

The complaint

Mr G complains about West Bay Insurance Plc's decision to void his policy after he made a vehicle insurance claim.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief description here.

Mr G had a vehicle insurance policy underwritten by West Bay. He made a claim in July 2023 after his vehicle was stolen.

West Bay say that during their consideration of the claim, it became apparent to them that Mr G had made a misrepresentation when he bought the policy. They say he failed to disclose that he had a second occupation as a car trader.

On that basis, they voided the policy and ceased to consider the claim. They said that if they'd known the facts beforehand, they wouldn't have offered cover for Mr G's vehicle.

Mr G wasn't happy with this and made a complaint to West Bay. They offered Mr G £125 in compensation because they'd been slow to deal with his complaint and he'd experienced long wait times when he tried to call them about it. But they maintained that the decision to void the policy was correct.

Mr G brought his complaint to us. Our investigator looked into it and didn't think West Bay had acted unfairly or unreasonably towards Mr G.

Mr G disagreed and asked for a final decision from an ombudsman.

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.

The relevant legislation in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

CIDRA places an obligation on consumers buying insurance to provide information required by the insurer. Insurers use that information to assess the risk and to decide whether to provide cover and, if so, on what terms.

If consumers don't provide that information and make a misrepresentation that is careless or knowing / reckless – and if knowing the facts would have made a difference to what cover the insurer offered (if any) - then CIDRA provides certain remedies insurers are allowed to take.

In those circumstances, and where an insurer – if they had known the facts - would not have offered cover at all, the insurer is entitled to void the policy (treat it as if it had never existed) and therefore cease to deal with any outstanding claims.

That's what West Bay have done in Mr G's case. And because they thought the misrepresentation was careless, rather than knowing or reckless, they've returned the premium Mr G has paid.

So, the question for me is whether, in all the particular circumstances of this case, West Bay are entitled to take that action under the terms of CIDRA and in all fairness to Mr G.

Mr G bought his policy using an on-line comparison website. He then called the insurance broker, at their request, to validate the information he'd provided and confirm the purchase of the policy.

The on-line form clearly asked Mr G to provide details of his occupation(s). It was clear he was being asked to declare *all* of his occupations. He said he was a drayperson (retailing). And he declared no other occupations.

I've listened to a recording of the validation call. When he made the call, Mr G seemed surprised to have been asked to contact the broker. However, he then went on to say that he'd possibly forgotten to declare, in the on-line application form, a non-fault claim he'd made around a month previously.

Mr G was then asked if he'd ever had a policy cancelled. He said no (correctly, it appears) but there then followed a discussion about a policy Mr G was about to cancel himself because he'd realised West Bay were offering a better deal.

To cut a long story short, Mr G's explanation of that situation involved him telling the broker that he had a 12-year no claims bonus, but on a motor trader's policy rather than a private vehicle insurance policy. I'll come back to this later. But suffice to say for now that insurers obviously only provide motor trader's policies to those who are involved in the motor trade.

The broker then asked about Mr G's occupation. He noted the information from the on-line application and confirmed that Mr G was a drayperson. He then asked, "*do you have a part time job as well sir?*" – Mr G answered "*no*". The broker then said, "*no part time jobs, so this is the only job, yes?*" – Mr G answered "*yes, this is my only job*".

So, I'm satisfied that, during the process of buying the policy, Mr G was asked clearly – both on-line and in the call – to disclose all of his occupations. And he said that his only occupation was as a drayperson.

West Bay believe that isn't true. They think Mr G is also a motor trader. The evidence they're relying on is as follows.

One, as I've mentioned above, Mr G has a motor trader's insurance policy.

Two, when Mr G rang West Bay about his claim (on 7 August 2023) – and again, I've listened to a recording of this call too - there was a discussion about why his vehicle was stolen from a part of the UK which is a long distance from the address given on Mr G's insurance documents.

Mr G said he was often at the address from which the vehicle was stolen. He said he was there usually for about three or four months of the year, for work purposes – the exact length of time depended on what work he had.

When he was asked exactly what that depended on, he said:

"I'm self-employed. I buy cars in England and ship them back home."

He went on to explain that, due to the ULEZ regulations in London, there were "*quite a few*" cars he could buy cheaply in the area, which would be worth more "*at home*".

On the basis of that evidence, I hope Mr G will understand that I can't reasonably conclude that West Bay have acted in any way unfairly when they've decided that Mr G is involved in the motor trade, as an occupation. And that he carelessly failed to disclose that when he bought the policy.

Mr G has told us that he buys cars as a hobby. He says he does sell the occasional car, once he's taken any parts from it that he uses to improve his own collection of vehicles, but never at a profit. But that doesn't square with the fact that he has a motor trader's policy or with what he told West Bay when he rang them about the claim.

So, I'm satisfied on balance that it wasn't unfair or unreasonable for West Bay to conclude that Mr G was a motor trader – and that he'd failed to disclose that occupation when he bought his policy.

They've also provided evidence to show that if they had known that Mr G was a motor trader when he applied for the policy, they wouldn't have offered cover on any terms.

And so, I'm satisfied they were entitled to void Mr G's policy. And to cease to deal with his claim.

When our investigator explained his view on the case to him, Mr G then sent us a copy of the certificate of insurance for his motor trader's policy. This also appears to be underwritten by West Bay.

Mr G says that West Bay therefore should have known, when he bought the policy, that he had a motor trader's policy. And if they didn't wish to insure him, on that basis, they should have declined his application for cover at the time. Because they didn't do that – and took his premium instead – he's now left with the uninsured loss of his vehicle.

I should say, Mr G only made that argument – and provided that evidence – once he knew our investigator was unlikely to uphold his complaint, given the evidence that he was a motor trader.

However, I'll take the argument on its merits. It still doesn't change my mind on the outcome of the case and I'll explain why.

For one thing, the validation of Mr G's policy purchase was through a broker. There's nothing to suggest that broker would have had access to West Bay's databases to the extent that he would have been able to see the details of Mr G's motor trader's policy.

More fundamentally perhaps, none of that alters the fact that Mr G was quite clearly asked - at least twice during the purchase journey - to tell West Bay about all of his occupations. I think West Bay were entitled to think they'd given Mr G an opportunity to tell them the facts and it wasn't unreasonable for them to rely on what Mr G told them.

So, I'm not going to give weight to Mr G's argument. In essence, he appears to be suggesting that because West Bay (or their agents) didn't pick up that he hadn't provided them with complete information at the time of purchase, and they could have done so from their own records, they shouldn't be allowed to rely on that information later. And I don't think that argument is morally persuasive.

Mr G tells us he didn't accept the £125 West Bay offered him in compensation for their poor handling of his complaint to them. That's not for me to comment on given that complaint-handling isn't a regulated financial activity.

My final decision

For the reasons set out above, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 6 September 2024.

Neil Marshall
Ombudsman