

The complaint

Mr M1 complains about Liverpool Victoria Insurance Company Limited (“LV”) and their decision to decline claims made on his motor insurance policy.

What happened

Mr M1 held a motor insurance policy, underwritten by LV. Mr M2, the son of Mr M1, was listed as a named driver on the same.

The car insured on the policy was collected by Mr M2 on 16 July 2022. And Mr M2 explained to take the car away on that day, he needed to agree for the V5 documentation to be placed in his name. It’s important to note Mr M2 took the finance out for the car, on behalf of Mr M1, due to Mr M1’s poor credit rating. Mr M2 has explained the car was a gift to Mr M1, with Mr M1 agreeing to cover the finance payments in a way agreeable to both. Shortly after this, Mr M1 contacted the DVLA to change the V5 documentation to list him as the registered keeper.

But before this was processed, Mr M2 was involved in a road traffic accident, which saw the car deemed beyond economical repair. So, Mr M1 made a claim on his policy. And, as Mr M1 was told he would need to replace the car on the policy to keep the policy live, this is what he did, with a second car being purchased.

Unfortunately, Mr M2 was involved in a second accident shortly after, while the first claim they made was ongoing. And on 24 August 2022, LV wrote to Mr M1 explaining their decision to decline the first claim, stating their belief that Mr M1 had deliberately misrepresented at the policy inception. So, they explained they would be voiding the insurance policy and treating it as if it had never existed, and because of this wouldn’t be dealing with either claim. They also explained they wouldn’t be looking to return any premium paid by Mr M1. Mr M1 was unhappy about this and so, he raised a complaint. I note Mr M1 may have been represented by Mr M2 during this process.

Mr M1 didn’t think LV’s decision to void the policy and decline his claims was fair. He explained his ill health had resulted in him being unable to collect the car, and this is why the V5 documentation listed Mr M2 as the registered keeper. But he explained his intention to alter this, shown by his called the DVLA the day after collection. And, that the replacement car was in his name. So, Mr M1 wanted LV to overturn their original decision and process both claims against the policy he held.

LV responded to the complaint and didn’t agree. They maintained their belief that Mr M1 had deliberately misrepresented the information he provided at the inception of the policy. So, they thought the actions they’d taken were fair, and didn’t think they needed to do anything more. Mr M1 remained unhappy with this response, so he referred his complaint to us.

Our initial investigator looked into the complaint and upheld it. They didn’t think Mr M1 had intentionally misrepresented the information provided at the inception of the policy. And they felt Mr M1’s health, and a delay in receiving the logbook coinciding with the timing of the accident, resulted in the situation he found himself in through no fault of his own. They were

satisfied Mr M1 was the intended owner, and registered keeper and so, they didn't agree that there had been a misrepresentation. Because of this, they thought LV should reinstate the policy, remove the record of voidance and reconsider both claims, while also recommending LV pay Mr M1 £250 for the distress and inconvenience he'd been caused.

LV didn't agree. And they maintained their belief they had acted fairly, in line with industry rules and guidelines based on the information available to them.

Mr M1's case was re-allocated to another investigator, who issued another outcome after considering further information supplied by LV. Their opinion remained the same as the previous investigator. But they thought LV should pay Mr M1 £500 to fairly recognise the distress he'd been caused, considering his health at the time. They also explained that, should LV accept the claim after reassessment, they should cover any additional charges applied to the first finance agreement.

LV continued to disagree. They thought there were several factors that meant their decision to void the policy was a fair one, which included the finance being in Mr M2's name, Mr M2 being the driver in both accidents, Mr M2 acting as point of contact through most of the process and their disagreement regarding who should be recorded as the legal owner. As LV didn't agree, the complaint has been passed 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'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

I note LV had deemed Mr M1 to have deliberately misrepresented the information he provided at the policy inception. So, to decide whether I think this determination and the actions LV took because of it were fair, I've considered this against the rules set out in the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA").

In line with the rules, I first need to think about whether Mr M1 made a misrepresentation at policy inception. LV says Mr M1 did, as he listed himself as the owner, and registered keeper, of the car. But they don't think he was either of these.

I've first thought about whether Mr M1 was the owner, as we was asked at inception "*who owns the car?*". It's not in dispute that Mr M2 took out the finance for the car. So, I can understand why LV may question this. But I think Mr M1 has provided a reasonable rationale, explaining that Mr M2 did so as he had a poor credit rating, and the car was taken out on a credit basis. And, on top of this, I've seen evidence that shows Mr M1 paid Mr M2 the majority of the finance cost per month, with the remaining balance deducted from keep Mr M2 paid to Mr M1 as he was living in a home Mr M1 owned. I think this is a plausible explanation and I see no reason to dispute this. So, I do think Mr M1 had an insurable interest in the car.

I also note I've seen evidence that shows Mr M1 paid the insurance premium for the car, out of his own account. And I think this supports his statement that he was intended to be the owner of the car, as I'd expect the owner for pay for the policy premium. And on top of this, I note Mr M2 says the car was purchased with the intention of it being gifted to Mr M1, and where a car is gifted, the recipient of the gift would usually be classed as the owner. So, I

don't think I can say Mr M1 mis-represented his answer to this question.

I've then thought about Mr M1's question to "*Whose name is on the registration document*". Mr M1 answered this, stating he was on the registration document. But it's not disputed that at the time of the first accident, this wasn't the case. So, I do think there was a misrepresentation here.

But crucially, for LV to be able to rely on CIDRA and the actions it allows them to take, the misrepresentation must be a "*qualifying misrepresentation*". And to be qualifying, I would need to be satisfied that Mr M1 failed to take reasonable care when answering this question.

Mr M1 has explained that it was always his intention to register the car in his name. And so, this is why he answered the policy as such. But he's explained due to his ill health, which is significant, he was unable to travel to collect the car due to the distance and how long the commute would take. It's not in dispute Mr M1 has significant health conditions and I'm satisfied the car being purchased was a distance away. So, I don't think this is unreasonable.

As Mr M2 was listed as a named driver, and also taking out the finance, it was agreed for Mr M1 to collect the car and drive it back on Mr M2's behalf. I think this was both fair and reasonable.

Mr M1 has explained that, when collecting the car, the retailer advised Mr M2 the V5 documentation would need to go in his name, as he was present at the time of collection. While I've no evidence to substantiate this claim, I don't think this explanation is implausible. And so, I don't think it would be fair for me to say this wasn't the case. So, I think this explains why the V5 stated the registered keeper as Mr M2, not Mr M1.

But what I do have evidence of is calls Mr M1 made to the DVLA the day after the car was collected. And he says these calls were made to try and update the V5 documentation to list him as the registered keeper. Again, I don't have evidence to say for certain this was what was discussed. But I think this makes sense, and it follows the events that happened since, as I've seen evidence to show both cars did list Mr M1 as the registered keeper eventually.

I note that, at the time of the first accident, due to it being so close to the date the car was collected, Mr M1 hadn't received the V5 by post to update it and return it to the DVLA. So, when LV were processing the first claim, it listed Mr M2 as the registered keeper. But because of the above, I'm satisfied beyond reasonable doubt that it was Mr M1's intention to list himself as the registered keeper. And I think the discrepancy with the V5 information LV received was down to a set of circumstances ultimately beyond Mr M1's control. So, I don't think I can say that the misrepresentation was caused by Mr M1's failure to take reasonable care when providing information at the inception of the policy.

Because of this, I don't think I can say the misrepresentation was a qualifying one on this occasion. And because of this, I don't think LV were fair when taking the action they did, under the rules set out by CIDRA. And I think this applies to both claims, as they were made under the same policy.

I appreciate LV may disagree with this. And I recognise they feel there was several reasons that combined to lead them to reach the decision they did. But I don't think the fact Mr M2 was driving on both occasions is evidence that Mr M1 wasn't intended to be the main driver. Mr M2 was a name driver and so, insured to drive the car under the policy. And him doing so doesn't mean Mr M1 misrepresented knowingly at the time the policy was taken out, especially considering his health and how this may have impacted his ability to travel overall.

So, as I don't think LV have acted fairly, I've then thought about what I think they should do to put things right.

Putting things right

Any award or direction I make is intended to place Mr M1 back in the position he would've been, had LV acted fairly in the first instance.

In this situation, had LV acted fairly, I think they would've continued to assess Mr M1's claims against the remains terms and conditions of the policy he held. So, this is what I think they should do.

And had LV acted fairly, I don't think they would've voided the policy. So, I think the policy should be reinstated and the voidance removed from anywhere that it's been recorded.

Finally, had LV acted fairly, I don't think Mr M1 would've incurred the distress and inconvenience he no doubt would've felt when he was told his policy had been voided. And I can appreciate the upset this, and the stress of being responsible for the outstanding finance applicable to the first car, would've caused. I've had to consider this impact against Mr M1's significant health conditions he's experienced during this time, and I think this has worsened the severity of the distress he's felt.

Our investigator took all this into account and recommended that LV pay Mr M1 £500 compensation to fairly compensate Mr M1. And I think this offer falls in line with our services approach and what I would've directed, had it not already been put forward. So, this is what I'm directing LV to pay.

My final decision

For the reasons outlined above, I uphold Mr M1 and Mr M2's complaint about Liverpool Victoria Insurance Company Limited and I direct them to take the following action:

- Reinstatement Mr M1's policy and remove any voidance/cancellation markers;
- Reassess Mr M1's claims against the remaining terms and conditions of the policy, taking into consideration any additional charges applied due to the delays in paying the claim if applicable; and
- Pay Mr M1 £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M1 and Mr M2 to accept or reject my decision before 4 December 2023.

Josh Haskey
Ombudsman