

The complaint

Mr H complains about how West Bay Insurance Plc settled a claim made on his commercial vehicle insurance policy.

Reference to West Bay includes its agents.

What happened

Mr H holds a commercial vehicle insurance policy with West Bay. He was notified by West Bay that a third party was making a claim against him, holding him at fault for an accident they were involved in.

Ultimately, West Bay settled the third party's claim as a fault claim on Mr H's policy. Mr H complains about that decision. He doesn't think it's fair considering his vehicle received no damage. He says the third party was in the wrong lane, and if they crashed, that was their fault not his.

West Bay said it settled the claim because Mr H didn't cooperate with its investigations. It said it sent him multiple letters asking for his version of events and received no response. It said this left it unable to defend the claim made by the third party, so it settled it. It said this was something the policy allowed it to do. It did offer to pay Mr H £150 compensation for its communication and the fact it didn't let him know it had settled the claim.

Mr H didn't think this was fair he said he didn't get the letters West Bay sent. But he says in any case he spoke to them about the alleged incident and explained why he didn't think he was at fault. He said West Bay agreed he wouldn't be at fault for the incident, so he was shocked when he found out it had settled the third-party claim.

West Bay didn't change its stance so Mr H brought his complaint to us.

One of our Investigators didn't think his complaint should be upheld. They thought West Bay was acting reasonably when settling the third-party claim.

I issued a provisional decision explaining why I was thinking of upholding Mr H's complaint. It said:

- *Mr H's policy says West Bay are "...entitled to take over and conduct the defence or settlement of any claim...covered by..." Mr H's insurance policy. This means the final say on any claim, made by Mr H or a third party, lies with West Bay. Naturally this means at times, it may make a decision Mr H doesn't agree with. But West Bay needs to rely on this term fairly, conducting an appropriate investigation into any claim, basing its decision on the available evidence.*
- *Here, it says it settled the claim because Mr H didn't help with its investigations. It says it sent him multiple letters which he didn't respond to. It says this left it unable to defend the third-party claim.*

- *I'm satisfied these letters were on balance sent. And I didn't think it's fair to hold West Bay responsible for whether or not Mr H received them.*
- *I'm not persuaded it's fair though to say Mr H didn't cooperate. I've listened to a call which he had with West Bay. This is roughly half an hour long and in that call he details his version of events, with both him and the agent looking at maps to get a detailed understanding of what Mr H thought happened. It's clear in that call that Mr H thinks the third party is in the wrong lane, and that his car doesn't suffer any damage. The call ends with West Bay saying Mr H wouldn't be at fault for the incident.*
- *The letters sent follow that call, but looking at the content of the letters and what they're asking of Mr H, I'm not persuaded West Bay would have got any more information if Mr H had returned the forms.*
- *West Bay says the letters make it clear he needs to respond, but I'm not satisfied this is the case. The letters say in bold "Please note if the completed form is not received within 14 days of this letter we will proceed to settle on the best terms." But to Mr H, the best terms would be to settle as a non-fault claim as the call handler indicated it would be.*
- *Importantly too, in the call mentioned above West Bay say they need information from Mr H, but says it can take this from him on the call. There's no suggestion he'll need to follow up anything in writing.*
- *So overall, I don't think it's fair to say Mr H didn't cooperate. He did. Therefore, I'm not satisfied West Bay's settlement of this claim as a fault claim on that basis is fair here. I think doing so, when it did, with the information it had – especially considering the fact that Mr H's car sustained no damage, prejudiced Mr H's position. I appreciate it's since said based on his version of events it'd still be unable to defend the claim, but this is after the fact, and I can't see it's based on any legal opinion.*
- *Therefore to put things right, West Bay should record this claim as a non-fault claim, allowing the no claims bonus. It should then re-rate any renewal of Mr H's policy with it following the incident on the basis that this claim is now a non-fault claim as opposed to a fault one.*
- *If Mr H has since moved insurers, West Bay should write a letter confirming the claim has now been rated as a non-fault claim with the bonus allowed so that insurer can re-rate his policy accordingly.*
- *Having a claim recorded against you would be distressing and chasing this with West Bay is inconvenient. Mr H says he had to borrow money to pay for the increased premium, adding further distress and inconvenience. So in addition to West Bay's compensation offer of £150, it should pay a further £150, taking the total compensation to £300.*

Mr H accepted that decision.

West Bay didn't. In summary it acknowledged it could have been clearer in its letters, but though another part of the letter made it clear that liability was being reviewed further following the call it had with Mr H. It also said that even if it did receive the forms back from Mr H, the best possible settlement would be one on a 50/50 basis considering there were no independent witnesses or CCTV. It said this would be treated the same as a fault claim, so

doesn't think it's fair to ask it to allow Mr H's no claims bonus. It pointed to its rights under the policy to settle claims in the way it sees best.

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.

Having done so, I'm not minded to change my decision. I'll explain why.

- West Bay has pointed to the following line in the letters it sent Mr H after the call it had with him. *"Thank you for reporting this incident. We are reviewing liability, and it would assist us if you could supply a more details description of the incident."* It thinks this indicates liability was being reviewed further. But I don't think that's the case. It simply implies things are being reviewed. There's nothing to suggest anything has changed since Mr H last spoke to them. And as explained above, the letter as a whole doesn't clearly say the claim will be settled as a fault claim if Mr H doesn't contact West Bay.
- In relation to West Bay's points around how the claim would ultimately be settled, this is all after the fact as mentioned in my provisional decision. It may well have settled on a 50/50 split liability basis. But it may not have, especially considering Mr H's car wasn't actually hit in the incident.
- As set out in my provisional decision, I've not seen any legal opinion stating that regardless of what Mr H provided, that he would be at best held partially liable for the incident. An incident he claims not to be involved in and that his car suffered no damage in.
- Therefore I'm still of the opinion that West Bay prejudiced Mr H's position, and that as such, how it settled the claim was unfair.

My final decision

My final decision is that I uphold this complaint. To put things right West Bay Insurance Plc needs to:

- Record this claim as non-fault, allowing Mr H's no claims bonus.
- Rerate any renewal of Mr H's policy/policies with it following the incident on the basis that this claim is a non-fault claim as opposed to a fault claim.
- If Mr H has since moved insurers, West Bay should write a letter confirming the claim has now been rated as a non-fault claim with the bonus allowed so that insurer can re-rate his policy accordingly.
- Pay Mr H a total of £300 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 April 2025.

Joe Thornley
Ombudsman