

The complaint

Mr M complains that West Bay Insurance Plc disposed of his van without his consent following a claim made on his commercial motor insurance policy.

What happened

Mr M's van was damaged and West Bay said it was beyond economical repair. An engineer assessed the van as a Category S total loss, but West Bay's engineers said it was a Category B. And so West Bay said it was obliged to dispose of the van's salvage. But it didn't tell Mr M this first. It paid Mr M the salvage value, but Mr M was unhappy as he said he'd been offered £4,000 for the van's scrap. West Bay offered Mr M £100 compensation for its poor communication. But Mr M didn't accept this.

Our Investigator recommended that the complaint should be upheld. He thought West Bay shouldn't have disposed of the van without informing Mr M. And he thought Mr M had lost out as he thought it was likely an independent engineer may have found the van to be a Category S total loss. So he thought West Bay should pay Mr M £4,000, less the salvage amount it had already paid him.

West Bay replied that the damage to the van and the cost of repairs made it a total loss. It said it had followed the industry code of practice in declaring the van to be Category B.

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 can see that Mr M made an earlier complaint to West Bay that his policy had been voided (cancelled from the start) and so his claim was declined. This was brought to our service and an Ombudsman issued a final decision not upholding this complaint. So I won't comment on this further. But, in the meantime, West Bay had recovered Mr M's van to its salvage agent. It had been declared to be beyond economical repair and West Bay needed to decide what to do with it.

Our approach is that when a vehicle is "written off" and deemed a total loss under a motor insurance policy, as Mr M's van was, the insurer, in this case West Bay, becomes the owner of the salvage only after the consumer accepts payment of the van's full market value. This didn't happen in Mr M's case as the policy was declared void. But this meant the claim was closed and so West Bay wasn't the van's owner.

Our stance is that where the consumer asks to keep the salvage, we expect the insurer to allow this. The van is, after all, the consumer's property and they should have the right to keep it if they wish to do so.

I've looked at West Bay's case file. I can see that the van was initially assessed by an engineer as a Category S total loss. This meant that the van was repairable, but the insurer had assessed it to be beyond economical repair.

West Bay then sought to return the van's salvage to Mr M. He said he didn't have a drive way and so it wasn't delivered to him. I can't see that Mr M then wanted to retain the van's salvage, but he did offer to sell it to West Bay's salvage agent.

West Bay's in-house engineers then assessed the van to be a Category B total loss based on a desk top review. This meant that the van had structural damage that meant it should be kept off the road, but it could be broken up for spare parts.

West Bay said that it couldn't return the van to Mr M as it was a Category B total loss. But we think that the duty to dispose of salvage in this case applies to the owner. So if the consumer retains the salvage it's then up to them to dispose of it if this is required. Where a consumer wants to retain salvage for a Category B write-off we look to see whether it's likely they'd be able to break the vehicle for parts and dispose of it appropriately.

If we think the consumer had the means to break and dispose of the vehicle, the insurer may need to compensate the consumer for the cost of the parts or the loss of opportunity to sell the parts. The cost to the consumer of keeping the salvage would then need to be factored in to any loss.

In Mr M's case, West Bay disposed of the salvage and paid Mr M the balance after deducting its costs. Mr M received this cheque, but he said he thought it was for a refund of premium. There was no accompanying explanation for the payment.

Seven months later, Mr M complained that West Bay had disposed of the van without his permission. He said that he had wanted to have his own engineer assess the van's salvage category and then sell the van for parts. West Bay agreed that it should have discussed the disposal with him. And so Mr M had lost the opportunity to challenge the salvage category. It offered him £100 compensation for this and for the loss of any personal possessions left in the van.

But I'm not satisfied that this goes far enough in the circumstances. I can see that the first assessment was based on a physical inspection of the van, while the second was based on a desk top review. A further assessment by Mr M's engineer could have found the van to be Category S or B. But it's now too late to decide this.

But Mr M has provided evidence from a disposal agent with an offer of £4,000 for the van's parts. This was offered before West Bay disposed of the van. And so I think Mr M had the means of disposing of the van's scrap appropriately. I think that if West Bay had told Mr M that it intended to dispose of the salvage, then Mr M could have sold the van's parts for scrap, as he was entitled to do. So I think West Bay's mistake has caused Mr M detriment and it should put this right.

Our Investigator recommended that West Bay should pay Mr M £4,000 compensation for his loss, less the amount it has already paid him for the van's salvage. I think that will fairly and reasonably restore Mr M's position. I don't require West Bay to add interest to this amount as I think Mr M could have brought this to West Bay's attention sooner. I think West Bay's offer of £100 compensation for the trouble and upset caused by its poor communication is fair and reasonable as I can't see that Mr M was unduly distressed by West Bay's error.

Putting things right

I require West Bay Insurance Plc to pay Mr M £4,000 compensation, less the salvage payment it has already paid him, for the loss caused by its disposal of his van.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. I require West Bay Insurance Plc to carry out the redress set out above.

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

Phillip Berechree
Ombudsman