his car insurance. West Bay said if it had known about the cancelled policy, it wouldn't have offered cover. It accepted it gave Mr H misinformation about reinstatement of the policy and it apologised for this.

Mr H remained unhappy. He said he wanted West Bay to remove details of the cancellation and pay compensation.

The Investigator upheld the complaint. They said West Bay's decision to cancel the policy was unfair. They recommended West Bay remove details of the cancellation, give Mr H a letter confirming the error, pay him a partial refund of his policy premium and pay him £200 compensation.

West Bay didn't agree. It maintained its decision to cancel based on previous policy cancellations and the previously declined claim. It said the mobile phone policy had also been cancelled.

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 said it cancelled the policy mid-term without a refund, based on Mr H's failure to disclose previous insurance policy cancellations and because of a previously refused mobile phone claim. West Bay said it cancelled the policy based on the policy terms, but it has also said Mr H made a misrepresentation when he took out his car insurance policy.

The terms of the policy say West Bay can cancel the policy where there is an exceptional or valid reason for doing so. The examples provided include "*where we identify any misrepresentation or fraud or any attempt to gain an advantage under this insurance...*"

Because cancelling a policy can have a significant impact on an insured, I've considered whether West Bay has applied the above terms fairly in cancelling the policy.

To begin with, I think a fair interpretation of the above is that any misrepresentation, fraud or attempt to gain an advantage must relate to *"this insurance"*, and namely, Mr H's car insurance policy with West Bay. I've considered the complaint with this in mind.

I also consider a relevant law in this case to be the Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA). I say this because West Bay said Mr H made a misrepresentation when he took out the policy, and because CIDRA outlines the circumstances in which an insurer can take action. So I've also considered CIDRA when deciding if West Bay applied the terms of the policy fairly.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The test for whether or not the consumer took reasonable care is set out in CIDRA. The standard of care required is that of a 'reasonable consumer'. And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation.

West Bay has provided a copy of the new business document from when Mr H took out the policy. I'm satisfied this is a good indication of the questions Mr H was asked when he took out the policy in 2021, and the answers he provided.

This document contains the question *"has this driver been declined insurance, had a policy cancelled or had special terms imposed?"* to which the answer is *"no"*. West Bay says Mr H made a misrepresentation based on this question and answer.

West Bay referred to a motor trade policy cancelled in March 2021. Mr H said he didn't disclose this cancellation as it was a motor trade policy in a company name. I can see the broker for that policy contacted West Bay to confirm it was a motor trade road risk policy where the policyholder was a limited company, which I shall refer to as F. West Bay's notes also show it recognised this policy was for a limited company, of which Mr H was a director.

Given Mr H was taking out a private policy with West Bay in 2021, I think a reasonable consumer in the same circumstances would have answered *"no"* to the same question. I say this because F was a private limited company, which made it legally independent from the individuals that owned it. And I think it's reasonable to assume the question is asking about cancellation of insurance policies in the driver's name, as opposed to cancellation of insurance policies in the name of any limited companies the driver may be associated with.

So I don't consider Mr H failed to take reasonable care not to make a misrepresentation. And because West Bay wouldn't therefore have the right to the remedies under CIDRA (including cancelling the policy in certain circumstance), I don't think it acted fairly in relying on the above to cancel Mr H's policy.

West Bay later claimed Mr H's mobile phone insurance policy from 2018 was also cancelled, but it hasn't provided sufficient evidence to persuade me this was the case. It provided its own notes referencing a policy that was 'closed' in 2018, but it's not clear if this meant it was cancelled, and if so, on what basis, and whether or not this was Mr H's decision. So I'm not persuaded Mr H failed to take reasonable care not to make a misrepresentation for reasons related to this mobile phone insurance policy.

It's also for West Bay to prove any misrepresentation made a difference. West Bay has been unable to provide its underwriting criteria, and I've not seen sufficient evidence to persuade me it wouldn't have offered cover at all, or only done so on different terms, if Mr H gave the

answer it says he should have. So even if I found there was a misrepresentation, I'm not satisfied West Bay has shown this would be a qualifying misrepresentation. So I still wouldn't consider it had a right to the remedies provided under CIDRA.

On Mr H's mobile phone insurance claim from 2018 being declined, I've explained above I consider a fair interpretation of the terms to be that any misrepresentation, fraud or attempt to gain an advantage must relate to Mr H's car insurance policy with West Bay. And because his mobile phone insurance policy from 2018 was independent of his car insurance policy with West Bay in 2021, I don't think it's fair for West Bay to rely on the declined claim to cancel Mr H's car insurance policy. I also don't consider the circumstances of that claim amount to exceptional or valid reasons that made it fair for West Bay to cancel Mr H's policy.

Overall, for the reasons outlined above, I consider West Bay's decision to cancel Mr H's policy was unfair. And because this left him unfairly without cover he'd paid for, for the remainder of the policy duration, I consider a pro-rata refund of the premiums he paid, to be fair in the circumstances.

I think West Bay's actions in unfairly cancelling Mr H's policy would have caused him distress and inconvenience. I also think its action in misinforming him about reinstatement of the policy would have led to a loss of expectation, albeit West Bay did clarify things shortly after. And in the circumstances, I agree with the Investigator that £200 compensation is fair. So this is what I will direct West Bay to pay.

My final decision

My final decision is that I uphold this complaint. I require West Bay Insurance Plc to:

- Remove details of the cancellation from all internal and external databases.
- Provide Mr H a letter confirming it cancelled the policy in error.
- Provide Mr H a pro-rata refund of the premiums he paid.
- Pay Mr H £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 February 2025.

Monjur Alam
Ombudsman