

complaint

Mr and Mrs V complain that Liverpool Victoria Insurance Company Limited (LV) hasn't fairly settled a claim they've made on their home contents insurance policy.

background

I issued a provisional decision on this matter on 10 July 2019, part of which is copied below:

"Mr V brings this complaint on behalf of himself and his wife. I'll refer to him throughout this decision and references I make to his actions include the actions of his wife.

Mr V has a home contents insurance policy with LV. He experienced a burglary at his property and various items were stolen. He made a claim on the policy. The claim was accepted but, during the investigation, the loss adjusters appointed by LV discovered that the total value of the contents at the property was £114,000. This was significantly more than the £50,000 Mr V had insured them for.

Mr V explained that some of the contents, including high value jewellery, were stored in a safe in a building in his garden. He thought they were sufficiently secure so he had decided not to include them in the insurance cover.

LV said that if it had known the total contents were valued at £114,000 it would have applied two security clauses to the policy relating to locks and the requirement to have an alarm. Coincidentally, Mr V's property would have met the first requirement but not the second.

LV decided Mr V had misrepresented the value of his contents and it declined the claim.

Mr V wasn't happy with this and initially complained to LV. Unhappy with its answer, he then brought his complaint to us. Our investigator concluded, in summary, that LV hadn't asked Mr V a clear and specific question about the value of contents at the property when he applied for the policy. Because of this she said she didn't think he'd misrepresented the value of the contents. After some discussion, LV accepted this position and agreed to pay the claim.

Some time later, Mr V got back in contact with us to say he'd received a cheque from LV in settlement of his claim but this was for considerably less than he was expecting. LV said that whilst it had agreed to cover the claim, because Mr V was underinsured, it had done so on a proportionate basis. So it said the amount it sent him was correct.

Our investigator said she didn't think this was fair as it wasn't in line with the requirements of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). She said that as there hadn't been any qualifying misrepresentation, LV should settle the claim in full. It should also pay interest at 8% on the amount of the claim and make an additional payment of £150 for the trouble and upset it caused Mr V.

LV accepted it couldn't retrospectively apply the security endorsements but said it could still rely on the terms and conditions of the policy which made it clear that, where there was underinsurance, it could reduce the settlement proportionately. Our investigator responded saying that the customer had met his duty under the law so it was unfair to settle the claim proportionately as she'd concluded the consumer hadn't misrepresented the value of the contents. She said LV ought to settle the claim in full.

LV disagreed and asked for an ombudsman to make a decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so, I've reached the same conclusion as the investigator – that LV didn't act fairly when it offered a proportionate settlement of the claim. I'll explain my reasoning.

Did Mr V misrepresent the value of his contents?

When a consumer takes out an insurance policy, they'll be asked questions about themselves and the risk they want to insure. The insurance company will then use this information to weigh up whether it wishes to cover that risk and how much it will charge for doing so.

CIDRA places a duty on consumers to take reasonable care not to make a misrepresentation when entering an insurance contract. In other words, the consumer must provide the insurance company with accurate information to allow it to assess the risk. If they don't, there are some circumstances where an insurer may be able to avoid the insurance contract – but that's only if there's been a qualifying misrepresentation. In the absence of this, and where the consumer has taken reasonable care not to make a misrepresentation then the insurer can't take any action at all, even if they were provided with incorrect information.

Under CIDRA, deciding whether Mr V took reasonable care is to be done in the light of all the relevant circumstances. That can involve a number of things but of relevance in this case is how clear and specific LV's questions were.

This is important because differently worded questions, apparently asking a similar thing, can elicit very different responses. For example, the answer to the question "how much do you want to insure your contents for?" could be very different from "what is the total value of the total contents in your property?"

Mr V has stated he excluded the contents that were usually contained in the safe in the building in the garden as he considered these to be sufficiently secure and therefore didn't require cover. That's why he told LV he wanted £50,000 of contents cover. In answering as he did, he considered he had provided the information which LV asked for.

LV's agents who investigated the claim commented

"We do not believe the underinsurance was a deliberate act to reduce premium. Instead we believe that the Policyholders have partially underestimated the value of their contents and also that they considered the majority of their jewellery to be more secure within a safe"

LV says Mr V applied for his policy online and it wasn't able to provide evidence to show what question he was asked about the value of the contents. It also wasn't able to show that subsequent renewal documents were sufficiently clear and direct in asking Mr V to check the level of cover.

Because of this, LV accepted the investigator's view - that it hadn't demonstrated it asked

Mr V clear and direct questions about the value of his contents either at inception or renewal.

Overall, I'm satisfied Mr V took reasonable care not to make a misrepresentation. The information LV really wanted to know was the value of the contents in the home, regardless of the value Mr V wanted to insure them for.

As there's no 'qualifying misrepresentation' LV doesn't have the option of the remedies stated in CIDRA.

*Was it fair to settle the claim proportionately?
What remains for me to decide is whether it was fair and reasonable for LV to settle the claim proportionately.*

Following the involvement of its loss adjuster, LV accepted the total value of items stolen from Mr V's property was £44,551.86.

LV relied on the policy terms and conditions to settle the claim proportionately. So while Mr V's claim was for £44,551.86, LV offered to settle it for £22,205.26 and it provided an explanation as to how it reached this figure.

The particular term it relied on to do this was:

*"Under insurance
If the limit of the cover is less than the full repayment cost of the contents of your home, we will reduce the amount claimed in proportion with the under insurance.
For example, if the limit of your contents cover is equal to 75% of the amount needed to replace all the contents, we will only pay 75% of the claim"*

But I'm not satisfied this approach is fair or reasonable in the circumstances of this particular case. A Law Commission paper¹ recommended controls to prevent parties from contracting out of CIDRA to the detriment of consumers and section 10 of CIDRA sets out the following;

Contracting out

(1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects the matters mentioned in subsection (2) than the consumer would be in by virtue of the provisions of this Act is to that extent of no effect.

(2) The matters are— (a) disclosure and representations by the consumer to the insurer before the contract is entered into or varied, and (b) any remedies for qualifying misrepresentations (see section 4(2)).

(3) This section does not apply in relation to a contract for the settlement of a claim arising under a consumer insurance contract.

¹ Consumer Insurance Law: Pre-Contract Disclosure and Misrepresentation, Law Com No 319: Scot Law Com No 219:

In this case I am satisfied that the issue of under insurance has arisen because of the lack of clarity in LV's question. I've explained why I'm satisfied Mr V took reasonable care and as such allowing LV to rely on the 'under insurance' term would cause a considerable financial detriment to Mr V. The term applied strictly has the effect of allowing LV to claim a remedy that isn't permitted, in this case, by the provisions of CIDRA.

In summary, I'm not satisfied that it's fair or reasonable in all the circumstances of this complaint for LV to rely on a term in its policy which has the effect of allowing it to do something that the relevant law specifically prevents it from doing. I therefore plan to uphold this complaint and instruct LV to settle the claim in full.

Trouble and upset

It seems to me that LV unnecessarily delayed the settlement of this claim. It became apparent to LV's agents as early as May 2017 that Mr V may be underinsured. So it could have started investigating at that point and established whether there was a qualifying misrepresentation.

But this didn't happen and LV didn't decline the claim until February 2018. This delay would have undoubtedly caused Mr V some trouble and upset particularly bearing in mind a number of the items had significant sentimental value. I understand why he would have been worried about how he would be able to replace them without the funds to do so. I think LV should pay them £150 in recognition of this."

In response to my provisional decision, LV confirmed it accepted what I said and was happy to proceed to full settlement of Mr V's claim.

Mr V responded to say, while he accepted the settlement in full, he didn't believe the £150 I'd recommended was enough to fairly reflect the trouble and upset LV had put him to. He believed LV's behaviour was outrageous and designed to frustrate his claim.

He highlighted a number of decisions published on our website where consumers had received higher awards and said he thought there should be some consistency in awards of compensation. He didn't make any comment specific to his case that showed why he thought a higher award was appropriate.

my findings

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

As both parties accepted my recommendation for the claim to be settled in full, I don't need to comment on that any further, other than to say I remain of the same opinion. But I will comment on the award for trouble and upset.

Inevitably with a case like this involving a burglary where a substantial number of items were stolen, some of which were of significant monetary or sentimental value, it will be a very distressing experience for the insured. That's obviously not something the insurer is responsible for though.

Equally, with claims of this size, it's likely an insurer will need to undertake a thorough investigation before it agrees to pay the claim and I don't think this is unreasonable.

In this case, LV believed it was acting within the terms and conditions laid down in the policy. In my provisional decision I explained why I didn't consider LV's approach fair in the specific circumstances of this particular case, and that's why I planned to uphold Mr V's case.

That doesn't mean I think LV was behaving outrageously or specifically trying to frustrate Mr V's complaint and I haven't seen evidence that persuades me it was.

I've acknowledged in my provisional decision that LV could have handled things better and I made an award for this. I know Mr V doesn't think the £150 I recommended was enough. The cases he quotes from our website do have higher awards but the circumstances of each of them are very different.

When considering the level of award on a case, the ombudsman will take into account the specific circumstances of the complaint and will reach a decision about what they consider fair and reasonable. Other cases with higher – or lower – awards don't set a precedent for the decision an ombudsman reaches.

In this case, for the reasons I explained in my provisional decision and in the absence of any new evidence, I'm satisfied that £150 is a fair and reasonable way for LV to recognise the impact of the delays it caused in settling the complaint.

my final decision

For the reasons I've explained above, I uphold Mr and Mrs V's complaint and instruct Liverpool Victoria Insurance Company Limited to pay Mr and Mrs V:

- £44,551.86 in settlement of the claim, less any sum it's already paid in part settlement
- Interest on this amount at the simple rate of 8% per year from the date of the loss until the date it makes the payment*
- £150 for the trouble and upset it caused

Liverpool Victoria Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs V accept my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date the payment is made at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs V to accept or reject my decision before 1 November 2019.

Paul Phillips
Ombudsman

*If Liverpool Victoria Insurance Company Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs V how much it's taken off. It should also give Mr and Mrs V a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate