

## The complaint

Mr A has complained about his car insurer West Bay Insurance Plc because it declined his claim for theft of his car.

## What happened

Mr A had a policy with West Bay for his car. He was going out late one evening but, having taken the car off his drive, realised he'd forgotten something in the house. He parked across his drive and went inside. When he came out the car was gone.

He made a claim to West Bay and it declined it. West Bay noted a policy endorsement requiring the car, when at the home address during night hours, to be parked on the drive. It said Mr A had breached that, so it was declining the claim. Mr A complained to the Financial Ombudsman Service.

Our Investigator noted that Mr A had been aware of the endorsement, and that he had breached it. She felt West Bay had acted fairly.

Mr A remained unhappy. His complaint was referred to me for an Ombudsman's decision. I was minded to uphold it. So I issued a provisional decision, allowing both parties a chance to respond to my findings, which were:

*"West Bay's policy, like many, contains exclusions and endorsements that limit cover and/or place extra responsibility on the policyholder. An endorsement is something a policyholder should comply with. West Bay is correct that a failure to comply leaves the policyholder open to certain risks, such as a claim not being covered. So, whilst I appreciate that Mr A didn't mean to act in a way that breached the endorsement, he did breach it, which left him at risk of his claim being declined.*

*However, West Bay should know that it, showing a breach has occurred, is unlikely to be sufficient for it to fairly decline the claim. This Service has long held that an insurer, wishing to decline a claim for a breach of endorsement, also has to show that the breach was most likely material to the loss which occurred.*

*In its decline letter and complaint final response letter, West Bay doesn't mention materiality at all – it says its decline is based purely on the breach. I've also seen nothing within West Bay's file to make me think that but for the breach, the theft would not have occurred. So West Bay hasn't shown the breach was material to the loss. As such it hasn't fairly and reasonably relied upon the breach of endorsement to decline the claim.*

*I've thought then about what West Bay must do to put things right. It will, of course, have to consider the claim in line with the remaining terms and conditions of the policy. As this was a theft claim, if it's settled, that will likely be by way of a cash settlement. In that event West Bay will have to add interest to any settlement paid to Mr A from the date of loss until settlement is made. This will make up for the delayed settlement which will most likely be based on the car's market value at the time of loss.*

*I know Mr A has had some inconvenience being without his car. However, at this stage, I can't award compensation for that because the claim hasn't yet been fully considered by West Bay. Which means I don't know that but for its error in initially declining it, it would have been settled.*

*I am satisfied though that having the claim declined on the unfair grounds relied upon by West Bay was upsetting for Mr A. I accept it's caused him a lot of stress and worry. I also understand that he spent time trying to contact West Bay to discuss matters. I note the loss was at the end of October 2023 with West Bay's final response on the complaint being issued on 25 January 2024. I think West Bay should pay Mr A £250 compensation."*

Mr A didn't reply. West Bay said it disagreed with the outcome.

West Bay said its imperative for a policyholder to comply with an endorsement or they risk invalidating the policy. Which West Bay feels has occurred here. It said the breach here was clearly material to the loss, with the endorsement being directly related to the risk of loss or damage. West Bay explained what, in its view, it feels it is reasonable to assume in this type of situation about cars being prospective targets for thieves when they are parked on drives as opposed to on the road. West Bay said that if Mr A's car had been on the drive, it is unlikely it would have been stolen.

### **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 note West Bay is now arguing the policy was invalidated. I think it's a bit late for it to argue that, given it initially only declined the claim on the basis of the breach of endorsement.

In very general terms I see West Bay's point about what a thief may think, and how a thief may view a car parked on a drive as a less appealing prospect for theft than one on the road. But I have to bear in mind that West Bay, hasn't provided any expert opinion about this. I also bear in mind that its views on the matter are based on quite broad generalisations – it hasn't shown what it's likely a would-be thief thought/would think about Mr A's car and his drive.

As an example, West Bay has referenced that a thief might be wary of triggering a home security device when trying to take a car from a drive, but it hasn't shown that Mr A had such a device which would likely have deterred a would-be thief. And I bear in mind that Mr A's drive is quite small – that when parked the driver's door of the car is positioned only two steps in from the pavement and there are no gates. Whilst West Bay is adamant that Mr A's car was only stolen because it was on the road, that this would not have happened in if it was on the drive, it hasn't persuaded me that this is the case.

West Bay then hasn't shown that if Mr A had complied with the endorsement, the theft would most likely not have occurred. Which means West Bay has not shown that the breach was material to the loss. In line with this Service's approach on such matters, I find that West Bay's decline of the claim was unfair and unreasonable.

Having considered West Bay's response, my view has not changed. As such, my provisional findings are now those of this my final decision.

### **Putting things right**

I require West Bay to:

- Consider the claim in line with the remaining terms and conditions of the policy.
- If this results in a cash settlement being paid to Mr A, interest\* should be applied to the settlement sum from the date of loss until payment is made.
- Pay Mr A £250 compensation.

\*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. HM Revenue & Customs may require West Bay to take off tax from this interest. If asked, it must give Mr A a certificate showing how much tax it's taken off.

### **My final decision**

I uphold this complaint. I require West Bay Insurance Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 August 2024.

Fiona Robinson  
**Ombudsman**