

The complaint

Mr M complains about West Bay Insurance Plc's handling of his home insurance claim.

West Bay is the underwriter of this policy i.e. the insurer. Part of this complaint concerns the actions of its agents. As West Bay has accepted it is accountable for the actions of the agents, in my decision, any reference to West Bay includes the actions of the agents.

What happened

In May 2022, Mr M made an escape of water claim under his home insurance policy with West Bay. Water ingress from a neighbouring property had caused damage to Mr M's lounge, basement storeroom and some contents.

West Bay instructed their loss adjusters to deal with the claim. Arrangements were made for drying equipment to be installed and a property maintenance company were appointed for repairs to the building.

Mr M raised concerns that the drying equipment had been removed too soon as there were signs of damp in his property. West Bay said it would arrange for the property to be reinspected. It later told Mr M that the property had been dried to its pre-loss condition. It said that as the basement was not tanked, there was rising damp which was causing the current dampness.

West Bay told Mr M that due to the pre-existing damp, he would need to sign a disclaimer before repairs to his storeroom could be completed by its contractors. Mr M disputed there was rising damp, but he said he was looking into appointing a contractor to install a damp proof course. He said he wasn't comfortable with signing a disclaimer because he wasn't convinced West Bay had taken sufficient measures to dry the storeroom.

West Bay told Mr M it could offer him a cash settlement based on what it would cost its contractors to carry out the work. Mr M queried the amount West Bay said it would cost and provided a quote from his own contractor, which was much higher.

West Bay said Mr M's contractor's quote included some elements that weren't covered by the claim, and it was trying to get a breakdown from Mr M's contractors. It suggested Mr M might want to get a second quote for cost comparison.

After some further discussion, Mr M said he understood that West Bay's contractors would not undertake the work. He said he hadn't been able to source any other contractors for property repairs, so he'd instructed his contractor to proceed with the work.

West Bay paid Mr M a cash settlement of £2,800 (less the policy excess) in respect of the repairs. Mr M was unhappy with this as he felt West Bay should pay the full quote of £4,746.

In the meantime, West Bay told Mr M that it wasn't willing to cover the cost of his sound system in his contents claim settlement, because it had been unable to validate the items. Mr M complained to West Bay about these matters as well as some other outstanding issues.

In response to Mr M's complaint, West Bay said it thought the £2,800 it had offered in full and final settlement for his building repairs was fair. It said it understood the quote Mr M had provided from his own contractor included shelving. There was no evidence in support of the shelving because it was disposed of prior to the inspection.

West Bay said it was unable to settle the sound system unless evidence could be provided in support of it.

West Bay apologised that Mr M's claim had been subject to poor communication resulting in avoidable delays. It said it had arranged for a payment of £400 to be sent to him to compensate him for the trouble and upset this had caused.

Our investigator thought the settlement West Bay had paid Mr M for the building repairs was fair. She was also satisfied it had acted fairly with respect to drying the property and refusing to pay towards the replacement of Mr M's sound system. But she recommended West Bay increase its compensation award for distress and inconvenience by £350.

I issued a provisional decision on 11 July 2023, where I explained why I intended to uphold Mr M's complaint in part. In that decision I said:

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

Based on what I've seen so far, I intend to uphold Mr M's complaint in part. I'll explain why.

I've considered everything Mr M has told our service, but I'll be keeping my findings to what I believe to be the crux of his complaint. I wish to reassure Mr M I've read and considered everything he has sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Building repairs

Mr M says that West Bay arranged for dehumidifiers to be removed before his storeroom was sufficiently dry. West Bay says it's satisfied that the room was dried to its pre-loss condition. It says the damp Mr M reported after the dehumidifiers were removed was rising damp as a result of a building defect with the property.

West Bay told Mr M it had taken a salt test which concluded the dampness was positive with nitrates which was an indication of rising damp, and provided a photograph of water samples. I appreciate Mr M would have liked to have seen a more formal report to evidence the pre-existing damp. However, the loss adjuster's report from the visit in May 2022 also notes "pre existing damp in a number of places". So, on balance, I think there was likely to have been pre-existing damp in Mr M's property.

Due to concerns about pre-existing damp, West Bay told Mr M he would need to sign a disclaimer before its contractor would start work. Mr M has asked for a copy of the disclaimer form. I'm not sure if one was sent to him. However, I can see from emails that Mr M was told he would need to sign a disclaimer before West Bay's contractors would proceed with the repairs. And I can also see that Mr M said he wasn't prepared to sign one.

Mr M has queried why West Bay needed him to sign a disclaimer when he'd already said he was arranging for damp proof course works to be carried out. I think Mr M has raised a fair point here.

Mr M mentioned that he was willing to arrange and/or pay for damp proofing several times in his correspondence with West Bay. He also indicated that his preference was for West Bay's contractors to carry out the repairs to his building. However, it seems that West Bay's contractors decided they weren't willing to carry out the work.

The terms of the policy say:

"If we can offer a repair or replacement through a supplier we have approved but we agree to make a cash settlement, or for you to use your own supplier, any payment we make will not be more than the amount we would have paid our approved supplier..."

"We will settle other claims by paying the costs incurred, after taking account of any relevant monetary limit shown under the Buildings cover option."

The estimate of repairs on West Bay's schedule is around £1,500 (excluding VAT). West Bay's final cash settlement for the building work was £2,800 (including VAT). So, West Bay doesn't appear to have limited it to the amount it would have cost it if its approved contractors had carried out the repairs.

However, the quote Mr M provided from the contractor who ended up carrying out the work was considerably higher than the amount West Bay paid at £4,746.71.

Within this quote is an amount of £1,080.90 for supplying and fitting metal shelving. West Bay says it wasn't willing to cover the cost of shelving because there was no evidence to show that this was in situ prior to the loss.

In the email West Bay sent to Mr M advising of its final cash settlement offer, it referred to Mr M saying that his original shelves were wooden, and they may have been able to be reused. However, Mr M had disposed of them without them being checked to see if they could be reused or saved. The email also refers to Mr M saying he had no evidence of the shelves in situ or evidence that they were beyond repair. West Bay said it was unable to consider the costs of these materials, but it had included labour costs for putting the brackets back on in the building settlement.

I haven't seen any evidence to contradict what West Bay said about the shelving. So, I don't intend to tell it to pay the costs of new shelves.

In its final response to Mr M's complaint West Bay said its loss adjusters were of the opinion that Mr M's contractor's costs were excessive. It said it had asked Mr M to provide a second quote for comparison, but Mr M had declined this.

I can see that West Bay suggested Mr M obtain a second quote for comparison "in the absence of (it) being able to obtain this breakdown from (his) contractor". And I can see that Mr M said he didn't intend to source a second estimate.

However, it looks like a revised quote from Mr M's contractor was provided at some point after that. It's unclear from the information I have whether or not West Bay asked Mr M to provide a quote from another contractor following this. And I can see Mr M told West Bay he wasn't able to get a quote from another contractor.

I appreciate West Bay feels that Mr M's contractor's costs were excessive. However, I haven't seen evidence to show that West Bay's cash settlement was enough to cover Mr M's costs. Mr M has provided invoices to show that his contractor carried out the work in December 2022 for a similar price to what Mr M was quoted. Keeping in mind that Mr M's preference was for West Bay's contractors to carry out the work, I think it would be fair for West Bay's cash settlement to be increased to better reflect Mr M's actual costs.

After removing the cost of the shelving, the quote works out to be £3,665.71. I don't have any information to show me what the cost of fitting the brackets would be. So, to keep things simple, I think a fair resolution would be for West Bay to pay Mr M £3,700 (minus the £2,550 it's already paid and the £250 policy excess). This means that West Bay should pay Mr M an additional £900 for the building repairs.

Mr M has provided two invoices from his contractor dated December 2022. I think it would be fair for West Bay to pay Mr M interest at 8% simple per year from the date of the second invoice (30 December 2022) to the date the settlement is paid, to compensate him for being deprived of the money.

Sound system

Mr M is unhappy that West Bay has refused to cover the cost of his sound system that he says was damaged as a result of the escape of water incident.

The policy terms say:

"You must provide any information, evidence and help we need to consider your claim. The type of information and evidence that may be needed includes original purchase receipts, photographs, invoices, instruction booklets, utility bills, valuations, bank or credit card statements, guarantee cards, pre-purchase surveys or plans, deeds of your property and estimates for repair or replacement."

Mr M says he paid around £3,000 for the sound system about 10 years before the incident and the cost seems to have more than doubled.

Given the high value of the items, I don't think it was unreasonable for West Bay to have insisted on Mr M providing proof of ownership before it would agree to settle this part of his claim.

Mr M says he doesn't have receipts for the items. I can see he emailed the retailer that he says sold him the sound system to see if they could provide proof of purchase. The retailer said it didn't have historic records on its system, possibly due to GDPR restrictions. The retailer also provided the last selling price for the items Mr M described as well as the cost of replacing them from its current range.

Mr M says that he included the sound system on the list of damaged items he sent to West Bay prior to the loss adjusters visit. He says the items were there for the loss adjuster to inspect, test and photograph.

I can see that audio equipment is showing on the contents list with a claimed cost of £500, which Mr M says is the amount he originally intended to claim for. Mr M has commented that his wife, who was present during the visit, said the loss adjuster "was very casual when he visited, he glanced at where all the damaged contents were and did not really inspect anything". So, it doesn't seem that the loss adjuster gave the impression that he had inspected, tested or photographed the sound system. Nor have I seen any other evidence to suggest that West Bay led Mr M to believe that he had.

The policy terms also say:

“You should not get rid of any damaged items or pay any amounts to repair damage without our permission, except for emergency repairs to prevent further loss or damage.”

I appreciate that West Bay might not have asked Mr M for evidence of ownership until several months after he'd made his claim. But there is nothing to suggest that West Bay had approved the settlement of the items or gave Mr M permission to dispose of them.

I know this will be disappointing for Mr M, but as he hasn't been able to evidence his ownership of the sound system, it wouldn't be fair for me to tell West Bay to settle this part of his complaint.

Recovery of costs

Mr M has also raised concerns that West Bay may not have pursued a claim for recovery of its costs from his neighbour's insurer. However, it's up to West Bay if it wants to do this and it won't make a difference to Mr M's claim record. So, I haven't found reason to uphold this part of his claim.

Distress and inconvenience

West Bay has acknowledged issues with its communication with Mr M which resulted in avoidable delays. It paid Mr M £400 compensation for this but disagreed with our investigator's recommendation to pay Mr M a further £350.

Mr M says he wasn't able to use his storeroom for around seven months. Some of this was unavoidable as it needed to be dried out and repairs needed to be completed. I also acknowledge what West Bay has said about lead times.

West Bay has acknowledged failings in its communication with Mr M which caused delays. But it believes the £400 it's already paid Mr M is enough to compensate him for this. It says that some of the delay was because Mr M refused to sign the disclaimer for its contractors to do the work which meant that he then needed to go and get quotes.

However, I've explained why I don't think it was fair for West Bay to have decided to give Mr M a cash settlement. Mr M had indicated that he was willing to pay for a new damp proof course in September 2022. He also made it clear that his preference was for West Bay's contractors to carry out the work. I can't see any reason why West Bay couldn't have agreed to carry out the building repairs once Mr M had arranged for the damp proof course work to be completed.

If it had done so, Mr M wouldn't have needed to go to the trouble of finding his own contractor to give him a quote. And I think things could have moved forward more quickly.

West Bay has commented that Mr M could have placed items back in the storeroom once the drying certificate had been issued. However, I'm not persuaded that this was practical when other works needed to be carried out and Mr M was concerned about damp in the room.

Mr M says he needed to store items in his dining room and downstairs bathroom whilst the storage room was out of use. He's provided photographs to show that his dining room couldn't be used because of this.

Aside from not having an appropriate space to store items, I think Mr M also experienced frustration and inconvenience due to West Bay's poor communication with him. There was further inconvenience from him needing to arrange his own repairs.

I appreciate Mr M doesn't think it's enough and West Bay thinks it's too much, but I think a total of £750 would be reasonable to compensate Mr M for distress and inconvenience. So, I intend to tell West Bay to pay him £350 in addition to what it's already paid."

I set out what I intended to direct West Bay to do to put things right. And I gave both parties the opportunity to send me any further information or comments they wanted me to consider before I issued my final decision.

Responses

Mr M provided some photographs, including one showing shelving in situ at the time of the incident. He said the shelving couldn't be reused because it was damaged. And the shelves couldn't be reattached to the wall as screws would have penetrated his new damp proof course and breached the warranty.

Mr M also referred to his contractor's invoice of May 2022 which says he was required to strip out the existing basement after the incident. He said the shelving had to be removed as the plaster had been taken down. He could try contact the contractor to get a statement that he removed the original fixed shelves, and they could not be re-used.

Mr M said he did not believe that the settlement should be discounted, and the cost of replacement shelving excluded.

Mr M said he was also unhappy that West Bay has refused to cover the cost of his sound system. He said it was available for inspection at the loss adjuster's visit. As there was no instruction to retain it, there was no reason to suspect there was an issue. He said the sound system was disposed of in the skip that was provided for plaster, carpet and other items. He thought it was logical to use the skip to dispose of all damaged items.

Mr M said he didn't originally seek the replacement cost as new for the sound system. He wasn't aware how much the cost had increased. He had forwarded the invoice for the replacement which was significantly more. It was a more sophisticated system, but he only expected like for like.

Mr M said he didn't think it was unreasonable that he hadn't retained the original receipt for the sound system as he'd moved house since purchasing it. He also asked whether West Bay or the ombudsman are contending his claim for the sound system was fraudulent. He said he could get witness statements from his wife, family members and possibly the contractor to confirm the sound system was present and disposed of.

Mr M said he accepted it was up to West Bay to decide whether it intended to pursue a subrogated recovery, but he felt he was the innocent victim. He was concerned about it affecting his claim experience. His neighbour had accepted responsibility for the flood.

Mr M made some further comments about West Bay's handling of his claim. He said he didn't think it was enough but was prepared to accept the ombudsman's recommendation of £750 for distress and inconvenience.

West Bay said that whilst Mr M had advised he was prepared to pay for the damp proof course works, it didn't solve the problem of its contractors completing work on an area that had pre-existing damage and technically was not in a good state of repair prior to the escape

of water. It said if Mr M's property had not had pre-existing issues, its contractors would have been able to do the work and complete a lasting repair with a guarantee at the costs they provided, and at which West Bay had cash settled. It said it wasn't sure why it should increase this as it had provided indemnity under the policy within the terms and conditions.

West Bay said the terms and conditions required Mr M to maintain his property and keep it in a good state of repair. It didn't think it was unreasonable to ask Mr M to sign a disclaimer if its contractor completed the work, regardless of him agreeing to add a damp proof course.

West Bay said if Mr M's basement had not had pre-existing damp, things would have run more smoothly with its contractor being able to complete the work. He wouldn't have had reason to obtain his own quote or store items in his dining room longer than necessary. He would have had to store his items, in any event, until he actually had the damp proof course work done.

West Bay agreed there were delays and poor communication, but it believed some of this was exacerbated by Mr M's lack of cooperation. It thought it had been fair with the settlement of his claim and compensation on his complaint.

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.

Mr M's photographs suggest shelving was in situ at the time of the incident. I appreciate Mr M says the shelving was damaged and it couldn't be reused. However, West Bay doesn't appear to have had the opportunity to review the shelving prior to Mr M disposing of it. This means it wasn't able to validate Mr M's loss or determine whether or not the shelving was salvageable. I also haven't seen any evidence to suggest that West Bay gave Mr M permission to get rid of the shelving, which means he doesn't appear to have complied with the policy's terms and conditions. So, I'm not persuaded that West Bay should cover the cost of the shelving.

I appreciate Mr M is unhappy that West Bay has refused to cover the cost of his sound system. However, I'd already considered most of Mr M's points about this in my provisional decision. I don't think anyone has suggested that Mr M's claim is fraudulent. But it wouldn't be fair for me to tell West Bay to cover a loss that he hasn't evidenced.

I understand that Mr M is concerned that it might affect his future insurance if West Bay doesn't attempt to recover its costs from his neighbour's insurer. However, whether or not it does won't change the information on Mr M's claims history.

I acknowledge West Bay's comments about the condition of Mr M's property prior to the claim. However, there's insufficient evidence for me to conclude that it would still have been necessary for Mr M to have signed a disclaimer even after the damp proof course work had been completed. In any event, I don't think this reasoning was clearly communicated to Mr M, who says he never received a copy of the disclaimer form.

The terms of the policy say the payment West Bay will make will *"not be more than the amount we would have paid our approved supplier"* if *"we can offer a repair or replacement through a supplier"*.

As it appears to have been West Bay's choice to offer a cash settlement, I don't think it's fair for West Bay to limit this to what its costs would have been if it had used its own supplier.

I appreciate that repairs might have been completed sooner if Mr M's property hadn't required a damp proof course. I also acknowledge that Mr M's contents needed to remain in storage whilst the damp proof course was being completed. However, I've explained why I think West Bay is responsible for delaying the completion of the works. It follows that Mr M was left without storage for longer as a result. I think a total of £750 is a reasonable amount for West Bay to pay Mr M for the distress and inconvenience it is responsible for causing him.

Having carefully considered the comments and information from both parties, I'm not persuaded to change the outcome I reached in my provisional decision.

Putting things right

West Bay should:

- Pay Mr M an additional £900 for building repairs.
- Add interest to the above at 8% simple per year* calculated from 30 December 2022 to the date the settlement is paid.
- Pay Mr M an additional £350 for distress and inconvenience.

*If West Bay considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold Mr M's complaint and direct West Bay Insurance Plc to put things right by doing as I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 23 August 2023.

Anne Muscroft
Ombudsman