DRN-4970434

The complaint

Mr and Mrs M have complained about their motor insurer, Liverpool Victoria Insurance Company Limited (LV). They believe it completed a poor repair which resulted in their car being damaged beyond repair.

Mrs M is the policyholder, with Mr M being a named driver. For ease of reading, in this decision, I'll refer mainly to Mrs M.

What happened

In autumn 2022, the front end of Mrs M's car was damaged whilst the car was parked. LV took the car for repair, some engine and body work repairs were completed and it was returned to Mrs M in late October 2022.

On 1 January 2024 Mrs M's car broke down. A manufacturer garage said it was not a manufacturer fault – the garage said it was likely to do with the previous repair, specifically poor refitting of the car's radiator. It was felt the radiator had not been vacuum bled as required which had caused an air lock, causing the engine to overheat and parts to fail. LV was contacted and it sent an engineer (H) to assess the car. H said the car was a total loss. H reported that "D", an individual at the repairing garage, confirmed the radiator had not been vacuum bled – however due to the gap in time between the repair and breakdown, D wasn't prepared to accept liability.

H's report was shared with Mrs M. Mrs M had an engineer (E) consider the matter. E noted the gap in time, including the miles covered by the car in the interim – but felt the breakdown had likely been caused by LV's poor repair.

LV reviewed matters again, with advice being sought internally from engineers. LV also spoke to D – with D stating that the radiator hadn't actually been removed, that work hadn't actually been necessary. D also said that he had not spoken to H, H must have been speaking to someone else. LV noted the audatex report from the 2022 claim (a report used in the insurance industry to set out and cost repairs) did allow for removing and refitting the radiator. But, LV said, this had been an error as that work wasn't necessary. LV said that reference to "D" in H's report was likely another error. Overall LV wasn't persuaded that its garage had completed any poor work, it was satisfied the radiator likely hadn't been removed and it didn't believe the 2024 breakdown was likely linked to or caused by its repair in 2022.

When LV wasn't minded to accept liability for the car, Mrs M complained to the Financial Ombudsman Service.

Our Investigator felt there were inconsistencies in the evidence LV was seeking to rely on to support its position – particularly what D had said and the content of the audatex report. During the complaint process LV sent a photo which it said had been taken during the repair process and proved (it said) that the radiator had not been removed – because in the photo it was in place. When this was shared with Mrs M, she passed it to E. E said it wasn't even certain the car in the photo was Mrs M's, and it was unclear why one single photo, like this,

would have been taken during the repairs, with it also being unclear at what stage of the repair process the photo was taken.

LV then provided some further comments which it said were from its internal experts. The comments argued that there were possible other causes of the car's engine failure, such as build-up of soot deposits from short journeys being taken. Further comments from E refuted those possibilities, with E noting the car had done relatively low mileage, meaning damage by things like soot build up was unlikely. An invoice for the car's service, dated June 2023 was also shared with LV.

Our Investigator weighed up all of the evidence presented. She felt it was most likely, even despite the gap in time, that the problem the car had experienced in January 2024, was caused by or had resulted from LV's repair. She felt LV should repair the car but if it declared it a total loss, it should settle for its value in line with what the policy says. She felt LV should reimburse Mrs M's costs for E and for towing the car after it broke down, both plus interest. She said LV should pay £500 compensation.

Mrs M indicated she was pleased with the outcome. But she added that given the condition of the car, they'd now had to pay to put it in storage. She also mentioned that finance payments are still being made on the car with the finance company now asking for the loan to be settled.

LV maintained that it wasn't reasonable to say it was liable for the breakdown of the car and the damage it had caused. The complaint was referred to me for an Ombudsman's decision.

I was minded to agree with our Investigator about the problem with the car. But I felt further and more specific redress would be required to put matters right. I set out my views, including explaining what redress was required in a provisional decision. I've included an excerpt below:

"I think it's understandable, to an extent, that LV would have reservations about liability in a situation like this – where it did work more than a year earlier, the efficacy of which is then brought into question by the much later breakdown event. But I'm not persuaded the balance of the evidence, when weighed to consider what is most likely, sits in LV's favour.

The first point to note is LV originally completed work to the engine/parts in the engine bay. And it is the engine overheating which two engineers have found, separately, to have caused the breakdown and damage.

The issue discussed in H's and E's reports was that when the car's cooling system is removed and refitted, the radiator has to be vacuum bled. That, without bleeding, air locks can form, resulting in pressure being exerted on engine parts, causing the engine to overheat and parts to fail. H spoke to the original repairer, specifically "D". H's report records: "[D] advise[s] the cooling system would not have been vacuum bled. But due to the time elapsed (15months) and the vehicle having covered 8000 miles they don't accept any responsibility for the overheating".

I'm mindful that the audatex report does specify that, as part of the repairs to be completed to Mrs M's car in 2022, the radiator had to be removed and refitted. So, from what I've set out above, it follows that upon refitting it, the system would have needed to be vacuum bled.

So, on the face of that detail I'm satisfied that:

- *Work was done on Mrs M's car – removal and refitting of the radiator;*
- *that was not done to the correct standard – it wasn't vacuum bled;*
- *which caused damage – overheating of the engine causing parts to fail.*

LV's defence of that position in summary is:

- *The time past and distance the car travelled in between its repair and the breakdown mean it's unlikely the two are related.*
- *There are other causes of engine failure which might have occurred.*
- *H's report is wrong – D did not speak to H, whoever H spoke to had been mistaken as to what repairs had been completed.*
- *The audatex report is wrong – the radiator was not removed and refitted, such wasn't necessary.*
- *The above is confirmed by manufacturer instructions, D's word and the photo of the car being repaired.*

Time and distance – H and E are the only two independent engineers I've seen comments from on this. So their comments are the only ones I'm affording expert weight too.

H said he cannot directly tie the repair and breakdown together, that if they were linked the overheating would have occurred upon the car's collection in October 2022. But he doesn't say whether they are most likely related or unrelated. I'm mindful that H appears to reach this conclusion only after speaking to D, with D having refuted liability for the engine's failure based on time and distance. E's report is quite detailed. E explains that the time and distance factors have been taken into account – but that E is satisfied that the failure to properly bleed the system had caused the engine's failure. E concluded the problem had manifest when the system wasn't bled but had taken time to progress to the point where significant overheating and damage were caused.

I think, in the context of a car which has low mileage and is often used for short journeys, where the engine likely doesn't operate fully, E's opinion makes sense. I also, otherwise, find E's report the most persuasive. I'm not persuaded that time and distance offer a reasonable defence to LV for not accepting liability for this damage.

Other causes – I don't doubt there are many causes for possible engine damage, caused by or related to overheating. But LV hasn't provided comment from an independent engineer in this respect. And the comments it has provided aren't entirely persuasive. I find them quite general, talking about what may happen, as opposed to what is most likely to have happened here. I also note that E has offered some expert rebuttal in these respects – for example the lower than average mileage of the car means damaging soot build-up is unlikely. I'm not persuaded that the arguments LV has raised in these respects mean it is reasonably not liable for the damage.

H's report is wrong – I'm really not persuaded that H's report is likely to be flawed. An expert engineer, undertaking enquiries in order to complete their official professional report, would, I think, be most likely to ensure they were speaking to the correct person. H records speaking to D, with D telling LV that wasn't the case. I note LV did not go back to H to verify D's allegation. I'm mindful that D, having seemingly admitted a gross error to H, would have every reason to, on reflection, distance themself from that statement. I think it's fair to rely on H's report as written, that LV's attempt to say it likely contains unreliable data, and so should not be relied upon, is unreasonable in the circumstances.

Audatex is wrong – The audatex report, in motor repair cases, is often given quite a lot of weight when considering what repairs were required and completed to a vehicle. Yet here this is another document that LV would like us to accept was, on this occasion, flawed. I'm mindful that it was D that raised the idea that it was flawed – that it included work which wasn't actually necessary, and so not done, which meant the system did not need bleeding. I'm mindful that whilst D now says this – that is not what H recorded D as saying when they

spoke. I'm also mindful that, at the time of the repair, D did not contact LV and say 'there is work on audatex – which you are paying us labour rates for – which we aren't actually going to need to do'. That feels sort of like it was ok to rely on audatex when it was it was going to generate income – but, when it might suggest there's liability for damage, it should be viewed as unreliable and discounted. I'm not persuaded it's fair to conclude – based on D's current recollection of the repair – that audatex was wrong.

Manufacturer instructions and photo – LV says audatex being wrong is also supported by the manufacturer instructions, which show that the radiator did not need to be removed. With a photo evidencing that work, in line with the manufacturer instructions, rather than audatex, was completed (as D claims). I think that what the instructions say should be done does suggest that removal might not be necessary – I'm not sure though, in the wider context of this dispute, that the instructions add sufficient weight to the balance to tip it in favour of 'it's most likely the radiator was not removed'. I've explained why D's word does not support in this respect, and I don't think the single photo does either. As E has said, it isn't clear that the photo is of Mrs M's car. The photo is not time/date stamped either and it's not clear at what stage in the repair process it was taken, or why. I'm not persuaded that LV has shown the audatex report was most likely wrong or should not be relied upon as a likely correct record of what repairs were done to Mrs M's car.

Summary – I explained above that, on the face of it, it looked as though it was most likely that LV's repair in 2022 had caused Mrs M's car to breakdown and be damaged in 2024. Having considered LV's defences raised in this respect, I'm not persuaded its reasonably shown it most likely isn't liable for the breakdown/damage. On balance I'm satisfied that it's fair to say that the 2024 event was most likely caused by work LV completed on the car in 2022. I think Mrs M has been caused loss and suffered upset as a result. I've set out below what I think LV needs to do to put matters right.

Putting things right

In summary I think LV should pay/reimburse Mrs M:

- *£14,750 as the market value of the car, plus interest.*
- *Any finance interest paid after 1 March 2024, plus interest.*
- *E's costs, including but not limited to the £1,500 report fee, plus interest.*
- *Towing costs, plus interest.*
- *Storage costs, plus interest.*
- *£750 compensation.*

I've explained these further below.

Market value
H has already found the car to be a total loss. When a car is felt to be a total loss it is usual for an insurer to settle for it based on its market value. There are motor valuation guides which will return a market value for a car. I've checked the four commonly used by this Service, using the date the car broke down of 1 January 2024. For Mrs M's car they returned values of £13,995, £14,642, £14,727, and £14,750. In line with our usual approach to determining market value, I'm minded to require LV to pay the highest of these four values. In saying that I've seen nothing which makes me think a settlement in line with one of the lower valuations, or above the highest, would be fair. If the parties think a different amount should be paid, I'll consider their evidence in that respect.

Given time has passed since the date used in the valuation, I'll require LV to add interest to the settlement sum. It will have to apply interest from 1 January 2024 until settlement is made.*

Once the settlement is made, the car will belong to LV. It will have to arrange to collect it.

Finance agreement
The car is on finance – so part of the settlement I'm intending to require LV to pay for the car will have to be paid to the finance company to clear what is owed. Mrs M has been continuing to pay the finance on the car. This will have reduced the balance due to the finance company. So when LV settles for the car, a lower portion of the settlement sum will be paid to the finance company than had this settlement occurred earlier in the year.

However, with the finance agreement being ongoing rather than settled, Mrs M will likely have paid additional interest. So if she can get a breakdown from the company of interest due and paid since 1 March 2024, it should reimburse any interest paid. To each reimbursed sum paid, interest should be added from the date Mrs M paid the finance interest until settlement of the reimbursed sums are made.*

I've used the date of 1 March 2024 above as by this time LV had H's report which confirmed both that a poor repair had been completed on Mrs M's vehicle in 2022, and that the car was a total loss. E's report was also available which found that the poor repair had likely caused the 2024 breakdown. If LV had been treating Mrs M fairly, I think it should have looked to settle based on the market value by that point.

E's costs
E charged £1,500 for the initial report. LV should reimburse that, plus interest from the date Mrs M paid the charge until settlement is made.*

E has been involved in replying to LV's comments during the complaints process. I think that Mrs M reasonably required expert input of this nature. I'm not sure if E charged for that further work – considering LV's comments and drafting replies. If E did then LV should reimburse those costs too, also plus interest as above.*

Towing
Mrs M had the car towed to a garage initially, and then to her home. I understand the car has since gone into storage and I presume it was towed there too. LV should reimburse each charge for towing, adding interest on each sum applied from the date it was paid for until settlement is made.*

Storage
Mrs M ultimately paid to put the car into storage. I can see why she'd need to do that. I'm minded to require LV to reimburse her costs for storing the car until it collects it once the market value settlement has been paid. To each reimbursed sum, interest will have to be added, from the date the storage cost was paid until settlement is made.*

Compensation
I know Mrs M has struggled without her car. Mr M's car has had to be used much more and that has disrupted the usual family life. I know Mrs M has been caused upset and worry, with extra pressure being felt because finance and other payments on the car have had to be maintained even whilst it is out of use. I'm minded to require LV to pay £750 compensation to make up for this."

In reply LV said it had nothing further to add. Mrs M clarified that E had not charged anything further for its involvement, and the car had not, in the end, been put into storage. She asked

if LV would have to reimburse the charges she'd incurred when the car initially went to the manufacturer garage. She provided a copy of the invoice.

I asked our Investigator to share the invoice with LV – total cost £620.40 paid on 20 February 2024 – and let it know I'd likely require it to reimburse this outlay, plus interest. She also let LV know that there hadn't been any additional costs for E or for storing the car. LV didn't reply.

Mrs M provided a further response. She explained more about what it had been like without her car, and the upset that had been caused. She noted that the compensation I had suggested worked out to about £3.00 a day since the car had broken down in January 2024. So she didn't feel £750 was fair and reasonable compensation.

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'd like to thank Mrs M for clarifying that E didn't charge for its further involvement, and that the car was not placed in storage. So I won't require LV to reimburse these costs (because none were incurred). As such I'll remove the directions relating to them from my list of awards set out below.

I do think it's fair that LV pays for the diagnostic work Mrs M had carried out by the manufacturer garage. So I will require LV to reimburse this sum. I've added an award for this into the list of what LV must do to put things right, set out below.

I was aware when I made my provisional decision that things had been difficult for Mrs M without her car. Whilst I appreciate the detail provided in reply to my provisional decision, it doesn't set out anything I wasn't already aware of. I'd like to explain though that when we award compensation we don't look at a daily amount. Rather we look at the total period of upset and consider how the policyholder was affected as a result of the error the insurer made. And whilst we consider each case on its own merits, we have guidance which ensures consistency of awards across broadly similar cases. We award a sum of £750 where those failings caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out, with the impact lasting over several months. I'm satisfied, in light of that and having reviewed everything, that £750 compensation is fair and reasonable in the circumstances here.

Putting things right

I require LV to pay or reimburse Mrs M:

- £14,750 as the market value of the car, plus interest* applied from 1 January 2024 until settlement is made.
- Any finance interest paid after 1 March 2024, plus interest* applied from the date Mrs M paid each amount of finance interest to be reimbursed until settlement is made.
- £1,500 for E's costs for the report, plus interest* applied from the date the report was paid for until settlement is made.
- Towing costs, plus interest* applied on each sum to be reimbursed from the date each was paid until settlement is made.
- £620.40 for the manufacturer diagnostic work, plus interest* applied from 20 February 2024, the date Mrs M paid this sum, until settlement is made.
- £750 compensation.

*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 M 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 Mr M and Mrs M to accept or reject my decision before 13 September 2024.

Fiona Robinson
Ombudsman