

## **complaint**

Mr G has complained about Liverpool Victoria Insurance Company Limited's decision to reject his medical expenses claim under his travel insurance policy, and about its handling of the claim. He considers LV incorrectly advised him that his medical expenses would be covered, prior to an operation, and should meet his claim.

## **background**

One February Mr G's wife took out an annual travel insurance policy underwritten by LV for her family through their building society.

The next month Mr G was involved in an accident whilst riding a motorcycle in Europe. He was referred to a private hospital, where a fracture was diagnosed, and surgery recommended. Mr G phoned LV's assistance company to tell them he had an accident.

LV rejected Mr G's claim, on the day following his surgery. They said that his policy excluded travel on a motorcycle.

Mr G complained that, before he had committed to the surgery, the assistance company agent had said that there were never any problems with cover in trauma cases. He added that his previous policy with his building society included motorcycle cover, and the ramifications of this change in cover had not been explained at the time. It was not until 24 hours after the operation, that the insurer told Mr G they would not cover his claim. And this was 40 hours after he had first called them.

LV said Mr G's wife had declined cover for motorcycle use at the time of sale – and that in any case this additional cover would have been limited to motorcycles of 125cc. (Mr G's bike was approximately 850cc.) They apologised and offered £50 for the delay in notifying Mr G that his claim had been declined.

The adjudicator considered that Mr G had been prejudiced by the delay. Mr G could have sought treatment in a state facility or returned to the UK for treatment if he had been aware of the restriction in cover regarding motorcycle travel. He recommended that LV reassess Mr G's claim without reference to the exclusion.

LV disagreed. They said Mr G had already incurred medical expenses of 400 Euros, and had arranged the operation, before they were notified of the claim. They said the policy documents explained that authorisation was required for medical expenses exceeding £250 and they highlighted the exclusion in cover regarding motorcycle travel. They said that Mr G had needed to have quick private surgery because of his unusual circumstances at the time, and there is no proof he would have made different choices anyway.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have decided to uphold the complaint and require LV to assess the claim taking into account my findings.

I have needed to decide whether LV was entitled to reject Mr G's claim, and whether they have offered proper compensation for any failings in its service.

### Background – Mr G's insurance history

I have listened to the telephone sales call in which Mr G's wife took out the most recent annual policy. In the call Mrs G made clear that she wished to renew her policy on the same terms as previously.

It is clear there was a complicated process that needed to be followed, in order to take advantage of a discount. The building society agent told Mrs G on the phone that she needed to start an application on-line but complete it by phone – this was because a discount could not be given solely by phone. After this part of the process was achieved, the agent did check with Mrs G that she did not want cover for a number of items. He gave a single list which included several sporting activities, amongst which was motorcycle use:

*“Our standard quote does not include winter sports, sports and activities, motorcycling, golf or wedding cover. Would like any of those covers included?”*

Mrs G confirmed that she did not want the items in the list covered. But soon after this, she asked the agent to confirm there was no difference in the cover offered the previous year.

I have seen the terms of the previous year's policy and these were the same as the more recent policy – both excluded the use of motorcycles over 125cc (and then only if certain options were chosen). This exclusion was referred to in the “key facts” summary document.

However I am aware that the underwriter of the building society's policy had changed in recent years. It is likely that there would have been differences in terms when that change happened. Mr G has said that he has been a motorcyclist for many years. He says he has had insurance with the same building society since 2003, and that this originally covered his motorcycle use. He had not been advised of a change.

In reaching my overall conclusions on these points, I have particularly taken into account a couple of matters. First, the history of Mr G's relationship with the building society as an insurance customer – and his belief that he had always been covered for his regular motorcycling. And secondly that Mrs G sought assurance that the cover was the same as previously offered. I am satisfied that LV took reasonable (although not perfect) steps to bring the restriction in cover to Mr G's attention. However, I also consider it was reasonable for Mr G to be unsure as to his cover when his accident happened.

This meant it was even more important that his queries following the accident were accurately and promptly answered.

LV has said that they cannot calculate the level of premium Mr G should have paid for cover for a 850cc motorbike. This is because 125cc is the upper limit of cover that they provide.

### medical expenses

I have listened to Mr G's telephone calls with LV. In the first call, the representative asked Mr G what the motorcycle's engine size was. Despite asking this, the agent did not identify that Mr G's policy might have an exclusion regarding motorcycle travel. Instead, LV's representative advised Mr G that his claim “should be okay” and that most trauma cases are covered under the policy terms. The discussion centred on whether it was quicker for Mr G to pay the hospital and reclaim, rather than wait for the insurer to pay the hospital direct:

*“Yeah you can do that, that’s not a problem at all –you can do what’s called pay and claim. So you just pay the doctor for the treatment and you come back Obviously you know, the other way of doing it is for him to send us a medical report and our medical team will review it and if they’re happy with, which it sounds, it’s just trauma so it should be okay, we’ll cover and then we can send him a guarantee of payment”.*

*“...I can’t say yes, you’ll get your money back but all I would say is that with nearly all trauma cases I’ve ever dealt with, they’re coverable because the only checks that we do are a previous medical history check and we need the medical report from wherever you are in the world .”*

The representative did not give any guarantees regarding the success of Mr G’s claim. However I am satisfied that he gave Mr G the impression that it was probable that his claim would be covered. Mr G supplied his policy number during his second call with LV, and I am satisfied that they ought to have identified that he did not have motorcycle cover at that time.

Because of Mr G’s circumstances at the time, it was important for him to have his operation very quickly. It is possible that he might have decided to go ahead with the operation even if the insurer had told him promptly that he was not covered. But, from listening to the calls, it is also clear to me that Mr G was anxious to check whether he was covered before having the operation. I have listened to the phone calls he made before the operation, and I am satisfied that gaining this assurance was the primary purpose of these calls.

It is impossible to say now what choices Mr G would have made. But, in the circumstances of the case, I think it unfair for the insurer to have the benefit of any doubt on this point.

In the initial hours after his accident Mr G did incur initial costs of 400 Euros for tests. This was, no doubt, whilst still traumatised and dealing with the immediate aftermath. He did not phone the insurer until after these tests and so did not give them the chance to advise him of the level of cover. However, given the time that it finally took the insurer to confirm the level of cover, I consider it unlikely that earlier notification by Mr G would have made any difference.

Further Mr G has described his extreme shock at later receiving a call from the insurer’s assistance company to be told he was not covered. This was whilst he was in the taxi from the hospital to the airport.

Taking into account the poor handling of the matter by the insurer’s assistance company, I consider it would be fair for the insurer to pay for these initial costs of 400 Euros.

I require LV to reconsider this claim without applying the exclusion to motorcycle use, and to include in its settlement the initial 400 Euro costs.

### **my final decision**

I uphold Mr G’s complaint. I require Liverpool Victoria Insurance Company Limited to reconsider this claim without reference to the exclusion on motorcycle use, and to assess the claim as though Mr G notified it of the initial costs promptly enough.

To any settlement paid, LV must add interest at a gross annual rate of 8% simple from the date of Mr G’s accident to the date of final payment to Mr G.

I make no other award against LV.

Timothy Bailey  
**ombudsman**