

The complaint

Ms E has complained that West Bay Insurance Plc is seeking recovery of costs from her for a claim it dealt with under the Road Traffic Act as the last insurer of Ms E's car. West Bay avoided Ms E's car insurance policy for misrepresentation following the claim. This meant it didn't deal with Ms E's claim for damage to her car.

Ms E is being helped by her son in bringing her complaint. For ease I will refer to all comments as being Ms E's unless it's necessary to refer to her son explicitly. All reference to the insurer West Bay in my decision includes its agents.

What happened

Ms E bought a car insurance policy with the insurer West Bay. She made a claim following an incident where Ms E's car damaged property which belonged to a third party. West Bay said Ms E had misrepresented the information provided when she applied for the policy. So it avoided her policy (treated it as though it didn't exist) and didn't deal with her claim for damage to her car.

Ms E brought her complaint about West Bay's decision to this service and received a final decision in September 2021. The ombudsman said that West Bay's decision to avoid the policy was reasonable. They said West Bay should refund the premium Ms E had paid under the policy. Ms E accepted the decision.

In December 2023 Ms E contacted this service to raise a complaint about West Bay. She was unhappy that it was seeking recovery of the claim costs from her. These were for the third party's claim for damage to their property and storage and recovery costs for Ms E's car. West Bay didn't uphold her complaint.

Ms E raised the following points with this service:

- That it was unreasonable for West Bay to seek recovery of the claim costs two years later as the matter had been agreed and settled in September 2021.
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- The claim costs included storage costs which she thought were high, and;
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- The question West Bay asked when she bought the policy wasn't clear enough.

Ms E asked for the previous case to be re-opened.

Our Investigator didn't recommend the complaint should be upheld. He explained that West Bay was obliged to deal with the third party claim which it received in May 2022 under the Road Traffic Act. And so he didn't think it unreasonable for West Bay to seek recovery of the claim costs from Ms E.

Ms E disagreed. She says this should have formed part of the previous decision. She says she wouldn't have accepted the previous final decision if she had known it wasn't in full and final settlement of matters. She wants the previous matter reopened.

Our Investigator explained that our decision dated 30 September 2021 was final and binding on both parties. So it cannot be reopened.

Ms E said she shouldn't be responsible for the full storage costs as West Bay caused a delay here.

The Investigator found there was no undue delay in the time between recovering Ms E's car from where it was moved after the incident to an approved repairer (AR). And he found that West Bay had absorbed the costs of returning Ms E's car to her when it avoided her policy.

The Investigator acknowledged there had been a delay in West Bay looking to recover the costs – and while this must have been a shock – he found this delay didn't change the fact that it was entitled to seek recovery of those costs.

Ms E disagrees. She has referred back to the original complaint about West Bay's decision to avoid her policy and the question asked when she bought the policy.

So as Ms E disagrees, the case has been passed 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.

As the Investigator explained, the complaint raised and investigated by this service in 2021 cannot be reopened as a final decision was given, which Ms E accepted.

I understand Ms E believes as she accepted the final decision, this means West Bay cannot look to seek recovery of claim costs at a later date. But this is a separate new complaint. From the information available to me, West Bay received a claim from the third party's representatives for their damages in May 2022.

I don't find that the claim costs West Bay are looking to recover – which include both the third party's damages and storage and recovery fees for Ms E's car – are unreasonable. I don't find that West Bay caused an undue delay. The time period from the date of the incident to the date Ms E's car was moved to the AR was 11 days. West Bay didn't include the costs to return Ms E's car to her from the AR after its decision to avoid the policy.

I can completely understand Ms E's shock when West Bay wrote to her in May 2023 to look to recover the claim costs. But West Bay was obliged to deal with the third party's claim as the last known insurer in line with the Road Traffic Act 2015. The Act serves to provide indemnity for innocent third parties when an incident happens. And so West Bay's actions in settling the claim and looking to recover the claim costs from Ms E are not unreasonable.

It's not clear why West Bay didn't contact Ms E to recover the full claim costs until a year after it received a request to pay the third party's outlay. However, I can't say that this put Ms E in a worse position – as she has not been required to settle the claim costs sooner.

My final decision

I'm sorry to disappoint Ms E. But for the reasons I've given 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 Ms E to accept or reject my decision before 13 August 2024.

Geraldine Newbold
Ombudsman