

complaint

Mr J complains that Liverpool Victoria Insurance Company Limited ("LV") unfairly settled a claim against his motor insurance policy and provided poor service in its claims-handling.

background

LV told Mr J in December 2017 that another insurer had contacted it about an accident in which he was involved. It said another driver claimed that at 11.15 am on 14 December 2017 Mr J's car had reversed into her stationary vehicle. Mr J said he could prove he was at home at the time and that his car was in his garage. He provided CCTV footage and stills.

LV said the other driver had provided photos of his car at the scene, but Mr J said it must have been a cloned number plate. LV said the photos also showed the other car was identical to Mr J's car. And the driver was wearing a bright yellow garment. Mr J's footage and stills showed he was wearing a jacket of the same colour that day.

One of our investigators reviewed Mr J's complaint. She thought the evidence wasn't conclusive, so she asked LV to consider marking the claim non-fault. LV said it didn't think that would be reasonable. It thought the time stamp on Mr J's CCTV footage could have been wrong, or that the time on the other driver's phone could be wrong. It said Mr J's car couldn't have been in two places at the same time. It didn't think it could be shown that the other driver's photos were of a cloned car. On the balance of probabilities, LV didn't think it would have a reasonable prospect of defending the claim in court.

Our investigator told Mr J that LV had provided an extra piece of information that wasn't in its original file. A note from its engineer said he thought the damage to the two cars could be consistent. She also said that in cases where the other driver's claim isn't for a large amount, we think it's reasonable to settle the claim rather than take it to court.

Mr J said there were also service issues to address, including the fact that one of LV's advisors had called him a liar. The investigator asked LV to provide all the call recordings between it and Mr J. Having listened to them, she said she didn't find fault with its customer service. Mr J asked for a review of the complaint by an ombudsman.

my findings

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

I've also listened to all the call recordings. I think Mr J comes across as credible and distressed about being accused of involvement in the accident. I think he was convinced from the start that he could prove beyond doubt that he wasn't there.

LV says there's a gap in the CCTV coverage it was given. The gap covers the time the accident happened. LV thinks it would have been possible for Mr J to drive the four miles to the accident location and back within the missing 18 minutes of coverage. I think that would have been difficult, given the time constraints. But LV was faced with timed photos taken by the other driver of a car identical to Mr J's car driving away from the accident.

I think both Mr J and LV made efforts to ensure that the full footage could be viewed by LV. It seems that different formats were tried without success. The CCTV footage and stills Mr J

sent us appear to show that 10 minutes after the time of the accident he drove his car out of his garage. But that's assuming the time shown on the footage is correct. LV's view is that as the car couldn't have been in two places at once, the timing on the CCTV footage or on the other driver's phone must be out. I think that's a reasonable conclusion to have reached.

Mr J initially said there was no damage to his car. The engineer found old damage to it, plus a small dent in the centre of his rear bumper. Mr J says that was also old damage, but as he didn't report it to LV at the time, there's no evidence of that. And the location of the damage fits with the description of the accident given by the other driver. The engineer couldn't be sure that the damage to Mr J's car was consistent with that to the other driver's car, but he said it could be. I think that must have been very frustrating for Mr J.

Mr J is adamant that the car at the scene of the accident had a cloned registration plate. He says he told the police that when he spoke to them shortly after the accident. LV asked whether the police had investigated Mr J's concerns. He said he didn't know. LV thought most people would have been concerned enough to check.

LV was concerned by the fact that the car involved in the accident was identical to Mr J's car. It struggled with the idea that an identical car with a cloned plate was photographed only four miles from Mr J's home *and* that the driver was wearing the same colour garment that Mr J was wearing that day. I don't think the colour of the clothing is conclusive. But I can see why LV thought it was another factor that it would have to overcome should it try to defend the other driver's claim.

Under the policy, LV has the right to settle any claim as it sees fit. But it has to act reasonably in exercising its discretion. I understand Mr J's frustration with the situation, but overall, I don't think LV's decision on liability was unreasonable. It decided that on the balance of probabilities the evidence in support of Mr J's account wasn't sufficient to allow it to defend the other driver's claim successfully.

I think the timing of the CCTV footage and /or the other driver's photos could be challenged, as LV suggested. That meant Mr J's defence largely rested on LV being able to show that the car at the scene of the accident wasn't his. It didn't think it would be able to do that. In my opinion, that was a reasonable conclusion to reach. Mr J said the car *must* have been cloned – but LV thought that was an assumption that couldn't be proven as fact.

As a result of having a fault claim on his policy, Mr J's no claims discount ("NCD") was reduced. He's very unhappy about that. But it's standard practice for NCDs to be reduced in these circumstances.

When it issued its final response letter, LV accepted that it had caused a delay in waiting four weeks to order a consistency report. It also accepted that it didn't make promised calls to Mr J. It offered him £75 compensation, which I think was reasonable.

Mr J told us he was unhappy with other aspects of LV's service. He said an advisor had called him a liar. The call recordings show that Mr J thought on more than one occasion that LV's advisors were questioning the truth of what he'd said. I think the advisors had to point out to Mr J where they thought the evidence was questionable. That may have come across as their not believing Mr J's account, which would naturally have been upsetting for him.

On some occasions, LV's advisors queried how Mr J knew details of the other driver's car. It seems Mr J had been shown photos by the police. But one advisor stated very firmly that the

police didn't show such photos to consumers. I can see why the way he expressed his view led to Mr J thinking he was accusing Mr J of lying. When challenged by Mr J, the advisor said that *in his experience* the police didn't share photos. But I think he should have expressed his view more carefully in the first place, to avoid causing unnecessary offence.

Apart from the example given above, I think LV's advisors offered Mr J reasonable service overall. I think the claim was a difficult one to deal with, as the evidence was hard to assess and much of it was disputed. One example was the dispute about whether Mr J's son could be considered to be an independent witness. Mr J disagreed strongly with LV about that, and I understand his viewpoint. But I think LV was right to say that in court Mr J's son's evidence wouldn't be given much weight, given their relationship.

I think it was hard for LV to reach a fair and reasonable conclusion here, whilst Mr J found it difficult to see why it wasn't an 'open and shut' case. But insurers don't generally settle claims if they think there's a reasonable prospect of disputing them successfully. It isn't in their interests to do so. But in the circumstances here, I can see why LV didn't think the prospects of success in court were good.

I have great sympathy for the position Mr J has found himself in. But I've thought very carefully about all the circumstances surrounding his complaint – and how LV reached its conclusions. I don't think I can say LV acted unreasonably in deciding to settle the claim, or that its service on the whole was poor. That means I can't uphold Mr J's complaint.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 3 October 2019.

Susan Ewins
ombudsman