DRN-4434680

Financial Ombudsman Service

The complaint

Mr H, trading as business R, has complained about the way West Bay Insurance Plc ('West Bay'), R's commercial motor insurer, dealt with a claim made on its motor trade policy.

What happened

I issued a provisional decision on this complain last month. An extract from that decision follows:

"In April 2022 Mr H on behalf of R made a claim to West Bay after discovering that seven cars and vans, six belonging to R and one to one of its customers, were damaged beyond repair in a fire.

West Bay arranged for the vehicles to be collected and then proceeded to review the claim.

Mr H complained initially because he said that the salvage agent collecting the vehicles wasn't able to collect them all together but had to collect them on different days as it had no suitable recovery vehicles. Mr H said it took several days for the vehicles to be collected and had concerns about complaints being made to the authorities as the vehicles were in a potentially dangerous state.

He also complained later on when West Bay made offers for the total loss value of each vehicle. Mr H said the offers were too low and also that West Bay was refusing to deal with the claim for the seventh car which belonged to a customer of R's. He was also unhappy that the claim was recorded as several separate claims as opposed to one which meant R was charged a £500 excess per claim.

West Bay upheld part of the complaint and awarded Mr H, trading as R, £200 for the distress and inconvenience it caused as a result of the delays in having all the vehicles collected. It also revised and increased its offers in relation to three of the vehicles. In relation to a van which had been converted into a catering van but not declared as such when the policy was taken out, it said it was only able to value this as a "standard van" which attracted a lower value. It added that under the terms of the policy it was only obliged to pay for the trade value of the vehicles and not their retail value. In relation to the seventh car, it said it was waiting for Mr H to send further information in as it could find no alternative valid insurance for that car.

Mr H didn't agree and complained to us on behalf of R. He said he wanted an increase in the offers made towards the value of the vehicles. He also wanted for the seven claims to be recorded as one claim and mentioned that this was impacting R's no claims bonus (NCB). He also asked for further compensation for the trouble and upset West Bay caused.

One of our investigators reviewed the complaint and thought it should be upheld. She thought West Bay's offer in relation to the catering van was too low and asked it to pay £1,900 instead of £750. She also said that West Bay should have treated this as one claim and it should therefore reimburse five of the six £500 excesses it had charged R. She thought West Bay should add 8% simple interest per year on the reimbursements it was *making. In relation to a seventh car our investigator thought West Bay should consider this claim under the terms and conditions of R's policy.*

West Bay agreed with the recommendations, but Mr H didn't. Mr H felt that the offers made for the total loss value of the vehicles were too low and provided adverts in relation to the catering van and one of the cars. West Bay didn't feel the adverts were comparable and reiterated that under the policy its offers are based on the trade and not the retail value. But it agreed to increase its' offer for the catering van to £2,345 based on adverts of comparable vans it had found which were for £1,795 and £2,895 respectively.

As Mr H on behalf of R didn't agree with our investigator the case was passed to me to issue a decision on.

What I've provisionally 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 H was unhappy that there was a delay in the cars being collected. The salvage agent collected one car on one day and wanted to collect the others on separate days. West Bay acknowledged this would have caused distress and inconvenience and offered £200 compensation in this respect. I think this is fair and reasonable in the circumstances bearing in mind the cars were seemingly collected about a week apart.

Mr H was also unhappy that West Bay had recorded these as separate claims instead of one and charged separate excesses. This also impacted R's no claims bonus which was protected at the time. West Bay has since confirmed it will log everything under one claim which will restore R's six - year NCB, as at November 2022. I think this is fair and reasonable. And it has also agreed to refund all but one excess charged plus interest as per our investigator's recommendation. Again, I think this is fair and reasonable.

West Bay has also now agreed to consider the claim for the seventh vehicle which belongs to one of R's clients. It said this would be subject to Mr H providing further information. As our investigator said as there appears not to be any other insurer involved, we would expect West Bay to consider this claim under R's policy. From what I can see the policy covers damage to cars belonging to customers under certain conditions. So, I would expect West Bay to consider this claim in line with the terms and conditions of the policy.

Under the loss or damage by fire or theft section the policy says, among other things, that the most West Bay will pay is the trade market value of the vehicle before the loss. It also says it will pay the retail market value of a customer's vehicle immediately before the loss if they have no involvement in the motor trade.

It defines "trade market value" as the typical cost of replacing the vehicle in its pre-accident state with one of the same or similar make, model, year, mileage and condition within the motor trade at a price that allows for future resale at a profit. It refers to a specific trade guide West Bay will use to arrive at the valuation.

We usually think it is fair for insurers to base their settlements on trade values when it comes to trade policies as these policies aren't meant to cover the loss of potential profit from selling a vehicle at a higher value.

I should also explain that it's not my role to decide what the value of the car is but to decide whether West Bay made an offer which was fair and reasonable based on the evidence available to it. Assessing the value of a used vehicle isn't an exact science. We generally *find the valuations given in motor-trade guides most persuasive as they are based on extensive nationwide research of likely selling prices.*

West Bay used valuations it obtained from one trade guide where possible. It said it was only able to obtain valuations for some of the cars but not all due to their age. Using the guide and advice from its engineers it made the following offers:

- *Car 1 - £1,750*
- *Car 2 - £715*
- *Car 3, catering van - £750*
- *Car 4 - £2,000 later increased to £2,200*
- *Car 5 - £1,250 increased to £1,500*
- *Car 6 - £2,065 increased to £2,580 as it said it should not have made a 20% deduction for the car being a previous total loss*
- *Car 7 – not settled.*

Our investigator also carried out further valuations using additional guides and looked at adverts for similar cars, as far as that was possible, where the guides returned no valuations. Overall, she felt that West Bay's offers on all but car 3 were fair and reasonable and I agree.

In relation to car 1 the £1,750 offer was based on a valuation obtained in a trade guide. So I don't think West Bay acted unfairly or unreasonably in offering this amount. Our investigator also looked at some sales adverts which returned slightly higher values. Nevertheless, I should explain that we don't tend to find adverts as persuasive as the motor guides and the reason for this is because it is difficult to know what a car will actually sell for from the advert; and a vehicle may be sold for less than the advertised price especially with private sales. There may be occasions where we do look at adverts and this can be where we aren't able to get a result from any/all of the guides, for example where the car is old or a rare model. I don't think this was the case here. I've also borne in mind that West Bay only has to offer a trade value not a retail valuation which tends to be higher.

In relation to car 2, I found that West Bay's offer of £715 was within the range of valuations that we obtained from other trade guides most of which returned lower valuations. The offers made by West Bay in relation to cars 4 and 5 were also within the range of reasonable values. In determining this we looked at adverts and they provided a mix of higher and lower values. As I explained above, I would expect advertised prices to be slightly higher in any event and not priced at what a trader would pay for a car.

In relation to car 3 our investigator asked West Bay to pay £1,900 which was the average of two of the trade guides; £1,800 and £2,000. West Bay had said that it had valued this as a "standard van" rather than a converted catering van but still offered a valuation that was lower than its £1,800 valuation which was itself for an unmodified van. Mr H didn't agree with this valuation and provided an advert which showed what he considered to be a similar van priced at £4,990. West Bay responded to say that the two vans were not similar pointing to the body of the advertised van which is different to R's. I agree that the advert for the van that Mr H provided seems to have been converted differently to R's van. West Bay has provided adverts for vans which are more similar to Mr H's and the values for those were £1795 and £2895 respectively. It has offered to increase its valuation to £2,345, that being the average between the two values. I think that is fair and reasonable particularly bearing in mind that I think it would have been reasonable to offer a valuation for a standard and not a converted van seeing as it was unaware this van had been converted. And it would have also been reasonable to offer a lower trade value and not an advertised value.

Mr H has also provided copies of adverts for cars which he believes are similar to car 6. Those were selling for around £8,000 and above. But I don't think those cars are *comparable. Mr H's car is a manual and has around 190,000 miles on the clock. The cars in the adverts were automatics and had lower mileage. In respect of this car we were able to conduct our own trade guide valuations, which as I said above, I would find more persuasive than adverts. And those returned valuations of £2,580 and £2,675 excluding outliers. So I consider West Bay's offer of £2,580 to be fair and reasonable.*

My provisional decision

For the reasons above I am considering upholding this complaint. West Bay Insurance Plc must do the following:

- *Confirm it has recorded this as one claim and that Mr H trading as R's NCB of 6 years as at 22 November 2022 has been reinstated*
- *Pay Mr H trading as R £200 for the distress and inconvenience suffered if it hasn't already done so.*
- *Consider the claim for the 7th car which belongs to Mr H trading as R's customer in line with the policy terms and conditions.*
- *Reimburse all excesses charged/deducted bar one and add 8% per year simple interest from the date each was charged/deducted to the date it is paid back.*
- *Pay Mr H trading as R the difference between the £750 paid for car 3 and its new valuation of £2,345 plus 8% simple interest per year (but only on the difference) from one month from the date the claim was made to the date it is paid.*
- *Pay any settlements if any are still outstanding. I will not be awarding interest on these as I see West Bay Insurance Plc made most of its offers and asked for payment details within a month of the claim."*

West Bay accepted my provisional decision. Before I issued my provisional decision I enquired with West Bay, through our investigator, whether the excess was £500 or whether it should have been £300 as per the policy schedule. West Bay confirmed it should have been £300.

Mr H said he wanted to accept the decision to draw a line under things, but he wasn't happy with the outcome. Our investigator took him through the figures I'd awarded and explained what the 8% interest would be on.

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.

As West Bay has confirmed that the correct excess was £300 and not £500, I think it should also refund Mr H trading as R £200 from the excess it is retaining. So that the excess it keeps is £300 not £500. And it must also pay interest on the £200 it is returning. As neither party made any other comments my views on the complaint as set out provisionally have not changed- other than the point about the excess. My provisional findings along with any further comments here are now the findings of this my final decision.

My final decision

For the reasons above I am upholding this complaint. West Bay Insurance Plc must do the following:

- Confirm it has recorded this as one claim and that Mr H trading as R's NCB of 6 years as at 22 November 2022 has been reinstated

- Pay Mr H trading as R £200 for the distress and inconvenience suffered if it hasn't already done so.
- Consider the claim for the 7th car which belongs to Mr H trading as R's customer in line with the policy terms and conditions.
- Reimburse Mr H trading as R all excesses charged/deducted bar one as well as the additional £200 charged on the excess it is retaining so that it retains only one £300 excess. Add 8% per year simple interest on each one from the date each was charged/deducted (including the £200 it is returning) to the date it is paid back.
- Pay Mr H trading as R the difference between the £750 paid for car 3 and its new valuation of £2,345 plus 8% simple interest per year (but only on the difference) from one month from the date the claim was made to the date it is paid.
- Pay any of the remaining claim settlements it had already agreed to pay to Mr H trading as R if any are still outstanding. I will not be awarding interest on these as I see West Bay Insurance Plc made most of its offers and asked for payment details within a month of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H trading as R to accept or reject my decision before 4 December 2023.

Anastasia Serdari
Ombudsman