

complaint

Ms E has complained that Liverpool Victoria Insurance Company Limited retained her car following a claim under her motor insurance policy.

The circumstances of this complaint are set out in my provisional decision issued in May 2015 as outlined below:

'background

Ms E's car was hit by a bus in September 2013 and she made a claim under her insurance policy. LV explained to her that without the bus registration number that it would be difficult to trace the bus involved in the collision.

Ms E's car was repaired but she refused to pay the excess to the garage. Ms E didn't believe that she had to pay her excess as she was not at fault for the accident. LV's appointed garage retained the car and reported the courtesy car stolen to the police. It refused to return her car until the various charges, including car hire charges and parking fines in relation to the courtesy car and storage charges for her own car were paid by Ms E.

Our adjudicator partially upheld Ms E's complaint. Although he accepted that Ms E should have paid the excess payment he didn't believe that LV had acted reasonably by retaining Ms E's car. He asked LV to return Ms E's car, to pay her compensation and to waive storage charges.

As both parties didn't agree the matter has been passed to me for a decision.

my provisional findings

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

Although LV explained to Ms E that she was required to pay the excess under her policy, she didn't believe this to be the case. It seems that Ms E believed that she didn't have to pay the excess as she wasn't at fault for the accident. Either that or she didn't understand how motor insurance works.

This meant that when it came to collect her car after it was repaired that she refused to pay the excess to the garage. It is clear that Ms E should have paid the excess at that time and her car should have been released.

However, once it became clear that this wasn't going to happen I think it would have been fair and reasonable for LV to put the excess on hold or seek it from Ms E direct. I say this as I understand that it was seeking further information from Ms E that may have changed the status of the claim (to non-fault) and the stalemate that followed was unacceptable.

To hold Ms E's car as collateral for the unpaid excess and possible parking charges, incurring large storage costs, was unfair. It left Ms E without her car for what started as a relatively small excess. I accept that those charges are now significant.

However, in forming this view I have taken account of the fact that Ms E has not helped her own position. LV and its agent explained the need for her to pay her excess in order to

collect her vehicle and she should have paid the amount and disputed liability with LV separately.

As such, I agree that Ms E should have her car returned and that LV should ensure that it is in a roadworthy condition as it has been left standing for a while. I believe that Ms E should be paid £500 compensation for her stress and inconvenience including being without her vehicle. It is clear that this whole affair must have been very difficult for Ms E. LV should waive all storage charges and any parking fines or other charges can be pursued separately.

I am aware that Ms E wants a new car but as long as there is nothing wrong with hers then it should be returned. The return of her car doesn't appear unreasonable. However, if there is any problem with her car that would mean it couldn't be fixed and returned then LV should consider writing the car off and giving Ms E the market value of her car.

LV has also said that it is waiting on further information from Ms E in relation to the accident in order to finalise the status of the accident. Ms E should provide any further information she has and I would expect LV to undertake a reasonable investigation into the accident using all the available evidence.

my provisional decision

My provisional decision is that I uphold this complaint. I am minded to ask Liverpool Victoria Insurance Company Limited to settle as follows:

- to return Ms E's car ensuring it is in good order and in a road worthy condition;*
- to waive all storage charges; and*
- pay Ms E £500 compensation.'*

developments

Both parties have responded to my provisional decision.

Ms E says that she isn't happy. She said that LV accused her of theft, that they took the courtesy car off her without warning, that LV treated her badly as she wasn't aware why she had to pay the excess, and that the garage was wrong to charge her money when it had her car.

LV also disagreed. It was of the view that LV, and the garage, had done all it could have done to ensure the contract was fulfilled. It was also of the view that Ms E had acted unreasonably in relation to the courtesy car and that the actions of the garage were reasonable.

LV also said that the debt is between the garage and Ms E and that it would be unreasonable for it to bear the costs. It says the garage was entitled to request the excess as Ms E had entered into a contract to pay the first £150 of any claim, irrespective of liability.

It says that Ms E left the garage in debt; took up room that the garage could have used for other repair jobs; incurred fines on the courtesy car; and damaged the courtesy car. LV thinks it is only fair that it recovers these costs.

LV says that it has organised the repairs and pursued liability as far as possible. The repairs to the car were to a commercially acceptable standard and it only asked for the contribution, or excess, that it was entitled to. It was of the view that Ms E could have avoided all of the

problems encountered by paying her excess, for the further damage caused to the courtesy car and for the fines. These issues remained a dispute between the garage and Ms E.

my findings

I've again considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I don't propose to rehearse the details of the dispute here. In the main neither party has raised any significantly new arguments.

I accept that both parties could have acted better. However, although Ms E should have paid her excess I am satisfied that she didn't understand the position and believed that she didn't have to pay her excess. This was because she believed the other person was at fault.

As already outlined it would have been fairer for LV to put the excess on hold or seek it direct from Ms E. Particularly as it was seeking information that may have altered the status of her claim. LV should have intervened at that time and, as outlined previously, it was not fair or reasonable to hold her car as collateral for the unpaid excess (£150). I am not satisfied that LV acted reasonably in the circumstances of this case.

For Ms E's part I accept that she remains unhappy but she could have paid the excess and advanced the matter separately with LV. Obviously the position got more and more complicated after that but she should have paid the excess in the first instance.

As such, I see no reason to depart from my provisional findings.

my final decision

For the reasons given above, my final decision is that I uphold Ms E's complaint. I require Liverpool Victoria Insurance Company Limited to:

- return Ms E's car ensuring it is in good order and in a road worthy condition;
- waive all storage charges; and
- pay Ms E £500 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms E to accept or reject my decision before 7 September 2015.

Colin Keegan
ombudsman