

The complaint

Mr S and Mrs S complain about Liverpool Victoria Insurance Company Limited's decision to decline a claim made under their home insurance policy.

What happened

The background to this complaint is well known to both parties so I'll provide only a brief summary here, concentrating on the key facts and information.

Mr S and Mrs S have a home insurance policy underwritten by Liverpool Victoria (LV) which covers their home and its contents amongst other things.

The policy was taken out by Mrs S on 15 February 2022, with an inception date of 16 February 2022. Prior to that, Mr S and Mrs S had been without home insurance cover for a number of months.

On the morning of 16 February 2022, there was a fire at Mr S and Mrs S's home which caused severe damage. In essence, the property needs to be rebuilt. That same day, Mr S and Mrs S contacted LV to make a claim.

LV appointed a loss adjuster to assess the claim. And forensic experts were instructed to inspect the property.

In short, after their investigations into the claim were complete, LV declined the claim, on the basis that it was fraudulent. They said Mr S and Mrs S's accounts of how the fire had started weren't consistent with the facts.

Mr S and Mrs S complained to LV. And when LV maintained their position, Mr S and Mrs S brought their complaint to us.

We advised Mr S and Mrs S that if we were to uphold the complaint, the redress was likely to go beyond our award limits. They were clear that they nonetheless wanted us to look into their complaint.

Having looked into it, our investigator didn't think LV had done anything wrong.

Mr S and Mrs S disagreed and asked for a final decision from an ombudsman. They want LV to accept and settle the claim in full, including any liability to the owners of neighbouring properties. They want LV to remove any records relating to the alleged fraud. And they want compensation for their trouble and upset.

I agreed with our investigator that the complaint shouldn't be upheld. But because I wanted to be completely clear about how I'd arrived at that conclusion, I issued a provisional decision. This allowed both LV and Mr S and Mrs S an opportunity to provide further information or evidence and /or to comment on my thinking before I issued my final decision in this case.

My provisional decision

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I should say that the outset that my decision is not about whether Mr S and/or Mrs S in fact set fire to their own house in order to perpetrate a fraud. I’m deciding whether it was fair and reasonable for LV to decline the claim, on the basis that the claim was fraudulent, given the information and evidence available to them.

Mr S and Mrs S both gave detailed witness statements about what happened on the morning of the fire.

Mr S said he entered the kitchen (where the fire started) and:

“... I could see that the room was otherwise dark, but there were flames in the boiler cabinet, coming from under the boiler and around the sides... they were not very high at the time, possibly between 6-12 inches in height...”

He goes on to say he didn’t enter the kitchen at the time. And he heard a knock at the front door, which he answered, to find neighbours or others in the street advising him to get out of the house.

Mrs S said she’d left the boiler door open the previous night because the isolator switch for the hob was inside and she’d turned that off before going to bed. She said that when she entered the kitchen:

“...I could see flames at the boiler.... about the size and length of my arm.... I would say the flames were at the bottom of the boiler, but I am not exactly sure if the flames were below the boiler or at the very bottom of it.”

LV commissioned an inspection of the property by a forensic expert, who provided a report in May 2022, having visited the property several times.

Mr S and Mrs S later commissioned their own forensic expert. They produced reports in August 2024 and October 2024. They visited the site in September 2024.

The experts agree unequivocally that the fire did not start in or around the boiler. LV’s expert places the start of the fire in the centre of the kitchen but can’t say what started the fire.

Mr S and Mrs S’s expert suggests that the likely source of the fire was a failed lithium battery in a vacuum cleaner which had been left on charge around 2.5 metres away from the boiler (LV’s expert also said this may be a potential cause of the fire which couldn’t be ruled out).

I should point out that Mr S and Mrs S commissioned their expert and provided copies of the expert’s reports after our investigation into their complaint had started – and long after LV’s original decision to decline the claim. However, LV did consider those reports and have confirmed that they don’t change their view about the claim.

In short, unless I receive further evidence or information to change my mind in response to this provisional decision, I don’t think it’s unreasonable or unfair for LV to conclude that Mr S and Mrs S’s statements about the morning of the fire are incompatible with the expert forensic evidence about how and why the fire started.

Both experts agree that the fire didn't start at the boiler. Mr S and Mrs S separately report entering the kitchen and seeing flames in and around the boiler cabinet – and they don't report seeing flames anywhere else.

Whether the ignition point was a lithium battery exploding from the vacuum cleaner – or indeed anything else away from the boiler – the flames would have had to reach the boiler for Mr S and Mrs S to see flames there. It's difficult to see how a fire that had spread to the boiler from elsewhere – and/or damage from that fire - would not have been visible to Mr S and/or Mrs S when they entered the kitchen.

I'm aware Mr S and Mrs S's expert has provided a hypothesis that the fire may have spread to the boiler via some curtains, but it seems to me far-fetched to suggest that the fire in those curtains, or the damage to them, would not have been apparent to Mr S and Mrs S.

There are other anomalies in the evidence that are difficult to explain.

Mr S says he didn't enter the kitchen and saw flames of 6-12 inches in height at the boiler – which was across the room. But according to witnesses – and Mr S accepts this himself – his hair was singed from the fire. It seems unlikely that would have happened given the size of the fire at the time, according to Mr S, and his distance from it.

He also says – in his witness statement – that he found the (small at the time) fire in the kitchen, then answered a knock on his front door. The people outside were urging him to get out of the house. They could only have been there – and doing that – if the fire were already advanced enough to attract attention from outside, including from neighbouring properties.

Both Mr S and Mrs S suggest that it's at most five minutes between the discovery of the (then small, according to them) fire and Mrs S having to leave the property via an upstairs window. She reports that when she tried to exit the house by more conventional means, the staircase had gone.

It's unlikely that a fire in or around the boiler as small as Mr S and Mrs S suggest could, within five minutes or so at the very most (and almost instantaneously according to Mr S's account), develop to engulf a large part of the property - and attract attention from neighbours or others outside the property.

In summary, Mr S and Mrs S's accounts are that the fire was discovered in or at the boiler and flames were apparent there, but no flames were apparent anywhere else. Both forensic experts say that the fire did not start in or at the boiler.

Additionally, the timeline given by Mrs S and Mrs S doesn't sit comfortably with the accounts of witnesses (including Mr S and Mrs S themselves) about the development of the fire. I note also that the fire officers involved in fighting the fire were surprised at the extent of the damage by the time they reached the property.

I can't reasonably conclude then that LV are unjustified in their assertion that Mr S and Mrs S have given accounts of the fire which can't be accurate, given the other evidence available.

On that basis, I'm minded as things stand to agree with our investigator that the complaint should not be upheld.

Finally, I want to be clear about the evidence I've relied upon in coming to my provisional decision.

As the reasons I've set out above indicate, the relevant evidence which I've taken into account in this case comprises Mr S and Mrs S's own witness statements, statements from other witnesses including fire officers, and the forensic reports provided by the two experts.

Specifically, the May 2022 report from LV's expert and the two reports from Mr S and Mrs S's expert.

Mr S and Mrs S are aware that LV asked their expert to comment on the first report provided by Mr S and Mrs S's expert. LV provided those comments to us in confidence.

Our rules allow us to accept information or evidence in confidence, so that only an edited version, a summary or a description is provided to the other party (see the Financial Conduct Authority's dispute resolution (DISP) rules, paragraph 3.5.9).

Mr S and Mrs S have asked for a copy of those comments. LV have requested that they are not disclosed to Mr S and Mrs S.

To be clear, I have not relied in any way on those expert comments in coming to my provisional conclusions about this case. They give no new primary evidence at all. In essence, they simply reiterate LV's expert's position on the causes of the fire – reasons which were already set out in detail in their earlier May 2022 report.

For that reason, I am satisfied that I can issue this provisional decision now – and indeed a final decision at a later date – without the need for Mr S and Mrs S to be given a copy of the expert's secondary comments or to be allowed a chance to comment on them.

Both experts' views on the case are abundantly clear already and it won't assist me in any way to reach my conclusion on this case to have another round of reiteration and/or re-articulation of those views."

For those reasons, I said that I was minded not to uphold the complaint.

The responses to my provisional decision

LV responded to say they accepted my provisional decision. They asked that if Mr S and Mrs S provided any further submissions or provided any further evidence, they should have a chance to consider those submissions or evidence.

Mr S and Mrs S also responded, through their solicitor, at some length. I don't propose to set out their arguments in detail. In summary, they are as follows.

One - Mr S and Mrs S's legal representatives (I'll refer to them as F) argue that I'm mistaken when I say that it's not for me to determine whether Mr S and Mrs S were guilty of fraud but to decide whether it was fair and reasonable for LV to decline the claim.

They say my decision should turn on whether Mr S and Mrs S *are* guilty of fraud. The burden of proof should be with LV. And the standard of proof should be akin to that which would be applied by a court – beyond reasonable doubt.

Two – they say that it shouldn't be surprising that Mr S and Mrs S's recollections of the morning of the fire, as set out in their witness statements, contain "*minor inconsistencies*" (their words), given the extremely distressing circumstances.

Three – they say there are some inconsistencies in the statements of the other witnesses and that some of their evidence is hearsay.

Four - they say their forensic expert maintains that the most likely cause of the fire was the lithium batteries in the cordless vacuum cleaner. And nothing in the witness statements contradicts that assertion.

Five – they believe LV's refusal to disclose the most recent statement from their own expert indicates that they have "*something to hide*".

Six – they say that it's against Mr S and Mrs S's religious and ethical beliefs to set fire to their own home to claim insurance. They provided an extract from an article which they say shows that this kind of fraud by arson is unlikely to be committed by individuals with those beliefs.

They also reiterate that they are aware the costs associated with the fire will exceed our award limit. But they invite me to find in their favour, make an award up to the limit, and recommend that LV pay the full value of 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 understand LV's desire to see any further submissions or evidence provided by Mr S and Mrs S before the case is resolved. Mr S and Mrs S's solicitors have also been keen to see everything provided by LV before the case is resolved. Both sides, it appears, want to have an opportunity to have the last word before I make a final decision.

I'm sure both sides will also see that would put us in the rather difficult position of never resolving the case as the parties engage in a never-ending carousel of argument and counterargument.

This service is a less formal and speedier alternative to the courts – and does not have the same disclosure rules as the courts. An ombudsman is entitled to make a decision when they are satisfied they have enough information or evidence to do so. And I am so satisfied in this case.

In any case, I'm sure LV won't be too disappointed that they haven't seen Mrs S and Mrs S's most recent submissions, because I'm not going to change my mind about the outcome. I'll explain why below.

In response to F's arguments about the test I should apply in this case, I should emphasise that this is set out in the Financial Services and Markets Act 2000 (FSMA) and in the Financial Conduct Authority's Dispute Resolution (DISP) Rules.

FSMA (228(2)) says:

"A complaint is to be determined by reference to what is, in the opinion of the ombudsman, fair and reasonable in all the circumstances of the case..."

This is echoed in DISP 3.6.1, which says:

“The ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case...”

I understand F’s argument. But I have to reach a determination by reference to what is, in my opinion and on balance, fair and reasonable in all the circumstances of the case, taking into account relevant law, amongst other things.

In declining the claim, LV are relying on the general fraud condition set out in the policy, which says:

“3.1 Claims fraud

If you or anyone representing you gives us misleading or incorrect information when making a claim or part of any claim that is fraudulent, false or exaggerated, you will lose all benefits under this policy.”

So, what I must decide is whether, on balance, it’s fair and reasonable for LV to rely on this condition. As F say, the burden of proof is on LV to demonstrate that it *is* fair and reasonable for them to do so. And I agree with F that there must be compelling evidence to support the decision, given the gravity of the accusation against Mr S and Mrs S.

I remain satisfied LV’s decision was fair and reasonable for the reasons I set out in my provisional decision. In summary:

- LV conducted a detailed investigation, which included appointing a forensic engineer, gathering evidence from the authorities, and taking witness statements. They then put their concerns to Mr S and Mrs S for rebuttal. I’m therefore satisfied LV gave due care to the process before reaching a conclusion, rather than making an ill-informed decision.
- LV’s conclusions are reasonable and not contrary to the evidence. Their assertion that the fire could not have happened in the way Mr S and Mrs S reported is clearly supported by the evidence, including Mr S and Mrs S’s testimonies and those of the other witnesses, in conjunction with the findings from the forensic engineers.
- The misleading or incorrect information Mr S and Mrs S provided to LV was material to the claim, and to whether it would or would not be accepted.

So, it remains my view that LV have not acted unfairly or unreasonably in declining Mr S and Mrs S’s claim on the basis that they provided “*misleading or incorrect information*” as part of a claim that was “*fraudulent, false or exaggerated*” (as per the policy terms).

I disagree with F’s assertion that there are only “*minor inconsistencies*” in Mrs S and Mrs S’s statements. And I’m not persuaded any misleading information they provided was due to the distressing circumstances Mrs S and Mrs S found themselves in. I’m also not convinced by F’s argument that there are significant and/or material inconsistencies in the evidence given by the other witnesses.

I understand that Mr S and Mrs S’s forensic expert maintains that the fire was most likely started by failure of the lithium batteries in the cordless vacuum. I knew that was his view before I issued my provisional decision. And I addressed that issue in my provisional decision.

I don't agree that LV's unwillingness to disclose their expert's latest statement means they have "*something to hide*". I've seen that statement. As I said in my provisional decision, it adds no new material evidence or arguments.

I understand what Mr S and Mrs S say about their religious and ethical beliefs. I've taken that into account, but on balance their comments don't persuade me to change my view on this case.

Finally, the comments made by F about the award limit don't come into play given that I'm not upholding Mr S and Mrs S's complaint.

If Mr S and Mrs S don't agree with my decision, they can reject it. This will leave them free to pursue the matter through the courts.

My final decision

For the reasons set out above, I don't uphold Mr S and Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 7 March 2025.

Neil Marshall
Ombudsman