

The complaint

Mr K complains about how West Bay Insurance Plc dealt with a claim on his commercial vehicle insurance policy.

What happened

Mr K was turning right out of a side road. Mr K said the third party was indicating left to turn into the road Mr K was exiting. Mr K said the third party drove into his van instead of turning left into the junction. Because of this Mr K claimed on his policy with West Bay.

The third party insurer disputed Mr K's claim and said the third party hadn't been indicating to turn into the junction. West Bay reviewed the claim and repaired Mr K's van. West Bay initially tried to defend Mr K's claim but after further consideration West Bay accepted liability for the accident.

Mr K didn't agree and complained. He also complained about the condition in which his van was returned to him. He said the repairs to his van hadn't been completed correctly and that additional damage had been caused to his van when it was in for repair. Specifically, he said the paint on his van no longer matched due to the repair, and that parts of damage hadn't been repaired which should have been. Mr K also said his van now kept going into "limp" mode and this was related to issue with the battery and Diesel Particulate Filter (DPF). Mr K also said there were issues with the wipers and speaker on his van.

West Bay reviewed the complaint and maintained it was fair to accept liability for the accident as there wasn't other evidence it could rely upon to support Mr K's statement that the third party was indicating. West Bay didn't agree it hadn't repaired Mr K's van correctly but did agree to repair the wipers and door speaker as a gesture of good will. In regard to the other issues with Mr K's van, West Bay said it wasn't responsible and Mr K hadn't provided evidence to support his position. West Bay explained its engineer had reviewed Mr K's concerns with the repairs but didn't agree West Bay was responsible. However, West Bay did offer £150 compensation for poor claim handling. Unhappy with West Bay's response, Mr K brought his complaint here.

I issued a provisional decision on this complaint on 20 April 2023 where I said:

"The terms and conditions of Mr K's policy, like most policies we see, give West Bay the right to take over the defence or settlement of any claim, as it sees fit. That means it might make a decision Mr K disagrees with and not try to recover its outlay or settle a claim from the third party or their insurer. But we'd look at whether West Bay made a reasonable decision in doing this based on the evidence it had and the circumstances of the case.

Mr K said he was exiting a side road and the third party was turning right into the road Mr K was exiting. There was also a witness to the incident which West Bay considered, however as the witness wasn't independent, West Bay said it couldn't use their statement. West Bay also said, as there was no other evidence to support that the third party was indicating and Mr K was making a higher risk manoeuvre, it didn't think this was a claim it could defend. I've considered whether West Bay has acted fairly in deciding the liability. As it's considered the witness statement and the circumstances of the accident along with whether the claim has

reasonable prospects of success, I'm satisfied it's acted fairly and reasonably.

I've also looked at the claim handling and the condition Mr K's van was returned to him in. Mr K has listed multiple issues with his van. These include the paint not matching, bare metal being left exposed, other areas of damage not repaired, door speaker not working, washers not working, issues with the van's battery and diesel particulate filter (DPF) and ultimately a new engine being required.

To support Mr K's complaint he's provided a word document from a garage which says:

"We carried out diagnostic checks & diagnosed the adblue pump was not getting adblue through to it causing the dpf to choke. We replaced the dpf, adblue pump, cat, 4 injectors & body control module on the vehicle. All the faults in my opinion have stemmed from the vehicle being overpowered left idling with a battery charger connected causing the adblue being unable to get through to the adblue pump, therefore [sic] choking the dpf."

Mr K has also provided a quote to repair the paint on his van which says:

"Repair offside due to poor previous repair, paint flaking and miss match of colour"

West Bay reviewed Mr K's van and said its engineer didn't agree the paint was of a poor repair or that it didn't match. It also said the garage's comments didn't make sense as it wasn't possible to cause damage to Mr K's van in the way described.

Mr K has provided another report by a different mechanic which gives more detail and says they don't agree the repairs to Mr K's van are satisfactory. In particular, the report says the paintwork hasn't been "blended" correctly, the wrong bumper has been fitted and says overall the repairs to the paintwork aren't of the required standard. In regard to the electrical and mechanical issues it says:

"Reference is made to what causes BCM failure in hard impact collisions such as this. Collisions and hard impact are one of the top reasons which cause interference with the operation of the BCM and causes it to fail. This in turn causes loose wiring, the shorting of wires and in some cases excessive heat from the engine and damaged sensors which in turn interfere with the operation of the BCM. Everything on the vehicle then goes haywire which would include the vehicle over fuelling itself and the ad blue being compromised and damaged in the process."

While I've taken what I deem to be key parts of these reports, I would like to assure Mr K that I've considered them in full. However, I'm not persuaded they show Mr K's van hasn't been repaired correctly. I say this because none of the reports Mr K has provided show the issues with his van are related to the accident or West Bay causing further damage to his van when in its possession. I say this because the reports are word documents and not on headed paper, they also aren't supported by pictures and explanations as to the issues on Mr K's van, but rather say what "could" happen, not what has or link it back to the accident or West Bay's handling of the claim. I understand Mr K has provided some pictures of his van but again these pictures aren't supported by an expert's comments, and so I'm not persuaded they show the issues with the paint and a result of West Bay's actions.

The main basis for the mechanical and electrical issues relate to Mr K saying West Bay left his van idling while connected to a battery charger. And while Mr K's report says this could

cause damage, it doesn't show that is what happened here. The report, as quoted above, does say the BCM could fail due to hard impact collisions. While it does say that I'm not persuaded that means that is what's happened to Mr K's van. I say this as the report says that's what "could" happen and not what "has" happened.

West Bay has disputed Mr K's reports and said the repairing garage didn't leave Mr K's van idling with a battery charger connected. West Bay has also said its engineers don't agree damage could arise in that way. This is the same for the repairs to the bodywork of Mr K's van. West Bay said the damage to the back of the van isn't accident related and given the impact to his van was to the front offside, this opinion doesn't seem unreasonable. West Bay also said the repairer reviewed Mr K's van and is of the opinion the repairs are satisfactory. When assessing all the evidence, I have to base my decision on what I think is most likely. And considering the reports don't show what the issues with Mr K's van are exactly along with an explanation as to why the repairs aren't of satisfactory quality, I'm not persuaded West Bay needs to do any more than it has. I'm therefore not going to tell West Bay to do anything else.

I've also noted though that West Bay has offered Mr K £150 for poor claim handling, specifically related to difficulties Mr K had with contacting West Bay. When considering Mr K's complaint about the poor claim handling overall, I'm satisfied this is a fair and reasonable amount. So, I'm not going to tell West Bay to pay any more. West Bay therefore needs to pay this amount to Mr K if not already done so."

West Bay responded to my provisional decision. It said it didn't agree with most of the comments in the reports Mr K had provided. However, it did say it wasn't aware of the flaking paint and, as it expected any repairs to be lasting and effective, agreed to correct any flaking paint if it was caused by its poor repair, subject to Mr K providing evidence of this. Our investigator also let Mr K know this.

Mr K responded and didn't agree with my provisional decision. He provided the 101 call he made to the Police at the scene of the accident. He also provided MOT history for the third party's car to show it hadn't been properly maintained and also raised concerns about it being correctly insured. Mr K quoted case law which he considered to be relevant to the liability of his claim. Mr K also provided a follow up report on the flaking paint on his van.

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've considered the additional information Mr K has provided but it's not persuaded me to depart from my provisional findings.

I've listened to the 101 call Mr K has provided, and while I agree it supports his version of the circumstances of the accident, I'm not persuaded it shows West Bay acted unfairly when deciding liability. This is because West Bay considered Mr K's version of events but said there wasn't other independent evidence to support it, and so it follows that a call recording confirming Mr K's version of events doesn't persuade me that West Bay acted unfairly at the time.

However, I've also noted Mr K has provided MOT history for the third party's car alongside insurance records and said due to this new information he shouldn't be held liable for the accident. As this is new information, it wouldn't be fair for me to consider it in this decision without West Bay having the opportunity to consider it first. Therefore, if Mr K feels the condition of the third party's car means he wouldn't be liable for the accident, he should

provide this to West Bay to consider. If he's unhappy with West Bay's response about the condition of the third party's car then that would need to be considered separately to this decision.

Mr K has also referred to two different pieces of case law, one from 2003 which refers to someone exiting a side road and the other party driving down the main road indicating. In this case the courts decided the person exiting the side road was at fault. Mr K has said this case law doesn't apply to his situation and therefore said the second piece of case law is more applicable. In the second case law, from 1985, it refers to someone exiting a side road and the other party driving down the main road indicating. In this case the court found in favour of the person exiting the side road. While I've considered these it's not persuaded me West Bay acted unfairly at the time when assessing the circumstances of the accident. I say this because one case supports Mr K's position and the other doesn't. I've also noted the more recent case law Mr K provided is the one which doesn't support that he wasn't at fault for the accident. As its more recent case law, I'm satisfied it's more likely to be the relevant legal position. I'm therefore not persuaded West Bay acted unreasonably when it assessed the liability for the accident.

Finally, I've also considered the poor quality of repairs aspect. Mr K has provided another report on the paintwork on his van. And in this report, it does go into detail about why the van hasn't been painted correctly and what needs to be done to correct it. While this report is more persuasive than the previous report, it's not supported by photos of the areas of poor repair. Furthermore, West Bay has already agreed to remedy the paint flaking if it relates to the repair it did. As West Bay has agreed to review the paint flaking and correct it if it's related to the area of the van it painted. I'm satisfied that's a fair and reasonable outcome to Mr K's concerns with the paint work on his van. So, I'm not going to tell West Bay to do anything else as this is new evidence West Bay needs to be given the opportunity to consider first to identify if the flaking relates to the repair it did. Mr K should therefore provide this new information to West Bay for it to consider.

My final decision

For the reasons explained above, my final decision is that I don't uphold this complaint. I require West Bay Insurance Plc to pay Mr K £150 for distress and inconvenience if not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 July 2023.

Alex Newman
Ombudsman