

## **The complaint**

Mr C is unhappy that Liverpool Victoria Financial Services Limited trading as LV= (LV) has declined his claim on his income protection policy due to misrepresentation.

## **What happened**

In September 2020, Mr C took out a 'Flexible Protection Plan'. In the event of Mr C not being able to work due to sickness, the policy would pay out a monthly benefit after a four-week waiting period. The policy underwriter is Liverpool Victoria Financial Services Limited.

In September 2023, Mr C submitted a claim through his broker following a diagnosis of cancer. LV registered the claim and requested medical information. The records referred to Mr C's previous medical history and LV said these hadn't been disclosed at the time of making the application in 2020. LV declined the claim on the basis of misrepresentation of medical information. It said had the information been accurately completed by Mr C, it wouldn't have offered cover at all; it refunded the premiums Mr C had paid and cancelled the policy.

Unhappy, Mr C brought his complaint to this service. Our investigator didn't uphold the complaint. He thought LV hadn't unfairly declined Mr C's claim and its decision to refund the premiums and cancel the policy was fair in the circumstances of the complaint.

Mr C disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

## **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 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 thinks Mr C failed to reasonable care not to make a misrepresentation when he didn't disclose his conditions. So, I've looked at the evidence provided.

I've considered the health questionnaire that Mr C completed in 2020 as part of the

application. Mr C was asked the following questions:

*'Have you ever had:*

*Anything affecting your heart or arteries or surgery on your heart or arteries*

*Including:*

- *Angina or heart attack,*
- *Angioplasty, stent or bypass*
- *irregular heartbeat or Palpitations*
- *Heart murmur*
- *Heart valve or heart structure abnormalities*
- *Peripheral vascular disease*
- *Cardiomyopathy or heart enlargement*

*In the last five years, regardless of whether you've seen a doctor, required treatment or had time off work, have you had:*

*Anaemia, blood clot or any other blood disorder?*

- *Thrombosis or blood clotting issues*

*Other than the things you've already told us about in the last three years have you:*

*Been referred to or seen by a specialist?*

*Including: For minor injuries or strains*

*Requested any or been advised to have any medical investigations?*

*Including:*

- *A blood test or biopsy*
- *Ultrasound x-ray*
- *CT or MRI scan ECG or other heart investigations'*

Mr C answered 'No' to the above questions.

I'm satisfied that the above questions were answered incorrectly. The medical evidence provided shows Mr C was diagnosed with ventricular septal defect and bicuspid aortic valve. He was seen by a cardiologist in 2019 following a referral by his GP due to shortness of breath. Mr C had further investigations including an ECG. And in August 2019, Mr C was referred by his GP to see a haematologist and had blood tests. The medical records show he has a history of chronic mild thrombocytopenia.

I've considered Mr C's comments that he didn't think the questions related to his heart or blood disorder. However, I'm not persuaded by his comments. I think the questions are clear and Mr C ought to have accurately answered these based on his medical history and he was able to get clarification should he have needed at the time.

LV has classified the qualifying misrepresentation as a careless one (as opposed to deliberate or reckless).

I've gone on to think about whether failing to take reasonable care makes a difference in this

case.

LV has provided evidence which shows what would have happened if the correct information was entered at the time of taking out the policy. This shows that had Mr C completed the questions correctly about his heart condition and the blood tests he'd had at the start of the policy in 2020, LV wouldn't have covered Mr C at all. This means, I'm satisfied Mr C's misrepresentation was a qualifying one.

CIDRA sets out the remedies available to an insurer in the case of careless misrepresentation. CIDRA is concerned with disclosure and representations made by a consumer to an insurer before a consumer contract is entered into or varied.

In this case, LV has said the misrepresentation was a careless one and therefore it has refunded the premiums Mr C has paid on the policy and cancelled the policy. I do understand that Mr C will be disappointed. But LV has followed the law as set in CIDRA and declined his claim. I'm satisfied this is fair and reasonable, taking everything into account.

I note that Mr C has said he had a previous claim accepted by another insurer on a proportionate basis. He says therefore LV should also settle the claim on the same basis as he believes he would have been offered cover had he fully disclosed his medical information. I can't comment on what another insurer has done in regard to settling a previous claim unfortunately. I'm only looking at what's happened in the individual circumstances of this case. And LV has shown that it wouldn't have offered cover at all.

Overall, based on the available evidence, I understand that Mr C is going through a difficult time with his health. But I don't think LV declined Mr C's claim unfairly or unreasonably. And I'm satisfied this was done in line with the policy terms and conditions. It follows therefore that I don't require LV to do anything further.

### **My final decision**

For the reasons given above, I don't uphold Mr C's complaint about Liverpool Victoria Financial Services Limited trading as LV=.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 March 2025.

Nimisha Radia  
**Ombudsman**