

The complaint

Mrs H has complained about the way her insurer, Liverpool Victoria Insurance Company Limited trading as Britannia Rescue ('LV') dealt with a claim she made on her breakdown policy.

LV is the underwriter of this policy i.e. the insurer. During the claim Mrs H also dealt with other businesses who act as LV's agents. As LV has accepted it is accountable for the actions of its agents, in my decision, any reference to LV includes the actions of the agents.

What happened

I issued a provisional decision on this complaint last month and said that I was considering upholding it and asking LV to pay Mrs H the cost of the repairs to her car plus interest. An extract from that decision follows:

"In December 2023 Mrs H made a claim under her breakdown cover with LV when she wasn't able to start her car. LV tried to restart the car but couldn't so it arranged for it to be recovered to a garage. It was later moved to a dealership who said the car needed a new electronic control unit (ECU) and carried out the repairs which came to £1,624.55.

Two days later Mrs H made a complaint to LV and said that the damage to her car was caused by its agent who damaged the ECU by trying to jump start the car. She said she wanted to be compensated for the repair costs and also to claim for inconvenience and for the loss of use of her car.

Mrs H said when the operative came to repair the car, he tried to jump start it using a jump pack. After that failed, he decided to use a main battery. While he was setting the cables up Mrs H's partner noticed that there were two 12-volt batteries linked together. She says her partner asked if this was a 24-volt system and the operative confirmed that it was but could be switched to a 12 volt system. Mrs H said they didn't see him flick any switches or separate the batteries. She said the engine caught very briefly but then failed to run. The operative tried three more times but the outcome was the same. He then installed a new battery but the car still wouldn't start. So the car was recovered to a local garage.

Mrs H says the car was at the local garage for a week or so and then moved to a dealership for a full diagnostic check. The check said the car needed a new ECU because the old one was damaged beyond repair. The garage added that the damage to the ECU was caused by a power surge from a 24-volt battery.

LV investigated the complaint, but it decided not to uphold it. It spoke to its agent who said they only had 12-volt electronic jump packs and their operative wouldn't know how to join the

two batteries together. It said it had tried to get in touch with the dealership to get a date stamped diagnostic test but wasn't able to. It said it would consider it if Mrs H was able to provide a copy.

Mrs H was able to obtain a handwritten report from the dealership which said that the cause of the damage was: "vehicle has been jumped with 24v jump pack. ECU spiked". The dealership said it couldn't provide a date stamped diagnostic report. The report was dated 19 December 2023. LV didn't change its view.

One of our investigators reviewed the complaint but didn't think it should be upheld. He said that there wasn't enough evidence for him to decide that on balance LV damaged the car's ECU.

Mrs H didn't agree and asked for an ombudsman's decision. She said that the vehicle sent out to carry out the repair was large and generally used for commercial vehicles. She said the operative pointed to the two batteries when speaking to her partner.

Our investigator told Mrs H that there was no evidence of the ECU's condition prior to the incident to enable him to conclude the damage occurred after LV's operative attended. Mrs H said that she had driven the car the day before and the car wouldn't restart after she dropped a friend over at their house.

Our investigator asked LV for further evidence. LV provided some photographs including one of the battery pack that the operative would have used. It said the other images showed the diagnostic machine plugged in to the vehicle and an image of the dash showing a charging fault.

The matter was then passed to me for a decision. Before I issued my decision I asked Mrs H for her comments on the evidence above. Mrs H said that the operative used a similar battery pack originally but it failed to start the engine over. It was then that he used the two large batteries. She said the image of the diagnostic machine was irrelevant as it showed no faults on the listed items and not on the discharged battery. She said the image of the dash isn't a fault but a default warning whenever the ignition is switched on but the engine isn't running. She enclosed a recent photograph of her car dash showing this. She said she wasn't questioning the professionalism of the operative but feels they may have made a human error.

We provided LV with Mrs H's comments before I proceeded with my decision. I said I would be issuing a provisional decision so it would have an opportunity to respond.

What I've provisionally 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.

Mrs H says that her car was damaged by LV but it denies this. Both parties have put forward evidence in support of their case. Neither has provided conclusive evidence in my opinion so

I need to weigh each party's evidence up so that I can decide on what the likely cause of the damage was and whether LV was responsible for it.

Mrs H's version of events has remained consistent throughout the claim. She said that the operative attended and tried to jump start the car using a pack and after this didn't work, he used leads which he connected to two 12-volt batteries even though he told her partner the system could be switched to only one 12-volt battery. She said her partner saw the batteries and that the operative pointed to them himself before using them.

Mrs H also said that the vehicle that attended was large, and possibly normally used to recover larger commercial vehicles. This would explain why it would have a 24-volt system at the back.

Apart from Mrs H providing a consistent account of the events she was also able to provide evidence which supported some of her points. Mrs H has provided a copy of the report carried out by the dealership which says that the damage to the ECU was caused by the vehicle being jump started using a 24 volt jump pack. This is the only engineering evidence on file and I find it to be persuasive at least as to the cause of the damage. The dealership also said the diagnosis and repairs were carried out by an engineer with 15 years' experience. I think this adds to the weight I can place on this report. So, on balance, I think the damage to the ECU was caused by an attempted jump start.

LV said it wasn't provided with a diagnostic report to show when the ECU damage occurred. So there is no evidence to show the ECU wasn't already damaged. Mrs H said that she drove the car the day before and it had no issues. She said she had driven some friends home and the car broke down at a friend's house nearby. She decided to leave the car there and called LV the following morning. I have considered the evidence provided by LV and the recovery notes show that the car was picked up from an address which wasn't Mrs H's home address. This address is a short drive away from Mrs H's home. This ties in with what Mrs H has said. On balance, I am inclined to conclude that the car was driveable the day before and there is no evidence I am aware of that suggests otherwise. It follows that I think the problem with the ECU developed subsequently.

I appreciate LV may say that the ECU may have been the reason the car wouldn't start in the first place but, as I said above, the only engineering evidence available states that the cause of the damage to the ECU was the attempt to jump start it. I therefore think, on balance and based on the available evidence, the reason the ECU broke down was the jump start which was carried out by LV's agent. I also think it is unlikely that Mrs H would have tried to jump start the car herself before the agent attended. I say this because I think she would have mentioned something like this to us or to the operative and this may have been in some of the notes. Also Mrs H didn't mention having a jump pack, or specifically a 24-volt one.

LV has provided evidence from its agent which states that it only uses 12-volt jump packs. It provided a photograph of one of its jump packs. Mrs H has said that the operative did have a jump pack similar to that but he actually used batteries he had at the back of the van. So I don't think the evidence LV provided disproves anything that Mrs H has already said.

LV said that its agents say they don't have 12-volt batteries which does go against what Mrs H has said. I have considered this but I find Mrs H's evidence more persuasive. Mrs H was an eyewitness and I think it is unlikely she would allege that there were batteries at the back of the van when that wasn't the case. Furthermore, she maintained the story about the two batteries from the start. This was in her original complaint to LV which was made not long after the incident. In my opinion, Mrs H's account of the events is likely to be more accurate than accounts given by the operatives who would have provided their account of the events much later. I also think it is more likely that Mrs H will remember the incident in more detail than the operative who probably attended a number of incidents on that particular date.

LV has also provided images of a diagnostic machine which shows no errors. I am not sure this image shows any of the parts of the car which are relevant in this complaint but perhaps LV can address this in its response to my provisional decision. Also, in terms of the image of the "charging error" Mrs H has explained this isn't an error and she has provided a photograph of her car now which shows a similar error message- but the car is seemingly ok. The mileage is higher in this photograph than in LV's which shows it was taken after the car was repaired.

In summary, though as I said above, none of the evidence provided is conclusive I think the report from the dealership as well as the consistency in Mrs H's account of events leads me to the conclusion that, on balance, LV is responsible for the damage to the ECU and should compensate Mrs H for the cost.

For completeness I will say that from my understanding of the evidence provided by LV the agent who tried to repair the vehicle and the agent who recovered the car to the garage were from two different companies. I note LV has been communicating with the company who recovered the car to the garage and they are the ones who said they only have 12-volt packs and wouldn't know how to combine two 12-volt batteries. If it hasn't reached out to the original agent perhaps it can do so now. But in any event, as I said on the evidence available to me, one of the agents was, more likely than not, responsible for the damage to the ECU.

As the case is so finely balanced I am not considering making any further awards, such as awards for distress and inconvenience or loss of use, other than asking LV to pay interest on the amount it pays back to Mrs H as Mrs H has been without this money since she paid the dealership for the repairs."

Both parties responded to my provisional decision. Mrs H said she had nothing further to add. LV responded to say that it was not willing to accept accountability for the alleged damage to Mrs H's car. It made a number of points including the following:

- It clarified that two separate rescue agents attended the incident. One attempted to start the vehicle and the other only attended to recover it. LV said it mistakenly initially contacted the second company to ask about its jump start equipment and it is that company who said that its vehicles do not have access to 24-volt systems.
- The first company does deal both with light and commercial vehicles and its vans are equipped to deal both with 12-volt and 24-volt systems.
- When the first company attended, the technician suspected that the fault may have been

due to a discharged battery. The technician tried to start the vehicle with a 12-volt boost pack and jump leads which connected directly to the service van but both methods failed to restart the car. The technician tested for faults in the ECU with a diagnostic tester but this didn't provide any further useful information so they advised that the car would need to be recovered.

- LV considered it unusual that Mrs H had supplied the technician with her own new battery. It said that this suggests that there may be some prior history or knowledge of issues with the car before she called LV which she hasn't disclosed. It also suggests that Mrs H bought a battery at some point prior to calling LV which may make it potentially more likely that someone else may have tried to start the car before LV's agent arrived.
- It provided photographs of the van that attended the incident and the jump cables it contains. It says this was to show discrepancies in Mrs H's description of the back of the van. LV said there was no switch but the two connections are controlled by two separate sockets that are clearly marked as 12V and 24V. Another discrepancy is that there are no batteries on display. LV added that the fact that Mrs H mentioned that the batteries were "connected in series" suggests a detailed understanding of how to produce 24 volts from a pair of 12-volt batteries which most people outside of the motor trade would not be aware of.
- LV said that it would not be possible for the engineer at the dealership to say that the ECU spiked with a 24-volt jump pack unless they had a detailed diagnostic report or carried out a forensic dismantling of the ECU. And without specific evidence to show the cause, establishing how the ECU was damaged could only be based on speculation. A full diagnostic report would also be able to pinpoint the precise date and time of any incident that led to the damaged ECU.
- 24-volt boost systems are quite rare in the motor industry. LV said it suspected the likely
 reason the dealership engineer suggested a 24-volt boost was because Mrs H
 suggested it as a potential cause. Without this, a more likely assumption would have
 been that the jump leads were connected incorrectly. LV suggested that we seek
 independent technical advice from an expert in vehicle electrical systems to confirm
 whether or not it would be possible to ascertain the precise cause of an ECU failure
 without the steps mentioned above.
- LV said it would also make sense for us to contact the dealership engineer and ask them to clarify how they were able to conclusively say that the ECU damage was due to a 24-volt boost.

I responded to LV in relation to its suggestion that we obtain expert evidence and contact the engineer. I said that it wouldn't be for us to obtain evidence on its behalf. I said I would be happy to consider further evidence if it had anything further to submit.

LV responded and reiterated some of its earlier comments. It added the following:

• In one of her communications Mrs H said that she was curious as to how the damage occurred bearing in mind that the car had no issues prior to the incident. LV said this is incorrect as the car had a fault when Mrs H made a claim. It repeated that it was unusual that Mrs H had a new battery in her possession.

- It said there is no way of knowing how long the car was at Mrs H's friend's address or whether Mrs H had tried to jumpstart it before LV's agent attended.
- Mrs H has not provided it with a full diagnostic report from the dealership despite its requests to do so. It believes the dealership engineer based their assumptions on what Mrs H alleged happened.
- Mrs H hasn't provided sufficient evidence in support of her claim. LV has provided images which show there were no batteries on display, there were two separate voltage cables and its suspicions as to why Mrs H would have a new battery.

We then went back to Mrs H for further information. We asked why she had a new battery and also whether she or anyone else attempted to jump start the car before LV's agents attended.

Mrs H said that she contacted LV very early in the morning. She was told it would be two to three hours before an agent could attend and so her partner went out and bought a battery. And this is because they suspected that the battery was flat. She said she thought this would help get the car back on the road more quickly. Mrs H said they did not try to jump start the car themselves.

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.

Though I've considered all the further evidence and information provided I will concentrate on the points I consider to be the most important. No discourtesy is meant by this. We aim for our decisions to be as concise as possible.

I'm glad LV has now clarified that the agent that attended to repair the vehicle did have a 24-volt system in their van. This ties in with what Mrs H has said from the start of her complaint and I think it adds further weight to her evidence.

LV said it was unusual that Mrs H had her own battery. It said this suggested that she may have had prior knowledge of the issues. It also said that buying a battery before contacting LV would indicate that someone may have tried to start the car before. I appreciate LV's point, but I note that it has no evidence in support of the assumptions it is making. Mrs H said that she called LV early in the morning and was told the agent would attend in a few hours. The notes show that the claim was reported around 6:30 am and the rescue van arrived around 11:00am or 12:00pm. Mrs H said she went and bought a battery in the meantime as she suspected the issue was a flat battery. I find Mrs H's explanation plausible and consistent with her overall testimony. I don't think having a battery, something that one can easily buy at short notice, is something that would necessarily indicate that Mrs H had previously tried to repair the car. And I don't think it's unusual for someone to assume that their car not starting is likely to do with a flat battery. I don't think this suggests anything untoward as LV suggested.

LV says there are inconsistencies in Mrs H's version of events including the fact that the van had no batteries that were visible and no switch. Mrs H said her partner saw the batteries and was told they could be switched between 12 and 24 volts. I have seen the photographs

LV has provided which it says are from the specific van who attended the incident. I agree that there are no visible batteries, but one can assume that there are batteries connected to the cables. So, I don't think this is necessarily a discrepancy. Or such a large discrepancy so as to completely discredit what Mrs H has said so far. In relation to the switch Mrs H said the technician told her partner the system could be switched from 12 to 24 volts. But they didn't see the technician flick a switch or separate the batteries. Again, I don't think this is an inconsistency and in fact it confirms there was no switch and Mrs H said she didn't see one.

As I said above, I am pleased that LV has now clarified that the van was equipped with a 24 volt system. And it accepts that it mistakenly contacted the wrong company when it was making its enquiries. But I note that this new and important piece of information is inconsistent with what LV has told us so far in relation to this complaint. I think this is a far greater inconsistency to what it considers to be inconsistencies in Mrs H's account. But it also confirms what Mrs H has said all along about there being a 24-volt system in the van. Again, I think this adds weight to Mrs H's evidence.

LV said that Mrs H describing the batteries as being "connected in series" suggests a detailed understanding of how to produce 24 volts from a pair of 12-volt batteries which most people outside the motor trade would not be aware of. I'm not sure I agree. I don't think providing this description shows that Mrs H would herself know how to connect batteries in series or that she damaged the car before she called LV, as LV seems to suggest.

LV says that the dealership engineer could not have made the diagnosis they made without a detailed diagnostic report or without dismantling the ECU. I appreciate LV's point and I have seen that it tried to get a detailed diagnostic report from the engineer but wasn't able to, as has Mrs H. I have seen an email from the dealership to Mrs H which was provided to us by LV. The dealership said that what it provided was its diagnostic report and that if freeze frame data and screenshots of codes were required this would have had to have been saved further to someone requesting it. So such a report doesn't exist though I appreciate that it would have been extremely helpful. As I said in my provisional decision, in the absence of this I have to make a decision based on evidence available to me.

The evidence I have available to me is a report from an expert engineer of 15 years' experience who carried out the repairs and said that the damage to the ECU was due to a 24-volt spike. I appreciate LV doesn't think it is possible to make such a diagnosis without a detailed diagnostic report, but it hasn't provided any expert evidence to contradict what the engineer said. And so, this is the only expert evidence I have available to me.

LV says the engineer may have made their diagnosis based on Mrs H saying she believed the damage was due to a 24-volt spike. Again, there is no evidence in support of this and I find it unlikely that an engineer would base their professional diagnosis on what they were told by a customer who isn't an expert in this area. So, the expert evidence is that the ECU was damaged by a 24-volt spike. LV said that a 24-volt system is rare even within the motor industry. I think this shows that, if the damage was caused by a 24-volt system as per the expert engineer, it is unlikely that this would have been carried out by Mrs H or that she would have one in her possession.

As I said to LV it would be for it to provide further expert evidence in support of its arguments but it hasn't done so and so I am proceeding with the evidence that is available to me.

Overall, LV feels strongly about the fact that it shouldn't be responsible for the damage to Mrs H's car. And it feels that its evidence that there is no switch or visible batteries in the van contradicts Mrs H's testimony. As I said above, I don't think it does and even if it did I don't think it would to such an extent that it would completely discredit what Mrs H said. LV is basing a lot of is arguments on assumptions that Mrs H may have tried to get the car repaired before calling it which is when the ECU may have been damaged but it has provided no concrete evidence in support.

As I said above and in my provisional decision my role is to decide what is more likely than not to have happened based on the evidence available to me. This is a very finely balanced case. The most persuasive evidence I have consists of an expert saying that the ECU was damaged by a 24-volt spike, a van that has a 24-volt system and which is the same van that attended the incident and Mrs H's contemporaneous and consistent version of events. And based on this I think it is more likely than not that the ECU was damaged by a 24-volt spike which was caused by LV's technician when they tried to restart the car. It follows that I think LV should be responsible for this damage.

My final decision

For the reasons above I am upholding this complaint and asking Liverpool Victoria Insurance Company Limited trading as Britannia Rescue to reimburse Mrs H for the cost of the repairs which came to £1,614.55. It should also add 8% simple interest per year on this award from the date Mrs H paid the invoice to the date it pays her back.

If Liverpool Victoria Insurance Company Limited trading as Britannia Rescue considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it's taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 November 2024.

Anastasia Serdari Ombudsman