

The complaint

Mr M is unhappy with repairs carried out on his car by his insurer Liverpool Victoria Insurance Company Limited (LV).

What happened

Mr M's car was stolen from his drive, in early September 2020. It was recovered within hours following it crashing during a high-speed chase with police. Mr M made a claim and LV took the car for repairs. Over the next 15 months the car went to three different repairers and some repairs were still left for Mr M to do. LV accepted liability for some of those repairs, making a cash in lieu payment to Mr M so he could have that work done. But it didn't agree it was liable for fixing all of the outstanding issues with the car. It did offer Mr M £500.00 compensation for upset caused.

Mr M remained unhappy, so he complained to us. Our investigator felt LV should pay more compensation. She also felt LV should do a further and comprehensive vehicle health check on the car as well as meet with Mr M and another engineer to discuss all the issues with the car and determine liability for them. She said if the cost of outstanding repairs totalled more than the car was worth, LV should declare it a total loss.

LV pointed out that it had done a comprehensive check already – doing another would make no difference. And it said it had already paid Mr M for all the issues it had accepted liability for, in addition to having completed various repairs. It said that when it had paid Mr M for repairs, it had inadvertently paid him £600.00 more than it should have done – Mr M was aware of this and aware it was happy for him to keep that overpayment. It said, in light of all that, it wasn't minded to agreeing to do anything more.

Around this time, Mr M found a broken piece of metal trim – LV dealt with this whilst our investigator was issuing her view. It paid Mr M £21.54 for a replacement part and £100.00 compensation for upset caused by this issue (as there was upset in taking the car in for further repairs). Mr M said if LV could pay him £100.00 for this single issue, he should get much more compensation for the previous trouble he'd had, given the amount of journeys to various garages and the like he had to do due to LV's poor repairs – all of which must surely be worth £100.00 each.

The complaint was passed to me for consideration. I didn't think the car, as a whole, needed a further assessment or to be written-off. Rather I noted three outstanding repair issues and I considered each of them. And I thought LV should be paying Mr M some compensation. So I issued a provisional decision, my findings of which were:

“total loss

I know Mr M is worried that further damage to the car will present itself as time goes on. He feels that he will never be sure that everything that might have occurred during the theft has been dealt with and that the car has generally lost value due to the theft and repairs. And I know that LV has said that with all the re-work and hire car charges (as it has kept Mr M mobile whilst the car has been repaired), it has already spent more than the car is worth.

Which Mr M thinks shows it should always have seen the car as a total loss. But I don't agree.

An insurer won't just write a car off because it has been stolen and recovered. Even though that may mean that once the car is fixed it will have lost value against what it would have been worth before. Rather an insurer will usually write a car off if it has suffered damage and can't be fixed safely or it can but the costs of the repair mean it will be uneconomical for it to do so, when viewed against the value of the car before the incident. And, as far as I've seen, the initial damage and/or likely cost of repairs resulting from the incident, didn't make the car either an unsafe or uneconomical proposition for repair. And I haven't seen any evidence from Mr M which makes me think it should have been. In contrast it seems Mr M's issues with the claim began when the car was first returned to him with poor repairs having been done initially.

The cost of repairs exceeding the value of the car has only occurred due to the poor repairs done by LV's approved repairers. Of course, therefore LV had a duty to correct that. But I don't think it was foreseeable its approved repairers wouldn't repair Mr M's car properly and the costs of making that right would mean it should always just have declared the car a total loss. Further the car has now benefited from being repaired – so it makes no sense to now waste all of that by saying the car must be written-off due to costs incurred already and still to be incurred.

I know the repair journey has been frustrating for Mr M, but LV has had the car checked by an engineer and at the main dealer. I consider that shows the damage most likely caused during the theft has all been accounted for. I can understand why Mr M might think there could be other unidentified issues, but I think the checks – in the absence of any expert view to the contrary – are sufficient. Mr M's policy allows LV to repair a damaged car – it doesn't promise that a car which suffers damage during a theft will automatically always be replaced. And nor does it offer cover for the car losing value due to the incident.

brakes

During the health check on the car the brakes, all round, were found to be 80 – 90% worn. LV feels the brakes are just suffering from normal wear and won't replace them. Mr M thinks it should – particularly as it replaced all four tyres for excessive wear/damage due to the incident. Mr M feels that if the tyres suffered, the brakes must have too.

With regret for any disappointment this causes Mr M, I don't agree with the logic of that. And in saying that I bear in mind that Mr M hasn't said or shown that he had the brakes replaced shortly before the theft. Such that I could be reasonably satisfied they were likely new/not worn when the car was taken. But the logical concern I have is that tyres would likely suffer in a highspeed chase because they are in contact with the road throughout and being used in a way they aren't designed for. So that would, logically, promote excessive wear. But during a chase brakes aren't necessarily/often used. And if they are used once or twice to break heavily – brakes are used in that way on occasion during their normal life. So, I wouldn't expect brakes to most likely suffer during a chase in the same way that tyres would. We can't know what happened during the chase which is why it is important for me to think about what likely happened in order to determine this issue. Having done so, I don't intend to make LV pay for the brake repair (which I understand Mr M has completed).

infotainment and dash rattle/creak

The engineer said this should be investigated. LV sent the car to a main dealer for this (and some other work) to be done. The dealer said it would have to remove the dash to complete any checks and LV decided it wouldn't pay for that. It noted there were no loose trims on the

dash and said the dealer had found no issue with the system. It felt it didn't need to do anything more.

I'm slightly surprised by this response from LV. It seems to acknowledge this was something which was not occurring before the crash, which I understand was head-on. And its engineer said it needed investigating. And LV initiated that investigation process by asking the main dealer to look at it. I don't think it then noting that there were no loose trims sufficiently discharges its liability for this issue. And I haven't seen that the infotainment system was found to have no issues by the main dealer. It's within/part of the dash, so I'm not sure how they could be dealt with separately. I think LV should pay for the car to go to a main dealer for the issue to be investigated. If or once the cause of the rattle/creak is found, to the dash and/or the system, work will have to halt for LV to consider whether it is liable for that repair. If it feels it isn't, Mr M will have to decide if he wants to pay for it. Whether he does or not LV will have to bear the cost of reinstating the dash area and removal of the system that needed to be taken apart to complete the investigations. Mr M should give the garage authority for LV to liaise with it so it can pay for the investigation, reinstatement, and if necessary, the repair, work direct.

alloy wheels

LV accepted that two were scratched during the incident and one of its repairers refurbished them. But Mr M noticed "milky" stains on the alloys, and that one looked misshapen. LV's engineer assessed the wheels and Mr M thought the engineer felt they should be replaced. But the engineer recommended to LV they were refurbished due to the 'milky' stains only.

As I understand it the milky stains have resulted from the scratch repairs. And whilst LV thinks they can be further repaired, I note it isn't prepared to do more work on the car. I'm not persuaded that any repairer would be prepared to complete a repair job on a previous failed insurance repair. Nor am I persuaded it would be fair, at this late stage, to expect Mr M to try and find a trader who will. It also isn't clear to me that such a repair would be successful. Seemingly the milky staining is a result of the alloy oxidising. Maybe a competent repairer could resolve all that – but if Mr M goes ahead and this can't be done, that is going to cause further issues for Mr M. I could foresee both parties entering into another phase of debate about whether the now failed repair is due to the competence of Mr M's chosen repairer or because repair of LV's failed work was just never possible. If LV had completed a satisfactory repair in the first place, Mr M would not now be in the position, nearly two years down the road, of facing further repair. I think LV should pay for replacing the two alloy wheels damaged in the crash and previously repaired by it.

Mr M had an estimate for replacement. That was £1,497.36, including £249.56 VAT. I'm going to require LV to pay Mr M £1,247.80 (£1,497.36 less the VAT) plus interest to allow for any change in cost that may have occurred since the estimate was compiled, less the £216.00 it has already paid for refurbishing the wheels. And if Mr M gets the work done that will be when VAT becomes payable. LV can calculate what VAT would be applied to the total sum of £1,247.80, plus interest, and tell Mr M. That will then be the maximum VAT due by it for this work. So, if Mr M does the work, he can present a VAT invoice to LV. It will then have to pay the VAT charged on the invoice, for this work, up to the maximum value already determined. It will have to pay that within 14 days of it receiving it. If payment is delayed, then interest will become due on the VAT sum owed from the date of the invoice until settlement is made.

compensation

This claim has been prolonged and I can understand why Mr M has become very frustrated and upset. The loss occurred in September 2020 and even into January 2022, serious

problems with the car – which meant it couldn't be driven – were still being experienced by Mr M. That repair was done by the main dealer for Mr M on 31 January 2022, and it is to this point that I am reviewing the upset caused to Mr M.

During that time, LV had used a succession of three repairers – the initial repairing garage followed by two more to try and fix outstanding issues. And it seems to be accepted that the second of those three repairers caused more damage to the car. As referenced above, LV also had the car taken to a main dealer repairer too. There were also at least three meetings with the engineer to discuss the outstanding issues. Mr M also had to amend his plans to accommodate the car being collected/dropped off on several occasions. And when LV decided it couldn't offer further repair, Mr M had to find repairing garages that would assist him. Mr M's explained how stressful this all was for him, as well as time consuming.

So, Mr M has suffered ongoing upset and disruption over a period of more than a year. I accept that the disruption of getting the car to a garage, seeing the engineer etc, don't, each time last for a long period. But the worry for Mr M has been there constantly, since his car was recovered. That initial upset was not caused by any failure of LV. But whilst everything should have then resolved after the first repair – completed when the car was returned to Mr M on 16 October 2020 – it wasn't. Everything that Mr M went through from 16 October 2020 until 31 January 2022 he experienced because of that initial poor/incomplete repair. I think fair and reasonable compensation for that is £1,000.00.

Mr M may well say that isn't enough given the £100.00 he was given for the most recent repair issue, for which LV accepted liability. But I don't award compensating by setting a base rate for the failure and applying that sum to each and every instance of upset caused. Rather, I look at what happened and over what period to determine what I think is a fair and reasonable amount of compensation for the upset I've seen was caused by the failure of the insurer. In doing that, I take into account our guidance on compensation awards as well as other awards made by this service in similar circumstances. I'm satisfied that £1,000.00 in total is fair and reasonable amount in the circumstances here.

I know LV thinks it has made various payments and concessions to Mr M during the course of the prolonged claim, which means its previous offer of £500.00 is fair and reasonable compensation. I've looked at LV's comments in this respect and I can see it has sometimes made pragmatic decision to try and draw the claim to a close – such as paying Mr M the VAT upfront for the cost of outstanding work. But I don't think those decisions can now fairly be seen as, or off-set again, a compensation award. Compensation makes up for upset caused, whereas the payments/decision LV made were largely to try and resolve the claim and complaint.

But there is one exception for me in that. LV says it has overpaid Mr M by £600.00 for repairs, due to an arithmetical error by the engineer. And it has told Mr M it won't be asking for that money back. I haven't seen the detail that shows this. If LV can satisfy me that Mr M has had the benefit of £600.00 from LV which is not attributable to the cost of work necessary to reinstate his car following the theft and its work, then I think this sum can also be seen as compensation. This type of money is something LV did not owe against the claim and did not pay with a view to resolving things. It was paid by mistake, but LV has agreed to leave it with Mr M so he can use it as he wishes. I think it's reasonable then to view that as compensation for upset. That is if LV can satisfy me this was a genuine overpayment, which it made Mr M aware of quickly. That will mean, if my final decision remains the same and Mr M accepts it, LV will now have to pay £400.00 compensation (£1,000.00 less the £600.00 overpayment Mr M has already benefitted from). If it can't then the full £1,000.00 will be due.”

LV said the dealer had already found no evidence of a rattle/creak with the dash and so the dealer felt stripping it down might be a fruitless task. LV also said that stripping a dash can result in problems in refitting. Regarding the alloy wheels LV said that they haven't been refurbished before, only polished. So refurbishment now, instead of replacement, in its view, and the view of its engineer, is a viable option. LV sent some detail to show that, by mistake, it had offered Mr M £600.00 more in settlement than the repairs would cost, and that it had made him aware of this quickly, along with the fact that it would, as a goodwill gesture, maintain the offer for the incorrect and higher sum.

Mr M indicated he was dissatisfied with the compensation amount. He added that other issues have arisen with the car which he is waiting for a reply on from LV.

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.

LV hasn't evidenced anything from the main dealer – it has only sent a copy email chain which includes detail about what its repair management company says the dealer has told it. But I bear in mind that unusual noises in a car can be a somewhat subjective issue. And it seems that, so far, the dealer has not discussed the noise which is of concern to Mr M, with Mr M. I also don't know if Mr M has been made aware of the concerns LV has reported about completing work to this area of a car – that it may come with risks for reassembly. So whilst I'm going to maintain that LV should have this rattle/creak investigated further, I'm going to say that this needs to be done by the dealer in conjunction with conversations and assessment with Mr M. And I'll leave an option for Mr M to decide to *not* go ahead with further work should he, upon review, decide that the risks of investigation and reassembly outweigh the nuisance and/or worry caused by the noise in question.

I did say provisionally that LV had refurbished the wheels before. Whilst I note LV says the work was not that extensive, only amounting to polishing, I don't think that distinction is really relevant. Nor, with respect, on this occasion, is the view of its engineer that currently refurbishment would be possible. I say that as seemingly whatever LV did to reinstate the wheels, that failed. Whether or not that failed repair can theoretically be fixed I said provisionally, *"I'm not persuaded that any repairer would be prepared to complete a repair job on a previous failed insurance repair."* I remain of the view that LV should pay Mr M so the wheels can be replaced.

I accept that LV did make an error in making the settlement offer to Mr M and that it explained this to him quickly. As I said provisionally, if I was satisfied in these respects, I'd off-set the sum of £600.00 against my total compensation award. So I will now direct LV to pay Mr M a further £400.00 as this is what is due to him when the sum of £600.00 is off-set against my total award of £1,000.00. I understand that Mr M is disappointed by the total of my compensation award. However, I have taken into account everything that happened and how he was affected. I remain of the view that £1,000.00 total is a fair and reasonable compensation sum, against which the £600.00 already paid by LV can reasonably be off-set.

I'm sorry Mr M is still having trouble with the car. I know LV is aware of his concerns and I think it will respond to him on them shortly. I hope the parties can resolve this new repair problem between them swiftly. But should Mr M be dissatisfied with LV's reply, he will be able to make a further complaint to this service.

Putting things right

I require LV to do the following:

- If Mr M wishes it to, cover the cost of the main dealer, in conjunction with Mr M, investigating the infotainment and dash rattle/creak. If or once a cause is found, consider liability for that. If liability is agreed, pay for the repair and reinstatement work. If it's not, Mr M can decide whether he wants to repair it or not. Whether or not he chooses to, LV must pay for reinstating the area that had to be dismantled for investigation works.
- Pay Mr M £1,247.80, to replace the two alloy wheels, plus interest* from the date of the estimate until settlement is made, less £216.00 paid already for refurbishing the wheels.
- Calculate what VAT would be applicable to the £1,247.80 plus interest and tell Mr M.
- If or when Mr M presents an invoice to it showing the alloy wheels have been replaced and VAT is due, refund the VAT to Mr M that he was charged up to a maximum of the VAT calculation referenced above. Payment should be made within 14 days of its receipt of the invoice. If payment is made later than this, interest* will have to be added to the sum due from the date of the invoice until settlement is made.
- Pay Mr M £400.00 compensation – where my total award is £1,000.00 and LV's previous overpayment of £600.00 is being off-set.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr M for HMRC purposes.

My final decision

I uphold this complaint. I require Liverpool Victoria Insurance Company Limited to provide the redress set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 July 2022.

Fiona Robinson
Ombudsman