

The complaint

Mr W is unhappy because Liverpool Victoria Financial Services Limited has declined claims he made on his income protection policy and cancelled it.

What happened

In March 2016 Mr W was involved in an accident. The following month he took out an income protection policy.

In 2021 Mr W claimed on the policy. When considering the claim LV concluded that Mr W's claim was related to the accident which pre-dated the policy. LV applied an exclusion to the policy relating to Mr W's back pain following the accident.

Mr W contacted LV again about a further claim involving a road traffic accident. He provided medical information which led LV to conclude that Mr W had not accurately answered the medical screening questions.

They said that had Mr W answered the questions correctly he would not have been offered the policy. LV considered this to be a reckless qualifying misrepresentation, which entitled it to decline the claim and cancel the policy. LV did provide Mr W with a refund of the premiums even though it could have retained them in the circumstances. Mr W complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He didn't think the medical screening questions had been answered correctly. He thought LV had acted in line with the relevant legislation when declining the claim and cancelling the policy.

Mr W didn't agree and asked an ombudsman to review the complaint. In summary, he said that he didn't have a full understanding of his health condition at the time he applied for the policy, had been impacted by strong medication which had been administered without his full knowledge and that he had serious concerns about the legality and ethics of medical staff and public officials. So, the complaint has been referred to me to make a decision.

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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). 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 has to 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 thinks Mr W failed to take reasonable care not to make a misrepresentation when he answered medical questions. I've looked at the questions asked:

Mr W was asked:

In the last 5 years have you had any of the following; (This is regardless of whether or not you have seen your doctor or required treatment.)

- any joint, bone or muscle pain, fracture, gout or arthritis?

He answered 'Yes' to this question.

- any back or neck condition, including pain, sciatica or whiplash?

He answered 'No' to this question.

I've looked at the medical evidence. I think Mr W should have answered 'Yes' to both questions. That's because the medical evidence indicates that he had a history of shoulder, wrist, hand and back pain shortly before he took out the policy.

LV has provided evidence of their underwriting guidance which shows that if Mr W had declared this information, they wouldn't have offered Mr W a policy. This means I'm satisfied the misrepresentation was a qualifying one.

LV has said Mr W's misrepresentation was deliberate or reckless because the accident which caused the injuries took place around a month before Mr W took out the policy. I agree that the misrepresentation was deliberate or reckless because I think it's most likely these events were fresh in Mr W's memory given that he'd sought medical help very recently. I'm not persuaded that Mr W was unable to disclose this information due to a lack of understanding of his medical condition or as a result of medication administered to him. I've not been provided with any persuasive or credible evidence which supports that was the case. It's also not within my remit to make a finding about the legality or ethics of decisions taken by public officials or medical staff.

As I'm satisfied that the Mr W's misrepresentation should be treated as deliberate or reckless I've looked at the actions LV can take in accordance with CIDRA. CIDRA says that LV is entitled to avoid the policy and keep the premiums. They also don't have to pay any claim. LV has cancelled the policy and returned the premiums.

Taking all of the above into account I don't think it's fair and reasonable to uphold this complaint.

My final decision

For the reasons set out above, I've decided not to uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 March 2024.

Anna Wilshaw
Ombudsman