

## **The complaint**

Mr R complained that West Bay Insurance Plc settled a third party's claim under his motor insurance policy.

## **What happened**

Mr R's named driver was driving his car when it came into contact with another driver's car in a car park. Mr R wasn't there at the time but described the incident as a "a low speed coming together". He said his car was not damaged and the other car had only minimal damage.

He reported the incident to West Bay and said he planned to resolve the matter without involving them or the third party's insurers. West Bay acknowledged his report. They said that as Mr R wasn't himself making a claim nothing further was required but if the third party required any further information, he should direct them to West Bay.

Mr R said the third party gave him a repair estimate for their car's damage. But after he asked them for an alternative estimate, he didn't receive that or hear from the third party again.

However when Mr R was later insuring another car with another insurer, that insurer told him there was a fault claim against him on the insurance database. West Bay had settled the third party claim without telling Mr R and recorded it as a fault claim. He was unhappy they'd done that without his knowledge or consent. He said they'd denied him the opportunity to challenge it. He was also unhappy that West Bay's settlement payment to the third party was more than the repair estimate the third party gave him. He suspected that West Bay had paid more than they should have.

Mr R thought that it should never have been a claim at all and that West Bay had mishandled it. He was unhappy that the claim had increased his premium on one car and would affect the others too. He said he'd spent time and money dealing with West Bay to resolve the issue. He wanted them to remove the fault claim database entry and compensate him for the damage and stress and financial loss he said they'd caused him.

West Bay apologised for what they agreed was their poor service in not telling Mr R about their decision to settle the third party claim. However they thought their decision itself was fair and they stood by it and thought they acted in line with the policy. They said they would have come to the same decision even if they'd told him first.

West Bay offered him £150 in compensation for not telling him but he wouldn't accept that.

The investigator recommended that his complaint should not be upheld. He thought that West Bay hadn't acted unreasonably in settling the third party claim and their compensation offer for failure to tell him was fair. Mr R didn't agree and so I've been asked 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.

As the investigator explained, in cases regarding liability we don't decide who was at fault for the incident. Instead we look at how West Bay have reached their decision on liability and whether they've done so in a fair and reasonable way. We also need to make sure that West Bay have acted within the terms and conditions of the policy.

On page 34 of Mr R's policy document West Bay say that they can take over and defend or settle any claim under his policy. This means that West Bay do have the final say on the matter. It's not necessary for anyone to admit liability. If Mr R wishes to be insured with them he is agreeing to this term. It isn't an unusual term and it's one that we consider to be fair.

Mr R thinks that if he'd known that the third party had claimed against his policy, he could have resolved the issue with them direct without involving West Bay. But not involving insurers was only Mr R's preference. It couldn't have been the third party's preference because they did involve their own insurers. I see from West Bay's file that those insurers contacted West Bay within a few weeks of the incident stating that Mr R's named driver was to blame. Insurers have a duty to act on a claim to them, they don't have choice to leave it to their policyholder.

West Bay thought their decision itself was fair. The third party said that the named driver had reversed into them. I can see Mr R is unhappy that they didn't ask for the named driver's side of the story. But West Bay knew that Mr R didn't deny the collision, and admitted that the third party's car was damaged, and was willing to pay for the third party damage. There were no independent witnesses, and the police had not attended the scene to make a report.

West Bay admitted that their attempts to contact the named driver before settling were unsuccessful and they apologised. But while it might have been good practice for West Bay to have told Mr R beforehand that they intended to settle the claim, under his policy West Bay can decide to settle as they think fit, without referring to him at all.

West Bay said that on the evidence they had then they could not successfully defend the third-party's claim in court and decided to settle it to prevent further costs. That's a commercial decision and we won't generally interfere with that as going to court is costly and time consuming and the result is uncertain. When Mr R complained they investigated again but said they would have arrived at the same decision even if they'd told him and checked his view, so it wouldn't have changed the outcome. I don't think they acted unreasonably in deciding as they did.

Further I can see that before West Bay settled, they had the third party insurer provide an engineer's report as to the third party repair costs claimed, with a full breakdown of those. After Mr R complained they had their engineers look at things again and confirmed those costs were reasonable and the price differential between that and the third party's first estimate was likely due to the third party insurer using a larger garage to do the repair. That's something outside West Bay's control, and they can only check if the costs are reasonable, which they did. The settlement amount also included recovery and storage costs, and this again is usual in such claims and were not unreasonable. So I don't think West Bay acted unfairly there.

I think that the £150 they have offered Mr R for their service failure is fair compensation in the circumstances. I would expect West Bay to stand by that compensation and reissue the cheque to Mr R if he hasn't cashed it or make a bank transfer to him. However while I can see that Mr R is frustrated with West Bay's decision and feels that it was unfair, West Bay

did what they were required to do under his policy. So I don't require them to do any more in that regard.

### **My final decision**

For the reasons given above, it's my final decision that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 14 February 2024.

A handwritten signature in blue ink that reads "R. Scott". The signature is written in a cursive, flowing style.

Rosslyn Scott  
**Ombudsman**