

The complaint

Mr S has complained that West Bay Insurance Plc (West Bay) provided him with a replacement phone that wasn't comparable to his original phone which was damaged. References to West Bay include its agents and administrators.

What happened

Mr S had an iPhone 11 128GB phone which he acquired on 5 November 2019. He reported this phone lost on 2 October 2020. West Bay provided him with a replacement iPhone 11 on 30 October 2020. It emailed him on that date confirming that the package he would receive contained a black iPhone 11 128GB. Mr S paid a policy excess of £100.

It was only at the end of December 2022 that Mr S, having dropped and damaged his replacement phone, realised that it only had 64GB.

He raised this with West Bay and asked it to provide him with an iPhone 14 Pro with 1TD of memory. West Bay accepted that he'd received the incorrect phone and apologised for his upset and frustration but said it couldn't provide him with what he'd requested. Instead, it offered him three options:

1. If Mr S returned the damaged device, it would replace it with an iPhone 11 128GB.
2. It offered to refund the difference in the two phones.
3. It offered to refund the difference in the two phones and also the excess he'd paid.

Mr S wasn't satisfied with West Bay's proposal in response to his complaint or the manner in which his complaint had been handled. He brought his complaint to this service.

Our investigator's view was that the options offered by West Bay were fair and reasonable and he wasn't going to ask it to do anything more.

Mr S wasn't satisfied with our investigator's view, so it's been referred to me for a review and a final decision from this service.

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 Mr S's complaint and I'll explain why.

I've looked at the terms of Mr S's policy with West Bay and what West Bay is required to do when providing a replacement phone. The relevant term is this:

“The intention of this policy is to put you back in the same position as immediately prior to the loss or damage. It is not a replacement as new policy. If the gadget cannot be replaced with an identical gadget of the same age and condition, we will replace it with one of comparable specification or the equivalent value taking into account the age and condition of the original gadget. We cannot guarantee that the replacement gadget will be the same colour as the original item. Where an equivalent refurbished item is not available, we will offer vouchers or a cash settlement based on the market value of the original gadget taking into account its age and condition.”

So West Bay should've provided Mr S with a phone of comparable specification, namely a 128GB phone. It only provided him with a 64GB replacement. It's accepted that this was a mistake. But Mr S didn't notice this until over two years later when the phone was damaged. This suggests that the lower memory wasn't obvious to Mr S and didn't cause him inconvenience.

But I can appreciate Mr S's concern that he might have paid more each month for a 128GB phone when he only had a 64GB phone. I'm not in a position to say what the price differential would have been between these two models each month over a two-year period, but I would expect that West Bay or indeed Mr S would have access to this information from Mr S's network provider.

In my opinion, West Bay has acted fairly and reasonably in the circumstances. It acknowledged its error and gave Mr S three options, two of which would ensure that he was refunded the difference between what he'd paid each month for a 128GB phone and what he should've paid for the 64GB phone he'd actually received from West Bay. I consider it unreasonable for Mr S to expect West Bay to provide him with the replacement phone that he asked for as this would be a betterment contrary to the policy term that I've quoted above.

I also don't consider it appropriate, given West Bay's offer, to require it to refund Mr S his premiums for the period since he received the incorrect model of phone.

Other than to request that West Bay keep open its original settlement options for acceptance or rejection by Mr S, I'm not going to ask it to do anything more.

My final decision

For the reasons I've given above, I'm not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 October 2023.

Nigel Bremner
Ombudsman