DRN-5050460

The complaint

Mr B says that after he made a claim on his motor insurance policy when his car was written-off, Liverpool Victoria Insurance Company Limited ('LV') didn't settle it properly.

What happened

Mr B's car was on a lease arrangement whereby he paid a lease firm ('firm A') to use it for a fixed period, after which it would be returned to firm A, its legal owner. Mr B thought LV would indemnify him if the car was lost by paying firm A for it. Firm A wanted £23,450 for the car, but LV only paid it £18,080. It said it had calculated the car's market value and had deducted from that sum Mr B's £600 policy excess and £100 for pre-accident damage. LV also deducted 20% from the settlement sum for VAT and told Mr B he owed firm A £5,370.

Mr B said LV hadn't valued the car correctly. And he pointed out that firm A had told him in writing in December 2023 that the sum it required from LV was *net* of VAT. Yet LV had deducted it, thereby reducing the sum it paid to firm A and leaving Mr B to pay the shortfall. Mr B said he wasn't liable for any VAT payment, as the car was leased for his private use. He paid firm A the £600 deducted by LV for the policy excess, but he wanted LV to explain the pre-accident damage deduction. Meanwhile, he disputed that he was liable for the shortfall, but LV didn't change its stance.

One of our investigators reviewed Mr B's complaint. He didn't think LV had valued the car correctly, as it hadn't referred to the motor valuation guides we use. He said our approach was that insurers should use the top valuation figure in the guides (in this case, £26,405) unless they could show why a lower sum was fair. He didn't think LV had done that. Initially the investigator said it was fair for LV to deduct the VAT from the settlement sum.

Mr B said he thought LV hadn't taken account three of the areas set out in the *Consumer Duty* requirements that came into effect in 2023. In terms of *consumer understanding*, he said there was no reference in the policy to the full market value not being payable in the event of a total loss situation. In relation to *price and value* he said it wasn't right that consumers who owned their cars got full value from the policy, but those who didn't lost out through VAT deductions. And he said *products and services* should be designed to meet the needs of consumers, but he'd unknowingly been exposed to financial risk.

After further consideration, the investigator said the VAT deduction was unfair. He noted that the policy made no reference to such a deduction being made, so he thought doing so wasn't in line with the policy, nor was it fair and reasonable. He said Mr B should be indemnified for his loss and not left with a sum to pay firm A.
LV said its method of calculating the car's market value was its established working practice. It said it had sent an extra £1,365 to the lease firm, partly as a result of Mr B's evidence when disputing the valuation. It also said it had paid him £200 compensation. But it said the VAT deduction was correct. It accepted that there was no specific reference to VAT. But it said the policy wording stated that in a total loss situation, where the car was on finance LV would contact the finance firm to discuss the sum outstanding. Once it had paid the finance

firm, any balance due was between that firm and the consumer. The investigator didn't think LV had justified its approach, so his view remained the same.

As there was no agreement, the complaint was passed to me for review. I issued a provisional decision as follows:

The valuation

Our approach to valuation disputes has been in place for some time, so insurers should be aware of it. We don't value cars, but we look at whether an insurer has acted fairly and reasonably in the way it approached a valuation. Insurers are entitled to use their own working practices, but if consumers aren't happy with the outcome, they can ask us to consider the issue. In doing so, we'll adhere to our approach.

In this case, from four valuation guides, the highest valuation was £26,405. I don't think LV has shown that a lower valuation is appropriate. In cases where cars are leased, and therefore aren't owned by the consumer, what usually happens is that the lease firm provides a figure for the car's total loss that's acceptable to it. Often, the sum required by the lease firm is less than the car's market value, as in this case, where firm A only required £23,450. So the valuation we think is correct makes no difference to the outcome here.

The policy says that LV will pay the legal owner for the car, and that if the car is on finance, it will settle the loan and pay any monies left over to the consumer. In this case Mr B didn't have a loan to finance the car; he paid a monthly sum to lease it from the legal owner. So when the car was written-off, he was only due a refund of part of the deposit he'd paid to firm A for the car, which he says was returned to him.

Deductions

Mr B was obliged to pay the £600 policy excess, in line with the policy, although I don't think LV should have deducted it from the sum it paid the lease firm, which complicated matters. I think LV has shown it had reason to make a £100 deduction for pre-accident damage, but I don't think it should have deducted VAT from the settlement.

LV can only deduct VAT if Mr B is VAT registered, and he told LV he wasn't. I haven't seen any evidence to the contrary - nor have I seen anything to show that firm A told LV the sum it required for the car included a sum for VAT. In fact, Mr B has shown that firm A said the settlement sum it required from LV was net of VAT. I think that shows the sum reflected only the value of the car to firm A and didn't include any sum for VAT.

It still isn't clear why LV thought it was appropriate to deduct VAT. When we asked for clarification, it said it was a legal requirement. But in my opinion, Mr B wasn't responsible for a VAT payment, and I don't think LV has provided a compelling explanation for its decision. I don't think it was fair and reasonable, or in line with the policy's terms and conditions, for it to deduct VAT, leaving Mr B to pay the shortfall.

Consumer duty

In terms of the Consumer Duty issues raised by Mr B, I agree that LV got things wrong, and I can see why he thinks it didn't meet the requirements he has referred to. But I'm satisfied that what I'm minded to require LV to do in order to put things right will mean that Mr B isn't disadvantaged.

Putting matters right

Mr B has cleared the outstanding balance with firm A. So I'm minded to say that LV should reimburse him with the sums he's paid to firm A (except for the policy excess and the pre-accident damage), plus interest. LV has paid Mr B £200 compensation (for an initial error by its engineer) but I'm minded to say it would be reasonable for it to pay him a further £200. He has had to spend a great deal of time dealing with the issues and he faced frustration and upset due to LV's decisions. Mr B was also inconvenienced by having to deal with firm A about the settlement when that shouldn't have been necessary. So I'm minded to say that £400 compensation in total for distress and inconvenience would be fair and reasonable.

I asked the parties to comment on my provisional findings. Both parties accepted them.

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.

As Mr B and LV accepted my provisional findings, there's no reason to depart from them, so for the reasons stated above, I'm upholding this complaint with the remedies set out above.

My final decision

My final decision is that I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to do the following:

- Reimburse Mr B with the sums he's paid to firm A (except for the policy excess and the £100 pre-accident damage payment).
- Add interest to Mr B's refund, from the date of each payment he made, to the date of the settlement of this complaint, at the simple yearly rate of 8%.
- Pay Mr B a further £200 (£400 in total) for distress and inconvenience

If LV thinks tax should be deducted from the interest it should tell Mr B how much, so he may reclaim it from HMRC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 October 2024.
Susan Ewins
Ombudsman