

## **The complaint**

Mr A complains West Bay Insurance Plc unfairly cancelled his motor insurance policy.

## **What happened**

In October 2020 Mr A took out a West Bay motor insurance policy. In early 2021 the insurer charged him an additional premium after reducing his no claims discount (NCD) entitlement. Mr A had said, when taking out the cover, he had nine years NCD. He accepted he had been mistaken and it was seven.

But around May 2021 West Bay cancelled the cover. It was explained to Mr A this was the result of an unacceptable gap in previous cover. However, in response to a complaint West Bay said it was unable to insure him as he hadn't lived in the UK for a full three years before the policy started. It explained this was outside of its underwriting criteria.

Mr A wasn't satisfied so he came to this service. He wants a refund of the additional premium and all admin fees charged – including for the cancellation.

Our investigator felt West Bay had acted in line with the relevant legislation – the Insurance Act 2015. So she didn't recommend it do anything differently. Mr A didn't accept that, so the complaint was passed to me to decide.

In June 2023 I issued a provisional decision. Its reasoning forms part of this final decision, so I've copied it in below. I explained why I didn't intend to uphold Mr A's complaint. I also invited him and West Bay to provide any further information for me to consider before issuing this final decision. West Bay didn't respond. Mr A asked for a recording of the call between him and the broker and provided a few comments.

### ***What I've provisionally 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.*

*West Bay cancelled Mr A's policy as it feels information it was given when the cover was taken out, regarding his residence in the UK, was incorrect. It says he hadn't been resident in the UK since the 1950's as originally stated. Instead he had been living outside the UK for 14 months prior to the inception of the policy in October 2020. So, in line with its underwriting guidance it was unable to offer cover. The relevant legislation for me to consider for this issue is the Insurance Act 2015 (the Act).*

*When Mr A took out the policy he had a duty – under the Act – to make a fair presentation of the risk. So this means it was his responsibility to ensure West Bay had all the information it needed to accurately assess the risk it was being asked to cover.*

*After receiving a quote via a website Mr A called the broker that arranged the cover. He says he explained about being out of the country for a period.*

*I've listened to the call and he didn't mention being out of the country at any point. And while our investigator implied he was asked directly about this, I've not found this to be the case. In fact I haven't seen anything, so far, that persuades me he did explain, before the policy started, that he had been abroad for 14 months.*

*I've seen Mr A's policy documents from the time. The 'Statement of Insurance' says 'Resident in the UK since'. Adjacent it gives a date in 1959. I'm satisfied West Bay wanted to know about his residence – and this was the information it was given in response.*

*The document asks Mr A to check the information is correct. It warns he is required to take reasonable steps to provide correct information – and warns incorrect information could adversely affect his policy. Finally it advises if he's unsure about any information, he should get in touch.*

*Months later, resulting from the NCD clarification, West Bay found out Mr A had been out of the country in recent years. He's explained, in a letter to West Bay, he had been in a foreign country for 14 months before the policy started. West Bay interpreted this as him not being resident in the UK throughout the three years prior to the policy starting. I can't say that's unreasonable or unfair.*

*Mr A's said he was still resident in the UK for tax purposes - and owned property here. However, the question on the statement of insurance didn't specify residence for tax purposes – or ownership of property. It's a general one about residence.*

*Considering how recent his time abroad had been, it would have been reasonable for Mr A to have sought clarification of the information required and explained the 14 months. As set out above he had opportunities to do so – including during the call and after receiving the statement of insurance. Unfortunately he didn't – and so West Bay wasn't provided with the relevant information. So it's reasonable to say there was a breach of the duty to provide it with a fair presentation of the risk.*

*But for West Bay to have taken any action, like avoiding the policy, the Act requires it to show the breach was a 'qualifying one'. Essentially it needs to show that if the correct residency information had been presented it would have done something differently - for example not offered cover or only done so on different terms.*

*West Bay's provided part of its underwriting criteria. Having seen that I'm satisfied it wouldn't have offered cover at all had it been told Mr A hadn't been resident in the UK in the period prior to taking out the cover. So there was a 'qualifying breach'. And because West Bay wouldn't have offered cover the Act allows it to avoid the policy. It chose to cancel it instead. That doesn't seem to have put Mr A to be in a worse position than an avoidance. So it acted fairly and reasonably – and so I don't intend to require it to do anything differently regarding the cancellation.*

*Neither do I regarding the additional premium for the NCD reduction. West Bay was initially told Mr A had nine years. But this was later amended to seven. Mr A's accepted he made a mistake with this. So I can't say West Bay did anything wrong here.*

## **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.

Mr A says there was no duty for him to explain he had been abroad. Instead he feels there was a duty on West Bay to consider why he hadn't owned a vehicle or had insurance recently despite holding many years of NCD. But I don't agree the insurer was required to do that type of analysis.

Instead there was a duty on Mr A to make a fair presentation of the risk. As I said in my provisional decision - the 'Statement of Insurance' says 'Resident in the UK since'. Adjacent it gives a date in 1959. The document asks Mr A to check the information is correct. It warns he is required to take reasonable steps to provide correct information – and warns incorrect information could adversely affect his policy. Finally it advises if he's unsure about any information, he should get in touch.

I still feel it would have been reasonable for Mr A to have sought clarification of the information required and explained the 14 months. He had opportunities to do so – including during the call and after receiving the statement of insurance. Unfortunately he didn't – and so West Bay wasn't provided with the relevant information. So it's reasonable to say there was a breach of the duty to provide it with a fair presentation of the risk.

So I still feel West Bay acted fairly and reasonably when cancelling Mr A's policy. I'm not going to require it to do anything differently.

## **My final decision**

For the reasons given above, I don't uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 7 August 2023.

Daniel Martin  
**Ombudsman**