

## **The complaint**

Mr H complains West Bay Insurance Plc (West Bay) did not return his damaged motorbike after it avoided his motor insurance policy.

West Bay are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the intermediary. As West Bay have accepted it is accountable for the actions of the intermediary, in this decision, any reference to West Bay includes the actions of the intermediary.

There are several parties and representatives of West Bay involved throughout the complaint but for the purposes of this complaint I'm only going to refer to West Bay.

## **What happened**

In July 2022 Mr H had his motorbike stolen from outside his home address. The thieves were caught by the police after an incident took place and the motorbike was damaged.

Mr H made a claim on his motor insurance policy that he held with West Bay.

West Bay had the motorbike inspected and it was classed as a category B loss. Which means the motorbike had suffered severe damage that cannot be repaired.

When West Bay further looked into his claim it was found that Mr H had incorrectly said his motorbike was stored in a garage when he took out his policy. West Bay avoided his policy from the start and did not pay his claim.

As the motorbike was classed as a category B loss, West Bay sold it for the salvage value through its authorised salvage company. It didn't return the salvage amount to Mr H.

After Mr H complained West Bay apologised and said it should have sent the proceeds of the sale of the motorbike to Mr H. It apologised for the delay, sent the proceeds of the sale and £50 for the poor service given.

As Mr H was not happy with West Bay, he brought the complaint to our service.

Our investigator upheld the complaint. They looked into the case and said as West Bay treated Mr H's policy as if it never existed it should have returned his motorbike to him. They said as West Bay hadn't told him they had disposed of his motorbike it should pay him a further £400 and 8% simple interest on the amount he had received from the salvage

As Mr H is unhappy with our investigator's view the complaint has been brought to me for a decision to be made.

## ***What I provisionally said***

*I saw that Mr H reluctantly accepted that West Bay had avoided his motor insurance policy and avoided it back to the start. Therefore the avoidance of the policy is not a complaint point in this case. The complaint in this case is because as the policy was avoided Mr H said West Bay should have returned his motorbike back to him as it was his property.*

*I looked at the timeline of events and saw the theft took place in July 2022. Mr H's motorbike was inspected by West Bay's approved engineer in early August 2022. The inspection reported damage to the ignition and steering lock from the theft. And damage to the front and back brakes and scratches and damage to the bodywork. Due to the cost of the repairs exceeding the value of the motorbike it was classed as a total loss.*

*I saw this report recommended treating it as a category B loss. And the inspecting engineer gave the reason for classification as a category B loss was to remove it from a possible theft chain. It did not give the reason "Cannot be repaired", which is the correct definition of a category B total loss. A category B loss means the body shell has to be crushed but other parts can be salvaged. West Bay said Mr H could not have his motorbike back due to the categorisation of loss being a category B.*

*In this case Mr H continued to dispute the category of loss of his motorbike and that he could not have it returned to him. He said some of the damage was cosmetic and he provided his own repair estimate of £673, based on the items listed in the assessment report.*

*I saw due to Mr H's dispute about the category of loss, on 24 January 2023 West Bay's claims department wrote to him and said it would ask its engineers to complete a second review of the damage.*

*After telling Mr H its intention to undertake a second review of the motorbike, West Bay realised it had already been sold at auction to a registered salvage agent in December 2022 and was destroyed on 4 January 2023. It should be noted that West Bay were aware Mr H contested its decision not to return the motorbike to him and its total loss categorisation at the date the motorbike was sold and then destroyed .*

*I think as West Bay were aware of Mr H's contest about the total loss categorisation and his request for it to return the motorbike it should not have sold it for salvage in December 2022.*

*When it realised the motorbike had been destroyed West Bay paid Mr H what it said the motorbike was worth – the salvage value of £106.26*

*I am not persuaded that West Bay reasonably and fairly recorded the loss category correctly. The engineer's report didn't give a sufficient reason for a category B being recorded. It said it was to remove it from a possible theft chain and we don't consider a theft chain to relate to the actual condition of the motorbike, therefore this doesn't fall within the write off definition of a category B description.*

*As West Bay sold the motorbike for salvage and it was destroyed, it couldn't be re-inspected, and the loss categorisation was not verified as agreed. Therefore, I think in addition to the salvage valuation already paid, West Bay should pay Mr H an increased amount to cover the value of the motorbike if it had been returned to him.*

*I think West Bay should pay Mr H the value of the motorbike minus the cost of the repairs. West Bay calculated the pre-accident value of the motorbike to be £1633 and it calculated the cost of parts and labour for repairs to be £1530 including VAT. Mr H calculated the costs to repair as £667 including VAT. I think the fair outcome in this case is to settle the repair cost halfway between the two estimates. In this case £1097.*

*Therefore I think a fair payment for the motorbike should be £536. This is West Bays pre-accident valuation minus the halfway estimate of costs to repair the motorbike from its damaged condition.*

*Therefore, I intend to uphold Mr H's complaint and require West Bay to pay him £536 for the motorbike that was not returned, minus the salvage amount £106.26 already paid. It should also pay 8% simple interest. In addition West Bay should pay Mr H £400 in respect of the distress caused to him because it didn't return his motorbike to him.*

### **Responses to my provisional decision**

Mr H responded to say

- West Bay seem to have massively inflated the cost of the repairs in order to declare the bike a total loss.
- In comparison to another accident with the motorbike the cost of repairs was much less and there was significantly more damage than occurred in this claim when it was stolen.
- He had not cashed all of the cheques received in from West Bay in relation to this complaint.

West Bay did not reply.

### **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.

### ***In response to Mrs G's comments***

- The cost of repairs provided by West Bay was completed by a professional engineer and I have no reason to think they are inflated.
- This complaint has been considered on the evidence relating to what happened in this case. I cannot consider accidents at a different time with different circumstances.
- Mr H should return the out of date cheques to West Bay and it should re-issue them.

Based on the evidence I've reviewed, I maintain my provisional decision and I uphold Mr H's complaint.

### **My final decision**

For the reasons I have given I uphold this complaint.

I require West Bay Insurance Plc to pay Mr H a further £429.74 for the value of his motorbike. It should also pay 8% simple interest on

- the total amount of £536 from the date the motorbike was sold for salvage to the date the salvage amount was paid to Mr H.
- and on £429.74 from the date one day after the salvage amount was paid to Mr H to the date of settlement.

In addition I require West Bay Insurance Plc to pay Mr H £400, in respect of the distress caused to him because it didn't return his motorbike.

West Bay Insurance Plc should also re-issue to Mr H any cheques relating to this complaint that are out of date and remain uncashed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or

reject my decision before 28 September 2023.

Sally-Ann Harding  
**Ombudsman**