

## The complaint

Mr C has complained about West Bay Insurance Plc's handling of a claim under his motor insurance policy.

## What happened

The background to this complaint is well known to the parties and it serves no purpose for me to repeat the details in full here. In summary Mr C submitted a claim following a collision between his vehicle and a third party vehicle on 21 December 2022. He collided with stationary third party vehicle on a slip road. He was unhappy with the investigation of his claim and the way West Bay settled it.

Our investigator didn't recommend that the complaint be upheld – he didn't find that West Bay had done anything wrong.

Mr C submitted a detailed appeal.

However following his view West Bay agreed to reimburse Mr C £38.50 if he could provide evidence of onward travel costs.

I issued a provisional decision, saying as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I've summarised the background to this complaint - no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I'm grateful to Mr C for the comprehensive presentation of his complaint. And if there's something I haven't mentioned, it isn't because I've ignored it. I've reviewed the file and considered the representations Mr C has made with care.*

*In this provisional decision I have considered the actions of West Bay and its agents only. Markerstudy Insurance Services Limited is an appointed service provider to West Bay – but for simplicity I will just refer to West Bay. Markerstudy is authorised in its own right, but here it was acting on behalf of West Bay, who underwrites Mr C's policy.*

*I recognise that Mr C will be disappointed by my provisional decision, but I agree with the conclusions reached by our investigator for the following reasons:*

- *West Bay is based in Gibraltar but has joined the voluntary jurisdiction of this service. In doing so it has agreed to be bound by the Standard Terms and other relevant provisions of the Financial Conduct Authority's handbook. Accordingly in determining this complaint I have taken into account the relevant regulatory rules and guidance in order to decide whether Mr C has been treated fairly by West Bay and its agents. Mr C has made reference to the Consumer Duty, although the matters about which he complains pre-date the Act coming into force on 31 July 2023.*

- *Complaints can be brought against firms regulated by the Financial Conduct Authorities as well those that have joined our voluntary jurisdiction. But as indicated this decision only concerns the actions or omissions of West Bay Insurance Plc and its agents. The party that sold the policy to Mr C isn't an agent of West Bay. Mr C has said this service's focus on West Bay appears to be an attempt to defend the other parties named in his complaint. This is not so. We are an independent service; we are impartial and not an advocate for either party.*
- *Mr C is aware that this service doesn't regulate insurers. I haven't disregarded his concerns but am not in a position to comment or take action. The matters that Mr C has asked this service to consider with regard to regulatory issues can be directed to the relevant regulator. We don't maintain 'regulatory oversight' of regulated firms; rather we consider individual complaints.*
- *Turning to the submission of his claim, I appreciate that it would have been distressing for Mr C to be told initially that West Bay had concluded that he was at fault. However he did later submit his Report of Claim, although I can see that he had some difficulty doing so. The claim submitted on 19 January 2023 was not accepted by the server as it was over the standard size accepted and Mr C was advised to send his claim direct to the inbox of a claims handler, which he did. I can understand that Mr C would have been frustrated that his claims submission wasn't initially accepted. But overall I don't find that Mr C was prevented from submitting his detailed submissions or that there were significant failings in the handling of Mr C's claim.*
- *As this service cannot determine liability, we will look to see that the insurer has properly assessed the claim. But, as Mr C accepts, it is entitled to determine liability in accordance with the policy terms which provide that West Bay can take over a claim and settle it as they see fit. For completeness, I don't agree that this is an unfair contract term.*
- *So West Bay had the ultimate and final say in how to settle the claim. But it needed to exercise this right fairly and reasonably, taking into account the evidence provided. Mr C feels strongly that West Bay didn't obtain a third party statement, but I can see that West Bay did consider Mr C's representations contained in his claims report. There is nothing to suggest that West Bay didn't consider what Mr C suggests are red flags. Additionally in its final response it confirmed that it had 'considered all your points including quotations from the Highway Code'. I don't find it was automatically unfair and unreasonable to reach a conclusion without requiring the third party to explain their actions on the day, as Mr C suggests. Likewise, I don't think that by finding Mr C at fault means that West Bay condones the driving or actions of the third party; rather it didn't feel it would be able to defend a claim if the matter went to court.*
- *I recognise how strongly Mr C feels about this matter and I understand why. He has a long and unblemished driving history and an exemplary driving record. I note too his extensive submissions with regard to the third party, their actions and breaches of the Highway Code. However West Bay reached the conclusion that it wouldn't be able to defend liability as Mr C had driven into the rear of the stationary third party vehicle. In all the circumstances I don't find that West Bay failed to investigate the matter or treated Mr C unfairly in arriving at the conclusion that it did. This being so there is no basis for me to require West Bay to correct the recording of the incident or to reinstate Mr C's no claims discount to its previous position.*
- *Following our investigator's view West Bay agreed to reimburse Mr C £38.50 incurred for onward travel when his car wasn't drivable. It requested Mr C provide*

*receipts in support. I think that is fair.*

My provisional decision was that I was not minded to uphold Mr C's complaint for the reasons given. I said I'd look at any more comments and evidence that I received but unless that information changed my mind, my final decision was likely to be along the lines of my provisional decision.

Mr C submitted a detailed response. He did not accept my provisional decision, with which he was dissatisfied and disappointed. Amongst other representations he said:

- The Consumer Duty should apply to his complaint.
- There is a lack of evidence to support the Ombudsman's findings.
- The Ombudsman advocates for West Bay.
- The Ombudsman refused to make any assessment of West Bay's regulatory compliance.

### **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 carefully thought about Mr C's detailed response to my provisional decision. However nothing Mr C has said persuades me to reach a different conclusion to that reached in my provisional decision. I adopt the reasoning contained in my provisional decision here.

As I said in my provisional decision, we are an independent service; we are impartial and not an advocate for either party. Inevitably one party will be disappointed with the outcome to a complaint. I understand why Mr C feels strongly about this matter, and I expressed that in the penultimate bullet of my provisional decision.

Reaching a provisional conclusion that West Bay had done nothing wrong on this occasion doesn't support Mr C's contention that I was advocating for West Bay. Rather I was determining the complaint by reference to what was, in my opinion, fair and reasonable in all the circumstances of the case.

In doing so I took into account the regulator's rules and principles by which West Bay must abide, in particular here West Bay's obligation to handle claims fairly - ICOBS 8.1.1(1). Whether or not West Bay was adopting Consumer Duty for business practices prior to July 2023, it wouldn't be fair to determine this complaint through a Consumer Duty lens when the Consumer Duty Principle only came into force from 31 July 2023 and doesn't have retrospective application.

West Bay *is* entitled to determine liability in accordance with the policy terms which provide that it can take over a claim and settle it as they see fit. I apologise if I wrongly credited Mr C with accepting this. However I carefully considered the submissions that Mr C made with regard to the third party and West Bay's assessment of his claim in the light of those. But having considered all the evidence I was satisfied, and remain so, that West Bay assessed the claim fairly in the light of the circumstances.

Finally the Financial Ombudsman Service was set up to resolve certain disputes quickly and with minimum formality – this may mean we don't answer all questions posed by either party, but that we will determine complaints by what we find to be the key issues.

I'm sorry that my decision doesn't bring Mr C welcome news.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 December 2024.

Lindsey Woloski  
**Ombudsman**