

The complaint

Mr W and the estate of Mrs G have complained that Liverpool Victoria Financial Services Limited declined a life insurance claim.

What happened

Mr W and Mrs G applied for a life protection policy in June 2021. Very sadly Mrs G passed away in 2023 and Mr W sought to make a claim under the policy. Liverpool Victoria declined the claim. It said that Mrs G hadn't correctly answered the medical questions on the application form, and had she done so it wouldn't have offered her a policy.

Mr W and the estate of Mrs G appealed. They are represented. They complained they didn't believe that there had been any non-disclosure of medical information and declining the claim was in breach of the policy.

Our investigator didn't recommend that the complaint be upheld. She said that the actions Liverpool Victoria had taken were in line with the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA).

Mr W and the estate of Mrs G's representative asked for the matter to be determined by an ombudsman.

In summary they said that the questions asked were unclear, in particular in relation to the time frames Liverpool Victoria was asking about. The representative also made the point that Mrs G's death was not due to anything related to her mental health. Finally it was argued that there had been no qualifying misrepresentation, but if this wasn't agreed the as a minimum the premiums paid should be reimbursed. The representative also asked for a copy of Mrs G's medical history.

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.

Liverpool Victoria has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably. So I've looked carefully at all the circumstances in order to see if it has treated Mr W and the estate of Mrs G fairly. Having done so I agree with the conclusion reached by the investigator. I'll explain why.

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). I note that the representative here has said that Liverpool Victoria didn't refer to this statute. However I must take the law, amongst other things, into account when determining what is fair and reasonable in all the circumstances of a complaint. CIDRA is the applicable law here.

The standard of care is that of a reasonable consumer. And if a consumer fails to take reasonable care, 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.

Liverpool Victoria thinks Mrs G failed to take reasonable care not to make a misrepresentation when answering the medical questions asked on the application form. The question asked:

Your mental health

In connection with your mental health, have you ever: (Including appointments with psychiatrists or psychologist)

- *Seen or been advised to see a hospital specialist*
- *Attempted or thought about taking your own life*
- *Deliberately harmed or thought about harming yourself*
- *None of these*

Mrs G answered 'none of these'. This was followed by a further question relating to mental health. It asked:

In the last 5 years, regardless whether you've seen a doctor, required treatment or had time off work, have you had Depression or anxiety, Stress, Eating disorder, Another health mental health issue, None of these

Mrs G answered 'Another mental health issue'. She said that she'd had symptoms in May 2021 and was taking medication.

However her medical records show an impulsive overdose in February 2013 where Mrs G was admitted to the ICU for observation and saw the crisis team in hospital and a suicide attempt in July 2009. Thoughts of self harm were recorded in 2007. These occurrences were more than five years from the date the policy was taken out. But it is the second mental health question only that refers to five years, the first question asks 'have you ever...'. I don't find the question to be unclear. I'm satisfied that it was reasonable for Liverpool Victoria to conclude that the answer to the first question should have been positive.

Mrs G was also sent a summary of the questions asked during the application and the answers given. The letter advised that it was very important to check the information and instructions were given as to how to change inaccurate information. No changes were made.

I haven't disregarded the representative's request for Mrs G's medical history. But as the investigator advised this can be requested from Mrs G's surgery or from Liverpool Victoria. Although we can't share the history in full, the relevant parts, relating to her mental health, are set out above. I'm not aware whether the full records were requested from either Liverpool Victoria or from Mrs G's GP surgery, but I note that Liverpool Victoria advised that if Mr W felt any of the information in the record was incorrect, he could meet with the GP to

discuss and if any changes to the record were made, Liverpool Victoria said they would be happy to review. I find this was fair.

And although I can't share the commercially sensitive underwriting evidence Liverpool Victoria has provided, I'm satisfied that had the first mental health question been answered correctly Mrs G wouldn't have been offered a policy at all. So the misrepresentation was a qualifying one. Liverpool Victoria has referred to another misrepresentation – but as I'm satisfied that the policy wouldn't have been offered based on the correct answer to this mental health question alone, I haven't considered that further. I do note that Mrs G didn't die from anything related to a mental health condition, so I understand why the representative has made this point. But had the question been answered correctly the policy wouldn't have been offered at all – so the cause of death is sadly not relevant.

Liverpool Victoria hasn't specifically indicated how it has categorised the misrepresentation, although it has offered to return the premiums paid for Mrs G's part of the policy. This accords with a careless misrepresentation. I think that is fair in the circumstances. It follows that I'm satisfied Liverpool Victoria was entitled to avoid the policy in accordance with CIDRA. I note though that it has said that Mr W's cover will continue – if he doesn't wish it to he should contact Liverpool Victoria directly.

I'm very sorry that my decision doesn't bring Mr W and the estate of Mrs G welcome news.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and the estate of Mrs G to accept or reject my decision before 10 February 2025.

Lindsey Woloski
Ombudsman