

## **The complaint**

Ms J has complained about the rejection of her claim under her Car Insurance policy with Liverpool Victoria Insurance Company Limited (LV) for damage to her vehicle.

## **What happened**

Ms J made a claim to LV after her vehicle was damaged in two separate incidents. She's said in the first incident the named driver under her policy, who I'll refer to as Mr D, parked the vehicle and a third party reversed into it causing damage to the front bumper. Ms J said that in the second incident several hours later, while Mr D was driving the vehicle, the airbags in the vehicle deployed and this caused him to veer off the road and hit some railings.

LV decided that the incidents should be treated separately. It also decided that Ms J's vehicle was a total loss as a result of the second incident. LV took several months to investigate the circumstances giving rise to the damage. It has said Ms J didn't actually make a claim for the first incident. But after its investigation, it turned down her claim for the damage caused in the second incident. It did this on the basis Ms J hadn't provided a satisfactory explanation of how the incident occurred.

Ms J complained to LV about its decision and the way it had handled her claim and the impact it had had on her. LV wouldn't alter its decision. Although, it did acknowledge it had taken a long time to investigate the matter. But it concluded the length and detail of the investigation was warranted.

Ms J asked us to consider a complaint about LV's decision and its handling of the matter. When she did this she mentioned that she had spent many hours on hold for staff at LV and sent numerous emails. She also said she'd had to purchase a replacement car. And that she had become very anxious as a result of the manner in which LV treated her and Mr D.

One of our investigators considered Ms J's complaint. She said it shouldn't be upheld on the basis that LV's decision was reasonable. She also said LV was entitled to reduce Ms J's no claim discount as a result of the second incident, as it had paid out a considerable amount to recover Ms J's car and provide her with a hire car.

Ms J didn't agree with the investigator's view and asked for her case to be considered by an ombudsman. She pointed out that she had no intention of misleading LV. In essence, she didn't think LV's decision to refuse her claim on the basis she had not provided a satisfactory explanation for the second incident was fair.

I issued a provisional decision on 7 November 2023 in which I set out what I'd provisionally decided and why as follows:

*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 provisionally decided to uphold it and I've explained why below.*

*Ms J's policy provides cover for damage to her vehicle. So, to establish she has a valid claim under it in the first instance, she needs to show that her vehicle has been damaged. Once she has done this, I consider it is for LV to show it is entitled to rely on one of the exclusions in the policy or a breach of one of its conditions to refuse Ms J's claims.*

*In this case – as I see it - the fact Ms J's vehicle was damaged in two separate incidents is not in dispute. And LV has not even said what policy exclusion it wants to rely on to refuse Ms J's claim or what condition it considers she has failed to comply with. It has simply said it isn't satisfied with her explanation of how the second incident happened. But this, is not, in my opinion, sufficient reason for it to turn down Ms J's claim. This is because there is damage to her vehicle, which is covered by her policy. And the fact LV isn't satisfied with Ms J's explanation of how it happened is – in my opinion - immaterial.*

*I think what LV is really suggesting is that Ms J and Mr D's version of events can't be true. This is because it doesn't think the airbags on Ms J's vehicle could have deployed while Mr D was driving it, causing him to veer off the road. And, while I appreciate this does seem unlikely, I agree with Ms J that it's not impossible that it happened because of a problem caused by the impact in the first incident. However, as I see it, whether the airbags went off before Mr D veered into the railings or just after he did so is irrelevant. I say this, because either way the damage to Ms J's vehicle is covered by her policy.*

*If Mr D was mistaken and thought the airbags went off before he started veering off the road, but they didn't, this could simply be poor recollection on his part of what happened. If he knew they didn't and lied about it, he and Ms J would have provided misleading information to LV. And there is a condition in Ms J's policy that says if Ms J or anyone representing her gives misleading information when making a claim she will lose all benefits under the policy. But, it is for LV to prove this has happened on the balance of probabilities. And I don't think it has done so in respect of Ms J's claim. I say this because, while it's possible the airbags didn't deploy before Mr D veered off the road, it is clear from the research on the internet and the fact LV's engineer only said it was unlikely, that it's also possible they did, due to some sort of malfunction in the sensors, which may have been due to damage caused in the first incident. Or it could be that Mr D simply had a poor recollection of what happened.*

*Even if I were to accept Ms J and Mr D did actually mislead LV, I'd only consider it fair for LV to rely on the abovementioned condition if it was clear that Ms J could have benefited financially from this. I say this because it is well established in law that an insurer can only rely on a fraudulent or misleading statement to reject a claim if it can show the insured could have gained financially from it, i.e. it would have influenced the insurer's decision on whether to accept the claim or led to it paying more than it should have done. In this case, even if Ms J and Mr D did mislead LV, which I am not suggesting they did, I do not see how Ms J could have gained any financial advantage from it. I say this because whether the airbags went off before or after Mr D veered off the road, the damage to Ms J's car would be covered by her policy.*

*In summary, it follows that I do not consider LV's decision to turn down Ms J's claims was reasonable in the circumstances. And – as part of the fair and reasonable outcome to this complaint, I think it should settle them in accordance with the terms of Ms J's policy. There were clearly two separate incidents which caused damage to Ms J's vehicle. I do think they do therefore need to be treated as two separate claims. How LV settles them is a matter for LV. But, bearing in mind it seems Ms J's vehicle would have been a total loss as a result of the damage from the second incident, irrespective of the damage from the first incident, LV will need to carefully consider whether it is appropriate to apply one or two excesses.*

*Turning now to the impact of LV's investigation of Ms J's claim. I do think it was*

*unnecessarily protracted and it does seem Ms J had to chase LV on several occasions and spend time on hold to speak with claim handlers. So, I think she should be compensated for the distress and inconvenience she experienced because of this. I also think the impact of LV's inappropriate decision to refuse her claim would have caused Ms J significant distress and inconvenience. I think she needs to be compensated for this as well. And I think £500 in total as compensation for distress and inconvenience is appropriate.*

I also sent a follow up email to LV saying I intended to make it add interest to the claim settlement amount due to Ms J at 8% per annum simple.

I gave both parties until 21 November 2023 to provide further comments and evidence.

Ms J has said she doesn't have any further comments or evidence to provide.

LV has said it is disappointed with my provisional decision and has asked me to reconsider it in light of the following further comments:

- Ms J first complained because she disagreed the two events claimed should be treated as two separate incidents. And maintained that the minor incident prior to Mr D's accident must have led to the sudden deployment of the airbags, which caused him to crash into some railings on the way home in the early hours of the following morning.
- It can't see that it turned down Ms J's first claim for the damage caused while her car was parked, It understands the person who hit the car accepted they were at fault and were going to ask their insurer to settle the claim.
- If it was expected to settle the claim based on Ms J's testimony and Mr D's version of events it would support Ms J's view it is all one claim, as the first caused the second event. But LV is confident it would not be able to recover its outlay from the third party (or presumably their insurer) due to the very minor nature of the first impact. And due to its engineering evidence suggesting this impact would not have been significant enough to have resulted in the airbags on Ms J's car suddenly deploying several hours later.
- It agrees to establish a valid claim Ms J has to show her vehicle has been damaged. However, it doesn't think showing damage alone is sufficient. It believes she needs to provide evidence the damage was sustained to the vehicle accidentally or due to fire or theft. And it feels there is not enough to support that the incident happened accidentally or to show it was not due to Mr D becoming incapacitated in some way.
- The vehicle that was reversed into Ms J's vehicle was much smaller and the impact was at very low speed.
- The impact damage from the second incident would definitely have caused deployment of the airbags.
- As Mr D left the scene of the accident it was unable to establish whether he was under the influence at the time. This may have been determined if he called the police due to the fact the vehicle was blocking a pathway.
- Its engineers feel very strongly the airbags would not have suddenly deployed as described by Mr D. Its referred to the fact I said this wasn't impossible, but thinks it highly improbable.
- It can't agree that it may be Mr D was mistaken about the sequence of events. As Ms J's original complaint was that she was adamant the airbags deployed causing the second incident.
- It feels strongly Mr D has misled it by deliberately insisting the deployment of the airbags caused the second event. The financial gain of this would be settlement of the claim. And, while it can't say why Mr D would mislead it, it considers it highly likely to be because if he had not there would have been reasons for it not to cover the claim.

## **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.

I have considered all of LV's comments in response to my provisional decision, but it remains my view that Ms J's complaint should be upheld. I've explained why below.

I appreciate Ms J's first complaint was that the two events should not be treated separately. And I have checked LV's claims notes and I can't see it ever did refuse Ms J's claim for the damage caused in the first incident. If, because I consider LV should settle Ms J's claim for the second incident, LV wants to treat the damage as all part of one claim, that's its prerogative. I don't think I need to comment further on it in this decision. Instead, I have focused on whether LV's decision to refuse Ms J's claim for the damage caused in the second incident is reasonable.

I agree that to establish a valid claim under her policy as a result of the second incident Ms J's needed to show that her car was damaged in an accident. But there is nothing to suggest Mr D didn't crash into the railings by accident, whatever the reason he did this was, i.e. I think it is clear he didn't do it deliberately.

So, it remains my view that Ms J did establish a valid claim under her policy and it was for LV to show it was entitled to rely on a term in it to reject her claim. The fact that Mr D's version of events leading to the second incident of damage to Ms J's vehicle seems highly improbable, although not impossible, does not – in my opinion - give LV a right to reject Ms J's claim. And even if it could show Mr D's statement was untrue, I don't think LV would have any way of proving he misled it to gain a financial advantage.

I note LV has suggested Mr J could have been under the influence at the time he crashed. And I presume from this it thinks this could be what led to him crashing, as opposed to it being due to the airbags going off. But, again, it has no way of proving this. So, I do not consider it can rely on the clause in Ms J's policy that would mean cover for the damage to her car wouldn't apply if Mr D was under the influence at the time he crashed it. I appreciate Mr D left the scene of the accident and didn't call the police. And he's explained why he did this. However, the reality is this doesn't alter the fact LV can't prove he did this because he was under the influence.

In summary, it remains my view that Ms J has established a valid claim under her policy for the damage to her vehicle from the second incident when Mr D was driving. And that LV has not shown it is entitled to rely on a policy term to defeat it. So, I still consider it should settle it in accordance with the claim settlement terms in the policy. And that it should add interest to the settlement amount from one month after Ms J submitted her claim to the date of actual payment. The interest is to compensate Ms J for being without funds she should have had.

Whether Ms J wants to also claim for the damage caused in the first incident or LV wants to treat this as a separate incident is something I will leave Ms J and LV to discuss, as I don't think I need to make a finding on it in this decision.

It also remains my view that LV's unreasonable decision to turn down Ms J's claim caused her unnecessary distress and inconvenience and it should pay her £500 in compensation for this.

## **Putting things right**

For the reasons set out above and in my provisional decision I have decided to uphold Ms

J's complaint and make LV settle her claim for the damage to her vehicle in accordance with the claim settlement terms in her policy. And I also require it to pay interest on the amount due to Ms J at 8% per annum simple from one month after she made her claim to the date of payment<sup>1</sup>.

I also require LV to pay Ms J £500 in compensation for distress and inconvenience.

### **My final decision**

My final decision is that I uphold Ms J's complaint and order Liverpool Victoria Insurance Company Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 20 December 2023.

Robert Short  
**Ombudsman**

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<sup>1</sup> LV must tell Ms J if it has made a deduction for income tax. And, if it has, how much it's taken off. It must also provide a tax deduction certificate for Ms J if asked to do so. This will allow Ms J to reclaim the tax from His Majesty's Revenue & Customs (HMRC) if appropriate.