

The complaint

Mr H has complained that Liverpool Victoria Financial Services Limited has not removed an exclusion to the income protection section of his Flexible Protection Plan.

What happened

The background to this complaint is well known to the parties so it serves no purpose for me to repeat the history in detail here. In summary Mr H's complaint relates to the policy that he has with Liverpool Victoria "LV"). The policy provides income protection benefit on an own occupation basis after a waiting period of 6 months.

In April 2021 when Mr H took out the policy LV included the following 'special provision': *"We will not pay a claim if it is due to, or arises from depression, anxiety, other mental disorder of chronic fatigue syndrome, fibromyalgia, myalgia encephalomyelitis (ME) and post-viral fatigue. You can ask us to review this exclusion 2 years after your policy start date. If at that time you've suffered no further symptoms and required no further treatment then we can remove this exclusion."*

In October 2023, Mr H tried to claim on the policy as he was signed off work due to anxiety and depression. LV rejected his claim, as the exclusion was still in place. Mr H thought it should have been automatically removed after two years, but asked LV to retrospectively review the exclusion and see if it could be removed.

LV reviewed the exclusion but found Mr H had requested an ADHD assessment in March 2023. It felt this suggested Mr H had suffered symptoms of a mental disorder within two years of the policy starting. So, LV refused to remove the exclusion or pay Mr H's new claim.

Mr H complained about this, and an ombudsman issued a final decision that LV had acted fairly. Mr H then obtained further evidence and asked LV to review this. LV did so but still said it wouldn't remove the exclusion. Unhappy Mr H brought the issue back to this Service. An investigator didn't consider that LV had done anything wrong. Mr H appealed.

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.

I'd like to reassure Mr H that whilst I've summarised the background to his complaint and his submissions, I've carefully considered all he's said and sent us. Within this decision though, I haven't commented on every point he's made, rather I've focused on what I consider to be the key issue. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. Having done so, and although I recognise that Mr H will be very disappointed by my decision, I agree with the conclusion reached by the investigator.

Financial firms must pay due regard to the interests of their customers and treat them fairly, so I've looked at the relevant circumstances to see if LV has done so here. I should explain

that as a colleague ombudsman has already issued a final decision, here I am only looking to see if the new evidence that Mr H has submitted enables me to reach a different outcome.

There is no doubt that Mr H has suffered with his mental health from October 2023. I was sorry to read the contents of the reports of his GP and psychologist outlining his health situation. However in conducting its review LV said it wasn't possible to conduct a retrospective review on the latest ADHD assessment only, and to disregard the more recent evidence that Mr H had been signed off work due to stress and anxiety. But even if I were to disregard this medical evidence and only take into account the ADHD assessment, I don't conclude that LV has treated Mr H unfairly.

I have carefully considered the report of Mr H's assessment for ADHD. He scored below the threshold in both parts of the assessment, accordingly the tester recorded the result as 'No diagnosis'. This evidence post dates the decision of my colleague ombudsman – at that stage Mr H had only requested the ADHD review but the review hadn't taken place.

But Mr H had requested the assessment within the two year period – he had consulted his GP relating to his concerns and referred for the assessment that is now before me. That the evidence is now that he didn't receive an ADHD diagnosis doesn't mean that he wasn't experiencing symptoms. I don't find it was unreasonable for LV to take this into account. So I don't find that the assessment outcome makes a difference to the decision already made.

I recognise that Mr H feels very strongly here – and has referred to evidence that ADHD isn't a mental health condition. It is not for this Service to make a finding here – we are considering only whether LV fairly reviewed his claim in the light of the new evidence.

I find that it did for the reason given. I note that the special provision stated: *You can ask us to review this exclusion two years after your policy start date. If at that time you've suffered no further symptoms and required no further treatment then we **can** remove this exclusion.* I have emphasised 'can' here – but I think its use is important. 'Can' shows that the removal is possible, and I find that it would have raised an expectation that this would happen. But it is not a promise or commitment.

I am sorry to bring Mr H disappointing news but in all the circumstances I don't find that LV treated Mr H unfairly or unreasonably by not removing the exclusion in the light of the new evidence he submitted.

My decision brings our process to an end in respect of this complaint. But as an aside it might be helpful to Mr H if LV were to indicate to him if it would be prepared to review the exclusion at his request in the future, and if so after what period of time.

My final decision

For the reasons given above my final decision is that I don't uphold this complaint about Liverpool Victoria Financial Services Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 March 2025.

Lindsey Woloski
Ombudsman