

## **The complaint**

Mr C complains about the handling of a claim under his motor insurance policy with West Bay Insurance Plc (West Bay).

References to West Bay in this decision include their agents.

This decision covers the issues raised in his complaint to this Service in May 2023 and his earlier complaint to West Bay, and their final response issued in May 2023. It doesn't cover other issues raised subsequently by Mr C.

## **What happened**

The following is a summary of events, based on what I've seen Mr C and West Bay have told us together with the evidence and information they've provided. There are some contradictions and disagreements between Mr C and West Bay, the summary reflects this.

In early November 2022 Mr C's vehicle hit some flood water and stopped running, as water had entered the engine. He contacted West Bay to tell them about the incident and lodge a claim. However, an engineer appointed by West Bay (B) didn't inspect the vehicle until three weeks later. West Bay initially referred Mr C to body repair firms, but they wouldn't accept the vehicle as it hadn't suffered damage to the bodywork or panels.

Being without a vehicle (or a courtesy car) and waiting for B to inspect his vehicle, Mr C asked his own mechanic to try to get the vehicle running. The mechanic changed the oil and a number of parts and drained the water from the engine. This enabled the vehicle to start, but it overheated so wasn't driveable. In the meantime, Mr C bought a replacement vehicle.

Following B's inspection, Mr C didn't hear anything further until February 2023, when West Bay told him they deemed the vehicle to be a total loss. The vehicle was taken to West Bay's salvage agent (C) but Mr C said the vehicle's interior had been badly affected during the time since the incident by mould and the air suspension had stopped working.

West Bay subsequently contacted Mr C in March 2023 to say they wouldn't accept his claim. They said C couldn't see any flood damage and the vehicle started. They also said that B's inspection of the vehicle concluded there were no signs of water ingress, with fuel injectors and filters already having been replaced in order for the engine to run. B also believed the issue with overheating (the engine cutting out) was unlikely to be related to flood damage and most likely a wiring issue.

West Bay referred to the policy terms and conditions that excluded cover for wear and tear, mechanical or electrical breakdown. West Bay considered the damage due to mechanical failure, which wouldn't be covered under the exclusion. They said they would arrange for C to return the vehicle to Mr C.

Unhappy at the decline, Mr C complained to West Bay. He also raised issues about the policy being mis-sold to him; delays in processing his claim; a lack of communication with him; poor customer service and not receiving a formal letter repudiating his claim.

West Bay upheld some aspects of the complaint, but not the decline of the claim. They said they'd commissioned a report to review the circumstances of the incident, which concluded the damage to Mr C's vehicle wasn't due to flooding, but a wiring fault. They referred to the same policy exclusion for mechanical breakdown they referred to when declining the claim.

On the sale of the policy, they said that would be an issue for the broker through which the policy was arranged, not them. On delays to the assessment of the claim, they accepted there were some delays in allocating the repair of the vehicle to a body repair firm for them to investigate, for which they apologised. On communication they also accepted they should have been more proactive in updating Mr C and responding to his emails. West Bay didn't accept there was evidence of poor customer service but would review this if Mr C could provide evidence to support his case. On the issue of a repudiation letter, West Bay accepted a system error meant a formal letter wasn't issued to Mr C. In light of the aspects of the complaint they upheld, West Bay awarded £200 compensation to Mr C.

Mr C then complained to this Service. He said he was left with a vehicle that would cost thousands of pounds to repair when it should have been covered under his policy. He would also have to have the vehicle fully valeted and restore the further damage from the vehicle lying unused after the incident. He wanted West Bay to cover the claim and compensation for the time he'd spent pursuing matters.

Our investigator didn't uphold the complaint. In his initial view he concluded West Bay's decision to decline Mr C's complaint wasn't unreasonable, given B's report that concluded the damage wasn't due to water ingress and that a wiring issue was the most likely cause of the engine cutting out. And the investigator hadn't seen any other expert opinion to contradict this. As Mr C's vehicle was initially deemed to be a total loss, the terms of the policy meant a courtesy car wouldn't be provided. The investigator thought West Bay's award of compensation recognised the impact of those elements of complaint they'd upheld.

Mr C disagreed with the investigator's initial view. He didn't think the investigator had properly considered all the evidence and information he'd provided in support of his complaint. He disagreed with B's report and conclusions, saying his mechanic got the vehicle running by changing the oil, spark plugs and filters. Mr C provided a report from the mechanic detailing the work on the vehicle to replace parts, enabling the engine to start. However, after a while the engine temperature rose to a dangerous level. His conclusion was that intake of water meant the engine had sustained internal damage, but without stripping the engine down, the full extent of the damage couldn't be determined.

Given the report from Mr C's mechanic, our investigator shared it with West Bay and asked for their response. Based on consideration by their engineering department, they weren't persuaded to change their view or their decision not to accept Mr C's claim.

West Bay said there were no images of the vehicle when received by Mr C's mechanic, nor any indication of the cost of the work on the vehicle (such as an invoice). West Bay said B's inspection of the vehicle towards the end of November showed no sign of water ingress or flood water damage and the engine ran - but cut out. When the vehicle arrived at C it was also driveable. They thought the wording of the report indicated any work carried out happened after B's inspection. West Bay's engineers also thought the overheating issues weren't consistent with what they'd expect from flood damage, rather it suggested a blown head gasket or faulty cooling system. But if Mr C had the vehicle inspected by a main dealer and diagnosed the cause of the fault, they would consider it.

Our investigator then issued a further view, maintaining his original findings and conclusions. He wasn't persuaded by the statement from Mr C's mechanic or that Mr C had shown the damage claimed for was covered under an insured peril.

Mr C disagreed with the investigator's further view and asked that an ombudsman review the complaint. He said the statement from his mechanic indicated his vehicle arrived at the mechanic on the date of the incident. But having waited over two weeks for West Bay to arrange an inspection of the vehicle, he asked the mechanic to try to get the vehicle running again. Which he managed to do, but the car overheated when running or being driven for a period of time. Mr C also disagreed the overheating issue was due to a blown head gasket or faulty cooling system, as he had no issue with the vehicle before it entered the flood.

### **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.

My role here is to decide whether West Bay have acted fairly towards Mr C.

The key issue in Mr C's complaint is whether West Bay acted fairly in declining his claim. There are also issues about the way West Bay handled the claim, including the time taken and the communication with Mr C.

One issue raised by Mr C in his complaint to West Bay (and included in their final response) was what Mr C considered to be the mis-selling of the policy. This didn't form part of Mr C's complaint to this Service, so I haven't considered it as part of this decision. It would also be an issue for the broker through which the policy was taken out.

On the first issue, I've considered the evidence and information available, including the views of Mr C and West Bay and the supporting evidence and information, including that from their respective mechanic and engineer (B). It's clear there is disagreement between the mechanic and B. In considering their respective views, as well as those of Mr C and West Bay, I have to come to a conclusion based on the balance of probabilities and what I find more persuasive.

From the timeline set out above, and the case notes provided by West Bay, it appears Mr C first contacted West Bay the day after the incident to notify them of the incident. The case notes also indicate the claim was initially validated, based on Mr C's description of what happened, and West Bay initiated the allocation of an approved repairer. But B weren't instructed until nearly three weeks after the incident, inspecting the vehicle the following day. I'll consider this timeline as part of the issues of West Bay's handling of the claim and communication with Mr C.

Coming back to the first issue, B's inspection, drawing on the statement provided by Mr C's mechanic indicating they had carried out work on the vehicle to get the engine running. B's inspection report notes that Mr C advised that his mechanic had replaced the fuel injectors and filters and got the engine running, but the engine cut out when on full lock – it doesn't mention overheating.

Looking at B's report, it states:

*"No sign of water ingress was noted. Engine running however Policyholder advises it cuts out when on full lock."*

*Policyholder advised that repairer had already replaced injectors and filters to get the engine running (invoice not seen).*

*I believe it is unlikely that the cutting out is related to the reported claim of flood but is most likely a wiring issue.*

*Further investigation will be required at a dealer to check issues and if related to flood damage."*

The report also includes a statement, against a heading of *Insured Vehicle Assessment*, of: *"Repudiation Recommended"*. Taken in conjunction with the above comments, this suggests B didn't think the damage was clearly the result of flood/water ingress. And that further investigation/diagnosis was required to determine this.

Turning to the report from Mr C's mechanic, it states:

*"I received the car on 02/11/222 from my customer [Mr C], he had recovered the vehicle from a flood, the car remained in the yard until March [sic].*

*My customer requested that I try to get the car mobilized having waited several weeks for the insurers to view the vehicle...*

*[list of work and parts removed/replaced]*

*...Started engine, noted engine management traction control light etc were all lit on the dash.*

*Let idle for 10 minutes, temperature raised to dangerous level.*

### **Conclusion**

*With the intake of water the engine has incurred internal damage, without stripping the engine down completely, I am not in a position to state the full extent of damage."*

The two reports clearly indicate differing conclusions as the nature, extent and cause of the damage. But both indicate the need for further investigation – either at a main dealer or otherwise – to arrive at more definitive conclusions. I've not seen any indication of this taking place, though I note West Bay's comment about considering such a report from a main dealer, should it be provided. I think that's reasonable, given the difference of opinion between B and Mr C's mechanic.

In the absence of a third, independent report I have to come to a view as to which of the two reports, on balance, is the more persuasive. B's report includes photographs of the vehicle and was carried out after work from the mechanic to get the engine running. The mechanic's report is much less detailed and doesn't include any information about the cost of the work it sets out, nor is the report itself dated. For these reasons, I find B's report on balance to be more persuasive.

As a general principle, the onus is on a policyholder (Mr C) to evidence that damage or loss is the result of an insured peril. Given the points set out above, I'm not persuaded there's sufficient evidence to conclude the damage was the result of an insured peril.

While I've come to this conclusion, I've also considered the other issues about the way West Bay handled the claim, including the time taken and the communication with Mr C.

In considering these issues, I've looked at the sequence of events and timeline provided by Mr C and West Bay. West Bay's case notes indicate (after B's report was received) the claim was validated (early December 2022). There's then a gap in the case notes until the end of January 2023 stating West Bay were struggling to allocate a repairer due to the damage and likely high cost of repair (compared to the age and value of the vehicle). The case notes indicate a further review of the claim would be needed and it was leading towards the vehicle being deemed a total loss. The notes indicate Mr C was told of the possibility the vehicle would be deemed a total loss, once review of the claim (by West Bay's in-house engineer) was complete. And that a further inspection (either by B or C) might be needed to determine if the damage was caused by flood (water ingress).

It was at this point Mr C's vehicle was taken to C (February 2023). It also appears West Bay re-reviewed the report from B (I've only seen one report from B, dated November 2022) and confirmed the vehicle was in running condition (at C). West Bay then (March 2023) issued their decision to decline the claim, on the basis that B's report indicated the damage wasn't likely to be flood-related or the result of water ingress.

Whilst I've concluded the damage to the vehicle hasn't clearly been shown to be the result of an insured peril, what the above sequence of events indicates is that West Bay initially validated the claim and proceeded down the route of the vehicle being repaired. But this proved problematic in terms of securing an approved repairer. And in the absence of this, they weren't able to determine whether repairs would be economical to carry out. The indications are that they might not be, and that given the age of the vehicle it would be likely to be beyond economical repair (for example, if a new engine would be required).

It was at this point that a further review of the claim was carried out, leading to the decision to decline the claim on the basis that Mr C hadn't shown the damage was the result of an insured event, but that that likely cause was a mechanical failure (which the policy excluded). While I've concluded this wasn't unreasonable for the reasons I've set out earlier, it isn't clear why West Bay couldn't – given B's report was available to them at the end of November 2022 – have reached that decision much earlier than they did, even allowing for the need for further investigation and review that B's report sets out.

So, I've concluded there were delays in assessing the claim and reaching the decision to decline it, and that some of these delays were avoidable and the responsibility of West Bay. The case notes (and West Bay's final response) also indicate their communication could have been more pro-active about what was happening with assessment of the claim. And West Bay acknowledge they weren't able to issue a formal repudiation letter to Mr C – though they did inform him of the decision to decline his claim, prompting his complaint to them in March 2023.

Having reached this conclusion, I've considered what West Bay should do to put things right. I think Mr C will have suffered distress and inconvenience from the delays as well as a loss of expectation from initially being told his claim had been validated, then it would be repaired, then possibly a total loss and finally having the claim declined. Taking all the circumstances of the case into account, I think West Bay's award of £200 compensation is fair and reasonable, and they should pay Mr C the sum (if they haven't already paid it).

### **My final decision**

For the reasons set out above, it's my final decision not to uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 February 2024.

Paul King  
**Ombudsman**