DRN-3468484

The complaint

Mr and Mrs C complain Liverpool Victoria Insurance Company Limited ('LV') voided their home insurance policy and refused to pay the claim they made.

What happened

I issued a provisional decision on this complaint on 22 April 2022 detailing my intention to uphold Mr and Mrs C's complaint, I said:

The background of this complaint is well known to both parties and has been detailed by our investigator previously. So, I'll summarise the key points I've focused on within my decision.

In April 2021, Mr and Mrs C told LV about cracking and damage to their property.

LV registered the claim. It asked that Mr and Mrs C send it evidence of the damage including photographs and the pre purchase survey.

LV voided the policy because it said Mr and Mrs C hadn't disclosed the property's history of subsidence either when they took out the policy in 2018 or at subsequent renewals. It asked Mr and Mrs C to send in any further information they wanted LV to consider within seven days.

Mr and Mrs C was unable to respond in time by post. So, they sent the information by e-mail and made telephone calls to LV.

Mr and Mrs C disagreed with LV's actions to void the policy and complained. They felt aggrieved by statements that they had lied when they took out the policy. That they were told by LV the voided policy didn't need to be declared to insurers was incorrect. As a result of the voided policy they are unable to obtain insurance at affordable prices and they are concerned how the voided policy will affect future insurance needs.

Mr and Mrs C said LV's communication was poor. Mr and Mrs C asked for information LV had relied on to determine the property had suffered from historical subsidence and LV responded quoting from the pre purchase survey. They also mentioned that they didn't have the opportunity to speak to the same LV contact.

LV reviewed Mr and Mrs C's complaint but its decision to void the policy remained unchanged. It offered £75 compensation to recognise the service issues Mr and Mrs C experienced.

Mr and Mrs C referred their complaint to our service, and our investigator didn't uphold the complaint.

Mr and Mrs C didn't agree with the investigator and asked for an ombudsman's decision. They said, amongst other things, that LV didn't disclose what information its decision to void the policy was based on and the difficulty they experienced with LV's systems and contacting it. Mr and Mrs C provided a survey report from August 2021 where the structural

engineer advises there is no subsidence at the property. They also provided comments from the original surveyor who also said the property wasn't suffering from subsidence.

What I've provisionally 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.

Policy avoidance and cancellation

When considering what's fair and reasonable in the circumstances I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. The relevant law here is the Consumer Insurance (Disclosure and Representation) Act 2012 (CIDRA). Under this legislation a consumer has a duty to take reasonable care not to make a misrepresentation.

In determining whether Mr and Mrs C took reasonable care the relevant law says that should be determined in the light of all the circumstances. And it provides examples of things that may need to be taken into account; how clear and how specific the insurers questions were, in connection with the inception or renewal of an insurance contract, how clearly the insurer communicated the importance of answering those questions (or the possible consequences of failing to do so).

The standard of care is that of a reasonable consumer. And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer must show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

LV said Mr and Mrs C made a misrepresentation when they said their property didn't have signs of subsidence. LV consider this to be a careless qualifying misrepresentation which meant it has avoided the policy, declined to deal with the claim and returned all the premiums Mr and Mrs C paid for the polices since they've been with LV.

LV thinks Mr and Mrs C failed to take reasonable care not to make a misrepresentation when they took out the policy online. I understand Mr C disagrees he took the policy out online and says he discussed it on the phone with LV. However, I've seen LV's system notes that shows the policy was taken out online. While I take on board Mr C's comments and recollection, I've considered that memories can fade over time. Based on the available evidence, it seems more likely, on balance, that the system notes are correct, and the policy was taken out online.

The question asked at inception was "Has the house ever had or ever shown any signs of subsidence, landslip or heave?' to which Mr and Mrs C replied 'No'.
LV said in each renewal Mr and Mrs C were asked to check if the information was correct including the following assumption the property 'Has not suffered from or shown signs of subsidence, landslip or heave'.

LV said that Mr and Mrs C answered this question 'No' when the policy was taken out and they didn't report any issues on each renewal. Mr and Mrs C do not dispute the question was

asked but said that they don't believe LV asked the question in the correct way.

LV based its opinion that the answer given by Mr and Mrs C was incorrect on the contents of the pre purchase report. The paragraph in the report LV has relied on is under 5.21 Structural Movement it says:

'Evidence of old structural movement was noted in the form of cracking and distortion to some of the external walls to the original building. I'm unable to confirm that further significant movement will not occur. Further movement would seem unlikely but from a single but from a single inspection this cannot be positively established and further specialist may be prudent.

The structural movement, however, appears old and my inspection revealed no evidence of any instability to cracked or distorted construction. As previously recommended, old cracks should be filled or repaired using traditional methods where deemed necessary to prevent further deterioration and prevent water ingress which can cause damp related defects to adjacent construction.

Cracks and distortion to flint walls may have been caused by natural settlement, possibly exacerbated by poor workmanship. Further movement may require re-stitching with salvaged or replacement flint and such work should be undertaken by an experienced and highly skilled craftsman. It may, however, be possible to strengthen the walls without too much disturbance to masonry by using stainless steel rods/wires within and through the flint. Such work should be specified by a structural engineer or other suitably qualified professional preferably specialising in the field of repair of historic buildings.

*In view of the evidence of old building movement, it is strongly recommended you have a precautionary CCTV drainage survey undertaken, prior to purchase, to confirm condition and need for repair, as leaking drains can affect foundation stability and cause serious structural damage to construction. The property is believed to be built on chalk sub-soil and you should also be aware of my comments made regarding the risk of subsidence in Section **3.02** the site and surrounding area.*

Some insurers, however, may not provide full cover for the property because of the old movement and you should make further enquiries about this prior to purchase. This may also deter some prospective purchasers and could affect future saleability.'

I've also considered that LV has shown us that when Mr and Mrs C completed the information online that there was available a further information button next to the question which said

"Subsidence is the sinking of the ground your home stands on. Subsidence damage can appear as cracks around windows and doors. Landslip is the movement of ground down a slope. Heave is the rising of the ground your home stands on. It can happen when trees are removed. You must answer yes to this question even if signs of subsidence, landslip or heave appear historic or non progressive."

However, I note it hasn't shown that this was read by Mr and Mrs C and even if they did read it when looking at CIDRA, I need to consider what Mr and Mrs C reasonably knew about the damage at the time of taking out the policy. I agree with Mr and Mrs C that the report doesn't explicitly mention the word 'subsidence', and although cracking, distortions, and movement can be common signs of subsidence not all cracking and distortion and movement means there is subsidence. I think it's fair that Mr and Mrs C who aren't experts in subsidence and its signs, to rely on the report written by an expert. And as they didn't link any of the cracking and distortion to subsidence, it was reasonable for Mr and Mrs C not to either.

LV has also said given the report also said, "Some insurers, however, may not provide full cover for the property because of the old movement and you should make further enquiries about this prior to purchase." LV thinks it's reasonable that Mr and Mrs C should have made it aware. And had they done so it wouldn't have insured them. I've considered this but the question asked was about 'previous subsidence' but not old movement in general. So only if the report had noted previous subsidence would Mr and Mrs C have been required to mention it in order to comply with CIDRA.

In addition, Mr and Mrs C have provided LV with comments from the original surveyor that supports that his report makes no reference to subsidence or progressive movement. LV have had an opportunity to review this alongside a report Mr and Mrs C had commissioned in August 2021. And it has said it has not changed its decision. I'm not placing weight on the latter report as this was obtained after the time of the qualifying misrepresentation and was written by someone who hadn't seen the building at the time the policy was taken out, so it's less persuasive then the report which was. But I think the comments from the original surveyor validate that the property hadn't shown previous signs of subsidence. So, I don't think LV's decision to treat the misrepresentation as a qualifying one is fair and reasonable, and in line with CIDRA.

I therefore intend to instruct LV to reinstate the policy and reconsider the claim and remove any voidance markers on internal or external databases.

Customer Service
Mr and Mrs C have described the repeated difficulty they had with raising their objections to LV's decision to cancel the policy within the seven days it provided. This includes receiving the letter of intention to cancel policy late and only by post, difficulties with using LV's systems, its staff's knowledge and understanding of the cancellation given the time sensitivity of the 7-day process, lack of responses and information, poor communication and lack of clarity.

I appreciate LV could've sent the cancellation by email, but I can't say it was wrong or made an error by sending it by letter only. I also note that the letter doesn't say it must be responded to in writing and provides a telephone number to contact LV. And from what I've seen this is what Mr and Mrs C did, so I'm satisfied that this didn't prevent them from making contact within the seven days and I can see, their objections to the cancellation are recorded on LV's system.

I agree with Mr and Mrs C that LV could have been clearer in the information as to why the policy was cancelled, and what evidence they were relying on sooner. I can see this was resolved in the email LV sent Mr and Mrs C on 7 July 2021 when it clarified the information it relied on. But I think LV could have done this sooner either as part of the first cancellation notice on 22 June 2021 or it could have contacted Mr and Mrs C by email sooner than it did.

With regards to Mr and Mrs C's comments about LV advising them that they didn't need to declare the cancelled policy to future insurers. I've not seen any evidence to support this, I can see there was a conversation about this on 6 July 2021. LV said if Mr and Mrs C were asked whether the policy was cancelled due to fraud then they can say no. So, it doesn't look like LV told Mr and Mrs C that they didn't need to declare the cancellation at all, just that they could say the policy wasn't cancelled due to fraud if they were asked, which is correct. So, I'm satisfied LV didn't make an error.

However, LV also could have been clearer in their communication with Mr and Mrs C about its complaint process.

Having considered the errors LV have made and the distress and upset this caused Mr and Mrs C, I'm satisfied the £75 LV has offered is appropriate to recognise the impact of its poor customer service on Mr and Mrs C. So, I won't be asking LV to pay more compensation.

My provisional decision

For the reasons given above I intend to uphold this complaint and instruct LV to reinstate the policy and reconsider the claim. Remove any voidance markers on internal or external databases. If it hasn't already pay Mr and Mrs C £75.00 compensation.

Responses to Provisional Decision

LV didn't agree to my provisional decision. In summary it has said:

- Common language was used in both Mr and Mrs C's pre house purchase survey (issued prior to policy purchase) and LV's additional information available to Mr and Mrs C at time of purchasing the policy. The pre purchase survey referred to ***cracking*** evidencing old structural movement. At the time Mr and Mrs C purchased the policy, LV's additional information mentioned subsidence can appear as ***cracks*** around windows and doors.
- The pre purchase survey mentioned "*Evidence of old structural movement was noted in the form of cracking and distortion to some of the external walls to the original building."* It refers that I mentioned the question asked when purchasing the policy was about previous subsidence rather than old movement in general. LV said its additional information referred to movement as 'sinking' in the statement *"Subsidence is the sinking of the ground"* and that Mr and Mrs C should answer yes to this question even if the movement was historic.
- Mr and Mrs C could have contacted LV when purchasing the policy – by using online chat team, call centre staff – but chose not to.
- My provisional decision removed all accountability from Mr and Mrs C and put this back onto LV. LV said it took reasonable steps to identify and mitigate risks of non-disclosure.
- As a non-advised policy sale, there was a responsibility on Mr and Mrs C to read the information provided by LV at the time they purchased the policy, this includes the additional information made available to them.

Mr and Mrs C also responded to my provisional decision. They said in summary:

- There was a delay in receiving the information requested from LV about the policy voidance.
- They called LV soon after moving into the property (around three weeks after) to change the cover from buildings only to buildings and contents. This conversation included the structural declaration and a discussion about the double garage and outbuilding which they say LV didn't wish to know.
- They met and spoke to their surveyor to clarify whether the movement mentioned in the pre purchase survey was subsidence and was reassured that it wasn't. This was the same position at the time of renewal. They mentioned they needed to know about subsidence as their parents' house had suffered with subsidence, so they were aware of how big an issue it can be and they wouldn't have bought their property if it was suffering from subsidence.

- Whilst the report from August 2021 wasn't available at the time of the qualifying statement, it does confirm no subsidence was seen to make a report on.
- They are generally unaware of CIDRA but feel they complied with the onus to make best efforts to take reasonable care. They believe they took reasonable care to understand that the property purchased was sound and that they provided appropriate information to the insurer.
- There were multiple challenges when contacting LV by telephone and e-mail about policy voidance.
- Using CIDRA industry interpretation, the insurance industry treats "careless" in the same manner as it appears to treat a deliberate or reckless act. This appears to be discrimination.
- LV referred to the event as a 'careless mistake' which can cause an issue with obtaining replacement insurance and is treated in the same way as fraud.
- The complaint process communication was non-existent.
- They can evidence LV maintain cover on properties with existing subsidence repair work.
- They would like to know what the impact is if I direct LV to reinstate the policy and reconsider the claim. Can LV use alternative reasons (CIDRA or non-CIDRA) to avoid their presumed liability? Will they need to refund payments LV has made under the terms of schedule 1 para 5. Can Mr and Mrs C come back to the ombudsman for support in a timely manner if appropriate?"

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.

Both parties have made several comments, however I'll only focus on those that I feel are relevant to the crux of this complaint.

LV has particularly focused on common language and that Mr and Mrs C ought to have known from their pre-purchase report that the cracks identified could be signs of subsidence and therefore they should've answered yes to the question '*Has the house ever had or ever shown any signs of subsidence, landslip or heave?'* it says if they were in doubt they should've contacted it.

I set out in my provisional decision that the relevant law for this situation is CIDRA. It requires Mr and Mrs C to take reasonable care not to make a misrepresentation. That includes a duty to answer questions to the best of their knowledge, based on what they ought reasonably to have known at that point in time. They are not required to volunteer information that's not asked about or to anticipate what an insurer may wish to know – they must simply answer the questions put to them with reasonable care.

The pre-purchase report doesn't diagnose the problem as subsidence or mention the word 'subsidence' at all and as I said in my provisional decision, cracks and distortion in a property does not necessarily mean they've been caused by subsidence. Overall, I'm satisfied Mr and Mrs C took reasonable care when answering the question and I remain satisfied it's fair to instruct LV to reinstate the policy and reconsider the claim. And remove any voidance markers on internal or external databases.

I can see Mr and Mrs C's depth of feeling about their complaint and I've fully considered their comments. I had already considered Mr and Mrs C's points regarding the customer service

element of their complaint and they've not provided me anymore information in addition to what I had already considered in the provisional decision. So, these comments haven't changed my mind and I still think it's fair for LV to pay £75 compensation.

I'd like to explain that this service is not the regulator. Nor do we act as the enforcer for the regulator. The regulator is the Financial Conduct Authority. Our service acts as an informal dispute resolution service for complaints about financial businesses. We look at the circumstances of individual complaints and, on a case by case basis, taking into account relevant industry guidance for example, make findings about whether a financial business has failed its customer in any way. Where we find it has, we make awards designed to make the business put things right with the complainant customer. Our awards are not designed to punish a business or to make it change the way it acts in order to protect other customers in the future. That is the role of the regulator.

As I've found it was unfair for LV to void the policy – and will direct it to reinstate the policy – I don't think it describing the way Mr and Mrs C answered the question as 'careless' has any impact.

Mr and Mrs C have asked the following questions:

- Can LV use alternative reasons (CIDRA or non-CIDRA) to avoid their presumed liability? LV are entitled to consider the relevant laws and policy terms however I'd expect them to do that in a fair and reasonable manner.
- Will they need to refund payments LV has made under the terms of schedule 1 para 5? LV is entitled to request the refunded premiums when reinstating the policy if it wishes.
- Can they come back to the ombudsman for support in a timely manner if appropriate? This is a final decision on this complaint so we can't look at the same issues again and we are not here to advise or assist consumers with their ongoing claim. However, if Mr and Mrs C find they have reason to make a further complaint they would in the first instance need to raise a new complaint with LV under its complaint process.

Taking everything into account I'm still upholding the complaint.

Putting things right

I require Liverpool Victoria Insurance Company Limited to do the following:

- Reinstate Mr and Mrs C's policy
- Reconsider the claim subject to the remaining terms and conditions of the policy
- Remove any voidance markers on internal or external databases
- Pay £75 compensation if it hasn't already been paid.

My final decision

For the reason's give above I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 24 June 2022.

Angela Casey
Ombudsman