

The complaint

Mr W has complained about his commercial vehicle insurer West Bay Insurance Plc, regarding the value it attributed to his vehicle after it was stolen.

What happened

Mr W's van was stolen. West Bay accepted the claim and looked to offer settlement for the total loss of the van. It said, in line with the policy wording, it had checked one motor valuation guide to find what the van was worth (£4,023). And then, given it had been a previous total loss, with signs of existing damage, it had deducted 20%. It said it would pay Mr W the remaining sum, £3,218, less his policy excess. Mr W felt that was insufficient and complained to the Financial Ombudsman Service.

Our Investigator checked another three guides, with two of these returning valuations. She noted the highest of those two valuations was £5,270. She said West Bay hadn't shown any evidence to support it paying against the valuation it had found (the lowest of all three), had been fair. She accepted though that it was fair for it to have applied a 20% deduction. So she felt it should increase the market value it had applied to that sum before deducting the 20%. Giving a final settlement value of £4,216 (£5,270 minus 20%). She felt it should pay Mr W the difference, between this and its lower sum, plus interest.

Mr W indicated he was happy with that outcome. West Bay said it disagreed with it.

West Bay said its policy, which Mr W had agreed to, said that in determining a vehicle's market value it would make reference to one particular motor guide – which is what it had done. So it felt it was unfair to base an outcome on additional guides or to expect it to have shown anything in addition to the policy wording to support the fairness of its settlement.

Following a further response from our Investigator, West Bay reiterated that it should be able to rely on its policy term which says it will determine a trade market value based on reference to one specific motor valuation guide only. It said the premium paid reflected the policy terms agreed to. The complaint was referred to me for an Ombudsman's decision.

I felt the same as our Investigator regarding the market value. But I wasn't persuaded that West Bay had shown a 20% deduction was fair. And I felt it should be paying VAT. So I issued a provisional decision to explain my views to both parties. I said provisionally:

“This is a trade policy. So a market value based on trade prices applies. And trade prices do not include VAT. When Mr W brought his van, he says he did not pay VAT on it. However, his invoice for the van's purchase – which West Bay has a copy of – shows the purchase price did include VAT. In any event, whether or not Mr W paid VAT for his van, unless he is VAT registered – which he has confirmed he is not – he will have to pay VAT to replace his van. So, to provide a fair and reasonable settlement to Mr W, West Bay should add VAT to the trade market value settlement.

I appreciate that West Bay has chosen to use a policy definition for trade market value which seeks to restrict the sources it will use for making such a determination. But this service has

long held that to ensure that a fair market value is attributed to a vehicle, it's reasonable to take into account multiple motor valuation guides. So West Bay, in seeking to rely on a term which restricts its sources to just checking one of the guides, has not acted fairly and reasonably in settling Mr W's claim.

That means that I need to think about what is required to rectify that situation. To do that I've consulted two other valuation guides (also referenced by our Investigator). They returned values in excess of the one consulted by West Bay.

Given the recent competitive market for second-hand vehicle sales, the Financial Ombudsman Service feels it's fair to rely on the highest valuation returned by the motor valuation guides. Here that is £5,270. That is unless the insurer can show there is good reason to think a lower value/its lower value is fair. West Bay, beyond arguing that it should be able to rely on its policy terms in this respect, which I haven't accepted, hasn't presented any evidence to show this. So I think it's fair that I require it to base its total loss settlement on a trade market value of £5,270.

West Bay's engineer did note that the van had some existing damage on it, reported by Mr W as a "gouge" down the nearside. And it is recorded as a previous total loss. West Bay feels all this would affect its value (if it were sold).

I appreciate West Bay's view in this respect, But the currently competitive and fast moving market for second-hand vehicles means it is not so easy to negotiate prices. And, in older vehicles, some existing damage is often expected. The industry, in respect of claims which result in total losses, has also changed. Insurers are often finding cars to be total losses even where relatively minor damage has been caused, largely due to labour costs along with the price and availability of parts. So the insurer chooses to not repair them. Such that it's not fair to assume that all total loss vehicles would be viewed by potential buyers as unsafe propositions (because the insurer couldn't fix them). I don't think it's fair, in the current climate, to say that it's most likely that, Mr W's van, if sold, would sell for 20% less than other similar non-total loss vans. Especially in light of the fact that West Bay has presented no evidence to support its view that it would. Or that if it would be affected (which it might) that it would be affected by 20%. I'm therefore not persuaded it's fair and reasonable to deduct 20% from the market value for the existing damage and previous total loss marker.

The difference between the value West Bay used (£3,218) and £5,270 is £2,052. West Bay should pay this to Mr W, plus interest applied from the date it paid its original settlement until this payment is made. Mr W has said the original settlement was sent to him by cheque, that he didn't cash that. If that's the case, West Bay should reissue that payment. West Bay should also pay a sum to Mr W equivalent to VAT applicable on the total trade market value."

West Bay did not respond to my provisional decision. Mr W said he'd restored the van since buying it and the "gouge" was really just a scratch. He confirmed he had not cashed the settlement cheque.

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 note West Bay did not reply. I appreciate Mr W's clarifications. I remain of the view that West Bay has not shown that the pre-incident condition of the van, and/or its previous claim history, would have likely affected its market value by 20%. Also, unless West Bay can show Mr W did cash the original settlement cheque, it should re-issue that payment.

Putting things right

For the reasons explained above, I require West Bay to pay Mr W an additional £2,052. This being an outstanding sum due against its total loss settlement. It should add interest* to that sum, applied from the date of its original settlement until this payment is made.

I also require West Bay, unless it can show Mr W did cash its original settlement cheque, to reissue payment of that original settlement sum.

I further require West Bay to pay Mr W an amount equivalent to the VAT sum applicable against the total trade market value figure. Also plus interest* applied from the date of its original settlement until this payment 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 W a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require West Bay Insurance Plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 February 2024.

Fiona Robinson
Ombudsman