

The complaint

Miss H complains that West Bay Insurance Plc (West Bay) failed to obtain CCTV footage and a police report, following an accident claim she made under her motor insurance policy.

What happened

Miss H was involved in a collision when driving. She says the other driver was at fault and had assaulted her at the scene. She says the police attended and viewed CCTV footage of the accident. She says this showed the collision was the third-party's fault but didn't show the assault. Miss H contacted her insurance broker and made a claim.

Miss H says it has taken many months and liability has still not been confirmed. This means the claim is still open and has caused an increase in her premium. Miss H also raises concerns that she's paid her policy excess fee despite the other driver being at fault.

In its final complaint response West Bay says that unfortunately there is no definitive timeframe for resolving liability. It says it continues to hold the third-party insurer responsible. But the third-party is disputing this. West Bay says a split-liability outcome was offered by the third-party, which it rejected.

West Bay says it could've done more to source the police statement and CCTV footage. It says this wasn't highlighted in the claim information Miss H's broker sent over. But it was aware of the police involvement and the existence of CCTV footage in November 2022. This is when Miss H sent a statement outlining the incident and sketch of the collision. West Bay says it should've requested the CCTV and police report when the third-party's insurer disputed liability.

In its complaint response West Bay says it has incurred costs as a result of Miss H's claim and liability has yet to be decided. It says because of this the claim is correctly showing as no claims discount disallowed. If liability is later decided in Miss H's favour West Bay says it will change the record to non-fault and she can seek a premium refund. The business declined to refund Miss H's policy excess, which it says is payable in the event of a claim.

Miss H didn't think she'd been treated fairly and referred the matter to our service. Our investigator upheld her complaint. She says West Bay should request the missing CCTV and police report and consider liability fairly. Because it failed to do this in a timely manner she says this has likely delayed the liability decision. Our investigator says West Bay should record the open claim as no-claims bonus allowed, until liability is decided. It should also pay £200 for the distress and inconvenience the delay caused Miss H.

Miss H accepted this outcome. West Bay didn't respond.

As an agreement wasn't reached the complaint has been passed to me to decide.

I issued a provisional decision in November 2023 explaining that I was intending to uphold Miss's complaint. Here's what I said:

provisional findings

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 upholding Miss H's complaint. Let me explain.

I'm sorry to hear that Miss H was assaulted after the collision she was involved in. This must have been very upsetting. I hope she is now feeling better. But for clarity, the assault is a matter for the police. This isn't something I can consider here. I can, however, consider whether West Bay handled Miss H's claim effectively.

When Miss H provided information about the claim to her broker, it sent this information to West Bay. I've read the information that was sent. This says no CCTV was available. But it does confirm that the police attended the incident.

I acknowledge what West Bay says about the statement and sketch it received from Miss H in November 2022. I agree it should've been alerted to the availability of CCTV at this time. But it should've been aware of the police attendance from the information the broker sent. This was re-confirmed in Miss H's statement.

West Bay says it should've made efforts to obtain the police report and CCTV at the time the third-party's insurer disputed liability. I agree. Although it could reasonably have done so at the time it received the first notification of loss information. The police's involvement was clearly identified.

It's clear that West Bay informed the third-party's insurer at the outset that it considered its driver to be at fault. I'm aware that it can take time to decide liability where the opposing parties blame each other. But we expect West Bay to handle all claims effectively to ensure fair outcomes in a reasonable timeframe. In these circumstances I don't think West Bay handled Miss H's claim effectively.

I say this because video footage is important evidence when establishing blame for an accident. In her statement to West Bay Miss H says the police attended and confirmed the incident could be seen on the CCTV footage. The business was also made aware that the police had attended when the claim information was originally provided. If this information had been obtained and provided to the third-party, it's likely that liability would've been decided sooner. As it is Miss H's claim has remained open since the incident occurred in September 2022.

In these circumstances as liability has yet to be confirmed, and West Bay has incurred costs dealing with the claim, it's correct that the claim remains open. If liability is decided in Miss H's favour she can then ask West Bay, or her current insurer if she's no longer with West Bay, for a premium refund. But I don't agree with our investigator that it should record the claim as no-claims bonus allowed until liability is decided. Regardless of the delay in obtaining relevant evidence, liability has yet to be decided, so the claim should remain open as West Bay has confirmed.

For the impact its poor claim handling has had on Miss H I agree with our investigator that West Bay should pay her £200 compensation. This is in addition to the £100 it's already paid.

West Bay should request the police report and see if CCTV footage is still available, albeit this is now unlikely. If once a liability decision is reached, Miss H remains dissatisfied, she can complain to West Bay. If West Bay doesn't resolve the matter to her satisfaction she can

then ask our service to consider her complaint.

I said I was intending to uphold this complaint and West Bay should:

- pay Miss H £200 compensation for the distress and inconvenience it caused; and
- request the police report and CCTV footage for consideration in Miss H's claim.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Miss H responded to say that when she moved insurers it told her that this claim was still open. This impacted on the premium she had to pay. She says she also rides a motorcycle and is concerned this will impact this premium as well. Miss H asks how long the claim will remain open.

In her response Miss H says the police joked with her about how 'cut and dry' the situation was based on the CCTV footage. She says it was clear which vehicle was stationary and which had been moving. Miss H says she accepts my provisional findings but needs to know if the claim is still going to show as open.

West Bay responded to say it accepted my provisional decision. It says it has allowed Miss H's no-claims bonus on a goodwill basis, but the claim remains open pending liability investigations that are ongoing. It says the outcome of these investigations will ultimately determine whether the no-claims bonus is affected. West Bay says if there is no CCTV, and the police report doesn't provide any useful information this is unlikely to be a non-fault claim.

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.

I've thought carefully about Miss H's further comments. As I discussed in my provisional decision I didn't think it was fair that West Bay hadn't tried to obtain CCTV footage or the police report. This is important information relating to the liability decision for her claim. I said that West Bay should request the CCTV and police report for consideration. I also said it's correct that the claim remains open until a liability decision is reached.

I note Miss H's comments that the open claim has increased the premiums she had to pay to her new insurer. And will potentially increase her motorcycle insurance as well. In my provisional decision I said that once liability was decided Miss H can ask her insurer(s) for a premium refund if a non-fault decision is made. We expect West Bay to handle Miss H's claim effectively, but I'm not able to tell her when this will be completed. If she has concerns she should contact West Bay to discuss this. If she isn't satisfied with how it handles her claim from here she can raise a complaint.

I note West Bay's comments about the liability decision. But as this has yet to be decided I can't comment further here. My decision is that it should request the missing information and consider this within its liability decision.

So, although I have carefully considered the further comments provided by both parties, this doesn't warrant a change to my findings.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Miss H's complaint. West Bay Insurance Plc should:

- pay Miss H £200 compensation for the distress and inconvenience it caused; and
- request the police report and CCTV footage for consideration in Miss H's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 26 December 2023.

Mike Waldron
Ombudsman