

The complaint

Miss B has complained about what West Bay Insurance Plc has paid in settlement of her claim under her motor insurance policy.

West Bay is the underwriter of Miss B's policy, so it's her insurer. This complaint is, in part, about the actions of one of West Bay's agents. As West Bay has accepted it's accountable for the actions of its agents, any reference to West Bay in my decision includes its agents.

Miss B is represented by Mr D.

What happened

Miss B's car was damaged in an accident. An agent acting for her insurance broker, who I'll refer to as L, referred her to a claims management company who I will refer to as E. E took on Miss B's claim for her and attempted to claim for the damage to her car from the third party insurer. E said Miss B's car was a write-off and that it would cost around £11,000 to replace it. The replacement cost is otherwise referred to as the market value.

Miss B wanted to retain her car and E said she could do this, but £1,800 would be deducted for the salvage value. So Miss B was expecting to get around £10,200 in settlement of her claim. The third party insurer then disputed liability for the accident. This meant E passed the claim to West Bay and asked it to deal with it under Miss B's policy.

West Bay considered the claim and said the market value of Miss B's car was £10,860 and that it would deduct a salvage value of £3,258 if Miss B wanted to retain it, i.e. 30% of the market value.

Miss B complained to West Bay, as she thought it should pay her the same as E had suggested in settlement of her claim with her retaining her car. West Bay accepted it had provided a poor level of service in a couple of respects and offered Miss B £75 in compensation for this. But it wouldn't increase the amount it was willing to pay Miss B in settlement of her claim. And it made an interim payment of £7,452, as it thought this was the amount that Miss B was entitled to in settlement of her claim. This reflected the fact that the policy excess of £150 needed to be deducted.

Miss B asked us to consider her complaint. We told West Bay about this and it made an offer to try and resolve the complaint. It said it would base its settlement on a market value of £11,210 and pay a further £150 in compensation for poor service. But it still wanted to deduct 30% for the salvage value of Miss E's car. This meant it was willing to offer a further £245, plus interest in settlement of Miss B's claim. It also offered a further £150 in compensation.

We put this offer to Miss B through Mr D, but she didn't accept it. So one of our investigators considered Miss B's complaint. He said West Bay's revised offer was fair. Mr D didn't agree with the investigator's view and asked for an ombudsman's decision. He explained that Miss B thought she was making a claim under her policy and had no idea she was making a claim against the third party insurer with E's help. He said he thought

West Bay was in breach of contract because Miss B had an offer to settle her claim at a higher amount with a lower deduction for salvage, which West Bay would not honour.

I issued a provisional decision on Miss B's complaint on 16 April 2024 and I set out what I'd provisionally decided and why as follows:

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

Having done so I've provisionally decided to uphold Miss B's complaint and make West Bay pay her a further £918 plus interest in settlement of her claim and an additional £225 for distress and inconvenience. I'll explain why.

I should first of all say that, bearing in mind there have been five different businesses involved in Miss B's claim, I completely understand her and Mr D's confusion around who was actually dealing with it in the first instance and how the arrangement between L's claim handling agent, L and E works. However, the reality is that West Bay is Miss B's insurer and it was not involved in her claim at all until E asked it to become involved. Once E asked it to do so, it did what it should have done and assessed the claim and contacted Miss B about it. Of course, it did provide a poor level of service in a couple of respects, but it paid £75 in compensation for this.

Miss B's policy requires West Bay to pay her the market value of her car. The market value is the cost of replacing the car immediately before it was damaged with one of the same make, model, specification, mileage and condition. To establish what this amount is we use industry valuation guides. And I've checked these and they show what West Bay put forward as a revised valuation when Miss B's complaint was referred to us (£11,210) is fair. This valuation is also in line with advertised prices, which supports my view that it is fair. The policy is actually silent on what happens if West Bay settles a claim as a total loss, which is the case where the car is written-off. This means it doesn't say West Bay is entitled to take possession of the insured car. However, I consider this is a general principle of insurance and this means, under normal circumstances, as West Bay treated Miss B's car as a total loss, it would be entitled to take possession of it once it had settled her claim.

This doesn't mean it was inappropriate for Miss B to retain her car, because this is something we would expect an insurer to allow. But it does mean that it is reasonable for West Bay to deduct what it would have got for the car from its salvage agent if it had taken possession of it. This amount won't necessarily be the same as E would have got from their salvage agent if they had taken possession of Miss B's car. This is because E are likely to have a different contract with their salvage agent to the one West Bay has with its salvage agent.

I should also say that what E told Miss B it was going to deduct for the salvage value was nothing to do with West Bay, as E are a separate company and West Bay is not responsible for its actions or what it offered in settlement of Miss B's claim. This means West Bay is not 'in breach of contract' by not deducting the same salvage value.

Turning now to what West Bay has actually deducted for the salvage value. I have checked this and I don't think what it has deducted is fair. I say this as it seems if it had taken possession of Miss B's car it would have received 24% of its market value. Whereas it has deducted 30% because Miss B retained her car. I consider this to be unfair, as West Bay should only have deducted what it would have received if it had taken possession of the car. This is because this is the amount it lost because Miss B retained it. West Bay shouldn't be penalising Miss B by deducting more because she has decided to keep her car.

As things stand West Bay has paid Miss B £7,452 in settlement of her claim using a valuation of £10,860 with a 30% deduction for salvage and the deduction of the £150 policy excess. What it should have paid her is £11,210 less a 24% deduction for salvage, less the £150 policy excess, i.e. £8,370. This means I think West Bay needs to pay Miss B a further £918 in settlement of her claim, plus interest. The interest is to compensate her for not having this money when she should have had it at the point West Bay settled her claim.

I also consider the way West Bay has handled Miss B's claim in deducting more than it should have done for salvage and not properly explaining how this should work, as well as offering less than it should have done originally based on the valuation guides and the poor service at a couple of points it has acknowledged, has caused Miss B a great deal of unnecessary distress and inconvenience. And I think a total compensation payment of £300 is appropriate for this. West Bay has already paid Miss B £75. So I think it should pay her an additional £225 in compensation.

My provisional decision

For the reasons set out above I've provisionally decided to uphold Miss B's complaint and make West Bay do the following:

- *Pay Miss B a further £918 in settlement of her claim.*
- *Pay interest on this amount at 8% per annum simple from the date it made the interim payment on Miss B's claim (22 November 2023) to the date of payment.*
- *Pay Miss B a further £225 in compensation for distress and inconvenience.*

I gave both parties until 30 April 2024 to provide further comments and evidence in response to my provisional decision.

Mr D has responded on behalf of Miss B to say they agree with it.

West Bay has responded to my provisional decision to say that it was not obliged to let Miss B retain her vehicle and Miss B had a choice on whether or not to buy it back at the amount it determined.

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 have noted what West Bay have said about the amount it deducted because Miss B retained her car. First of all, as I said in my provisional decision, while I accept West Bay had the right to retain Miss B's car, as they had treated it as a total loss, I consider it to be good industry practice, and therefore fair and reasonable, for an insurer to allow its policyholder to retain their car if they wish to do so. And I think West Bay has missed the point I made in my provisional decision as to why I think it was unfair for it to deduct more than it would have got if it had retained the car. As I explained, it is only fair for West Bay to deduct what it would have obtained for the car because this is the loss it suffered as a result of Miss B retaining it. It is not fair for it to penalise Miss B for doing this by putting what I would describe as a surcharge on top, just because it had a technical right to retain it.

So, West Bay's further comments do not change my view on the fair and reasonable outcome to Miss B's complaint.

Putting things right

For the reasons set out in my provisional decision, I've decided to uphold Miss B's complaint and make West Bay Insurance Plc do the following:

- Pay Miss B a further £918 in settlement of her claim.
- Pay interest on this amount at 8% per annum simple from the date it made the interim payment on Miss B's claim (22 November 2023) to the date of payment*.
- Pay Miss B a further £225 in compensation for distress and inconvenience. West Bay must pay this compensation within 28 days of the date on which we tell it Miss B accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple*.

*West Bay must tell Miss B if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Miss B if asked to do so. This will allow Miss B to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.

My final decision

I uphold Miss B's complaint and order West Bay Insurance Plc to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 29 May 2024.

Robert Short
Ombudsman