

## **The complaint**

Mr S complains about how West Bay Insurance Plc handled a claim made on his motor insurance policy.

## **What happened**

Mr S said a motorcyclist collided with his car, but they agreed there had been no damage caused. Later, the police contacted Mr S about a hit and run. Mr S then told the police and West Bay what had happened. West Bay settled the motorcyclist's claim and told Mr S that the likely outcome would be 50/50 split liability.

But Mr S was unhappy with this as he thought it hadn't investigated the claim or considered his evidence. He also said West Bay hadn't kept him updated and he was unhappy that his premium increased at renewal. West Bay agreed that its service had been wanting at times and it paid Mr S £300 compensation for this. But it said the claim remained open.

Our Investigator recommended that the complaint should be upheld in part. She thought West Bay had reasonably considered the evidence available and settled the claim on a without prejudice basis whilst it continued to defend it. She thought the open claim meant that Mr S's premiums would increase. But she thought there had been delays in the claim and West Bay hadn't been proactive in keeping Mr S updated. She thought West Bay should pay Mr S £150 more for the trouble and upset caused.

West Bay agreed its communication with Mr S had been more reactive than proactive as it had nothing to update him about. It said this hadn't affected the claim or liability, which it was continuing to defend. It thought an increase in compensation wasn't justified.

## **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.

I can understand that Mr S feels frustrated that a claim was made against his policy and West Bay settled it. Mr S described what happened. He said the motorcyclist was weaving through traffic, clipped his tyre and fell off his bike when Mr S indicated to turn right. The motorcyclist, however, said he was driving straight ahead when Mr S turned right and collided with him.

The Investigator has already explained that it isn't our role to decide who was responsible for causing the accident. This is the role of the courts. Instead, our role in complaints of this nature is simply to investigate how the insurer made the decision to settle the claim. Did it act fairly and reasonably and in line with the terms and conditions of the policy? And has it treated Mr S the same as someone else in his position.

West Bay is entitled under the terms and conditions of its policy with Mr S to take over, defend, or settle a claim as it sees fit. Mr S has to follow its advice in connection with the settlement of his claim, whether he agrees with the outcome or not. This is a common term in motor insurance policies, and I don't find it unusual. Insurers are entitled to take a commercial decision about whether it is reasonable to contest a third party claim or better to compromise.

That said, we expect an insurer to reasonably investigate a claim and consider the evidence available before making its decision on liability.

The evidence West Bay had to consider was Mr S's version of events and the diagram and images he provided, the motorcyclist's version of events and engineer's report of damage to the bike. An independent witness later provided a statement holding the motorcyclist at fault as he was overtaking Mr S whilst he was signalling to turn right.

West Bay initially decided to settle the motorcyclist's claim for damage on a without prejudice basis to limit its costs whilst it continued to defend Mr S. It warned Mr S that the likely outcome would be 50/50 split liability. And it has now passed the claim to its solicitors as the other party isn't accepting liability. I think it decided this after reasonably considering the evidence available as it's entitled to do by the policy's terms and conditions. So I can't say it did anything wrong in this.

The motorcyclist's engineer's report said the bike was a total loss. Mr S thought this meant that it was totally wrecked, which was in contrast to the images he provided. But this isn't correct. The total loss was decided on the basis that the bike was uneconomical to repair. This is shown by the estimated repair cost exceeding the bike's pre-accident value. And I can see that the valuation took into account the bike's previous written-off status, its unrelated damage and its mileage. So, whilst I can understand Mr S's concerns, I think it was reasonable for West Bay to rely on this report.

West Bay agreed there had been errors in its claim handling:

- It had made a typo in the claim number which caused confusion.
- It sent the incorrect witness statement to the other insurer, which upset Mr S.
- It delayed responding to Mr S's complaint for six months, causing Mr S much frustration.
- And, it said in its response to Mr S's complaint that it hadn't updated Mr S in a four-month period and hadn't been proactive in pursuing the other party for a response to the claim. It said this may have caused some delay.

I think West Bay only needed to update Mr S when it had something new to tell him. And whilst I can understand that he wanted news, I don't think West Bay had anything new to tell him during the four months it said it hadn't made contact.

And I wouldn't usually hold West Bay responsible for the other insurer's delays and lack of response where it has chased it sufficiently. But I can't see that West Bay chased it sufficiently for a response to the independent witness's statement. And when it did, the other party pursued matters immediately. So I think West Bay most likely caused avoidable delays. This didn't affect the outcome of the claim, but I think this caused Mr S avoidable stress and frustration.

West Bay paid Mr S £300 compensation for the impact of these errors. But I'm not satisfied that this was sufficient for the impact its errors had over many months. In keeping with our published guidance, I think an award of £450 is fair and reasonable. And so I think West Bay should pay Mr S £150 further compensation.

Mr S was unhappy that his premium had increased significantly due to the claim. But, as our Investigator already explained, an open claim is treated as a fault until liability is settled. If West Bay recovers its outlay, then the claim would be changed to non-fault and Mr S's premium would be recalculated. So I can't say that West Bay has done anything wrong in this.

### **Putting things right**

I require West Bay Insurance Plc to pay Mr S £150 further compensation for the distress and inconvenience caused by its handling of his claim.

**My final decision**

For the reasons given above, my final decision is that I uphold this complaint in part. I require West Bay Insurance Plc to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2024.

Phillip Berechree  
**Ombudsman**