DRN-4853358

The complaint

Mrs G complains that Liverpool Victoria Financial Services Limited ('LV') declined a claim she made on a life insurance policy.

What happened

Mrs G held a joint life insurance policy with her husband, Mr G. In 2023 Mr G sadly died and so Mrs G claimed on the policy.

LV declined the claim as they said Mr G hadn't fully disclosed his medical history during the application process and, had he done so, they wouldn't have offered the joint policy. LV considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to decline the claim, cancel the policy and retain the premiums.

Mrs G complained to the LV but they maintained their decision to decline the claim was fair. Unhappy, Mrs G complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He noted Mrs G's concerns about the available medical information. But, he didn't think it was unreasonable for LV to rely on the medical records to decline the claim.

Mrs G didn't agree and asked an ombudsman to review the complaint. In summary, she highlighted what she considered to be inaccuracies in the medical records. She wants LV to pay the claim.

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 G failed to take reasonable care not to make a misrepresentation when he answered questions about his history of drug use.

I've looked at the questions Mr G was asked. They include the following question:

> Have you used recreational drugs in the last 10 years?
>
> Including:
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> Cannabis, ecstasy, cocaine, heroin, amphetamines and anabolic steroids.

The answer to that question was 'no'. Based on the evidence that's available I think it's most likely Mr G failed to take reasonable care when answering this question. I'll explain why.

Mr G was required to disclose any recreational drug use from 10 years before the application which was made in early March 2018. So, he needed to tell LV about any recreational drug use from early March 2008 up until the point of application.

Mr G's medical notes record the following:

- In late March 2008 Mr G said he's been using less heroin and wanted something for the withdrawal.
- He tested positive for opioids in December 2008 and stated he'd taken heroin the previous week as a one off. This was whilst he was receiving ongoing support in the form of a prescription for Subutex and counselling.
- In June 2009 he stated that he'd used heroin 'for the first time in a couple of months last week' and occasionally used cannabis.
- In November 2013 he sought support for a 'recent return to drug use'.
- He stated in January 2015 that he'd not used heroin or crack for 9 months.

Mrs G has provided a letter dated May 2022 in which it's stated that Mr G had not used drugs for 15 years. But that's not consistent with the contemporaneous medical records I've outlined above. And I think it's unlikely that multiple medical professionals, involved with Mr G in different capacities, between 2008 and 2015 would have incorrectly recorded details of Mr G's drug use.

I've also considered that there was a further letter from 2019 which refers to Mr G having not 'used' for 3 years. Mrs G has provided a letter from a hospital which states that the letter from 2019 should read that Mr G had not used for over 13 years if it was factually correct. But, this hasn't changed my thoughts about the overall outcome of this complaint. That's because, as I've outlined above, there are references in the other medical information which indicate Mr G was most likely using recreational drugs within the relevant time period. So, even if I placed less weight on the letter from 2019, I still think LV have reasonably concluded Mr G was using recreational drugs in the 10 years before the application.

Mr G's GP provided a letter in 2024 to say Mr G had received no consultation for drug related issues since the end of 2013. However, as I've outlined above, I still don't think that means LV's decision was unreasonable as there's evidence of other recreational drug use between 2008 and 2013, which is within the timeframe covered by the question. And it was in November 2013 that there is a note of Mr G seeking support for a recent return to drug use.

I can see that Mrs G has made further enquiries into the historic records in relation to Mr G held by a consultant psychiatrist. She says this demonstrates that they have no record of Mr G in 2008 and 2009. But what the psychiatrist said was that he couldn't make any adjustments or make any further statements about Mr G whilst there are no records or testimony from the time. So, I don't think this is adequate confirmation that the contemporaneous records provided were incorrect.

Taking into account all of the above I think it's fair and reasonable to conclude that Mr G should have answered 'yes' to the question about his drug use.

LV has provided evidence of their underwriting criteria which shows they'd have initially deferred Mr G's application and ultimately not covered cover. This means I'm satisfied Mr G's misrepresentation was a qualifying one.

LV has said Mr G's misrepresentation was deliberate or reckless. I agree that Mr G's misrepresentation was deliberate or reckless. He had a significant history of recreational drug use. And, based on the medical evidence, he had sought support and treatment for this on several occasions within the ten years prior to taking out the policy. So, I think this is something that he ought reasonably to have disclosed. Given his history I think it's difficult to understand why Mr G didn't indicate that he had a history of drug use as it had been ongoing over a long period of time. I also think it's unlikely he'd have forgotten having monitoring and support, including ongoing prescriptions for Subutex.

As I'm satisfied Mr G's misrepresentation should be treated as deliberate or reckless I've looked at the actions LV can take in accordance with CIDRA. It says that LV can decline the claim, cancel the policy and retain the premiums.

In reaching my conclusions I've also considered the relevant Association of British Insurers Code of Conduct and I am satisfied that LV has acted fairly and reasonably.

I appreciate that my decision will come as a disappointment to Mrs G. I have a lot of empathy for the circumstances that she's described and I'm very sorry for her loss. However, I don't think it's fair and reasonable to uphold this complaint.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 23 October 2024.

Anna Wilshaw
Ombudsman