

## **The complaint**

Miss W has complained about the way that West Bay Insurance Plc handled her claim under her motor policy following an accident.

## **What happened**

Miss W was involved in a road traffic accident with another driver on 6 December 2022. She maintained the accident was the other driver's fault. The other driver however maintained it was her fault.

West Bay investigated the accident and eventually concluded with the other driver's insurers that it was best to settle the accident on 50/50 liability between both drivers and also on a 'without prejudice' basis. This meant that Miss W and the other driver were each equally at fault for causing the accident and Miss W's and the other driver's insurers could only recover 50% each of their respective claims.

On that basis, Miss W complained that the other driver received £5,700 for his claim as she felt she should have received the same amount. However, her claim was much less in total than the other driver's claim. Miss W received around £1,000 for her car from West Bay which she bought back for £400 so she could repair it herself and continue to drive it.

When Miss W complained about this claim from the other driver now registered on her insurance record to West Bay, it responded with its final response letter on 10 February 2025 with a compensation payment of £300 for poor communication causing distress. Miss W raised further concerns on 11 February 2025 to which West Bay responded with a further final response letter of 6 March 2025 with a further compensation payment of £250. Miss W remained dissatisfied and brought her complaint to us.

Previously in February 2023, West Bay paid Miss W £75 compensation and paid another £75 compensation in April 2023.

The investigator was of the view that West Bay hadn't done anything wrong in deciding to settle this matter on the basis of 50/50 liability. Therefore, there was nothing wrong with West Bay registering the 50% claim from the other driver's claim on Miss W's insurance record. The investigator was of the view West Bay could have done more to keep Miss W informed, but he considered its payment of compensation to her in the total sum of £550 was reasonable and in line with our approach to compensation for these sorts of matters, therefore he didn't think West Bay needed to do anything further.

Miss W remained dissatisfied, so her 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.

Having done so, I'm not upholding this complaint. I do understand and appreciate Miss W will be very disappointed, so I'll now explain why.

However, before I explain why, I want to make it clear that my role as an Ombudsman is not to address every single point that has been made to date. Instead, it is to decide what is fair and reasonable in the circumstances of this complaint. So, if I have not commented on, or referred to, something that either party has said, that does not mean I have not considered it.

I will also explain that the Financial Ombudsman Service is independent of both consumers and the businesses they are complaining about. This means that we don't act for consumers, nor do we take instructions either from consumers or businesses or allow either party to direct the course of our investigations. Were we to do so, it would compromise our independence and impartiality. It's also up to us to determine what evidence we need in order to investigate a complaint.

#### *West Bay's decision on liability*

The starting point is the policy that existed between Miss W and West Bay. When we apply for motor insurance, which we must do if we wish to drive a car, once we accept the quote provided by the insurer we are also deemed to have accepted the terms and conditions of the policy.

Virtually every single motor policy has something along the lines of this term in West Bay's policy with Miss W:

*'The insurers are entitled under this policy to:*

- *Take over and conduct the defence and settlement of any claim in your name or in the name of any other person insured by your policy.*
- *Instigate proceedings at their own expense and for their own benefit but in your name or in the name of any other person insured by your policy to recover any payment that they have made under your policy.*
- *Recover from you the amount of any claim that they are required to settle by law which the insurer would not otherwise have paid under this policy.*
- *Pay the legal owner of the car in the event of a loss.*
- *Require proof of ownership and value of the insured property in the event of a loss.*

*You or any person who makes a claim under your policy must give the insurer all reasonable assistance and information in relation to any claim made under your policy.'*

Essentially this means it is for the insurer only, as in West Bay in Miss W's case, who is entitled to make any decision as regards who may be liable for causing the accident. As this is a standard clause in all motor policies, I don't find it unusual or significant. The reason for it is that insurers deal with such claims every day and indeed indemnify the policyholders for claims against them. Therefore, they are best placed to know which cases to take to court and which to settle.

This service doesn't decide who was liable for causing an accident either, only the Courts can do that, however we can look to ensure that West Bay came to its decision reasonably based on the evidence. I consider it did for the following reasons:

- There were no witnesses to the accident or any dashcam or CCTV evidence.
- Whilst the police breathalysed both the other driver and Miss W, neither were found to be under the influence of alcohol. The police obviously didn't consider the other driver was under the influence of drugs, as Miss W maintained, as they didn't pursue any drug testing.
- Both the other driver and Miss W blamed each other for causing the accident on a roundabout. Accidents which happen on roundabouts are notoriously difficult to apportion causation as invariably mistakes on behalf of both parties caused the accident, simply due to the nature of roundabouts.
- The damage to both cars was side on (albeit towards the rear in Miss W's case) instead of rear versus frontal damage which again shows the possibility of both parties being at fault instead of just one.

In West Bay's opinion, if the matter went to court it would be more likely that the court would find both parties at fault on a 50/50 basis. Given the other driver was equally as outraged and indignant about this matter as Miss W was, his insurers were also of the view that it was best to settle this as 50/50 also. Given both insurers ended up with this view, there is no other evidence to show me this was an unreasonable stance to take on the matter.

Being involved in any road traffic accident is always invariably very distressing and upsetting. It's not unusual that both drivers feel very strongly about the matter either. And of course, neither insurer was actually involved in the accident. Insurers have a duty to try and settle claims sensibly without involving the courts too. I consider that here, given the circumstances, both West Bay and the other driver's insurance in the end upheld that duty.

I can see that Miss W believes there was little damage to the other driver's car. However, the evidence doesn't show that. Further West Bay has carefully examined the other driver's insurer's evidence in relation to this and have agreed with the level of damage sustained as is its right to do. Miss W has alleged the other driver was fraudulent but I'm afraid without actual evidence of that, the allegation can't stand up to scrutiny.

So that means both Miss W and the other driver will have their individual insurance record marked with what is called, a 'fault' claim outcome for this accident. This simply means each insurer was unable to recoup its outlay for its insured's claim from the other insurer. That's because the other driver's insurers paid West Bay 50% of Miss W's claim costs and West Bay paid the other driver's insurers 50% of the other driver's claim costs. So, neither insurer had their total claim costs paid by the other insurer. This means both drivers have their individual insurance records marked accordingly.

It is not the case as Miss W maintained that she should receive into her hand the same level of funds as the other driver's insurers did. As West Bay explained, it doesn't work like that. Both drivers made claims to their respective insurers for the damage to their respective cars and had that claim paid by their respective insurers only. The other driver didn't receive a further payment from West Bay of 50% of his claim either.

When any accident occurs the fact it occurs gets noted on the driver's insurance record. It is marked fault or non-fault solely on the basis on whether the insurer has been able to recoup its outlay from the other driver's insurers.

So, having regard to all the evidence and negotiations, which did take a long time, I consider West Bay adhered to the terms and conditions of the policy and came to its decision on liability for this accident in a reasonable way on the evidence available to it, given the policy permits it to make this decision also. It explained adequately why legal advice wasn't obtained too.

### *West Bay's decision on the damage to Miss W's car*

Given the market value of Miss W's car plus the damage costs sustained in the accident, West Bay was of the view that it was uneconomical to repair her car. It gave Miss W two options, to be paid the total loss value less the excess with West Bay taking away her car, or to allow Miss W to keep her car and be paid the total loss value, less the excess and less the salvage value. This would mean Miss W could then repair her car, get a new MOT certificate ensure the DVLA knew the car was repaired and she could then continue to keep and drive her car. Miss W chose the second option.

I consider this was a reasonable offer to Miss W and fairly standard in situations where it wasn't economical to repair the car.

### *Keeping Miss W informed*

West Bay has admitted it failed in its duty to keep Miss W cogently informed at all times with what was going on. It has admitted it could have made things easier for Miss W also by keeping her more updated.

It had paid her a total of £150 compensation in 2023 before it then issued the latest final response letters in 2025 upon which Miss W then brought her complaint to us. In those two latest final response letters it also paid Miss W £300 and a further £250 compensation. So, in total West Bay has paid Miss W a total of £700 compensation for its failures to effectively keep her updated throughout this matter.

It's clear to me reading both what Miss W said and what West Bay has said that effectively the relationship between Miss W and West Bay did break down quite substantially at times. West Bay didn't do all it could have done to keep Miss W informed and Miss W then felt let down and confused about certain issues which then caused further issues to occur. Compensation is about compensating for the distress and upset caused. It is not about punishing or fining West Bay for making any mistakes. I've got no authority to punish West Bay for anything and indeed neither does any Court in the UK either.

I consider the overall compensation amount of £550 plus the previous £150 compensation to be more generous than what our approach to compensation might award in these sorts of circumstances, which is more detailed on our website. So, on that basis I consider it very fair and reasonable for the distress and upset West Bay caused Miss W in not keeping her updated. And on that basis I don't consider West Bay needs to do anything more.

### **My final decision**

So, for these reasons it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 5 November 2025.

Rona Doyle  
**Ombudsman**