

## **The complaint**

Mr and Mrs D complain that Liverpool Victoria Insurance Company Limited (LV) unfairly declined their claim and cancelled their home insurance policy, following a fire. LV says Mr and Mrs D were involved in fraud.

## **What happened**

Mr and Mrs D suffered a fire at their home, and they made a claim on their home insurance policy. They appointed a loss assessor, who in turn appointed a surveyor; and those two appointed parties oversaw the tender process for the building reinstatement works.

LV raised concerns about the tender returns and how the tender process was run. LV went on to invoke the policy's fraud condition, and it declined the claim and cancelled the policy.

My ombudsman colleague has previously issued a provisional decision on this complaint. He set out in detail his thoughts on the points both parties had made. He explained he intended to uphold the complaint. His provisional decision followed a detailed assessment by one of our investigators, who also thought the complaint should be upheld.

Due to unforeseen circumstances, my ombudsman colleague is currently unable to consider the responses to his provisional decision. So, to avoid further delay, the case has been passed to me to decide.

I'm not bound by the provisional decision that was issued. However, I've carefully considered all the submissions before the provisional decision, and those in response, and I'm also upholding this complaint. This is for the reasons I've set out below and those in the provisional decision.

Given the detailed assessment and provisional decision previously issued, it's not necessary for me to set out, or revisit, all the previous points made. Instead, I'll focus on the responses to the provisional decision, and on what LV should do to put matters right and move the claim forward.

First, I'll summarise my ombudsman colleague's provisional decision and the responses we received.

My ombudsman colleague provisionally decided the following:

- LV had requested we dismiss the complaint on the basis it's better suited to court, where Mr and Mrs D could be cross-examined. The ombudsman didn't consider dismissing the complaint would be appropriate.
- The ombudsman accepted it was likely, based on the evidence available, that the contractors nominated by Mr and Mrs D had colluded to manipulate the tender returns.

- However, the ombudsman wasn't persuaded LV had shown that, on the balance of probabilities, Mr and Mrs D were aware of, or part of, the tender manipulation.
- The ombudsman also wasn't persuaded the contractors could reasonably be considered to have been representing Mr and Mrs D.
- Whilst he accepted Mr and Mrs D's loss assessor and its surveyor were representing them, and they controlled the tender process, the ombudsman wasn't persuaded LV had shown that those two parties were involved or knew of the manipulation.
- So, the ombudsman concluded that LV hadn't acted fairly or reasonably when invoking the fraud condition, to terminate the policy and decline the claim.
- LV's fraud investigations started in July 2018. LV's decision to decline the claim and cancel the policy was made about nine months later, in April 2019. The ombudsman acknowledged the investigations and correspondence between this period, but he concluded there was a couple of months of unnecessary delay.
- The ombudsman provisionally decided LV should reinstate the policy and continue considering the claim in line with the remaining terms and conditions; and remove any references to the fraud from any internal and external databases.
- The ombudsman acknowledged the impact LV's decision had on Mr and Mrs D. He noted the distress caused by the allegation and them having to return home to their property which was fire damaged. He explained he intended to award £2,000 compensation.
- The ombudsman explained that the most he could award, based on when the act or omission being complained about occurred, was £350,000, plus any interest and costs (and interest on costs) he considers appropriate – so, LV would only be required to pay a maximum of £350,000 when settling the complaint.

In response, LV made the following points:

- If no answer can be given to the question of how all three contractors were in contact with each other, the only sensible conclusion is that Mr and Mrs D were involved in the fraud.
- Mr and Mrs D have only produced documents that are helpful to them. If this service dismissed the complaint, and Mr and Mrs D initiated court proceedings against LV, they would be required to provide certain documents in their possession or control showing who they had been in contact with over the relevant period; and financial records. This would also extend to their agents. As part of the court process, LV could also apply for disclosure orders against third parties; to fill in gaps in the evidence.
- LV said, during court proceedings, Mr D would have to justify his assertion that he didn't know how tenders worked, despite working in the building trade as a sub-contractor, for contractors who would have been regularly submitting tenders.

- The ombudsman accepted that Mr and Mrs D's recollections, about how the three contractors were selected, had been inconsistent. LV said there was no basis for assuming those inconsistencies were slight, or that Mr and Mrs D were simply confused. LV noted Mr and Mrs D had been represented throughout, by an experienced loss assessor, and they couldn't have been in doubt about the importance of providing accurate information.
- LV said the source of the contractor recommendations and Mr and Mrs D's contact with them, and Mr D's knowledge of the building trade, are precisely the sort of issues which should be explored in cross-examination.

Mr and Mrs D responded to the provisional decision via their solicitor, who set out the following:

- The alternative accommodation arrangements before the claim was declined, and the communication of the wrong policy limit for this, was a cause of unnecessary stress. LV also misrepresented its intentions, reassuring Mr and Mrs D that there was no cause for concern.
- Mr and Mrs D were forced to carry out works at their home. They relied on the scope of works and obtained multiple quotes from reputable builders. The repairs are almost complete, but Mr and Mrs D can't afford to finish them.
- Mr and Mrs D have already paid £179,928 to eight different contractors; they have two invoices for £10,200 to pay; and three quotes for £13,950 for the outstanding works. So, in total, their buildings claim so far is £204,078 (inclusive of VAT).
- Due to the passage of time, the kitchen worktops and units can no longer be cleaned. Therefore, due to LV's delays, the kitchen now requires replacing. Mr and Mrs D estimate this will cost a further £25,000 to £30,000.
- Mr and Mrs D's contents claim is still outstanding. As per the loss list presented to LV by Mr and Mrs D's loss assessor, the contents claim is for £110,000.
- Mr and Mrs D had to pay for alternative accommodation themselves, which cost £10,000. They also had to pay council tax on their rental accommodation for 17 months, which cost £3,727.
- In order to fund the repairs, Mr and Mrs D re-mortgaged. They incurred a £10,000 early repayment charge and their new mortgage payments are higher.
- Mr and Mrs D have incurred over £100,000 in legal costs (plus VAT) in corresponding with LV; without prejudice negotiations; raising a complaint to this service; and liaising with this service and third parties.

### **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.

Where evidence is inconclusive or incomplete, I have reached my decision on the balance of probabilities – this means I've determined what I consider is more likely to have happened, based on all the evidence that is available and the wider surrounding circumstances.

I'll set out my findings under the following headings: grounds for dismissal; fraud decision; award limit; buildings and contents; alternative accommodation and council tax; early repayment charge and new mortgage repayments; legal costs; and compensation.

### Grounds for dismissal

LV has again asked this service to dismiss the complaint. As LV will be aware, we routinely consider insurance claim complaints involving allegations of fraud. However, I accept this case is relatively complex, given it involves a potential multi-party fraud, rather than the usual situation of alleged fraud by the consumer acting alone. In addition, there's good evidence the contractors were involved in fraud by way of manipulating the tender.

LV says it can't prove Mr and Mrs D's involvement in the fraud, without being able to obtain documents from third parties; and without exploring, through cross-examination, how the contractors were sourced and Mr D's awareness of the tender process. I've given LV's concerns careful consideration.

Whilst there's evidence of fraud by the contractors, the evidence that Mr and Mrs D or their agents were involved is much more speculative, in my view. Likewise, it's speculative what may emerge through the disclosure of documentation and cross-examination, particularly given the passage of time.

In the 'fraud decision' part of my findings, I acknowledge Mr and Mrs D's recollections, about how the contractors were sourced, were inconsistent. But I also explain that I consider some confusion, in the circumstances, to be reasonable. I accept cross-examination on this issue might turn something up. However, I also consider it likely that Mr and Mrs D's confusion would simply be inconclusive.

Also, even if it was shown through court proceedings that Mr D did have more awareness of the tender process than what he says, as I'll go on to explain in the 'fraud decision' part of my findings, I'm not persuaded such knowledge would point towards Mr and Mrs D being fraudulent.

Overall, I'm satisfied I can make fair and reasonable 'on balance' findings, about such issues, based on the evidence and arguments presented. So, in conclusion, I'm not persuaded it's inappropriate for me to consider Mr and Mrs D's complaint.

### Fraud decision

The policy terms allow LV to decline a claim and cancel the policy if the policyholder, or anyone representing them, makes a claim that is fraudulent, false or exaggerated.

There's been no suggestion the fire wasn't legitimate. But rather, LV argues the building repair costs were exaggerated and the tender process manipulated, to secure the exaggerated amount.

In terms of our approach to such complaints, my role here is to decide whether LV is entitled to invoke the fraud condition, decline the claim and cancel the policy. This means looking at whether, on the balance of probabilities, it's more likely than not that Mr and Mrs D, or their agents or representatives, were part of a fraud. I then need to consider what's fair and reasonable, in all the circumstances of the case.

For the reasons explained by my ombudsman colleague in their provisional decision, I'm not persuaded the contractors can reasonably be considered representatives of Mr and Mrs D. As a result, Mr and Mrs D are not responsible for the contractors' actions in relation to the tender.

I accept the loss assessor and its appointed surveyor were representing Mr and Mrs D, and those parties were responsible for the tender process. However, I'm not persuaded LV has shown the loss assessor or surveyor, were, on balance, party to the collusion or manipulation.

LV argues that if no answer can be given to the question of how all three contractors were in contact with each other, the only sensible conclusion is that Mr and Mrs D were involved in the fraud. I've given this point, and the submissions, careful consideration.

All the submissions have consistently explained that the first contractor was found through a dog walking acquaintance of Mr and Mrs D. I will set out the inconsistencies regarding the other two contractors. For context, the tender process was in March 2018.

- Mrs D was interviewed by LV in October 2018. She said the second contractor was someone Mr D knew through his work, and the third contractor was someone who had been recommended to Mr D by a friend.
- In November 2018, Mr and Mrs D's loss assessor said he was given the second and third contractors by Mr D. He also clarified that whilst Mrs D had understood the two contractors had been recommended to Mr D by family or acquaintances, he had established the contractors were recommended to Mr D by the first contractor.
- In March 2019, Mrs D complained to LV. In her complaint letter, she again said the second contractor was someone Mr D knew through his work. She said the third contractor was given to her by the first contractor.
- In September 2019, Mr D provided a witness statement. This said Mr and Mrs D may have asked the first contractor for recommendations, and they think this is where the second contractor probably came from, but they aren't 100% sure. His statement didn't mention the third contractor.

It's evident Mr and Mrs D's submissions about the second and third contractor haven't been consistent. However, I'm mindful the submissions were provided over a period of time, and some were provided some time after the events being recalled. They also say they were inundated with contractor recommendations, but yet had difficulty finding willing tender participants. In such circumstances, I consider some confusion reasonable. I'm not persuaded their inconsistent recollections show involvement in fraud.

Having considered the various submissions, *on balance*, I consider it's likely the second and third contractors came from the first contractor. I'm persuaded Mr D would have known if the second contractor was someone he knew through his work, but his witness statement said he thought the second contractor came from the first contractor. Mr D's statement and the loss assessor's clarification are consistent in this regard. The loss assessor and Mrs D's complaint letter also consistently said the third contractor came from the first contractor.

LV has found a link between the second and third contractor via Companies House records, and it also points towards the first and second contractors having almost identical websites. In my view, the identical websites do point towards a connection, albeit not conclusively. In view of the connections that LV identified, *on balance*, I'm persuaded the three contractors could have known each other already and colluded without Mr and Mrs D's involvement. Overall, I don't consider it implausible they did so.

I accept it's not unreasonable for LV to question why Mr and Mrs D asked the first contractor for other recommendations when they knew that contractor was bidding for the job itself. Mr and Mrs D had also instructed a loss assessor and surveyor, who knew finding other contractors in this way wasn't appropriate.

However, as set out in my ombudsman colleague's provisional decision, Mr D explained in his witness statement, that whilst he runs a glazing business, he didn't have any previous experience or knowledge of the tender process, or of the appropriate procedures. I've not seen or been told anything that leads me to doubt what he says about this.

Furthermore, even if Mr and Mrs D ought reasonably to have known it wasn't good practice for a contractor already taking part in a tender process to recommend another, that in itself, isn't enough for me to reasonably conclude they had awareness those companies were linked, or they were involved in fraud.

Mr and Mrs D say they were inundated with recommendations. As such, I consider there to be a reasonable question here about why they needed to ask the first contractor if it could recommend others for the tender. However, Mr D explained in his witness statement they had tried a number of contractors (and he provided some names), but these weren't available or interested in insurance work.

Mr and Mrs D have also explained they were overwhelmed, which is why they asked the first contractor for recommendations. There's another reasonable question here, about why they didn't revert back to their loss assessor or surveyor if struggling to find further contractors. Both have said that whilst they don't have a panel of contractors, and it's generally for the client in the first instance to identify their chosen tender contractors, they can if needed, make recommendations. This would have been the logical step in my view, rather than approaching the first contractor.

However, having said all that, overall, I don't consider it unreasonable for someone to ask a contractor they trust, whether they can recommend other contractors. In the circumstances of a tender process, I accept Mr and Mrs D were somewhat naïve. But in my view, this isn't sufficient to demonstrate they were, on balance, involved in fraud. Mr D also noted in his witness statement that he was relying on the professionals representing both parties to conduct the necessary checks. I don't consider this explanation to be unreasonable.

I accept there were legitimate concerns with what happened during the tender process, and it was appropriate for LV to investigate. But based on everything I've seen, and considering all the evidence in the round, I'm not persuaded the claim was, on balance, exaggerated by Mr and Mrs D or someone representing them. As such, I don't consider LV acted fairly and reasonably when relying on the policy fraud condition, to decline the claim and cancel the policy.

Therefore, like my ombudsman colleague, I'm persuaded LV should reinstate the policy and continue considering the claim in line with the remaining policy terms and limits. LV should also remove any references to the fraud from internal and external databases.

### Award limit

My ombudsman colleague set out in detail why a £350,000 award limit applies to this complaint. I won't repeat that same information here.

However, for context, the maximum compensation I can direct LV to pay Mr and Mrs D is £350,000. When I refer to 'compensation' this includes:

- Any settlement paid under the policy as part of the claim. Because the whole claim is the subject of Mr and Mrs D's complaint, this includes any interim payments that LV made before it declined the claim. So, *for example*, if LV had already paid £10,000 for alternative accommodation, I could only direct LV to pay £340,000 more compensation.
- Awards for delays and distress (such as the £2,000 award my ombudsman colleague intended to make).
- Awards for financial loss (such as the early repayment charge being claimed).

However, 'compensation' doesn't include any interest I award, or any award I make for costs reasonably incurred in respect of the complaint. Therefore, if Mr and Mrs D accept my final decision and LV goes on to settle their claim, the maximum 'compensation' it will be bound to pay will be £350,000, plus any interest and costs I award.

### Buildings and contents

I can't reasonably decide what amounts the buildings and contents should be settled for, at this stage.

In respect of the buildings, Mr and Mrs D's repair costs are similar to the value of the tender LV says was exaggerated. I've not seen the invoices or quotes; and nor is it clear whether a scope of repair was previously agreed between the parties, from which I could compare the invoices and quotes to. In any event, it's not our role to provide claim handling or loss adjusting services.

In the circumstances, I can't reasonably direct LV to simply settle Mr and Mrs D's claimed costs. LV will need to give Mr and Mrs D's quotes and invoices fair consideration; and compare them against any scopes generated when the claim was previously being assessed, to determine what remedial work was required due to the fire.

When assessing the claim, LV will need to keep in mind that Mr and Mrs D were left with no other option than to press ahead with the works. Equally, Mr and Mrs D will need to support the repair decisions they took. This will likely include providing a breakdown of all the work through quotes and invoices; and proving the amounts they paid by way of bank account statements. LV may also wish to visit the property to inspect the works and assess any works not yet undertaken.

If LV agrees to settle any building repair invoices (or part of), it will need to pay Mr and Mrs D 8% simple interest per year on the amounts settled, from the date Mr and Mrs D paid the invoices, to the date of settlement.

In respect of the contents, Mr and Mrs D have submitted a significant claim. Again, LV will need to give their loss list fair consideration, keeping in mind the damaged items will have now likely been disposed of. Equally, Mr and Mrs D may need to show that items were owned by them and damaged beyond economic repair.

LV will need to pay Mr and Mrs D 8% simple interest per year on the contents' settlement, from the date it declined the claim in April 2019, to the date the settlement is paid.

If the parties can't agree on the claim settlement once LV has assessed the loss and given Mr and Mrs D's evidence consideration, a further complaint can be referred to our service about that matter, and we'll consider the arguments and evidence presented. A further complaint would still be subject to the current £350,000 award limit.

#### Alternative accommodation and council tax

It follows that LV will need to cover Mr and Mrs D's alternative accommodation costs, not yet settled through previous interim payments.

In respect of the council tax, Mr and Mrs D will need to show they were still paying council tax for their home whilst it was unoccupied. If they were, LV will need to reimburse the full amount they paid at their rental property.

If Mr and Mrs D weren't still paying council tax at their home, LV only needs to reimburse the amount above what they would have been charged for their home, had they been living there.

Both the alternative accommodation and council tax settlement I'm awarding here, is subject to evidence being provided to LV of the amounts paid.

LV will need to pay 8% simple interest per year on this part of the award, from the dates Mr and Mrs D paid for the alternative accommodation and council tax, to the date of settlement.

#### Early repayment charge and new mortgage repayments

In my view, it was reasonable for Mr and Mrs D to raise the necessary funds to return their home to a habitable state. So, subject to Mr and Mrs D providing evidence to LV that they incurred an early repayment charge in order to release equity (by way of mortgage statements and/or correspondence), it follows LV needs to reimburse this charge.

Mr and Mrs D say their mortgage repayments are now higher than they were before, due to having re-mortgaged. However, I'm satisfied that the 8% interest to be applied to various elements of the claim settlement, and the refunded early payment charge, will fairly compensate them for the costs they have incurred to borrow money.

#### Legal costs

This service is free to use and doesn't require legal representation. As such, it's uncommon for us to make awards for professional representation.

I can understand why Mr and Mrs D obtained legal advice during their discussions with LV. However, they have put forward significant legal costs, and I've not seen a breakdown or anything that would reasonably explain such sums.

The amount quoted is well beyond an amount I could reasonably award, given Mr and Mrs D could have referred to our service without incurring such costs. So, in the circumstances, I make no award for the legal costs Mr and Mrs D say they have incurred.



## Compensation

I accept concerns remained for LV after its investigation was complete. However, in my view, and particularly given the implications for Mr and Mrs D, its concerns were insufficient for its eventual decision. I consider a fair and reasonable outcome at that stage, would have been LV taking control of the tender process and continuing the claim. Its decision to not do so has caused significant distress. I also acknowledge Mr and Mrs D's further submissions about the unnecessary stress they suffered due to various issues (which I noted when setting out their response to the provisional decision).

My ombudsman colleague intended to award Mr and Mrs D £2,000 compensation. I've given this figure careful consideration, whilst considering all the submissions in the round. *Overall*, I'm satisfied £2,000 is fair acknowledgement LV could have avoided some of the distress suffered by Mr and Mrs D, whilst also reflecting it was placed in a difficult position by the tender manipulation. I accept its concerns were, and remain, genuinely held.

## **My final decision**

For the reasons I've set out above, and those given by my ombudsman colleague in their provisional decision, I uphold this complaint.

I can award fair compensation to be paid by Liverpool Victoria Insurance Company Limited of up to £350,000, plus interest and costs (and interest on costs), that I consider to be appropriate. If I consider fair compensation is more than £350,000, I can recommend Liverpool Victoria Insurance Company Limited pays the balance.

## Award

My final decision is Liverpool Victoria Insurance Company Limited should:

Part 1:

- A. Reinstate the policy and remove any references to the fraud from internal and external databases;
- B. Pay Mr and Mrs D £2,000 for the distress caused;
- C. Reimburse Mr and Mrs D any alternative accommodation costs not yet settled, and any *additional* council tax they had to pay (subject to them providing evidence);
- D. Reimburse the early repayment charge Mr and Mrs D incurred on their mortgage, to fund the repairs (subject to them providing evidence);

Part 2:

- E. Continue considering the building part of the claim (*i.e.* Mr and Mrs D's quotes and invoices) in line with the remaining terms and conditions, in order to calculate this part of the claim settlement;
- F. Continue considering the contents part of the claim in line with the remaining terms and conditions, in order to calculate this part of the claim settlement;
- G. Pay Mr and Mrs D fair compensation, up to a maximum of £350,000, to be calculated using the following formula: *previous interim claim payments + B + C + D + E + F*;

Part 3:

- H. Pay Mr and Mrs D 8% simple interest per year on C, from the dates Mr and Mrs D paid these costs, to the date of settlement;
- I. Once it has been established what fair compensation is for E, pay Mr and Mrs D 8% simple interest per year on E, from the dates Mr and Mrs D paid the invoices, to the date of settlement;
- J. Once it has been established what fair compensation is for F, pay Mr and Mrs D 8% simple interest per year on F, from the date the claim was declined in April 2019, to the date of settlement;
- K. Income tax: if Liverpool Victoria Insurance Company Limited consider it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr and Mrs D how much it's taken off. If requested, it should also provide them a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.

Recommendation

If the amount produced by the calculation of fair compensation, in G, is more than £350,000, I recommend that Liverpool Victoria Insurance Company Limited pays Mr and Mrs D the balance. This recommendation is not part of my determination or award.

Liverpool Victoria Insurance Company Limited doesn't have to do what I recommend. It's unlikely that Mr and Mrs D can accept my decision and go to court to ask for the balance. So, Mr and Mrs D may want to get independent legal advice before deciding whether to accept this decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 23 September 2021.

Vince Martin  
**Ombudsman**