

## **The complaint**

Mr G, a sole trader, complains that West Bay Insurance Plc (West Bay) unfairly avoided his Commercial Vehicle Insurance policy and declined his claim.

There are a number of different parties involved in this complaint, but for ease of reading, I'll only refer to West Bay, Mr G and Mr G's broker (B) where necessary.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr G took out a Commercial Vehicle Insurance policy underwritten by West Bay through B, who was acting as Mr G's agent during the sale of the policy. The policy renewed in 2023, following which Mr G made a claim for damage to his vehicle.

West Bay avoided Mr G's policy from the 2023 renewal for breach of the duty of fair presentation and didn't consider Mr G's claim. West Bay didn't treat the breach as deliberate or reckless and therefore it provided a full refund of the premium paid.

West Bay said the Statement of Insurance completed by Mr G when renewing his policy in 2023 asked whether there were any modifications on the vehicle. Mr G answered 'yes' and told West Bay that the vehicle had signwriting. During the investigation of the claim, West Bay discovered that Mr G's vehicle also had a water tank installed. Therefore, West Bay said the answer to the modification question wasn't accurate, which amounted to a breach of the duty of fair presentation under the Insurance Act 2015. West Bay said the underwriter confirmed it would not have provided cover if Mr G had answered the question correctly.

Mr G did not accept West Bay's response. He said he purchased the policy through B and he made B aware of the water tank, so it was B's responsibility to provide accurate information to West Bay. Mr G also said that in any event he didn't consider the water tank to be a modification because it wasn't a permanent fixture, and it could be easily removed.

Our Investigator considered the case and he didn't think West Bay had acted unfairly. He said in summary, Mr G had a duty to make a fair presentation of the risk. The statement of fact included a question which he thought was answered incorrectly. He was satisfied that had the correct information been disclosed, the underwriter wouldn't have accepted the risk.

Mr G didn't agree with the Investigator and asked for an Ombudsman's decision, so the case has been passed to me.

## **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.

Having done so, I'm not upholding this complaint. I'll explain why.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

I'll start by explaining that this complaint is against the insurer, West Bay. Although this policy was sold through B, B is not a party to this contract as it's between West Bay and Mr G. Therefore, I'm not considering the action of B in this complaint. A separate complaint is being investigated about the sale of the policy. Here I'm only deciding whether West Bay acted fairly and reasonably when deciding that Mr G failed to fairly present the risk correctly.

The issue for me to decide in this instance is whether or not it is fair and reasonable for West Bay to avoid Mr G's policy and decline his claim on the basis it has set out in its final response to Mr G's complaint.

West Bay made the decision to avoid Mr G's policy on the basis of a breach of the duty of fair presentation made by Mr G when renewing the policy in 2023. When considering whether West Bay acted fairly, the starting point is the Insurance Act 2015 (the Act). Under the Act, commercial policyholders, such as Mr G, have a duty to make a fair presentation of the risk to the insurer when taking out a policy. This means they have to disclose either:

- everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

Where there has been a failure to fairly present the risks to an insurer, and this gives the insurer a right to a remedy under the Act, this is called a qualifying breach.

The Statement of Insurance that was sent to Mr G in 2023 included the following statement:

"Any modifications to the manufacturers' original specification e.g. alloy wheels, suspension or engine?"

And it explained that if any of the information provided on the Statement of Insurance was incorrect, it may result in additional premiums, refusal of a claim or being fully paid, policy being cancelled or being null and void and treated as if it never existed.

It's not in dispute that the above statement was marked as 'yes' by Mr G and he had told West Bay (through B) about the signwriting on his vehicle but not the water tank.

West Bay says there is a breach and it has confirmed that if accurate information had been provided in relation to the water tank being installed in the vehicle, the policy would not have been offered.

Mr G said he didn't consider the installation of the water tank as modification because it was temporary and can be removed. The question asked refers to any modification to the manufacturer's original specification. I've not seen any evidence that the water tank came as an original specification and Mr G accepts he installed it. There is no requirement for a modification to be permanent as usually modifications can in most cases be removed if needed. 'Modification' is not defined in the policy, but given the description in the Statement of Insurance and the examples provided therein, I'm satisfied that it was reasonable for West Bay to consider the addition of the water tank as a modification.

Mr G also argues that B knew about the water tank and it was B's responsibility to inform West Bay. I agree with our Investigator that it was Mr G's responsibility to ensure the information in the Statement of Insurance was correct. The document also contained a warning to remind the policyholder to check that all the information provided is accurate and explained the potential consequences of it not being correct. I've not seen anything to suggest the policy documents weren't provided to Mr G.

I am satisfied that it was Mr G's responsibility to ensure that he provided a fair presentation of the risk to West Bay when the policy was renewed in 2023. As he didn't do that in this instance, I am satisfied that he breached the duty to make a fair presentation of the risk.

West Bay says if it had been told about the water tank, it wouldn't have offered cover. I have seen evidence which supports that Mr G wouldn't have been offered a policy. The evidence provided by West Bay is commercially sensitive and so I can't share it with Mr G, but I am satisfied that it wouldn't have offered terms. Therefore, I think Mr G made a qualifying breach when renewing the policy.

The Act also says where there has been a breach and the insurer wouldn't have provided a policy, the insurer is entitled to avoid it. The remedies available to West Bay depend on whether a qualifying breach is either deliberate or reckless, or, neither deliberate nor reckless. West Bay haven't treated Mr G's breach as deliberate or reckless, and therefore, in line with the remedies available under the Act, it refunded his premium. Based on all the circumstances, I think West Bay was fair in deciding this.

I'm satisfied it was fair and reasonable for West Bay to avoid the policy from 2023, refuse Mr G's claim and return the premiums for that policy year. This remedy puts Mr G back in the position he would have been in had the duty of fair presentation not been breached. This is in line with the actions prescribed in the Act and I see no reason to depart from this approach in the circumstances of this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 10 January 2025.

Ankita Patel  
**Ombudsman**