DRN-4296603

The complaint

Mr S complains about Liverpool Victoria Insurance Company Limited's handling of a claim on his car insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here.

Mr S has car insurance underwritten by LV.

On 11 December 2022, Mr S went walking in the hills close to his home. He parked his car in a public car park.

When he returned from his walk he discovered his car had been crashed into by a third party. They were at the scene, admitted fault and passed on their insurance details. It appears the accident was due to the very cold and icy weather.

Mr S called LV and, as the car wasn't driveable, they arranged recovery by a local contractor.

When the recovery vehicle arrived, the contractor said the weather and poor light meant the car couldn't be recovered. Mr S left the scene with the recovery vehicle but left his car in the car park. He says the recovery contractor said they would pick up the car the following day.

In fact, the car was recovered more than a week later on 19 December, according to LV's claim notes. By that time, it had suffered further damage whilst in the car park. LV have suggested it was hit by other vehicles on several occasions.

LV covered the cost of all the repairs to Mr S's car. However, they recorded the events as two separate claims. The first a non-fault claim about the initial accident. And the second a fault claim – given that the third parties could not be traced – about the subsequent impacts and damage to Mr S's car. They also charged an excess on the latter claim.

Mr S wasn't happy about this or about the handling of the claim more generally, so he made a complaint to LV.

They said the decision to record two claims – one a fault claim – and charge an excess was correct. But they agreed to reduce the excess by £100 (to £450) as a gesture of good will, given that Mr S had been, in their words "*a victim of circumstance*".

They also gave Mr S £75 in compensation for the fact that there had been failings in their handling of the claim. The claim notes suggest this related to a failure to authorise the repairs in a timely manner.

Mr S wasn't happy with this outcome and brought his complaint to us. He says his insurance premiums have gone up considerably – for this car, plus a motorbike and another vehicle which are both insured with other companies. And he wants LV to record the events as a

non-fault claim – so that, in his words, "*my other insurance policies are not affected*".

Our investigator looked into it and thought LV had acted unfairly in the way they'd handled Mr S's claim(s). She said LV should accept responsibility for everything that happened to Mr S's car after the initial accident on 11 December 2022 and remove the second claim from the record.

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.

There's no real dispute about the facts in this case. Or about what Mr S's policy entitled him to expect from LV once he reported the first accident – recovery of the car and then necessary repairs in line with the terms of the policy.

I find it slightly odd that the recovery contractor was able to pick up Mr S, but not recover his car. I understand the conditions were extremely unpleasant, but I think the narrative that says the darkness impacted their ability to recover the car isn't particularly persuasive – crashed cars are recovered in the dark very regularly.

I suspect there might be a question then about whether the recovery team *couldn't possibly* recover the car or whether they were averse to doing so given the weather conditions at the time.

However, I don't think I need to resolve that debate one way or the other. The important fact – which LV haven't disputed in the evidence they provided to us – is that the recovery contractor said he would pick up the car the next day. And the recovery contractor was acting on behalf of LV.

The car was in fact left for more than a week. The weather conditions may or may not explain some or all of that delay. But the most important thing is that Mr S was entitled at that point to believe the recovery agent and to assume that the car would be recovered the following day.

No-one knows when the subsequent impacts to Mr S's car occurred. They could have happened at any point in the eight days between the original accident and the car being finally recovered on 19 December.

On 15 December – halfway through that period – Mr S chased LV to find out what was happening with his car. LV then contacted the recovery agent. There's a note to say that the agent said they needed to be advised by Mr S when the road to the car park was thawed.

I'm not sure why LV accepted that the onus was on Mr S to provide that information. However, I can see from the claim notes that after they spoke to the recovery agent, LV made a note to say they'd contact Mr S to tell him he should speak to the agent when the road was thawed.

There's no evidence that they did contact Mr S at that point. The next entry in the notes is two days later (on 17th) when Mr S again calls to chase an update, saying that the temperature has risen, the road is clear and gritted and asking why his car still isn't recovered. It appears to be two days after that when the car is finally recovered from the car park.

So, there's a significant delay between Mr S reporting the first accident and the car being picked up and delivered to the repairer. At the very start of that period – and before there have been any further impacts to Mr S's car, LV tell Mr S they're recovering his car (in response to his first call) – and then their agent (the recovery contractor) tells Mr S it'll be recovered the following morning.

The subsequent damage to the car occurs after that – and quite possibly after LV fail to contact Mr S – on the 15th - to tell him to nudge the recovery agent when the road is no longer icy. Or even after 17th, when Mr S has told LV very clearly that the road is now clear and gritted.

In any case, I'm satisfied that on the 11th, Mr S was entitled to think that LV – and their agents – had taken over care of his car and would see to it that it was recovered appropriately and satisfactorily. If he hadn't been told that LV and/or their agents were dealing with things, he might have chosen to take further steps himself to get the car recovered, or moved to a safer position in the car park, or in some other way protected from further impacts.

I understand that the weather conditions were extreme at the time, which made things difficult. But on balance, it's fair and reasonable to say LV – not Mr S – were responsible for the car after 11 December and should be responsible for putting right any damage that happened to it after that time.

Therefore, in short, I agree with our investigator that LV should not regard the subsequent impacts as leading to a second (fault) claim. It's LV who were the unfortunate "*victim of circumstance*" in this case, not Mr S.

Putting things right

I'll explain in a bit more detail what I think that means in terms of what LV should do now to put things right for Mr S.

Given that I'm saying there is in effect no second claim here, LV will need to delete any record of such a claim from their own records and any shared records to which they contribute. To be clear, there's one claim here - relating to the initial accident – and it's a non-fault claim.

It necessarily follows that LV should not have charged an excess for the repair costs associated with the supposed second claim. I know they reduced the excess to £450 as a gesture of good will. In fact, they should now reimburse Mr S the remaining £450.

If Mr S still has insurance for this particular car with LV, they should review any premiums Mr S has paid at renewal after December 2022. If the removal of the second (fault) claim would cause those premiums to be reduced, LV should now refund Mr S the difference.

Mr S may also wish to ask his other insurers to look again at the premiums he's paid to insure his motorcycle and other vehicle in light of the removal of the second (fault) claim. They would usually be willing to do so.

I do want to manage Mr S's expectations to an extent on this point. Removing the second (fault) claim may well reduce the premiums he has to pay. It's unlikely though to mean that, in his words, his insurance policies are "*unaffected*" by the incident as a whole. All else being equal, premiums will tend to go up when a claim is made, even where it's a non-fault claim.

My final decision

For the reasons set out above, I uphold Mr S's complaint.

Liverpool Victoria Insurance Company Limited must:

- delete any record of a second (fault claim) relating to the events of 11-19 December 2022;
- reimburse Mr S the excess (£450) they charged in relation to the supposed second (fault) claim; and
- review any premiums Mr S has paid to renew his policy since December 2022, providing a refund of any difference between the premiums paid and the premiums that should have been paid had the second (fault) claim not been taken into account.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 September 2023.

Neil Marshall
Ombudsman