

The complaint

Mr C has complained about his car insurer West Bay Insurance Plc as he feels the total settlement it paid him after his car was damaged beyond repair in an accident, is too low.

What happened

Mr C's car was damaged in an accident in August 2022. His car is electric, he leases the battery. He made a claim to West Bay. On inspection West Bay decided the car was beyond repair and told Mr C it would settle with him for its market value. It said that was £15,250.

Mr C said he had seen a value in another trade guide of £22,300. He noted other cars for sale, similar to his, all in excess of the market value offered by West Bay. He asked that West Bay revise its valuation. West Bay wasn't prepared to do that. It noted that it doesn't use the guide Mr C had referred to. It felt it had fairly and reasonably assessed the market value at £15,250. Mr C complained to the Financial Ombudsman Service.

On referral to this service our Investigator felt there was an error in West Bay's reasoning for the market value reached, which meant Mr C had been paid less than he otherwise should have been. So she asked West Bay if it felt able to increase its offer. It said it would pay £16,121 based on an average of market values returned by two trade guides. The offer was put to Mr C. He, noting he was still paying for the battery, wasn't minded to agree to it.

Our Investigator explained that she felt the revised offer from West Bay was fair and reasonable. She wasn't minded to make it increase that further.

Mr C noted that one of the trade guides our Investigator had referred to gives market values for his type of car with and without the battery. He noted the value for cars not subject to a battery lease was greater than those which were. He felt West Bay's offer of £16,121 would leave him with only just over £13,000 to replace his car as he'd need around £3,000 to replace the battery. Our investigator noted that West Bay's cover was for Mr C's car, and whilst he could have taken out separate cover elsewhere for the battery, he hadn't done so. But she asked West Bay for more detail about its settlement.

West Bay said the car as a whole, including the battery had been declared a total loss. It said the trade guides used had given values inclusive of the battery, as such its offer represented a value for the car including the battery.

Our Investigator confirmed that her view on the complaint had not changed. The complaint was passed to me for an Ombudsman's decision. I felt it should be upheld, with West Bay to settle based on an increased market value, plus interest, along with it paying £1,000 loss of use and £150 compensation.

In reply West Bay said it generally agreed with my findings – but thought interest should only be applied from a later date. It said it will need detail from Mr C about what is owing on the battery – it will pay that to the finance company, deducting that sum and the policy excess from the market value before paying any balance remaining to Mr C. Mr C said he had told West Bay before about what was owing on the battery lease.

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.

My provisional findings were:

"In considering the complaint I was mindful that Mr C had said his car was sold with an option to buy the battery or lease it. I asked one of our Investigators to make some enquiries with the trade guides about the market values returned for Mr C's car, with two of the three contacted responding. A fourth guide often relied upon for market valuations has previously told us it can't value this model at all. Having reviewed the detail received, I'm not persuaded that the settlement value West Bay offered does reflect the market value for the car including its battery. As such I'm not persuaded that West Bay has offered fair settlement for Mr C's claim and I'm issuing this provisional decision to explain my views to both parties.

My starting point for this decision is West Bay's clarification that it intended to provide a market value to Mr C for the car including its battery. And that it thinks the guides it used gave such a value, which informed both its initial and then revised settlement figures. So, to be fair and reasonable, the settlement offered, logically, has to do just that – be an inclusive value for the car with its battery.

West Bay referred to two trade guides to get a value for the car (including the battery). I'll refer to them as G and C. Our Investigator also obtained a value for guide "A".

I've seen the original data from G and C. Also from A (the value it originally returned was £17,314).

G's data referred to the make and model in question having an electric battery. But didn't confirm if the value given was for the car only, or the car including the battery. C's data referred to the make and model of this car being subject to a battery lease. Which suggested to me, at the very least, that the associated value returned would be unlikely to include the value of the battery because the battery was not being sold. This was similar for A.

An Investigator made some enquiries with the valuation guides. C is yet to reply. But G has explained that unless an "i" is included in the model reference number of the valuation, its value is for the car only, where the battery is not being sold as it is subject to a lease. The valuation West Bay obtained did not include the "i" and was for the sum of £13,500. G has shown the market value for the car, where its sale includes the battery because the battery is not subject to a lease (marked with an "i"), is £17,680.

A has confirmed in a similar fashion that it will offer values for this make and model both with and without the battery. It's confirmed that where the battery is also sold, so is not subject to a lease, that the market value is £21,013.

It's unfortunate that C has not replied as yet. But I understand there are some current changes which may be delaying that. I'm not hopeful a reply will be returned soon. But I don't think a reply from it is necessary for me to reach a fair and reasonable decision here. The clarification from G and A point to my initial understanding of C's value being likely correct. That it doesn't include the battery value. West Bay has offered Mr C £16,121. West Bay felt that was fair given the original values returned from G and C of £13,500 and £16,993. But it's now clear that that value from G, and likely that from C too, is for the car alone. With G and A stating that the market value for a car including its battery is,

respectively, £17,680 and £21,013. Both values being in excess of West Bay's settlement offers. Which is why I said at the start, I think its revised settlement offer is not fair.

I then have to think about what a fair and reasonable resolution is in the circumstances here. As noted, we only have two confirmed market values for Mr C's car, where we'd usually see three or four. And those values, from G and A, are quite far apart. So I've looked to see what other data is available which might assist in reaching a fair and reasonable resolution here.

Mr C has obtained a value from a trade guide, I'll reference as "P". But it isn't a guide usually relied upon by this service. However, that is often because it returns up to date market values for cars only – so where it is only checked some while after the fact it can't reasonably be relied upon as showing the likely market value as it was at the point of loss. With the point of loss date being what cover is usually provided for. But each situation has to be taken on its own merits and here the valuation seems to have been done quite soon after the loss, and Mr C used an estimated mileage which was slightly higher than that his car had actually travelled. So I think it is fair here to take the detail from P into account. P gave a market value for Mr C's car of £22,300.

I also note the adverts Mr C has presented. He's shown three but explained there aren't many cars of his model available for sale, so two of the three are not the same as his. The one remaining includes the letter "I" and is for a car with similar but slightly higher mileage to Mr C's. I'll call it "X". X has an asking price of £19,995. I'm satisfied this advert is for a car similar to Mr C's and I think it's reasonable to include X's sum along with the market values returned from G, A and P (£17,680, £21,013 and £22,300).

In the circumstances here, I propose that the market value for Mr C's car is seen as an average of all four sums referenced G, A, P and X, set out in the paragraph above. That is – £20,247. If my final decision remains the same and Mr C accepts it, West Bay will have to work with this as the market value for Mr C's claim – with the subsequent claim settlement being subject to the usual policy excess and any other relevant terms.

I understand that West Bay has yet to pay anything in settlement of the claim as it is waiting on detail from Mr C as to any finance on the car and any sum owed for the battery lease. I know Mr C has said the car itself is not subject to finance. Mr C will need to deal with West Bay direct on this matter to further the settlement.

I think West Bay should also compensate Mr C for not having had a car since the loss. Its settlement offer was not fair or reasonable. And had it paid off any sum due to the battery lease company, there would have been even less of that insufficient settlement available to Mr C to replace his car. I'm satisfied that he's been unreasonably without a car in the months since his evidence was reviewed by West Bay and it concluded his complaint as not upheld. I'm currently minded to say it should pay him £1,000 for that loss of use.

There's Mr C's frustration with West Bay's unfair settlement offers to think about too. I think it should pay Mr C £150 compensation.

I'm not minded though to make West Bay reimburse any costs Mr C had for keeping paying the battery lease in the months since the loss. I appreciate Mr C wasn't happy with the overall settlement being offered by West Bay – and I've found it was unfair and unreasonable. But had he given West Bay detail of how to settle the battery lease, it would have made a without prejudice payment, thereby ending Mr C's liability. I'm not persuaded that West Bay is fairly responsible for Mr C's liability having continued."

I note West Bay's concern regarding interest – but I remain of the view it should be applied from the date of loss. The market value is assessed as at date of loss and Mr C is only receiving settlement for his claim following delay because West Bay's initial offer was unfair.

I note West Bay needs detail from Mr C regarding the battery lease. I know Mr C sent detail to West Bay from the lease provider which detailed "the purchase price" of the battery as of that date in September 2022 (£3,250). But West Bay needs a settlement figure which would likely be expressed in that sort of way. In saying that I note the battery lease agreement refers to this type of situation leading to a "termination sum" or "Total Loss Sum" being due to the lease provider. Given the detail shared I can't reasonably blame West Bay for not acting earlier to settle the lease agreement. West Bay and Mr C will need to work together to determine what is owing on the lease and now needs to be paid as part of the settlement of Mr C's claim.

Having reviewed the parties' responses to my provisional findings, my views on the complaint have not changed. As such, my provisional findings, along with my further comments here, are now the findings of this, my final decision.

Putting things right

I require West Bay to:

- Record the market value for Mr C's car as £20,247 and continue to settle the claim on that basis, adding interest* to any settlement made from the date of loss until payment.
- Pay Mr C £1,000 for loss of use.
- Pay Mr C £150 compensation.

*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 C 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 C to accept or reject my decision before 29 September 2023.

Fiona Robinson
Ombudsman