

## **The complaint**

Mr A complains that West Bay Insurance Plc said he was at fault for an accident following a claim on his car insurance policy.

## **What happened**

Mr A was driving his car, with his family in it, while it was snowing. Mr A pulled out of a side road and was then hit in the rear by another driver. Because of this, Mr A called to claim on his policy for the accident.

Rather than claiming on his car insurance policy, Mr A was referred to an accident management company (AMC). The AMC reviewed the claim and repaired Mr A's car. As it was then unable to recover its outlay from the third party and it contacted West Bay to claim its costs from Mr A's car insurance policy.

West Bay said it would only authorise payment if Mr A agreed to the claim being against his policy. However, West Bay also assessed the liability of the accident and said it thought Mr A was at fault. It said it would therefore need to meet any third party claim. Mr A didn't think this was fair and complained, he said he'd pulled out of the side road and the third party had been speeding up the hill, which meant the third party couldn't stop in time.

West Bay reviewed the complaint and didn't uphold it. It said as Mr A was pulling out of a side road, and it was snowing, the responsibility was on Mr A to ensure it was safe for him to complete the manoeuvre. West Bay reviewed Mr A's dash cam footage and agreed Mr A had established himself on the main road. However, it also said as there was only one second between Mr A completing the manoeuvre and the impact, then it didn't agree Mr A wasn't at fault for the accident. Mr A didn't agree and referred his complaint here, he said he now had a £3,000 excess to pay and didn't think it was fair the third party wasn't at fault as they had been driving too fast for the conditions.

Our Investigator reviewed the complaint and didn't agree West Bay had done anything wrong. He found that West Bay had reviewed the dash cam footage, along with Mr A's testimony and the circumstances of the accident before making a decision on the liability. He therefore didn't recommend this complaint be upheld.

Mr A didn't agree for similar reasons as he'd raised previously and so the complaint has come 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.

The terms and conditions of Mr A'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 A 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 A explained he had pulled out of a side road. After he'd completed the manoeuvre and was on the main road the third party hit him in the rear. Mr A has also provided dash cam footage of the incident. I can see West Bay has reviewed the dash cam footage and concluded this wasn't a claim it could defend, as it was Mr A who was moving from a side road into the path of the third party's car.

I've also reviewed the footage and I can understand Mr A's frustration at the situation, particularly taking into account his comments about the conditions and the road being on a hill. However, without anything else to show the third party was at fault, I'm satisfied West Bay acted reasonably and in line with the policy terms when saying this wasn't a claim it could defend based on the evidence it had. I'm therefore not going to tell West Bay to do anything else.

### **My final decision**

For the reasons explained above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 February 2024.

Alex Newman  
**Ombudsman**