

## **The complaint**

Mr B complains about the way West Bay Insurance Plc handled a claim he made on his motor insurance policy.

## **What happened**

Mr B has an imported classic car. In May 2023, another vehicle collided with it, causing damage. He made a claim on his West Bay insurance policy. West Bay said the car needed to be written off, as a category B – meaning it wasn't suitable for repair, but some of its parts could be recycled and put back into use. It offered £3,600 for the settlement. It later increased this amount to £6,500, and then £10,000.

Mr B complained about the settlement offered, and the total loss categorisation. He said he wanted the total loss category to be amended so he could retain the salvage. In September 2023, West Bay responded to that complaint. It was satisfied its settlement offer was fair and that it had made a reasonable decision to declare the car a category B total loss.

Mr B made a further complaint to West Bay, he said it had caused damage to the vehicle - including its bonnet - after the initial incident. He said this was factored into West Bay's decision not to carry out a repair, which was unfair.

A further complaint response followed in November 2023. West Bay accepted it might have caused some additional damage to the vehicle whilst lifting it (because it wouldn't start) but said it wouldn't change the total loss category.

Unsatisfied with West Bay's response, Mr B brought his complaint to the Financial Ombudsman Service for an independent review. He said the damage caused by West Bay had factored into the car being a total loss. He also provided information relating to the ABI code of practice for the categorisation of motor vehicle salvage (ABI code) to support his view that the car could be repaired, and so shouldn't be categorised as a category B total loss. He felt West Bay should pay £20,000 to settle the claim and allow him to retain the salvage.

Our Investigator didn't think West Bay had acted unfairly when settling Mr B's claim. He thought West Bay was reasonable in relying on its engineer's report to decide on the total loss category. He wasn't persuaded by Mr B's comments on the ABI code. He also didn't think the damage West Bay caused was the reason the car was considered a total loss.

Our Investigator ultimately said he hadn't seen enough to suggest the offer of £10,000 was unreasonable.

Mr B disagreed with the outcome our Investigator reached. He made the following points in summary:

- West Bay had admitted causing damage to the bonnet of the vehicle during a phone call with him.
- His engineer says the car is safely repairable and it falls outside of the ABI code and so shouldn't have a total loss category applied.
- West Bay's engineer overstated the level of damage to the vehicle. Its report has errors and he doesn't think his car was inspected in person.

- The practical classics valuation guide, upon which West Bay made its offer, cannot be used as a credible source to value his car. As it's completely at odds with the prices advertised in the marketplace.

I previously issued a provisional decision on this complaint. I said I was minded to decide West Bay had made a fair offer of £10,000 to settle the claim for the market value of the vehicle. But I said I intended to require West Bay to allow Mr B to retain the salvage. A copy of my findings is below:

#### "Market value"

*I'll start by considering whether West Bay has made a reasonable offer of £10,000 for the market value of the vehicle. I consider it has, so I've explained why below.*

*Whilst Mr B's car is a classic car, he doesn't have an agreed value policy, so the policy he had with West Bay says the most it will pay is the market value of the vehicle, based on one of the same make, model, specification and condition, immediately before the loss. The terms say the market value will be decided by an engineer in conjunction with the published valuation guides.*

*Given the age and type of Mr B's car, West Bay said the usual valuation guides didn't provide a valuation. It did use another guide for reference, one that gives values for classic cars. That returned a possible value – based on the pre-loss condition of the car being below average – of £6,500.*

*West Bay's engineer considered the pre-accident condition of the car to be poor. It noted corroded chrome work, interior seats torn or damaged, poor paintwork and corrosion to all exterior panels. Having viewed the photographs from the scene of the incident, and the reports, I consider those comments largely in line with what I've seen. Based on that, and three adverts West Bay found for similar cars at £11,500, £12,000 and £17,950, it ultimately settled on an offer of £10,000. It said the condition of the cars in its adverts looked better than the pre-loss condition of Mr B's car, which is why it had offered lower than those advertised amounts.*

*Mr B says the engineer was incorrect in his statement that the interior was ripped, because it was only one seat that was torn, which he'd intended to repair. I accept from the photographs provided that there is only one seat ripped. But I'm not satisfied this means the engineer's overall comments on the condition of the car shouldn't be taken into account. Also, as West Bay hasn't relied only on the engineer's opinion to value the car, I'm not persuaded this incorrect comment means the valuation would otherwise be higher.*

*I've reviewed Mr B's claim that West Bay caused further damage to the vehicle in the storage yard. It seems accepted that the bonnet has become detached from its fixings in the storage yard. West Bay says this likely happened when the bonnet was lifted whilst checking the car. It also appears, when you compare photographs from after the accident to those in the storage yard, that the exhaust pipe has also come off the car at some point when it was in West Bay's possession. I'm not persuaded either of these smaller issues are the reason why West Bay marked the car as a category B. I also haven't seen enough to persuade me that the valuation of the car is lower because of either of these two issues, but I will return to this point later when reviewing the retention of the salvage.*

*Mr B has also said the classic car trade guide shouldn't be relied on because its values aren't reflective of advertised prices. He's made various points in support of his argument. But I don't think West Bay has solely relied on this guide in placing a valuation on his car. It seems to be it has used the guide valuation, the comments from the engineer and adverts to make its offer. I don't think that is unreasonable, and I note West Bay offered higher than the price returned by the classic car guide in any event.*

*Mr B has provided around 40 adverts for the same type of car he has, from what I can see the advertised prices he's provided have a very wide range from around £7,000 up to in excess of £80,000. He's said he also found ones listed for over £100,000 but didn't provide those as he accepts his car was in need of some restoration.*

*Whilst I've reviewed Mr B's adverts, I'm not persuaded that most of them match the pre-loss condition of his car, so those don't persuade me West Bay has made an unreasonable offer.*

*I've found four adverts from those Mr B provided which seem similar to the condition of his car, their advertised prices were as low as £7,750 and as high as €69,900. If I take an average of those (which won't be exact as some are in Sterling and some are in Euros) it would be around £25,000. However, it's difficult to place much weight on the higher advertised prices because I've seen adverts for already restored cars, which appear (from the photographs I've seen) to be in a superior condition to Mr B's, for considerably less than £25,000. For example, Mr B has provided adverts of restored cars advertised in the UK at £16,000 and £18,000. So it's difficult for me to say based on that wide range of advertised prices for cars in need of restoration, that West Bay's offer should be higher.*

*I've also considered that cars in need of restoration can likely be sold for much less than their advertised price. So putting a value on the vehicle isn't straightforward. However, having considered all of the adverts provided by Mr B, and the information provided by West Bay, I'm not currently satisfied Mr B has shown the pre-loss market value of his car is £20,000. And I consider I've seen enough to support that West Bay has made a fair and reasonable offer, based on a range of material available to it, to settle the claim for £10,000. So, it follows I'm not minded to require it to pay anymore.*

#### *Retaining the salvage*

*Central to Mr B's complaint is that he wants to be able to retain the salvage, because it's a classic car he's owned for a number of decades. Mr B's policy schedule says that where the vehicle is a total loss and there is a desire to retain the salvage of the vehicle, the underwriters will endeavour to comply with this, subject to the current legislation surrounding salvage of motor vehicles.*

*West Bay says the car is a category B total loss because there has been structural damage. But it said to Mr B that if he was able to provide a report from a suitably qualified engineer which set out that the ABI code of practice for classic cars would apply, and that the car could be restored as part of the code's consideration for classic vehicles, it would consider it. Mr B has done that. I've reviewed his report, it seems to be from a suitably qualified expert in the industry. In line with the code of practice that expert says the car can be repaired with new parts, which are still being made.*

*West Bay says it has a duty to other road users not to release any unsafe car back to a policyholder. And it says given the pre-loss condition of the car, it isn't persuaded Mr B will carry out the necessary repairs to safely return the car to the road. West Bay says if I require it to allow Mr B to retain the salvage, it won't agree to remove the category B marker until evidence of satisfactory repairs has been provided to it.*

*Having carefully considered all points of view here, I consider West Bay's suggestion above to be a pragmatic way forward. I consider it not removing the category B marker it allows it to be confident it is safeguarding other road users, until satisfactory repairs are complete. And this way forward then also allows Mr B to retain the salvage as I think he's evidenced he's fairly able to under the ABI code. I note Mr B's expert also provided information of a garage accessible to Mr B that would be willing and able to carry out the necessary repairs. So, I'm minded to decide it is fair and reasonable for Mr B to retain the salvage.*

*Mr B's engineer said the salvage for the car would be around £450. However, insurers have agreed rates with salvage yards, which I consider it can fairly use, since allowing Mr B to retain the salvage means it would otherwise miss out on that payment.*

*I've seen reference from West Bay that it would actually retain 39% of the market value if the salvage was retained for a category U with a pre-accident value of £10,000. However, given West Bay isn't changing the category to a category U, I don't think it would be reasonable to retain this amount for the salvage. West Bay says it doesn't have a category B retention rate because you can't retain the vehicle. However, I'm satisfied the vehicle can be retained in certain circumstances, including those involved in this case.*

*I'll consider any more comments I receive from both parties in relation to this, but I'm minded to decide that unless West Bay can show what its agreed rate is for the car – as a category B – that it should only retain £450 for the salvage. Since currently, that is the only evidence I have on what a usual salvage rate would be for the car in its current damaged condition.”*

#### Responses to my provisional decision

West Bay said given the car is technically being changed to a category U (once repairs are completed) it should be allowed to charge for salvage at that rate. It said had it simply graded the car as a category U, it would have been able to retain more for the salvage. It says it's essentially being penalised for maintaining the salvage category should be a 'B' due to its safety concerns. It said only being able to deduct £450 for the salvage was unfair.

In summary Mr B was happy that he'd be able to retain the salvage, and at the £450 amount, but said he was reluctant to accept it on the terms set out in my provisional findings. In summary he said he'd found West Bay difficult to deal with and wasn't confident it would agree to remove any category B marker, even once the needed repairs were undertaken. He instead wanted to enter into an agreement with West Bay that it would remove the category B marker now, and that he would carry out the repairs through competent engineers/mechanics. He would, on completion of repairs, have the car MOT tested and make any repairs needed to pass the MOT. He would then have the car MOT tested for the following ten years.

Mr B also provided further information on cars to support his argument that the pre-accident valuation of £10,000 was too low. And he said the adverts relied on by West Bay should be disregarded, he thought the car advertised at £11,500 was likely a scam advert based on his research. He said West Bay hadn't shown the £10,000 was fair. He also said leaving aside the actual valuation, West Bay should add interest on the valuation amount. It should also pay the £500 Mr B spent on his engineer's report, as well as postage expenses he'd incurred. He also thought West Bay should compensate him for distress and inconvenience over the past 14 months, as well as compensation for the loss of enjoyment of his car.

#### **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.

There has been extensive comment from both parties over the market value, and whilst I have read and considered all of these comments, I'm not going to respond to all.

#### The Market Value

As set out in the provisional decision, West Bay provided three adverts, the one that most closely matched the specification of Mr B's car was listed for £11,500. Mr B says he thinks he's found this listing, although possibly on a different website, and he considers it likely to be a scam listing. He later said he'd found that same car might have actually sold for around £25,000. I haven't seen enough to persuade me the listing was a scam listing, and so shouldn't be relied on. And even if I accept that it later did sell for £25,000, I'd still need to be persuaded that Mr B's vehicle, in the condition it was in before the accident, had a higher pre-market value than £10,000. And I'm still not persuaded that it most likely did.

The car that Mr B says might have sold for around £25,000 also appeared, from the photo, to be in a superior condition to Mr B's. And it's clear from the adverts and comments

provided that there is a very wide range at which these cars sell for, but from all of the adverts provided it seems to me that restored cars are valued higher than those similar to the pre-accident condition of Mr B's vehicle.

Mr B provided two adverts for cars listed at around £7,750 and £12,000. Whilst he considers his car to be in a superior condition to those, I think it is indicative that his type of car, in need of restoration, does sell for below the £20,000 he has alluded to as a likely value. The classics car guide provided an estimate of around £6,500. And given Mr B hadn't taken out an agreed value policy, West Bay is also entitled – under the terms of his policy – to rely on the experience of its engineer in valuing cars, even though this is a rare one. And whilst Mr B has shown he knows a lot about this type of car, he hasn't provided anything from a suitably qualified valuer or engineer which persuades me West Bay's offer is too low to be considered reasonable. So I'm not going to ask it to increase its offer.

I'm also not going to ask West Bay to add interest onto the amount. This Service can require a business to add 8% interest onto funds that a consumer has unfairly paid as part of a claim process, and so been unfairly without. However, I'm not persuaded West Bay should add interest onto the offer simply because it made it some time ago and it wasn't accepted. I'll return to other costs claimed for later in the decision.

#### Retention of salvage

I've considered the comments on both sides and I am satisfied that the fair and reasonable outcome of this case is for Mr B to be able to retain the salvage of the vehicle, given the comments from his engineer. And so I consider, since this engineer's report is important to the outcome of this complaint, that West Bay should fairly reimburse what Mr B paid for it. He says it was £500, I'd expect him to be able to show West Bay that he paid this amount. It will need to add 8% interest onto the amount paid from the date Mr B paid it, until the date of settlement.

I also find that West Bay can only retain £450 as the salvage value. Whilst I note West Bay's comments that it would be able to deduct a higher amount from the settlement if the car was a category U, this isn't what the car is currently recorded as. And it will be Mr B who must pay for the restoration of the vehicle in order to have the category B marker removed. So, it doesn't seem fair or reasonable to me for West Bay to be able to deduct the same amount for salvage as it would for a category U car.

I understand Mr B's reservations about having to refer back to West Bay to have the car category changed, once he has restored it. But I'm not satisfied that his recommendation is the fair and reasonable way to resolve this complaint. Requiring West Bay to remove the category B marker now, before the necessary repairs are undertaken, doesn't seem reasonable to me. If Mr B accepts this final decision, it will be binding on both him and West Bay, meaning should he face issues with West Bay down the line, he would be able to enforce the final decision. He also may be able to bring a further complaint to this Service, subject to our usual jurisdiction rules. So I'm only going to require West Bay to remove the Category B marker once Mr B has evidenced he's had the necessary repairs carried out by a suitably qualified engineer.

#### compensation

Mr B has said he's had postal expenses of between £30-£40 due to sending letters to West Bay by recorded delivery, I'm not going to require it to reimburse this cost to Mr B. Sometimes there will be uninsured expenses incurred whilst dealing with a claim, and as I ultimately find that West Bay offered a fair market value, and its likely some of that postal cost related to Mr B's representations on that, I'm not persuaded it needs to reimburse these costs.

I understand dealing with a claim causes unavoidable frustration and inconvenience, that isn't something that this Service awards compensation for. This Service can make an award

for compensation for avoidable distress and inconvenience caused by mistakes that a business made. But I'm not persuaded West Bay has made mistakes that warrant a compensation award. Mr B has been without enjoyment of his vehicle, but I don't find that is a result of a mistake West Bay made. I have decided differently to West Bay on the retention of salvage on the particular circumstances of this case, but this doesn't mean I think it needs to pay Mr B compensation for its initial refusal to allow him to do so. The car needs extensive repairs, Mr B would have always been without enjoyment of the car for some time as a result, I'm not persuaded West Bay needs to pay compensation for the loss of enjoyment Mr B has had so far.

### **My final decision**

My final decision is that I require West Bay Insurance Plc to:

- Pay Mr B £10,000 to settle for the total loss of his vehicle.
- Allow Mr B to retain the salvage. West Bay can deduct £450 from the settlement amount for the value of the salvage.
- Upon receipt of confirmation from a suitably qualified engineer that the necessary repairs have been carried out, West Bay will need to remove the category B marker from any internal or external databases.
- Reimburse Mr B what he paid for his engineer's report, upon receipt of his evidence of payment. West Bay will also need to add 8% simple interest onto that amount from the day Mr B paid for the report, until the date of settlement.\*

\*If West Bay Insurance Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 January 2025.

Michelle Henderson  
**Ombudsman**