

The complaint

Mr S complains about West Bay Insurance Plc ("WBI") and the way they handled a claim made against his policy by a third-party insurer ("TPI"). Mr S is unhappy the claim was recorded as a fault claim against him, and he is unhappy with the impact this has had on his no claims discount and renewal premium.

What happened

Mr S held a motor insurance policy, underwritten by WBI. The policy was administered by an intermediary, who I'll refer to as "M". As M were acting as an agent of WBI and so, on WBI's behalf, I've referred to any action taken by M as if it was made by WBI throughout the decision.

Unfortunately, in June 2022, Mr S was involved in a road traffic accident on a supermarket car park. The driver of the other car reported this accident to their insurer, the TPI, and in early June, the TPI passed their allegations to WBI, holding Mr S liable for the accident in question.

WBI wrote to Mr S notifying him of the claim made against him. And Mr S responded, explaining why he felt the accident was the fault of the third-party driver, and not himself. Mr S also provided WBI with a sketch of the accident circumstances, to support his testimony. But after considering the evidence available to them, WBI decided to accept full liability and settle the claim, as they felt Mr S had admitted he was reversing at the point of impact. And they wrote to Mr S on 15 July making him aware of this decision.

Mr S took no further action until February 2023, when he received his renewal documentation. He noted his premium had increased, and his no claims discount had been affected, due to the claim being settled on a fault basis. Mr S was unhappy about this, so he raised a complaint.

Mr S wasn't happy with WBI's decision to settle the claim on a fault basis. He thought it was clear the third-party was at fault and so, he wanted the claim decision to be overturned and his no claim discount reinstated. Mr S was also unhappy WBI hadn't substantiated the third-party claim, which he felt was exaggerated. And he was unhappy with the service provided by WBI after he contacted them in February 2023.

WBI responded to the complaint and upheld it in part. They thought their decision to settle the claim on a fault basis was fair and in line with the policy terms, based on the evidence available to them. And because of this, they explained Mr S' no claims discount was impacted and so, his premiums likely impacted because of this. While they were satisfied they followed the correct process, they accepted they could've responded to Mr S sooner in February 2023, when he made them aware he was unhappy with the claim decision. So, to recognise this and any inconvenience this caused, they paid Mr S £150. But they didn't think they needed to overturn the claim decision or reinstate his no claims discount. Mr S remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn't uphold it. They thought WBI had settled

the claim fairly, in line with the policy terms. And they explained WBI had full discretion to settle the claim as they saw fit, without the acceptance of Mr S being required. And as Mr S had a claim recorded against his policy, with his no claims discount being affected, they thought it was reasonable to expect his premium to increase at renewal. They also recognised WBI's acceptance of their service failures after February 2023 but thought the £150 WBI paid was a fair offer to recognise any impact this caused and so, they didn't think WBI needed to do anything more.

Mr S didn't agree. He maintained his belief that the third-party driver was at fault, rather than himself. And he provided several comments explaining why he believed this to be the case. Mr S also reiterated his belief that the TPI's claim was exaggerated, considering the accident circumstances, and that WBI should've done more to defend it. Mr S explained having a claim recorded against him impacted his life and his reputation and so, he maintained his belief the claim decision should be overturned. As Mr S 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 Mr S. I recognise Mr S feels strongly about the accident circumstances, and who he feels was at fault. So, I can understand why Mr S would feel unfairly treated when he realised the claim had been settled on a fault basis, especially when he realised the impact this had on him financially due to his loss of no claims discount and so, an increase in his renewal premium price.

But for me to say WBI should overturn their original claim decision, or do something differently, I first need to be satisfied they've done something wrong. So, I'd need to be satisfied they failed to act within the terms and conditions of the policy Mr S held when settling the claim as they did. Or, if I think they did act within these, I'd need to be satisfied they acted unfairly when doing so. And in this situation, I don't think they have.

Before I explain why I've reached this decision, I think it would be useful to set out exactly what I've been able to consider, and how. I want to make it clear that it is not mine or our service's role to re-underwrite the claim, as we don't have the expertise to do so. So, I won't be speculating on how I think the claim should've been settled regarding liability. Instead, it is my role to consider the actions of WBI and to decide whether they were both fair and reasonable. And when considering this, I've thought about the actions WBI took and thought about what I think most other insurers would most likely have done, in the same situation.

I've seen the terms and conditions of the policy Mr S held. And these explain, within the general conditions section, that WBI *"shall be entitled to take over and conduct the defence or settlement of any claim or prosecute any claim in the name of any person covered by this insurance"* as well as stating WBI *"shall have discretion in the conduct of any proceedings or in the settlement of any claim"*.

So, based on these conditions, I think WBI were entitled to settle the claim as they saw fit and that they could take this decision without the agreement of Mr S. So, I don't think I can say WBI acted outside of these terms when deciding to settle the claim as they did.

But even so, I would expect WBI to give Mr S the opportunity to support his position, and that any evidence he provided was considered before they decided to settle on a fault basis. And I think they did so here.

I can see on 30 June 2022, WBI wrote to Mr S asking that he complete an enclosed form which requested a sketch of the accident circumstances, his testimony and any other support evidence he wished to be considered.

And I've seen Mr S received, and replied, to this request, with his statement and sketch being signed by himself on 1 July. I've seen that WBI considered this information, alongside Mr S' testimony he provided in his email to them on 22 June and from this, took the decision to settle the claim on a fault basis, as Mr S had confirmed he was reversing at the time of impact.

As I've already explained, I won't be speculating on the liability of the claim, and how I think the claim should've been settled. But, having considered the evidence available to WBI at the time which included Mr S testimony, his sketch and the TPI allegations, I think WBI's reasoning for accepting fault was plausible and crucially, I think it's likely another insurer would've taken the same decision, in the same circumstances, as there was no CCTV footage or independent witness evidence to further substantiate Mr S' position. So, I don't think I can say WBI acted unfairly when settling the claim on a fault basis.

I also must note that, after reaching this decision, WBI sent Mr S a letter confirming their decision. And I can see it was sent to the same address, in the same format, as the other letters sent before this that Mr S had responded to. So, I think it's reasonable for me to assume it was received. And even if it wasn't, I'm satisfied it was sent and so, any issue with delivery would be the responsibility of the postal service, and not WBI.

Had Mr S remained unhappy with the decision and had he more information he wanted to be considered, I would've expected Mr S to contact WBI again after this letter. But I can't see that he did until February 2023, when he received his renewal documents. And by this time WBI had settled, and paid, the TPI claim.

The terms and conditions of Mr S' policy also explain within the no claim discount section that *"if you make a claim or if a claim is made against you for an event which you may not consider to be your fault and we have to make a payment this will affect your no claim discount unless we can recover our outlay from the responsible party."*

In this situation, at the time of renewal, WBI had made a payment to the TPI on a claim Mr S didn't feel was his fault. And, WBI hadn't recovered this outlay from the responsible party as it was deemed Mr S was responsible. So, because of this, I think WBI acted fairly, and within the terms of the policy, when reducing Mr S' no claims discount to take into account the claim that had been made and settled.

And as Mr S' no claims discount has been impacted, I think it's reasonable to assume this would then impact his renewal premium, as there would be a reduced discount on his premium price, which would also need to factor in an increased risk to a previous claim. So, I don't think I can say WBI have acted unfairly regarding the no claims discount, or the increase in premium. And because of all the above, I don't think WBI need to do anything more regarding the claim decision, or the direct impact this had on Mr S' premium price and no claims discount.

I note WBI have issued a payment of £150 to Mr S to recognise the delays in them responded to his communication in February 2022. And as WBI have accepted there were failures here, I don't intend to discuss the merits of this any further. But having considered

the £150 they paid, I think this payment is a fair one that falls in line with our services approach and what I would've directed had it not already been made. I think it reflects the clear frustration Mr S would've been caused by the delays, and his need to chase WBI for information he wanted. But I think it also recognises the fact that the claim decision wouldn't, and shouldn't, have been overturned and so ultimately, he remained in the same position regarding his renewal premiums. So, I don't think WBI need to do anything more here.

I understand this isn't the outcome Mr S was hoping for. And I recognise this is unlikely to address his concerns about the claim the TPI made, and whether it was exaggerated considering the accident circumstances. But it's not our service's role to consider whether a TPI's claim was fraudulent. What I have seen is that the TPI submitted clear documentation setting out what their costs were, and why. And as WBI had already accepted liability and had discretion to settle the claim as they saw fit, I don't think I can say they did anything wrong when proceeding to issue a payment to the TPI to settle the claim in full.

My final decision

For the reasons outlined above, I don't uphold Mr S' complaint about West Bay Insurance Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 October 2023.

Josh Haskey
Ombudsman