

The complaint

Miss K complains about West Bay Insurance Plc (“WBI”) and their request for repayment of an insurance premium originally refunded to her when she cancelled the policy itself.

What happened

The events and circumstances of the claim are well known to both parties, so I don’t intend to list them chronologically in detail. But to summarise, in December 2022 Miss K purchased a motor insurance policy, underwritten by WBI. The policy itself was sold and administered by an intermediary, who I’ll refer to as “R”. As R administered the policy on WBI’s behalf, I will refer to any actions taken by R, or WBI, as though they were made by WBI throughout the decision, where appropriate.

Around a week after Miss K purchased this policy, she called WBI to cancel it, explaining that she intended on purchasing a new car through finance and that because of this, she’d found cheaper insurance elsewhere. But on the same call, she made WBI aware she had been involved in an accident, although no claims had been made.

WBI proceeded to cancel the policy, issuing Miss K a refund of £1,484.67. But it’s since been accepted that this refund shouldn’t have been provided, in line with the terms and conditions. And some months later, a claim was made on the policy for the accident Miss K made WBI aware of. So, WBI wrote to Miss K asking that she repay the full refund she’d received. Miss K was unhappy about this, so she raised a complaint.

R responded to this complaint. And while WBI say R didn’t have authority to respond to a complaint on their behalf, they’ve provided consent for our service to continue our investigation based on this response. So, I will assume the response is one WBI would’ve provided. In this response, R accepted they had failed to make Miss K aware that she would still be liable for the full premium paid for the policy, as she’d been involved in an incident which may lead to a claim. And a claim was made on this occasion. So, WBI, through R, offered to reduce the amount Miss K owes to £741.67 to acknowledge the error made. Miss K remained unhappy with this response, so she referred her complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They accepted R, and so WBI, failed to make Miss K aware that her full premium would be payable if a claim was made on the policy. So, they thought Miss K should be compensated for this. But they thought the reduction to the amount payable was a fair offer of compensation, considering the terms of the policy allowed them to retain the full premium Miss K initially agreed to pay. So, our investigator didn’t think WBI needed to do anything more.

Miss K didn’t agree, explaining why she felt WBI had invalidated their own terms and conditions by providing her with a refund when they shouldn’t have done. And she explained had WBI made her aware the premium would still be payable if a claim was made, she wouldn’t have cancelled the policy. So, she thought WBI should waive the entire premium amount they had been seeking, including the amount after the reduction offered. As Miss K didn’t agree, the complaint has been passed to me for a decision.

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 the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to recognise the impact this complaint has had on Miss K. I don't doubt the upset and worry she would've felt when she received contact out of the blue from WBI, requesting she repay the full refund amount she'd been paid several months earlier. And as the correspondence from WBI provided no real explanation for the request, I can understand why she'd raise a complaint about this.

From what I've seen, I think it's already been accepted by WBI that Miss K wasn't given the right information when she initially cancelled the policy. And, that the refund was paid to her in error. I can also see they've accepted they failed to make Miss K reasonably aware of why they were asking for the refund to be repaid and so, the distress this is likely to have caused. As all of the above isn't in dispute, I don't intend to discuss the merits of these issues in detail. Instead, my decision focuses on the main point that remains in dispute, which centres around what WBI should do to put things right.

And when doing so, I've had to consider the terms and conditions of the policy Miss K held with WBI. I think these make it reasonably clear within the cancellation section that *"If a claim has been made, or there has been an incident which may lead to a claim, no refund of a premium will be given and all premiums would be due"*.

In this situation, it's not disputed that Miss K was involved in an accident when her policy with WBI was in force. And it's since transpired that a claim was made as a result of this accident. So, based on the policy terms and conditions, I don't think I can say WBI are unfair to say the full premium she agreed to pay is due. And, as this was refunded to Miss K in error, I can understand why WBI would return to Miss K and ask that it be repaid.

But as well as thinking about whether WBI's actions fell in line with the terms of the policy, I also have to be satisfied these actions were fair. And after listening to the call Miss K held with R, and considering WBI's acceptance of their error, I think it's clear Miss K was mis-advised on this call, and a full refund was paid out to her incorrectly. So, I do think she should be compensated for this. But to be clear, any advice given on this call doesn't invalidate the terms and conditions of the policy she held and so, these still need to be considered when I think about what WBI should do to put things right.

Miss K has explained in detail, on several occasions, that due to WBI's mis-advice, she proceeded to cancel the policy when she wouldn't have, had they made it clear the premium would remain payable. While I can't say for certain what Miss K would've done in this situation, I note she stated within the call that she intended to purchase another car entirely.

And, within the call she didn't provide any suggestion that she wanted to add this car to the existing policy she held. Instead, from listening to the call, I think she made it clear she had already decided to cancel the policy and she'd found another policy for the new car she intended to buy that was significantly cheaper.

But that being said, this doesn't detract from the fact WBI didn't make it clear how this decision was impacted by the fact she'd had an accident that may lead to a claim. And I note

WBI don't dispute Miss K's testimony on what she would've done, so I don't intend to either.

But whether or not Miss K would, or would not, have cancelled the policy doesn't alter the fact the premium should always have remained payable in full. And that Miss K has benefited from the policy WBI provided, as they've handled a claim made against it by the third-party involved in the accident.

And I note that in their complaint response, WBI have agreed to reduce the amount payable by £743. So, as I think this £743 was payable under the terms of the policy, I do think this reduction is a financial benefit to Miss K.

And having considered this reduction against the clear distress and upset Miss K has been caused, I think it is a reasonable offer of compensation that falls in line with our service's approach and what I would've directed, had it not already been put forward.

I think it adequately recognises the distress Miss K would've felt when she was chased for a significant sum some months after she was incorrectly refunded by WBI. And I think it fairly recognises WBI's errors, and how these may have impacted the decisions Miss K chose to take based on the misinformation she was provided.

But I do think it also fairly recognises that when Miss K took out the policy underwritten by WBI, she agreed to be bound by the terms and conditions of it. And, under these terms, as Miss K did have an accident that had led to a claim on the policy WBI have needed to provide cover for, the full premium should've been payable and Miss K would've needed to cover this cost, whether she cancelled the policy or not. And while it may not cover the total cost of the new policy Miss K ended up purchasing, which I haven't seen the actual cost of, I think it also takes into consideration the possibility that adding a new car onto the existing policy, considering an accident had been recorded, would likely have resulted in an additional premium being payable as the risk to WBI had altered. So, I do think the reduction WBI have applied is a fair one, that takes into account the emotional impact caused to Miss K, and any additional financial costs she may have incurred.

So, while I understand this is unlikely to be the outcome Miss K was hoping for, I don't think I can say WBI need to do anything more on this occasion. But considering the length of time between the refund being paid to Miss K and WBI requesting payment, I would expect WBI to act positively and sympathetically to Miss K's financial situation and look to agree a reasonable way of repayment. Miss K will also need to actively engage in these conversations.

My final decision

For the reasons outlined above, I don't uphold Miss K's complaint about West Bay Insurance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 31 January 2024.

Josh Haskey
Ombudsman