

## **The complaint**

Mr H complains about how West Bay Insurance Plc (West Bay) has handled a claim on his motor insurance policy.

## **What happened**

Mr H was involved in an accident with a third-party vehicle in December 2022.

When Mr H reported the accident to West Bay, who he held a motor insurance policy with, Mr H thought he wasn't at fault for the accident. He'd obtained independent CCTV footage of the accident and provided this to West Bay in support of his denial of liability.

Although West Bay initially disputed liability for the accident, after review of the CCTV footage, West Bay reached the decision that it couldn't determine 100% non-fault on Mr H's part. West Bay therefore thought it would be best to settle the claim on a 50/50 basis, and it proceeded to do so.

Mr H was unhappy with West Bay's decision and made a complaint. He raised the following points:-

- The liability decision
- The delay in settling the claim
- Lack of communication
- Renewal premiums
- The claim being recorded on the Claims and Underwriting Exchange ("CUE")

In response West Bay said whilst it continued to defend a non-fault stance this was disputed by the third-party insurer. It said it reviewed the CCTV footage but due to the angle it couldn't determine a 100% non-fault stance without any additional evidence to support this and it felt it would be difficult to prove should the matter proceed to court. West Bay therefore felt a 50/50 was the best outcome.

As to the delay, West Bay said there was no timescale in which to gain the third-party's admission of liability. But, it could see there was a delay in sending the CCTV footage to the third-party insurer. West Bay also felt it hadn't been proactive in progressing Mr H's claim and responding to the third-party as expected, nor updating Mr H.

Turning to Mr H's premium renewal West Bay said as there was currently an open claim it would probably affect the premium Mr H was being charged.

With regards to the entry on CUE, West Bay said it had recorded this correctly as it has a duty to record all incidents regardless of whether they are fault or non-fault. Once the claim is resolved and fully settled, CUE would be updated.

As West Bay accepted there had been a delay and lack of communication to Mr H it upheld Mr H's complaint in this respect and offered £150 compensation.

Mr H remained dissatisfied with West Bay's response, so he referred his complaint to this Service.

Our Investigator didn't recommend Mr H's complaint be upheld. He said he felt West Bay's decision was supported by the information and evidence it had been provided. And in addition to acting reasonably, West Bay had acted within the terms and conditions of the policy.

As to West Bay's offer of compensation in the sum of £150, our Investigator said he was satisfied this was fair, reasonable and proportionate and in line with this Service's published guidance. He therefore said he wouldn't be asking West Bay to take any further action.

Mr H didn't agree, so his complaint has been 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.

Firstly I'd like to acknowledge Mr H's strength of feeling on this matter along with the additional information he's provided. As Mr H has raised several issues, I'll deal with each separately.

My role isn't to consider who was responsible for the accident. It's to look at whether West Bay has carried out a fair investigation, reviewed all of the evidence it has available and reached a reasonable decision.

### **Policy Terms and Conditions**

To start, I think it would be helpful to provide a section from Mr H's policy terms and conditions to understand what West Bay is allowed to do. At page 34 of Mr H's policy terms and conditions booklet, West Bay is allowed like other motor insurance policies to:-

*"We shall be entitled to take over and conduct the defence or settlement of any claim or prosecute any claim in the name of any person covered by this insurance."*

*"We shall have discretion in the conduct of any proceedings or in the settlement of any claim".*

The general conditions of Mr H's policy therefore allow West Bay to settle the claim on the best terms it felt possible and that it has the final say in how to settle a claim. It doesn't need the agreement or consent of the policyholder, in this case Mr H, to settle a claim in a particular way. Naturally this may lead to West Bay making a decision which Mr H doesn't agree with. But that said, it doesn't mean West Bay can do as it pleases when settling a claim. Its decision must be reasonable and based on facts and evidence.

### **Fault, Non Fault and CUE Database**

I'd also like to clarify the meaning of the terms "fault and non-fault" as these are terms which have been used by the parties.

A "fault" claim is more colloquially used, but the actual terminology is "no claims bonus

disallowed". It doesn't mean the policyholder is necessarily to blame for the accident but reflects the fact where a claim has been made and the insurer hasn't recovered its outlay.

An Insurer will be required to register the claim following the Claims and Underwriting Exchange ("CUE") guidance. When recording the claim, the insurer can select bonus disallowed. This doesn't mean the policyholder was to blame; it simply means the insurer has been unable to recover all its costs in full from another party.

When liaising with customers, rather than use the term bonus disallowed, insurers will often say "fault". Use of this term can make the policyholder think they were the party to blame for the accident, rather than the correct scenario of an insurer being unable to recover all its costs.

In the alternative, a "non-fault" claim means "no claims bonus allowed". This will be where an insurer has been able to recover its costs in full from another party.

I therefore hope the above explanation will give some greater understanding when reading the sections below where these terms may be discussed.

### Decision to Settle

I appreciate Mr H feels strongly he wasn't at fault for the accident with the third-party. He's provided photographs of the damage to both vehicles and West Bay are in receipt of the independent CCTV footage of the collision. Mr H has provided detailed notes to accompany CCTV stills of the parties vehicles pre and post collision, giving his commentary of what he believes occurred and why he's not responsible for the accident.

As stated above, it's not for me to decide who was responsible for the accident but whether West Bay has taken Mr H's comments and all other evidence into consideration when deciding whether to concede liability or not.

Although West Bay did initially maintain a denial of liability on behalf of Mr H, liability was also disputed by the third-party insurer.

From the available evidence I've seen that West Bay considered the independent CCTV footage and photographs when reaching its decision to settle. West Bay has said following its review it decided liability couldn't be fully attributed to the third-party and decided a 50/50 would be the best and most likely outcome.

West Bay has said following its review of the CCTV footage it felt Mr H's vehicle was initially straddling the middle of the road and only once the third-party vehicle came into view did Mr H's vehicle start to move to the left. Within West Bay's review notes I've seen an entry which says "*PH clearly on wrong side of the road moments before collision*". I appreciate that Mr H will likely disagree with West Bay's assessment of the CCTV footage as he's said within additional information he's provided to this Service, that at the time of the accident there was no middle of the road, only cleared tyre tracks in the snow which he was following. Mr H has said the critical thing given the road conditions was to travel slowly, which he did, but the third-party failed to do.

I've seen from the available evidence that West Bay did consider the speed of both party's vehicles but felt it wouldn't be able to say that the third-party was speeding, as in its opinion the vehicles seemed to be travelling at a similar speed. I appreciate Mr H's recollection may differ and I'm not attempting to change his mind. But West Bay weren't witness to the accident, so it can't say for certain what the speed of the vehicles were and therefore it has

to base its liability decision on the evidence available. And without any additional evidence, I can't say its conclusions and the decision it reached are unreasonable in this regard.

Taking everything into account I find that West Bay followed a fair and reasonable process in assessing whether to deal with the third-party's claim. West Bay utilised the terms it was afforded under page 34 of the policy terms and conditions booklet (referenced above) as it's entitled to do.

I appreciate Mr H will be disappointed as I understand he says he was told if the third-party didn't admit liability West Bay would proceed with the matter to court, and he'd said to West Bay he would be prepared to attend. However, from the available evidence I've seen that West Bay said liability would be difficult to prove should the matter proceed to court and it would only proceed on this basis if it felt it had good prospects, which in this case it felt it didn't.

### CUE Database

I understand Mr H is unhappy that his claim has been registered on CUE as fault/bonus disallowed.

I hope however the explanation I've provided above of why an insurer is required to register the claim and that a fault/bonus disallowed entry doesn't mean that Mr H was to blame, rather that West Bay have been unable to recover all of its costs in full from another party, will assist Mr H in his understanding of why West Bay was required to take this action.

I therefore find that West Bay don't need to do anything further in this respect.

### Renewal

Mr H has said he is concerned what the impact of the claim being settled on a 50/50 basis will have on his premium. West Bay has said within its response to Mr H that the claim currently remains open as the third-party's claim has not yet settled. Therefore as the claim currently remains open and it has been recorded as a fault/bonus disallowed claim, going forward Mr H may see an impact to his insurance premium.

From the available evidence I can see West Bay suggest to Mr H once the claim is closed he should discuss this with his broker.

I therefore don't require West Bay to do anything further in this respect.

### Delay and Communication

Turning to West Bay's handling of Mr H's claim I note it has admitted delays and lack of communication and has paid £150 compensation to Mr H. I think this is fair compensation in the circumstances given the frustration the delays and lack of communication are likely to have caused Mr H. I therefore won't be asking West Bay to do anything further in this respect.

### **My final decision**

My final decision is that I don't require West Bay Insurance Plc to do anything further to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 July 2025.

Lorna Ball  
**Ombudsman**