

The complaint

Mr R complains about West Bay Insurance Plc's handling of a claim following a road traffic accident.

What happened

Mr R complains about how West Bay dealt with his car insurance claim. He says the third party driver admitted fault for the accident at the time and confirmed this in a text message. He raised his claim through the insurance broker as a non-fault accident but was informed by the third party driver that West Bay were dealing with this as a fault claim against Mr R. He says they were dealing with the claim as being 50% responsible for the accident despite the third party driver being responsible because West Bay contacted the third party driver and were wrongly told in this call that Mr R had accepted liability.

He complains about the poor communication he's had from them including lack of contact and correspondence he's received about the claim and their failure to respond to the complaint or keep him updated about the liability position.

He was unhappy with the valuation placed on his car after it was a total loss. He was offered £4241 for his car which he said was significantly less than market value. As his car was a total loss, he was not entitled to a replacement car and was forced to spend his own money to hire a car until he bought a replacement. He also points out, the offer made to him was also after the claim excess had been deducted, which wouldn't have happened if the claim was being dealt with as a non-fault claim.

West Bay wrote to Mr R in April 2023 and increased their settlement offer to £5221 which Mr R accepted. They responded with their final response letter in May 2023 saying they had dealt with liability correctly based on the information they had available. They did accept their communication had been poor and offered Mr R £300 compensation and 8% interest because of the delays in offering a new total loss settlement.

Our investigator considered the complaint and said West Bay had correctly handled liability in the claim based on the information they'd been given and once informed of the correct position within five days, they updated their liability position and so there was no detrimental impact from this. She wasn't persuaded that West Bay made a call to the third party driver and is more likely that the broker did so, and West Bay couldn't be held responsible for the information they'd been given.

She did say West Bay didn't offer a fair amount for their first settlement offer and could have communicated with him better. She concluded they should increase their offer to £400 which was a fair amount to compensate him for the issues he's encountered.

Mr R didn't agree with this outcome, so this has come to me for a final 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 will be upholding this complaint and for broadly similar reasons as the investigator.

I'd like to be clear, my role here is to consider evidence from both parties and come to an impartial conclusion about what I think to be correct. As an informal complaints resolution service, my role is not to punish or sanction a business for any wrong doings that may be established, but my aim is to put the consumer back in a position they would have been had it not been for the business' mistake.

Although I may not have individually mentioned each point, I have considered all of Mr R's complaint points along with the evidence provided throughout the life of the complaint and commented in turn on the elements that I consider to be key to the complaint.

The first is the concern around West Bay contacting the third party driver and telling him, Mr R had accepted liability. The message from the third party driver informing Mr R of West Bay contacting him was sent on 7 October but West Bay say they didn't set up the complaint until 8th October. I note Mr R's comments about when he believes the claim was set up and I can see he feels quite strongly about this. I have to consider both points, but I haven't seen any definitive evidence to establish that West Bay made this call or engaged in a conversation about liability with the third party driver. I've seen evidence of the text message the third party driver sent to him, and whilst it refers to Mr R's insurer, it doesn't mention the name of the business or person he spoke to. It is quite possible that the reference to the insurer could have been the broker. It is clear, the complaint came to West Bay from Mr R's broker after he initially reported the incident. On balance it is more likely than not, the claim details including liability status would have come from the broker. However, as I say there is no conclusive evidence to confirm West Bay did engage with the third party driver.

Mr R believes West Bay were going to settle the claim on a fault liability basis based on the conversation above while they believe they've not done anything wrong. I note his comments in relation to the total loss payment he received where a deduction for the excess of £525 had been made. Mr R says this shows he was considered liable and West Bay were dealing with it in this way, but this isn't necessarily correct. Where liability has not yet been established, or in this case confirmed/accepted by the third party, it is common practice for insurers to retain the excess payment if liability may be subject to change – this doesn't mean they considered Mr R to be liable for the accident.

I consider West Bay's actions following the initial information to be of more importance than how they recorded the initial notification of loss. On 13 October 2022, Mr R spoke to West Bay and clarified the situation, informing them he hadn't accepted liability. They then wrote to the third party insurer on 15 October 2022 to confirm the third party driver had accepted liability. So, for a period of around five days, the liability position was unclear, nonetheless this simply means their investigations were still ongoing and doesn't establish West Bay had done something wrong.

From what I have seen, there is nothing to suggest any detriment was caused in the handling of Mr R's claim because of the five days of liability being noted as fault. There doesn't appear to be any conversations or communications between West Bay and the third party insurers because of the fault status and on 11 November 2022, there is clear evidence that West Bay supported Mr R's version of events because they wrote to the third party insurer holding the third party driver at fault. It is important to point out, that any impact to Mr R from the initial incorrect liability status would easily have been mitigated if West Bay had communicated their change in liability position to him or updated him when they wrote to the third party insurer about this.

Mr R also raised his concerns around the £4241 valuation placed in the initial offer West Bay made to him. The investigator has explained our services approach to car valuations, so I won't repeat these again here. Looking at the trade guide valuations obtained, the lowest of these was £4640, and include £4826, with the highest being £5292. West Bay's offer was lower than the lowest trade guide valuation and not within the range of trade guides valuations obtained, so I wouldn't consider their offer of £4241 to be fair and reasonable.

Putting things right

I fully accept the points Mr R makes in relation to the lack of communications from West Bay. These issues haven't been disputed and they have already accepted their communications with Mr R were not handled well. In recognition of this they, offered £300 in compensation. My only consideration here would be whether I think that this is the right amount of compensation to award.

Since any potential detriment to the claim was limited to the period in which liability was incorrectly noted, and West Bay made the changes to liability when they said they would, I can't see that any actual detriment has been caused to the claim because of this. As I mentioned above, what I do acknowledge is that West Bay's communications with Mr R should have been better when dealing with his claim, and this would have prevented any further distress or inconvenience to him. In addition to this, I think their settlement offer to Mr R was unfair and it wasn't until April 2023 that a new offer was made. On this basis, I think the compensation offer should be increased to £400.

West Bay made a new offer at £5221 plus interest at 8% on the full amount from the time it should have been paid on 24 October 2022, has been accepted. As I understand it, West Bay has already issued payments for these, and if not this should be paid.

I appreciate Mr R may still has concerns around the way West Bay operate, their lack of communications and not responding to him within the time frames set out by the regulators, Financial Conduct Authority (FCA). I do not intend to trivialise the strength of his feelings in saying this, but this service has strict guidelines around what we can and can't look at and looking at how a service complaint has been handled is not within the remit of this service. I would suggest Mr R refers his ongoing concerns about this and the limitations of our service to the FCA.

My final decision

For the reasons given above, my final decision is that I uphold this complaint against West Bay Insurance Plc. Where any payment is outstanding, they should pay Mr R as above, and a total of £400 for the distress and inconvenience caused, with allowance made for any compensation payment already made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 8 January 2024.

Naima Abdul-Rasool
Ombudsman