

## The complaint

Mr B complains about how much West Bay Insurance Plc ('West Bay') paid him in settlement following a claim under his motor insurance policy. He's unhappy they've now asked him to repay the difference between the amount he received and what they should have raised.

## What happened

Mr B held a motor insurance policy underwritten by West Bay. He made a claim for damage in January 2024, which was accepted, and body repairs were completed. But West Bay said a replacement for his damaged heads-up display unit ('HUD') would take several weeks to be delivered. Mr B discussed the option of settling this element of the claim via a cash in lieu payment. West Bay agreed and raised a payment of £8,684 which Mr B said he understood to relate to the HUD only.

However, Mr B was later contacted by the repairing garage to settle their costs. And West Bay clarified that they'd raised the payment in error as it included the body repairs as well, which they'd expected Mr B to pay the repairing garage directly. They asked Mr B to repay the difference, but Mr B explained he'd opted to have the HUD repaired elsewhere and had since spent the difference in the settlement he'd received. West Bay said they would need Mr B to pay them back via a payment plan.

Mr B was unhappy with West Bay's request for him to return the overpayment, so he raised a complaint. He said he'd accepted the total amount on the understanding it only related to the HUD in good faith, and West Bay had failed to properly communicate with him that he'd need to pay the garage directly for the body repairs.

West Bay considered the complaint and upheld it in part. They said they would be paying the repairing garage directly and would expect Mr B to repay the surplus he'd received in error. But they did say they agreed the service he'd received during his claim had been poor, their communication regarding the payment made to him was not acceptable, and it was also acknowledged that the incorrect outcome was originally reached on the complaint. They also said that they'd contacted Mr B to discuss a payment plan despite telling him they would place this on hold for a period of six months.

West Bay awarded a total of £475 compensation in light of these failings across their final responses. But Mr B remained unhappy with West Bay's response to his complaint and felt he didn't owe them any money – so, he brought the complaint to this Service.

An Investigator looked at what had happened but didn't recommend the complaint should be upheld. He said that, while it was clear Mr B's customer journey had been poor, and this experience had caused stress and inconvenience, he didn't think it was unreasonable for West Bay to request repayment of the overpayment. And he thought their total compensation award was fair in the circumstances and in line with this Service's approach.

Mr B didn't agree with the Investigator's findings. He said he'd accepted the offer of settlement in good faith and based on the information provided by West Bay. He felt this

resulted in a contract being created when the payment was made to him. He said that based on the agreement which had been made, he'd spent the settlement money repairing his HUD and treated his family to a holiday. And he said that if he'd known West Bay had made a mistake, he wouldn't have accepted the settlement and instead would have waited for the parts to become available. Mr B also said he felt the compensation awarded was too low in respect to the worry and stress he'd endured which had worsened his existing medical conditions.

As the complaint has yet to be resolved - it's been passed to me to decide.

### **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 have come to largely the same overall outcome as the Investigator. I appreciate this is not the answer Mr B had hoped for – so I'll explain why.

I should start by explaining that I won't be repeating the entirety of the complaint history here in my decision or commenting on every point raised. Instead, I've focussed on what I consider to be the key points I need to think about in order to reach a fair and reasonable conclusion. This reflects the informal nature of this Service and our key function; to resolve disputes quickly, and with minimum formality. However, I want to assure both parties I've read and considered everything provided.

West Bay have confirmed they made a mistake and shouldn't have raised the cash in lieu payment for both the body repairs and the HUD – and they should have made this clear to Mr B when they did so. This means I don't need to make a finding on whether or not they did something wrong. Instead, I need to decide whether it would be fair and reasonable for them to request a repayment of the surplus.

Mr B's main submission is that he received the money in good faith and was not aware an error had been made. He says there is relevant case law that supports his position that where money is received and spent in good faith – it would be unfair to recover it. I haven't been provided with any caselaw that Mr B wishes to rely upon – but I am generally aware of the legal principle he refers to, which is *unjust enrichment*. For a defence to unjust enrichment to apply, Mr B would need to show he relied on a statement to his detriment and that he spent the money in good faith, believing it to be his.

I've listened to the phone call between West Bay and Mr B where they agree to raise a cash in lieu payment. I think there is no doubt that this call could have been much better, and I accept West Bay caused confusion given Mr B's surprise at the size of the proposed payment. But I don't think the call shows that Mr B was categorically told the payment only related to the HUD.

While Mr B directly asked whether the payment was for the HUD, the call handler at West Bay answered this question by saying that some parts were on back order and if the garage's quote included them – this payment would be for those parts. No further clarification was sought and the call ended with West Bay taking payment details.

Additionally, Mr B asked for written confirmation to follow the call – but this was never sent out. Whether or not Mr B understood the payment to relate to the HUD based on the call alone, I don't think this is enough for me to fairly conclude that West Bay shouldn't be able to recover it. There was no follow up confirmation in writing that Mr B may have reasonably relied on, and while I recognise this was West Bay's responsibility to send out - I think it

would have been prudent to follow this up given the size of the payment. Additionally, given the disparity in the payment Mr B received against the cost of having the HUD repaired, I think this could have led a reasonable person to suspect the payment may have been incorrect.

I should also explain that while I am required to take the law into account when considering a complaint, under DISP 3.6.1, my remit is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. Having done so, while I'm satisfied that West Bay didn't provide Mr B with clear information – I don't consider it fair and reasonable for me to interfere with their decision to request this overpayment back from him. Ultimately, this payment was made on the basis of an insurance policy which exists to indemnify Mr B against loss.

So, I don't think I can reasonably conclude that West Bay should disregard recovery due to an error they made which would put Mr B in a better position than the policy requires in the event of a loss. I acknowledge that it was West Bay's error in raising an incorrect payment in the way they did. And West Bay have confirmed their communication could have been better in explaining what they did. However, I think the fair remedy here would be to award a sum of compensation to address the loss of expectation and inconvenience caused to Mr B.

I can see West Bay have already made a compensation award of £475 which the Investigator thought was fair. So, I need to think about whether that's enough compensation to reflect the impact on Mr B of West Bay's actions. I've thought about this complaint very carefully, as well as this Service's approach to compensation awards. I've weighed up Mr B's testimony, the available evidence, and the duration of the process, and I was sorry to hear about Mr B's health conditions which he said was made worse by this situation.

Overall, West Bay got back in touch with Mr B within a short period of time to correct things. So, I agree that this sum of compensation falls within a reasonable range and reflects the impact West Bay's actions had on Mr B.

While I appreciate this amount is not what Mr B considers to be adequate in the circumstances, it's important to note that this Service does not look to make specific awards for someone's time, or calculate it using a set amount, like an hourly wage. So, while I appreciate that this may not fundamentally change matters for Mr B – I'm overall persuaded the sum West Bay awarded creates a fair and reasonable conclusion to this particular complaint and is in keeping with similar awards this Service would make.

As such, I do not intend to interfere with West Bay's decision to seek recovery of the funds paid in error. And as they have already raised payment for compensation, I won't be directing them to do anything more.

While not a direction, I would also consider it good industry practice for any repayment plan that is agreed to have no interest attached and set over a time period in line with Mr B's affordability and other financial commitments.

### **My final decision**

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 July 2025.

Stephen Howard

**Ombudsman**