DRN-4181570

The complaint

Mrs T has complained about her car insurer Liverpool Victoria Insurance Company Limited (LV) because it has completed work on her car which hasn't resolved damage noted following an attempted theft, and it has declined liability for other damage.

What happened

Mrs T was driving her car on 21 January 2022 when it began losing power. She decided to leave it by the side of the road. When she returned to it the following day it had been moved. There was a strong smell of fuel in the car. LV moved the car to its garage. LV accepted that the interior and exterior of the car had been contaminated by fuel and it found that the gearbox had failed. Work was done on the car with a view to resolving the interior fuel contamination. But LV felt the gearbox issue meant the car had suffered a mechanical breakdown which was likely the cause of the car having lost power before Mrs T left it. So LV wasn't prepared to offer cover for the mechanical problems with the car. And LV later said that it wasn't actually prepared to cover a claim for Mrs T at all because there was no sign of forced entry to the car.

LV told Mrs T it had resolved the fuel issue anyway, classing it as a gesture of goodwill, and it was returning the car to her. Mrs T was concerned that the contamination issue had not been resolved – that it couldn't be resolved, as a friend had their fuel contaminated car written-off by their insurer as it presented a safety risk. When the car was returned to her Mrs T reported there was still a strong smell of fuel in the car. LV refused to do anything more, so she placed the car into storage and complained to the Financial Ombudsman Service.

Our Investigator felt LV had made a fair decision regarding the mechanical issues with the car. But he felt its evidence that it had resolved the fuel issue wasn't persuasive. He felt it should valet the car.

LV initially said it would not agree to a valet – but it would undertake another inspection. But it also said it would expect any further work it did do to be subject to the usual claim requirements such as a policy excess which it had not taken before, as well as a further claim for vandalism being logged to cover this damage.

Our Investigator told Mrs T that he felt LV's offer was reasonable. Mrs T wasn't happy. She felt that being made to have another claim and excess payment now wasn't fair when all that had really happened (she feels) is that LV carried out unauthorised work on her car which failed. She argued that LV should be responsible for resolving the mechanical issues too.

The complaint was passed to me for consideration. Noting LV's offer to inspect the car, I felt this should be done as part of our complaint process, not as the overall recommended redress. LV and Mrs T agreed to have the inspection carried out. However, after waiting for a time for LV to organise this, LV said it wasn't prepared to complete a further inspection. It felt this wouldn't be useful at this time and it provided a note from an engineer who had viewed the car in April 2022, which it asked to be taken into consideration.

Without an agreement to inspect the car, I took the complaint for review. I felt it should be upheld in part – but not in respect of the mechanical issues, or to the extent of requiring LV to write the car off. So I issued a provisional decision to explain my views on the complaint and what I felt LV did need to do to put things right. My provisional findings were:

"Mechanical issues
I'm satisfied, based on what I've seen, that it's most likely that LV's decision that the mechanical issues occurred before Mrs T left the car at the side of the road is fair and reasonable. I acknowledge that there is some lack of clarity with the data gathered from the car's ECU and keys – in short the data available is corrupted to some extent because the system was reset at some point after the car was recovered. Which means that that data doesn't show a true reading of when faults were first discovered. And I'm mindful the car was driven after it was recovered, with it not being clear if it was driven/moved or not by those attempting to steal it.

But there are some other key points which I think need to be factored in here. The car was checked only a fortnight before the incident, with an odometer reading of 134,302km. And there were no gearbox issues on the diagnostic at that time. It isn't clear what the odometer reading was when Mrs T left her car. But she reported finding it moved about a mile (1.6km) down the road. Given she had left it due to lack of power issues, I think it's reasonable to say that if thieves, attempting to steal it, did move it (and I know LV has doubts about this), that is as far as they would have taken it. And when LV began assessing the car the odometer reading was 134,915km. So it had travelled 613km within those two points of time. And only 1.6km at most attributable to the thieves. It is also clear, as I've said, that the car was suffering a loss of power such that Mrs T decided to leave it at the side of the road – and the fault indicators showing at the last check don't seem to be anything that might have caused a loss of power. I understand that an issue with a gearbox could cause that. So, on balance, taking all this into account alongside the diagnostic data referenced above, I think its most likely that the gearbox issue was pre-existing to the attempted theft. As such I'm satisfied that LV's decline of liability for resolving this damage under the policy is fair and reasonable.

Fuel Contamination
There is no doubt that the car was contaminated with fuel. Without opting to first complete validation enquiries – such as considering whether or not the car had likely been locked when it was left – LV completed work on the car with a view to resolving the interior fuel contamination. It also did that without opting to take the policy excess sum. LV has later said the claim overall can't fairly be accepted under the policy because no forced entry occurred, and for it to do any more work, a policy excess would have to be paid. I don't think either is fair or reasonable here. Not when LV went ahead with repairs in the way that it did.

LV did, I think log a claim on its own and the industry database when Mrs T notified it of the incident. That is to be expected and is perfectly reasonable. But LV can't reasonably log another claim for the fuel contamination alone. Not least as there was only one incident. If it logged the claim as one of theft but feels it is more accurate to change that to vandalism, then I can accept that is fair. In short there should be one claim and it doesn't make much difference whether that shows as theft or vandalism. But LV will need to show Mrs T what it's recorded on the database so she can accurately advise future insurers of her claim history.

With that all clarified; I've looked at whether or not there is most likely a fuel contamination issue which LV has some outstanding liability for resolving.

LV, of course, would like me to accept that there was a fuel issue, which it resolved before returning the car to Mrs T. Its evidence in support of that seeming to be that reports it obtained in April 2022 did not say there was any remaining fuel smell. It's also told Mrs T that several people examined the car before it was returned to her, none of whom reported

smelling fuel. And, most recently, it presented a statement from one of the authors of the two April 2022 reports which states that author, an inspection engineer, now in May 2023, did not notice any fuel smell when assessing the car (in April 2022).

Set against that I see that:

- *Its repairing garage, in February 2022, said it was worried that attempting to clean the fuel contamination would not be successful.*
- *Its in-house engineer assessed the car after it had been valeted, and his report from February 2022, according to LV's call handler speaking to Mrs T in May 2022, said he could still smell fuel.*
- *Two reports were completed by two different external engineers in April 2022.*
- *The first of the reports noted the reported fuel contamination and recommended repairs and some further inspections at a total cost of £2,828.84.*
- *The second report focused on the data available within the cars' ECU and keys.*
- *It is the author of the second report who, a year later, has said he did not note any smell of fuel in the car.*
- *LV has confirmed that when the car was returned to Mrs T in May 2022, it did not undertake any final, formal checks on the state of the car before it was released.*
- *Within two weeks of Mrs T having received the car back, she contacted LV to advise there was still a strong smell of fuel in the car.*

Since then LV has had the chance to inspect the car further. But ultimately it has chosen not to do so. My view then, based on the evidence that is available, is that it's more likely than not that the car was returned to Mrs T still smelling of fuel. As such, it is my view, that LV has not completed a satisfactory repair. So I've considered what is required to fix that.

I know Mrs T wants the car written-off but I'm not recommending that. Whilst she believes that is what is required, I've seen no persuasive evidence, such as from an appropriate expert, that that's necessary here.

The first of the two April reports set out recommendations for repair. LV argues that many of the things set out there were done by it before the report. But the report doesn't seem to be written with a view to recording what had already been done. Rather the author engineer seems to have noted fuel contamination and set out costs for resolving the same. There is some reference within the report to the need for further inspections in relation to the mechanical issues but I don't see anything within the costs themselves that relates to any investigations or resolving any mechanical issues. The likely repair cost detailed by the engineer is £2,828.84. I think LV should pay this sum to Mrs T in settlement of the claim, plus interest from 27 April 2022, the date of the inspection, until settlement is made.*

I appreciate that Mrs T may be worried about taking that settlement, completing the work recommended, and that not totally resolving the fuel issue. However, these repairs have been recommended by an engineer as a way of resolving the fuel issue. I think it's fair and reasonable for me to rely on them as equating to fair and reasonable redress for this part of Mrs T's complaint.

<u>Loss of use and compensation</u>
Clearly Mrs T has now been without her car for an extended period of time. However, regardless of Mrs T's view of the safety of the car, with it still smelling of fuel, I think it's clear that the mechanical issues would prevent it from being used too. And I haven't seen anything that shows Mrs T has tried to have these fixed only for garages to refuse to work on the car. So I'm not minded to make any award against LV on account of the fact that Mrs T has been without the car for an extended period.

I do think though, as I've said, that LV's position regarding the fuel issue, was unfair and unreasonable. And there was a lot of frustration caused to Mrs T by that position. I think LV should pay Mrs T £350 compensation. Mrs T may feel this is not enough. But I must bear in mind that I have not found LV was wrong about the mechanical issue, or that it should be writing the car off as Mrs T would like it to. So I have to temper my compensation award, as when making it I can't take into account the upset Mrs T has been caused by those aspects of the complaint which I have not upheld."

LV said it agreed with my findings. Mrs T said she felt LV was reasonably liable for the mechanical issues as they had likely occurred during the attempted theft. She provided further comment about the fuel issue – including that she reported it the same day the car was returned to her. Mrs T explained about the costs she's incurred since LV returned her car to her when she had to move it to storage. She feels LV treated her unfairly and caused her a lot of upset.

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.

Mechanical issues

Mrs T said the report shows fault codes and the mileage they occurred at, and the garage did not reset the car's data. She said the gearbox fault triggered after she had left the car and after a code which shows the boot was forced open, the latter likely being the point of entry of the would-be thieves.

I understand Mrs T's concern. And I note that the data gathered from the car shows that the gearbox fault was recorded at 134,912km and the boot at 134,908km. With the car being recorded as inspected by LV's engineer at 134,922km. And LV's engineer has explained that the records held within the car also show the data was reset 8 miles (12.8km) before his inspection. He's explained that means that the date, time and mileage of when the codes were recorded can't be relied upon – essentially the mileage point shown isn't necessarily the point when the fault first occurred. I've seen no expert evidence in challenge of that.
I remain satisfied by what I said provisionally about the mechanical issues, including that the data can't be relied upon to reasonably conclude the gearbox was most likely damaged during the incident rather than before it.

Fuel contamination

Mrs T commented at length on this issue. She mentioned the phone calls again where she believes LV sought to cover up the initial finding that the car was still contaminated even after cleaning. She said the fire brigade and her breakdown recovery company had told her not to drive the car and she knows LV usually writes-off cars contaminated with fuel due to the risk they present.

I know how strongly Mrs T feels about this issue. And I do think LV failed to treat her fairly and reasonably in this respect. I explained provisionally that I wasn't persuaded by the recent evidence from LV, which stated its engineer, in May 2023, didn't recall smelling fuel when he inspected the car a year before.

I noted provisionally that LV did acknowledge in one call that the car still smelled of fuel even after cleaning. But I don't think LV tried to cover that up in the second call. I think there was some confusion in the second call, that the operative and Mrs T were not talking about the same evidence as that reviewed and commented on during the first call.

I know Mrs T has said she believes her car should not be driven, that it should be written-off. But the only written expert evidence, which specifically focuses on Mrs T's car, is that of LV's engineer, which recommends repairs to resolve the fuel contamination. And it is the costs detailed in that report which I am requiring LV to pay to Mrs T, plus interest. I remain of the view that is a fair and reasonable resolution in all of the circumstances here.

Loss of use and compensation

Mrs T said she couldn't use the car primarily due to the fuel contamination, and no garage would work on the car until that was resolved. So Mrs T has had storage charges for her car and hire charges for a replacement car whilst hers could not be used.

I appreciate the difficult position Mrs T has found herself in. And, as I've said, LV should have handled this better. But I also remain of the view that there were serious mechanical issues with Mrs T's car which LV was not responsible for. And I haven't seen anything from a garage to say it could not work on the car whilst it remained contaminated. My views about Mrs T's losses have not changed from those stated provisionally.

I know Mrs T feels treated unfairly by LV. And, to an extent, I agree with her that is the case. But there are some things which Mrs T has been upset by which I haven't found LV did – for example that it lied or otherwise acted nefariously during the second of the two keys calls where the fuel contamination was discussed in order to cover up what had been admitted during the first. For the upset I'm satisfied LV did cause Mrs T, I remain of the view that £350 is fair and reasonable compensation.

Putting things right

I require LV to:

- Ensure only one claim is recorded on its own and any industry database.
- Show Mrs T what has been recorded about this claim on the industry database.
- Pay Mrs T £2,828.84, plus interest* applied from 27 April 2022 until settlement is made, in settlement of the claim and complaint.
- Pay Mrs T £350 compensation for upset.

*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 LV to take off tax from this interest. If asked, it must give Mrs T a certificate showing how much tax it's taken off.

My final decision

I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 24 July 2023.

Fiona Robinson
Ombudsman