

The complaint

Mr W complains that West Bay Insurance Plc (“West Bay”) declined a claim on his motor insurance policy.

What happened

Mr W had a motor insurance policy with West Bay covering his car.

In March 2022, Mr W was driving his car in poor weather when he crashed. His car was recovered by the manufacturer to one of their garages and the manufacturer told Mr W it was a write-off.

Some confusion happened around this time because West Bay had it recorded that Mr W was going to use his own choice of repairer, but Mr W wanted West Bay to handle the claim.

West Bay recovered the car and its engineers examined it and produced a report and valuation for the car, which it'd deemed written-off. The valuation was lower than Mr W expected, so he complained. West Bay then increased its offer to £25,750, less the excess.

West Bay provided Mr W with a courtesy car, which was a small hatchback.

Mr W was asked to send his bank details and various documents to West Bay so it could send him the payment.

About two weeks later, Mr W chased up West Bay because he still hadn't had the money. West Bay then declined his claim. It said the rear tyres on his car were below the minimum standards as they were measured at 0.6mm. It said its engineers thought that the worn tyres were “on the balance of probabilities the cause of the accident”. West Bay referred to this part of its policy wording:

“Where you fail to maintain the insured vehicle in a roadworthy condition, or you fail to look after it in accordance with General Conditions 2 of this policy;”

2. Looking after your car You or any permitted drivers are required to maintain the insured vehicle in a roadworthy condition.”

West Bay did agree that its service had been poor, with long call wait times and a lack of updates being provided to Mr W. It paid him £150 for his distress and inconvenience.

Mr W remained unhappy, so he brought his complaint to this service. There are a number of complaint issues and questions:

- Why wasn't the tyre condition listed in the report?
- Why did he receive an offer after West Bay had sight of the report?
- His private number plates are no longer with the vehicle.

- The car was returned to him in poor condition, with a substance like cement on the interior, and exterior.
- He asks for proof that "the illegal tyres are a contributing factor and on the balance of probabilities the cause of the accident".
- He asks how West Bay can know that the wear was not caused when he crashed and skidded.

He asks for the claim to be paid according to the settlement offer. He also mentions that the courtesy car he received wasn't the type he was promised when he bought the policy, which was a like-for-like replacement.

Our investigator looked into Mr W's complaint and didn't uphold it. He said he thought West Bay had acted fairly by declining the claim under the terms and conditions of its policy.

Mr W didn't agree with the view. He asked that his complaint was reviewed by an ombudsman, so it has been passed to me to make a final decision.

I issued a provisional decision to give both parties the opportunity to consider things further. This is set out below:

Mr W's complaint about West Bay covers several areas, so for ease of reading I've divided it up and dealt with each part separately.

Courtesy car

I can see that West Bay have already told Mr W this, but his arrangement for a like-for-like courtesy car was with the broker he'd used to arrange his insurance policy, rather than West Bay. Under the terms of West Bay's policy, it offers:

"The courtesy car will normally be a small hatchback of less than 1200cc."

So, West Bay have complied with the terms of its policy. If Mr W wishes to take this issue further, he should contact his broker.

Report

From the evidence I have, I can see that the initial report didn't mention anything about the tyre tread. But I wouldn't necessarily expect this, because that type of report is to assess the car to establish whether it could be repaired or whether it would be a write-off.

Having looked at the pictures taken by West Bay of the car after the accident, I can see clearly that at least one of the rear tyres is substantially without tread. West Bay has said it measured the tread depth on the rear tyres at 0.6mm. This would normally be taken as an average across the tyre, and having looked at the evidence I think it's fair to accept this as valid.

Mr W has said in his complaint that the wear could have been caused in the accident, when his car slid across a major road. I've thought about this carefully and it seems to me that the wear on his tyres look like normal wear and tear, rather than the sort of damage that would happen in a crash. I say that because the surface looks polished smooth and generally worn, rather than being "flat-spotted" or rough.

It's also reasonable to say that tyres generally wear the same across an axle, so I can fairly

say that the other rear tyre was in similar condition to the one pictured.

Rejection of the claim

Having established that the rear tyres were, on the balance of probabilities, very worn before the accident happened, It's important that I examine West Bay's policy wording to establish whether it's able to reject the claim because of the condition of the tyres.

I've already mentioned the appropriate part of the policy wording above. I think it clearly explains the circumstances when insurers won't provide cover. And this type of policy condition is common in motor insurance, so I don't think it's unfair.

With the rear tyres in the condition I've mentioned above, I think it's fair and reasonable of West Bay to say Mr W's car wasn't in a roadworthy condition, so I'm persuaded it can decline Mr W's claim under the terms and conditions of its policy.

Timing of the rejection

West Bay sent Mr W its first offer about 23 days after the accident. It had already examined the car at this point and taken the photos I've referred to above. Mr W rejected the offer about two weeks later, and West Bay then increased its offer another two weeks later.

But I don't think West Bay have provided Mr W with the level of customer service we'd expect. He chased West Bay many times, staying on hold for up to three hours each call. When West Bay made him the offer for his car, it had the photos I've seen, so it could already have known there were issues with the condition of the car, which would impact on its acceptance of Mr W's claim.

Where a business has made an offer in error, which they later withdraw based on further evidence, this doesn't mean we'll say they must stand by the offer. West Bay made a mistake in making Mr W two offers before it'd properly considered the engineer's report and photographs. It was ultimately about six weeks between the initial offer and the rejection of the claim, and it was Mr W who chased up West Bay and caused it to respond.

It's unclear to me why West Bay took so long to consider and make a decision about the claim given the evidence it had. Because of the way West Bay handled Mr W's claim, he's suffered significant distress and inconvenience.

But it wouldn't be right for me to say West Bay should pay the sum they offered Mr W for his car. If he'd kept his car maintained and serviced, and carried out the appropriate checks on it, then I don't think Mr W would be in the position where his claim has been declined.

Vehicle condition and number plates

Mr W has told this service that his car was returned to him in poor condition:

"with what looks like cement all over the interior, and cement splash marks all over the wheels & front of the car"

He comments that he doesn't think its acceptable for West Bay to return his car like this, and has sent this service evidence of it. I can see from West Bay's engineer's pictures that shortly after the accident the car was free of external cement marks. I agree with Mr W that West Bay should have taken better care of his property, so I think it's fair that I ask West Bay to clean Mr W's car to compensate him. I'm aware Mr W's car was written-off, so he may have disposed of it. In which case I'd ask West Bay to pay Mr W a reasonable price for a

valet clean in his area.

In later correspondence, Mr W mentions that the personalised number plates haven't been returned to him. As part of his personal belongings, I'd expect these to be returned to him along with the car, so I'd ask West Bay and Mr W to liaise to make sure all of his belongings are present.

Service

I think it's clear that West Bay's handling of Mr W's claim has been poor throughout, and it had already offered him £150 compensation for his inconvenience and long hold times. But I don't think this is enough. I think West Bay has been in possession of the information it needed to deal with the claim from very early on in the process, and it made two offers to Mr W before eventually declining his claim. Mr W has been caused a loss of expectation by withdrawal of the offers, so I think the compensation should reflect this and West Bay's poor service.

Taking everything into account, I think the appropriate level of compensation is £500 (an additional £350 over the £150 already paid).

Responses to my provisional decision

West Bay said it had been told Mr W's number plates had been taken by the initial recovery company who rescued Mr W after his crash. This recovery company was chosen by Mr W, so West Bay said he should contact that company to find them. West Bay also said it would pay the reasonable cost of an exterior clean to Mr W's car, but it couldn't see evidence of the interior needing cleaning. It agreed to pay Mr W £500 compensation in total for his distress and inconvenience.

Mr W didn't respond to my provisional 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.

Because Mr W didn't respond to my provisional decision, I have looked at the information sent by West Bay. Having considered it, I agree that the evidence I have shows cement marks on the exterior of the car. So I think it's fair to ask West Bay to pay for the reasonable cost of exterior car cleaning in Mr W's area. I can see online that a car wash is available for around £25.

West Bay's explanation about the number plates is logical and persuasive, and in the absence of further evidence from Mr W I can't ask West Bay to return something it doesn't have possession of. Mr W should contact the initial recovery company to locate his number plates.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part. I direct West Bay Insurance Plc to:

- Pay the reasonable cost of cleaning the exterior of Mr W's car, which is £25.
- Pay a total of £500 compensation for his distress and inconvenience. I'm aware that

£150 has already been paid.

West Bay Insurance plc must pay the amount within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this, it must also pay interest on the amount from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 January 2023.

Richard Sowden
Ombudsman