

complaint

This complaint arises from the alleged maladministration of a motor insurance claim by Liverpool Victoria Insurance Company Limited ('LV'). Mr and Mrs V are seeking compensation of £1,000 for distress, injury and inconvenience.

background

LV accepts that it could have handled Mr and Mrs V's insurance claim better. So it offered them £50 compensation for distress and inconvenience. Dissatisfied with that offer, Mr and Mrs V referred the matter to the Financial Ombudsman Service.

Our adjudicator agreed that LV's claims-handling wasn't good enough – and she ultimately felt that the compensation should be increased to £125 in total. LV accepted this, so that offer was put to Mr and Mrs V.

This case has come before me because Mr and Mrs V still feel the offer isn't enough for what happened. They say, amongst other things, that:

...given that [we are] the victim of whiplash injuries still suffering & getting medical attention & physiotherapy, [we] find your findings quite derisory.

We would've thought that lacking the basic duty of care towards the insured let alone several notified lapses of service & access to service with evidence, [you] would've reasonably & proportionately adjudicated £1000.00 in total.

LV's derisory £50 was bereft of an apology, explanation or admittance. We are most unhappy & wish to escalate this matter, forthwith.

my findings

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

The accident occurred on 28 June 2015. And Mr and Mrs V referred this matter to us on 28 August 2015, two months later. They alleged in their complaint form that LV's maladministration of the claim had exacerbated their pain and suffering from the accident (whiplash injuries). They've also alleged a number of other incidents of maladministration, eg, poor/inflexible communications, staff rudeness, misleading information, delaying their liability claim against the third-party driver, etc.

I fear that Mr and Mrs V's expectations are unrealistic, both in relation to LV's overall handling of a motor claim that's complicated by personal injuries and third-party liability; and in relation to appropriate levels of compensation for non-financial losses such as distress or inconvenience.

When a road traffic accident results in personal injuries or involves third-parties and witnesses, etc, it's often not a straightforward matter because the policyholder's insurer can't just settle the matter. It also has to liaise with other insurers and/or expert witnesses, whose client(s) may not accept readily or at all that they were the negligent/liable party. I appreciate how upsetting this sort of incident is – and it's natural to want to draw a line under it as soon as possible. I've a lot of sympathy for Mr and Mrs V. Nevertheless, I don't think they gave LV long enough to try to resolve this matter before escalating it to us. Two months isn't

excessive for this sort of claim. In any event, given that litigants have at least three years in which to bring legal action for personal injuries caused by negligence (*cf.* Limitation Act 1980), there's no danger yet of LV's acts or omissions having prejudiced Mr and Mrs V's ability to recover compensation.

There's also no medical or other evidence of LV's conduct exacerbating Mr and Mrs V's injuries (pain, suffering or loss of amenity). Indeed, compensation for personal injury isn't covered by the LV policy which Mr and Mrs V hold. LV insures their property rather than their persons. They must claim compensation for injuries and any other uninsured losses from the third party's insurer – if necessary via court action (for which motor insurers often do offer legal expenses cover).

The rest of this complaint involves relatively minor maladministration, some of which LV—and indeed I—accept occurred; but some of which isn't justified. For example, Mr and Mrs V accuse LV of not apologising, but as the adjudicator pointed out, this simply isn't factually correct. Mr and Mrs V have already been given the benefit of the doubt as regards some of their allegations, a few of which were raised after this complaint was already in progress (so, strictly speaking, LV didn't have a proper chance to resolve them informally).

I think it might be worth putting compensation for distress or inconvenience in context, as it rarely justifies the level of award sought by Mr and Mrs V. We're obliged to take account of the law when deciding what's fair and reasonable in all the circumstances of a case. So I'm mindful of a Court of Appeal judgment which is still good law and, in my view, neatly summarises the correct approach to non-financial losses. In *Milner v Carnival plc* [2010] EWCA Civ 389, Lord Justice Ward stated the following:

Perhaps the most acute form of distress is that which is suffered by a parent who has lost a child. Here damages are limited by statute and the present figure is no more than £10,000. If that figure may be thought by many to be derisory, it is all part and parcel of the same policy considerations dominating damages for distress. Lord Steyn said it all in *Farley v Skinner*:

'I have to say that the size of the award [£10,000] appears to be at the very top end of what could possibly be regarded as appropriate damages. Like Bingham LJ in Watts v Morrow [1991] 1 WLR 1421, 1445H, I consider that awards in this area should be restrained and modest. It is important that logical and beneficial developments in this corner of the law should not contribute to the creation of a society bent on litigation.'

I must now stand back and look at the judge's awards...against the background of comparable awards for psychiatric damage in personal injury cases, for injury to feelings in cases of sex and race discrimination and damages for bereavement...

Damages under these heads are of course not entirely comparable with damages in holiday cases. Physical inconvenience and discomfort is necessarily ephemeral. Disappointment, distress, annoyance and frustration are likewise the feelings one experiences at the time and which last painfully for some time thereafter. But one is not disabled, the psyche is not injured and one gets on with life. Every time one thinks back, one relives the horror but the reliving of it is transitory. There is no medical evidence here to indicate any recognisable psychiatric injury: distress falls into a different and less serious category and does not equate with bereavement.

Bearing that weighty authority in mind, together with our own experience of similar cases, I would normally only award £1,000 or more compensation for distress or inconvenience where there were substantial errors – and that's not the case here.

I appreciate Mr and Mrs V also wanted to complain about the third party's insurers. But we have no jurisdiction over the third-party insurers here because Mr and Mrs V aren't *their* customers. They are entitled under EU law—ie, the European Communities (Rights against Insurers) Regulations 2002—to make a direct *legal* claim for their losses and injuries under the third party's insurance. But they aren't 'eligible complainants' under our rules for the purpose of a complaint against someone else's motor insurer. Hopefully, the third-party insurers will make Mr and Mrs V a fair offer for their personal injuries. I gather they've accepted liability. And if they don't, they may have to defend the matter in a court of law. But it's not something we're allowed to help with.

However, Mr and Mrs V can't reasonably expect to recover substantial four-figure compensation from their own motor insurer, LV, simply because of the relatively minor administrative defaults here. I accept that misleading them about contacting the witness was poor. But it's had no lasting impact on their third-party claim; and is a key factor in why there's financial compensation rather than just an apology. Mr and Mrs V may regard £125 as derisory; but in my judgment, it's fair and reasonable compensation for those errors for which LV is actually responsible. I take account that it has in fact made a written apology as well.

my final decision

For the reasons set out above, I only uphold this complaint to the same extent as the adjudicator, namely, increasing the compensation payable by Liverpool Victoria Insurance Company Limited from £50 to £125 in total. I'm sorry if this award disappoints Mr and Mrs V – but it is our final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs V to accept or reject my decision before **8 February 2016**.

Mark Sceeny
ombudsman