

The complaint

Mr and Mrs G have complained about their commercial vehicle insurer West Bay Insurance Plc regarding a claim they made when their pick-up van was stolen.

What happened

Mr and Mrs G's pick up was stolen in mid-May 2024, with a claim being made to West Bay by their broker. Towards the end of May, the broker asked if West Bay had made a decision on settling the claim as Mr G needed to purchase a replacement vehicle because his son, whose vehicle he had been borrowing, was returning to work. A query was also raised about a tent box (fitted to the roof of the vehicle) which had also been stolen. West Bay said the maximum policy limit for the tent box was £250.

On 31 May 2024 West Bay issued a letter via email confirming the claim was accepted and that the market value for the vehicle was being determined. West Bay said the market value when determined would be subject to the application of a policy excess and would be given excluding VAT (because Mr and Mrs G were VAT registered).

West Bay subsequently made an offer to Mr and Mrs G of just over £12,000 (net the policy excess). They weren't happy with that and say they told their broker they'd accept £13,000 inclusive of the policy excess and tent box. Mr and Mrs G understood the policy excess was £250, so they were asking West Bay to agree a payment of £12,750, exclusive of any VAT. They provided adverts to support their view on the pick up's reasonable market value.

Having reviewed Mr and Mrs G's request for an increased market value, West Bay accepted the reasonable market value for the pick-up (not including the tent box) was £13,020. It sent Mr and Mrs G an offer letter confirming it had paid them £12,720, with the policy excess having been £300. However, that payment wasn't actually made, the pick-up was then recovered and West Bay decided to review its decision to settle the claim. Ultimately West Bay decided it wouldn't be fair to change its mind on settlement – but it did choose to revise the offer which had been made (which it had said had been paid).

Upon reviewing its file, West Bay thought that the market value it had offered was inclusive of VAT. It felt it had therefore made an error in offering the inclusive sum in settlement. It noted that £13,020 exclusive of VAT would be £10,850. It reviewed valuation guide values for the vehicle, the average of which it noted was £10,364 exclusive of VAT. West Bay, therefore, felt it could fairly offer £10,850 in settlement of the claim because that was more than the average of the valuations the guides it used had returned. In reaching that decision it noted there were some similar vehicles advertised for sale for less too. So West Bay, at the beginning of July 2024, sent Mr and Mrs G a payment of £10,550 (£10,850 less the £300 policy excess). Later, in August 2024, it sent them a payment of £250 for the tent box.

Mr and Mrs G were unhappy with the settlement paid by West Bay. Their broker said they had relied on West Bay's agreement to pay them £12,720 to buy a new vehicle and that it cost them £13,000 plus VAT to do so. In reply West Bay acknowledged it had made a mistake about the VAT but said it couldn't pay the VAT sum to them. It said its settlement, based on a market value which was above the average of the values returned by the

valuation guides, had been fair. It paid Mr and Mrs G £300 compensation for the upset it had caused.

Unhappy with West Bay's response, Mr and Mrs G complained to the Financial Ombudsman Service. Our Investigator noted West Bay had corrected its error over VAT and felt that, along with its compensation, reasonably put that right. She felt the settlement itself was in line with the valuation guides, and she noted current adverts for vehicles for sale for less than £13,000, so she felt the market value, less VAT, West Bay had paid was fair and reasonable.

Mr and Mrs G were unhappy with that outcome. They said their broker hadn't represented them well and had missed key details such as they'd had to hire a vehicle when they'd been left without theirs for a month. They said as they had, effectively, sold their stolen but recovered vehicle to West Bay, they had no way to claim the VAT back – so West Bay was acting unfairly in keeping that sum. They weren't persuaded that looking at adverts a year on was a fair way to assess their claim.

The complaint was referred to me for an Ombudsman's decision. Having considered everything, I found I was minded to require West Bay to pay Mr and Mrs G an additional £2,170 in settlement of their claim, plus interest. So I issued a provisional decision to share my view on the complaint with both parties.

Mr and Mrs G replied to say they were happy with the outcome. West Bay did not reply.

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 said provisionally:

"In claims for commercial vehicles, it is often the case that any market value used in settlement will exclusive of VAT. This is nothing to do with the insured car, written off by the insurer, being effectively 'sold' by the policyholder to the insurer. Rather settlement for the insured car is made net of VAT because the settlement is made to allow the policyholder to purchase a replacement vehicle. Where the policyholder is a VAT registered commercial customer, as are Mr and Mrs G, that purchase will usually be exempt from VAT. So, assuming West Bay's market value, net of VAT, is fair, there is nothing wrong with the principle of it paying that sum (less the policy excess), in settlement of the claim.

However, if West Bay made a promise to pay the settlement inclusive of VAT, and Mr and Mrs G relied on that to purchase a new vehicle, then West Bay later changing its mind on paying VAT would not be fair. I'm not persuaded that was the case here though.

The pick-up was stolen in mid-May, with the first contact to West Bay seemingly being 15 May 2024. Around two weeks later West Bay was asked to confirm if it would be settling the claim, as Mr G needed to purchase a replacement vehicle as his son's would no longer be available to him. At that time West Bay said it would be settling the claim but the amount of its settlement was still being reviewed. It's first offer of settlement was then made on 4 June 2024, and it wasn't until 17 June 2024 that West Bay made the offer of £12,720 (£13,020 less the £300 policy excess). Mr G shared his invoice for his new pick-up, this was dated 1 June 2024, and confirmed payment was made on 2 June 2024. So Mr and Mrs G relied on West Bay's promise that the claim would be settled before buying their new vehicle – but not on any promise of a specific settlement sum being paid.

However, in that call at the end of May, West Bay was clear that any sum it would eventually set out as the market value for the vehicle, would be given excluding VAT. I think that is important when thinking about whether the settlement sum, which West Bay had said on 17 June it had paid, was really a mistake by it. I'm not convinced it was.

West Bay knew Mr and Mrs G were commercial customers. It had specifically said any market value would be given exclusive of VAT. And it wrote to them confirming it was waiting for its engineer to set out their "pre-VAT" market value. So I'm not persuaded West Bay just overlooked or forgot about the VAT when issuing its initial or revised settlement offers in June 2024.

The initial offer from West Bay, before the excess was deducted, was £12,496. The broker had, at that time, provided a couple of adverts showing similar replacement vehicles for sale at £13,000 and £14,000. Mr G has said these values were exclusive of VAT. The broker asked West Bay if that was the maximum settlement that could be offered and if the adverts provided had been considered when reaching that value. West Bay, that same day, agreed to increase the market value (for the pick-up not including the tent box) to £13,020, with it acting to make payment that same day too. I'm currently reasonably satisfied that West Bay, at that point, accepted that a reasonable market value for Mr and Mrs G's pick up, excluding VAT, was £13,020.

I say that because when the engineer reviewed the valuation guides the highest guide value returned was £11,416 excluding VAT, £13,699 including VAT. The engineer, in his report, also referenced some adverts he'd found for cars for sale or recently sold. I say 'referenced' because West Bay's file doesn't include screen shots of those adverts, rather its engineer has just captured detail from them in his report. However, the detail captured shows that all the prices recorded were "subject to VAT". When that phrase is used in advertising it usually means the price given is the price a commercial customer, exempt from VAT will pay – but a non-exempt customer will pay more because VAT will be added.

The engineer recorded details of 12 adverts. Having reviewed the details recorded, I'm discounting three. They seem outliers to the definite theme set by the remaining nine. The nine adverts suggest that a pick-up with more than 100,000 miles on it will be advertised for sale at less than £10,000. And, conversely, a pick-up with less than 100,000 miles on the clock will be advertised for sale at more than £10,000. Mr and Mrs G's vehicle had less than 100,000 miles on it – so I've looked more closely at the group of adverts for vehicles for sale over £10,000.

There were five adverts for vehicles for sale at more than £10,000. One was at a similar price to the market value West Bay applied of £10,850 (which of course was excluding VAT) – £10,999. That was for a 2014 pick-up, as was Mr and Mrs G's, which had 98,000 miles on the clock. So the mileage was slightly more than that covered by Mr and Mrs G's pick up. There was only one other 2014 model, that was for sale at £12,490, but had only done 60,000 miles, so a bit less than Mr and Mrs G's vehicle. The remaining three were 2015 models, with sale prices around £15,000. The average price of all five examples is £13,896.

So I've thought then about what the engineer saw – he saw valuation guide prices which, excluding VAT, were not indicative of the general selling price indicated by the available adverts. The average of those valuation guides values, with VAT added, was in the region of the sum Mr and Mrs G had requested – £13,020. With that average sum also being more broadly in line with the adverts reviewed by the engineer, which did not include VAT, rather than the 'excluding VAT' sums returned by the valuation guides. So I think the engineer, acting for West Bay, was satisfied that the reasonable market value, exclusive of VAT, for Mr and Mrs G's pick-up was £13,020. It follows that I think he made a reasonable decision to make a settlement to Mr and Mrs G of £13,020 less the policy excess.

Of course, that payment wasn't actually made. West Bay's settlement in the end was for £10,850 less the policy excess. But I haven't seen anything from West Bay which makes me think its revised market value was fair and reasonable. West Bay has said that the adverts support its lower sum. But my review of those adverts shows that is not the case – in fact, only vehicles with more mileage on them than Mr and Mrs G's had were for sale at less than the "excluding VAT" sum West Bay paid.

I'm currently minded then to require West Bay to honour its original settlement offer of £13,020, less the policy excess, for the pick-up. I'm satisfied that sum of £13,020, which is exclusive of VAT, is the reasonable market value for Mr and Mrs G's pick-up. After deduction of the £300 policy excess, that market value would net a settlement payment to Mr and Mrs G of £12,720. West Bay paid them £10,550 (net of the policy excess) on 3 July 2024. The difference in those two sums is £2,170 and I think West Bay should pay this to Mr and Mrs G, with interest applied from the 3 July 2024 until settlement is made.

Clearly only settling the claim in July 2024 was not ideal – especially given West Bay's file shows it raised payment on 17 June 2024. I think that the promised payment not being received was frustrating for Mr and Mrs G – but I bear in mind they had, by that time, already replaced their vehicle, and with one which was significantly more expensive than the £13,000 they'd said they'd be happy for West Bay to settle for (less the policy excess). So I think they were always prepared to cover some significant short-fall in settlement. I also bear in mind that most of the challenges raised, and communication which occurred with West Bay, was from their broker. So I think the distress and inconvenience caused to them by West Bay's decision to pay a reduced sum was minimised. West Bay has paid £300 compensation. I think that is reasonable and I'm not currently minded to make it pay anything more.

I'm mindful, at this point, that Mr G recently told our Investigator they'd incurred hire costs because West Bay had left them without settlement for a month. Clearly West Bay didn't make its settlement payment when it should have done on 17 June 2024. West Bay's (reduced) settlement was only paid on 3 July. But this delay in settlement did not leave Mr and Mrs G without a vehicle as they had already replaced their pick-up at the start of June, within about a fortnight of the loss. It was reported they'd had use of their son's vehicle until that point. But if the broker was wrong in saying that and they'd actually incurred hire charges – that isn't something I could reasonably require West Bay to reimburse to them. Simply put the policy doesn't offer that cover and West Bay reasonably needed time to consider the claim.

Mr and Mrs G may still be unsure about the tent box. I know they thought this was paid as part of the market value for the pick-up. But that was not the case. West Bay dealt with the tent box separately under the personal possessions cover available on the policy, with the policy limit for that being £250. West Bay's file shows a payment of £250 was made to Mr and Mrs G on 6 August 2024. So I consider the tent box issue settled and I'm not minded to require West Bay to pay anything further in this respect."

As Mr and Mrs G are happy with the outcome, and West Bay hasn't raised any challenge, I've no need to review or revise my provisional findings. As such I can confirm they are now the findings of this, my final decision.

My final decision

I uphold this complaint. I require West Bay Insurance Plc to pay Mr and Mrs G £2,170 plus interest, applied from 3 July 2024 until settlement is made.*

*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 and Mrs G a certificate showing how much tax it's taken off.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs G to accept or reject my decision before 26 September 2025.

Fiona Robinson
Ombudsman