

The complaint

Miss H is unhappy about the way West Bay Insurance Plc has handled a third party claim against her under her Motor Insurance policy. She made a number of other complaints about how West Bay and its approved repairer handled the claim for her car, which our investigator addressed in her first view on the complaint. But Miss H made it clear in response to this that her main complaint is the way West Bay handled the third party claim against her.

What happened

Miss H was involved in an accident with a third party. She has said the third party intended to turn right and changed her mind and this meant she couldn't avoid her and made contact with the passenger side of the third party's car.

Miss H made a claim under her policy. West Bay arranged for Miss H's car to be repaired. There were some issues around this with alleged damage to the courtesy car provided by West Bay's approved repairer and some damage to the windscreen of Miss H's car while it was with the repairer.

West Bay investigated the third party claim and felt it could not defend it due to the circumstances of the accident. So, it settled it on the best possible terms. Miss H complained to West Bay about this and the issues around the repairs to her car.

West Bay addressed Miss H's complaint. It was satisfied its decision to settle the third party's claim was correct. But it felt it could have explained the rationale for its decision better to Miss H; so it paid her £200 in compensation. It also agreed to include damage to Miss H windscreen in the claim for damage to her car. And, when it made its submission to us, it offered to cover the cost of some minor damage to the courtesy car its approved repairer had provided to Miss H, along with the cost of any coolant or windscreen wash Miss H had bought for it.

Miss H wasn't happy with West Bay's response and asked us to consider her complaint. One of our investigators did this. In her first view she said what West Bay had paid for poor communication and done and offered with regards to the issues with the repairs to her car and the problems with the courtesy car were fair. But she didn't comment on West Bay's decision to settle the third party's claim. Miss H responded to point this out. So the investigator issued a second view in which she said she thought West Bay's decision to settle the third party's claim was reasonable in the circumstances.

Miss H does not agree with the investigator's view with regards to West Bay's decision to settle the third party's claim. She is adamant the accident wasn't her fault and thinks West Bay haven't properly considered the evidence; in particular the location of the damage to the cars. She's said the police told her she had the right of way. And she explained the third party came up the side of her car and she gave way and let her pull in front of her and she started to indicate. But then she smashed into the side of her car. Miss H has provided photographs of the damage to her car and the location of the incident, which she considers support her version of events and show she wasn't at fault. She feels West Bay should have appointed experts to consider the evidence, but she was told they didn't because of the

witness statement. Miss H also thinks the investigator made an incorrect statement, as she said she went into the back of the third party's car.

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.

As Miss H hasn't challenged what the investigator said with regards to the issues around the damage to her car and the issues with the courtesy car, I don't see any need for me to comment further on them; other than to say I agree with the investigator that what West Bay has paid and offered is fair.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Miss H's complaint.

Having done so, although I realise Miss H will be very disappointed to hear it, I'm satisfied that West Bay handled the third party's claim against her in line with the policy terms and reasonably.

Miss H's policy contains the following condition:

The insurer is 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.

This means West Bay is entitled to decide how it deals with a claim from a third party against Miss H. But I consider it good industry practice and an obligation under the abovementioned rules for an insurer to act reasonably when doing so. This means it needs to properly investigate the third party's claim and consider very carefully the evidence available, including the damage to the cars, the location of the incident, any witness statements and – most importantly – the evidence of its policyholder.

I realise Miss H doesn't agree, but I am satisfied that West Day did properly consider all the evidence before settling the third party's claim against her on the best possible terms. Irrespective of what it may have said, I am confident it appreciated the damage to Miss H's car was such that she couldn't have gone into the rear of the third party's car. I say this because it had photographs of the damage and an estimate for the repairs to Miss H's car and it is obvious from these that she hit the passenger side of the third party's car. However, the reality is that the witness did not see the third party coming up the side of Miss H's car or indicating' All they saw was Miss H drive into the side of the third party's car. West Bay got a special investigator to investigate whether there was a possibility the third party and the witness had colluded. And he is an expert in such matters. He investigated and said he was confident they had not colluded. This meant West Bay had to place some weight on what the witness and third party had said.

West Bay also had to consider whether, in light of the evidence, it would have any chance of defending a claim from the third party in court. And, despite the fact I have no doubt Miss H would have made a very good witness and provided a strong testimony, I think it's unlikely West Bay would have been able to successfully defend the third party's claim. I say this because normally the car behind is found to be liable for a collision, even if it doesn't contact the rear of the other car. This is because it is the responsibility of the driver behind to make

sure the way is clear before proceeding. And, as far as I can see, Miss H came from behind the third party's car. In addition, the witness only saw Miss H hit the third party's car. So, if anything, this would count as evidence against Miss H. Bearing all this in mind, I consider West Bay's decision to settle the third party's claim was a reasonable one.

I do of course appreciate Miss H doesn't think she was at fault for the accident. But, even if that is the case, this doesn't mean that it would have been possible for West Bay to defend the third party's claim. And this is why I think its decision to settle it was a reasonable one.

In view of what I've said, I do not consider it is appropriate to uphold Miss H's complaint about West Bay's decision to settle the third party's claim against her. And I agree with our investigator that the additional amounts West Bay has offered to pay Miss H for the damage to the courtesy car and coolant and screen wash represent a reasonable offer to resolve these aspects of her complaint.

Putting things right

For the reasons set out above, my final decision is that West Bay should cover the cost of the damage the approved repairer suggested Miss H had caused to the courtesy car it provided. It must also cover the cost of any coolant or screen wash Miss H bought for it, subject to her providing evidence of this.

My final decision

I uphold Miss H's complaint about the issues with the courtesy car and require West Bay to do what I've set out above in the 'Putting things right' section.

But I do not uphold Miss H complaint about West Bay's decision to settle the third party's claim against her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 18 January 2024.

Robert Short
Ombudsman