

The complaint

Mr V complains that West Bay Insurance Plc (“West Bay”) are seeking reimbursement of storage costs from him after he made a claim under his motor insurance policy.

What happened

A problem occurred with Mr V’s motorcycle in October 2022 and, given the nature of the problem and his motorcycle only being a few weeks old, he initially approached the dealership and manufacturer to try to reach an amicable resolution. This wasn’t successful so, wanting to avoid making a claim on his policy, Mr V then referred the matter through an alternative dispute resolution scheme (“ADRS”). A proposal was made by the ADRS for Mr V and the manufacturer to share the costs of instructing an independent expert to inspect Mr V’s motorcycle. The manufacturer didn’t agree to this proposal, so the ADRS weren’t able to take things further.

Mr V then made a claim on his policy in March 2023. Mr V says he informed West Bay his motorcycle was being stored at the dealership, and he had an agreement with the dealership they wouldn’t charge any storage fees until the ADRS had provided an outcome. Mr V says, despite this, West Bay paid the dealership the full storage costs and then sought reimbursement from Mr V of the storage costs incurred from the date the dealership took in Mr V’s motorcycle up to the date West Bay were made aware of the claim. So, Mr V complained.

West Bay responded and explained Mr V’s motorcycle was held at a dealership and West Bay weren’t made aware of Mr V’s intention to claim until 23 March 2023. They said, in line with the policy terms and conditions, they aren’t liable for any storage charges applied prior to them being made aware of the claim. They noted Mr V said the dealership confirmed in writing they wouldn’t charge him storage. West Bay said Mr V should refer this to the dealership if they aren’t complying with this agreement. West Bay did uphold other parts of the complaint relating to their communication and customer service issues. West Bay sent a cheque for £125 for the distress and inconvenience caused.

Our investigator looked into things for Mr V. He thought it wasn’t fair for West Bay to seek reimbursement of the storage charges between the dates they were claiming. He recommended the storage cost reimbursement be limited to the date Mr V received an outcome from the ADRS to the date West Bay were made aware of the claim. West Bay disagreed so the matter has come to me for a decision.

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’ve decided to uphold the complaint. And, I think the investigator’s recommendation is a fair way to resolve matters.

My role requires me to say how a complaint should be settled quickly and with minimal formality and so I'll focus on what I consider to be the crux of the complaint and the main areas of dispute. There's no dispute around the parts of the complaint upheld by West Bay or their payment of £125 compensation. I think the compensation paid here is fair and reasonable. The dispute here relates to the level of reimbursement being sought by West Bay. So, I've looked to see whether West Bay have acted reasonably here.

The information I've seen shows the incident occurred in October 2022. Mr V then tried to reach a resolution directly with the dealership who were also storing his motorcycle at the time. The dealership then emails Mr V in November to say they've now inspected his motorcycle. They say the damage to the engine cases is the result of an external impact, and therefore the Consumer Rights Act doesn't apply. They say, "*I will continue to store the motorcycle free of charge for an additional 30 days from the date of this email, this will enable you to arrange an independent inspection should you wish to.*" Mr V then decides to approach an ADRS to try to settle the dispute through conciliation. The dealership then emails Mr V and says, "*I can confirm that I will not commence storage charges until you have received the advice from your chosen arbiter.*" The ADRS process then concludes on 7 March 2023 when they email Mr V explaining they can't take things any further as the manufacturer has declined to participate in obtaining an independent expert's report. Mr V then makes a claim to West Bay on 23 March.

I can see West Bay paid the dealership's storage costs from October 2022 through to 12 April 2023 – and they then took possession of the motorcycle. West Bay then sent a letter to Mr V asking him to reimburse them the storage charges accumulated prior to 23 March 2023. In their response to Mr V's complaint, West Bay refer to the policy terms and conditions in support of their decision that they're not liable for any storage costs incurred prior to them being made aware of the claim. I can see our investigator has queried this and West Bay agree the terms and conditions don't specifically make reference to storage costs not being covered. West Bay say though that Mr V failed to inform them of the claim in a timely manner – and this led to costs being incurred without their agreement or consent. West Bay say they were unaware of any storage costs accruing so they shouldn't be responsible for them up to the point they were made aware of the claim. They say, had Mr V made them aware of the claim in October 2022, they could've moved his motorcycle to safe storage, at no cost.

I have carefully considered West Bay's points here, and I accept Mr V didn't inform West Bay of the claim until almost five months after the event. But I think it's important here to take into account Mr V's reasons for this. It's clear Mr V was trying to avoid having to make a claim on his policy as, given the circumstances didn't involve a third-party, it would've been treated as a fault claim. So, Mr V exhausted alternative avenues to try and achieve a resolution – and when that wasn't successful, Mr V did then notify West Bay of the claim within a reasonable period. I don't think Mr V's actions in pursuing alternative avenues were unreasonable in the circumstances, particularly as the information shows Mr V was concerned about any manufacturing or material defects given his motorcycle was still relatively new and low mileage – and he wanted to avoid a fault claim being recorded on his policy.

Mr V says he did keep the broker and West Bay updated of his actions at the time. He has provided a screenshot showing his mobile phone call log, and this shows he did make calls to the broker in October 2022. Mr V says, it was during these calls that he made the broker aware of what was happening and that he was trying to reach a resolution directly with the dealership and manufacturer. Mr V also says, it was during one of these calls that he was put through to West Bay where he again explained the situation. I can see West Bay have searched their systems, but they've been unable to locate any record of a call being made to them. Having considered the information carefully – in particular the contemporaneous

evidence showing Mr V did make calls to the broker and Mr V's testimony being consistent with this – I'm persuaded, it's more likely than not, Mr V did discuss the matter with West Bay while he was taking alternative action. So, in these circumstances and given the facts in this case, I understand why Mr V chose to attempt resolution through alternative means rather than having a fault claim recorded on his policy – and I'm persuaded he informed West Bay of his intentions.

The information shows the dealership agreed with Mr V not to charge him any storage costs, initially up to December 2022, and then up to Mr V receiving advice from his chosen arbiter – which in this case was 7 March 2023. I've looked at the claim notes and this shows West Bay discussed the matter with the dealership on 30 March and they explain storage costs have accumulated as Mr V's motorcycle has been stored with them for five months. The notes show West Bay then determine Mr V's motorcycle as a total loss. The notes say the motorcycle will need to be collected for disposal and West Bay will be instructing an agent for this. There's a note which says West Bay spoke with the dealership on 4 April and they explained Mr V's motorcycle won't be released until the storage charges are paid. The notes say West Bay will authorise payment of the costs and will then deduct any storage costs attributable to Mr V from his settlement. There's a note which says West Bay then discussed the storage costs with Mr V the same day and he confirmed these had been waived by the dealership, and West Bay ask for evidence of this.

There's a note dated 6 April which says West Bay have authorised payment of the storage costs up to 12 April. There's then a note dated 12 April which says West Bay are still waiting for waiver of storage from the dealership "*...as can see email thread advising that [dealership] has indicated charges will not commence until you have received the advice from your chosen arbiter.*" The note says West Bay informed Mr V they would need direct confirmation from the dealership that there are no outstanding storage costs. There's a note setting out 'next steps' and this says, "*confirm waiver of storage charges with [dealership]*" It's not clear from the notes whether any confirmation was then sought but the next note is dated 13 April, and this says the dealership produced an invoice for the storage costs and this was paid.

West Bay say Mr V had an agreement with the dealership to not charge any storage costs until the ADRS process was concluded. They say, however, during the claim, the dealership informed them many times that storage costs are accruing and will need to be paid prior to releasing the motorcycle. West Bay say this left them in a difficult position as, although they informed Mr V about this, they say he did nothing to approach the dealership to query this. They say, under the terms and conditions of the policy they hold conduct of a claim and an insured interest in the motorcycle. They say, in view of this, and to avoid causing unnecessary delay in the claim and in the best interests of Mr V, they decided to pay the storage costs to release the motorcycle so they could retain possession and carry out their own assessment.

I do acknowledge the position West Bay were in, but I don't think it's reasonable to expect Mr V to now reimburse the level of storage costs they're claiming – I say this for a number of reasons.

Firstly, the claim notes show West Bay were aware of Mr V's agreement with the dealership as there's a note dated 4 April where Mr V refers to the storage costs being waived and a note on 12 April which makes reference to the 'arbiter' point – and this appears to be before the storage costs are paid the following day. I'm satisfied Mr V did send evidence of the agreement to West Bay as their notes make reference to the wording of the agreement. The notes from 12 April then set out the next steps West Bay plan to take and this says they'll be confirming waiver of storage costs with the dealership. The claim notes don't then refer to any discussions with the dealership, or of West Bay challenging them about the storage costs based on the information they had showing there was an agreement in place. I can

see West Bay were presented with an invoice the following day, but there's no evidence West Bay referred the dealership to the agreement or sought to clarify why the dealership were now deviating from the terms agreed with Mr V. In these circumstances, and given the information they had, I think West Bay should've done more to challenge the dealership rather than pay on presentation of the invoice.

I note West Bay say Mr V did nothing at the time to query the storage costs with the dealership, but West Bay are handling the claim at this point and are the experts here. I can see Mr V provided West Bay with details of his agreement with the dealership, and I don't think it's unreasonable to then expect West Bay to raise any challenges as part of the claims handling process. I've decided this complaint on what I think is fair and reasonable in the circumstances. And in this case, given that I've seen no evidence of West Bay effectively challenging the dealership on the agreement with Mr V despite them being aware an agreement existed, I can't say they took all reasonable steps prior to paying the invoice.

So, taking this all into account, and while I acknowledge West Bay's reasons for paying the storage costs, I don't think it's reasonable for them to pursue Mr V for reimbursement of the storage costs of 148 days. I agree there should be some responsibility on the part of Mr V to pay storage costs prior to West Bay being made aware of the claim. But these should be limited to the date Mr V received an outcome from the ADRS to the date he made West Bay aware of the claim – and in this case, that's 7 March 2023 to 23 March 2023.

Putting things right

I've taken the view that West Bay have acted unfairly in seeking reimbursement of 148 days' worth of storage costs from Mr V. So, while it's fair for West Bay to seek some reimbursement from Mr V, this should be limited to the storage costs accrued between 7 March 2023 to 23 March 2023.

My final decision

My final decision is that I uphold the complaint. West Bay Insurance Plc must take the steps in accordance with what I've said under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr v to accept or reject my decision before 17 January 2024.

Paviter Dhaddy
Ombudsman