DRN-5253045

The complaint

Mr P's complaint is that Liverpool Victoria Insurance Company Limited ('LV') wrongly avoided the motor insurance policy he'd set up and didn't deal with a claim made on it.

What happened

Mr P set up and bought the policy online in May 2023 through a comparison website ('firm A'). He had previously found a policy via the website for his father ('Mr P2') having created an account on it in Mr P2's name. Mr P says he completed the application for cover on his car by entering all the correct details for himself, including his name, occupation, and his no claims discount ('NCD'). When asked if he was the car's owner and registered keeper, he gave the correct answer, which was "Yes".

Mr P didn't notice the application form was populated automatically with Mr P2's name, so the details shown on it when it was submitted showed Mr P2 as the policy holder, and the car's owner and registered keeper. 10 months later Mr P had an accident and LV contacted Mr P2. It found he knew nothing about the policy – and that Mr P owned the car. It said it wouldn't have offered cover had it known the facts. Initially, LV thought Mr P had deliberately misrepresented the situation. Later, it said it thought he'd only been reckless in not taking reasonable care to provide the right details to it. But that meant the policy was still avoided and the claim not dealt with.

When Mr P explained to LV what had happened, LV sought quotes on firm A's website using fictional names. It found that in seeking a second quote (in a different name) the website populated the form with the name of the previous proposer, but that there was an option to edit the details so the second policy could be created in the correct name. Firm A said that previously, its system had only allowed the original account holder / proposer to get quotes.

One of our investigators reviewed Mr P's complaint. He said the relevant law is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). He said CIDRA requires a consumer to take reasonable care to answer questions correctly when taking out a contract / policy, and that the standard of care is that of a reasonable consumer. The investigator said if there was a *qualifying* misrepresentation (one where an insurer could show that it would not have provided cover - or would only have done so on different terms) the insurer's remedies under CIDRA depend on whether the misrepresentation was deliberate, reckless, or careless. He thought there was a qualifying misrepresentation in this case, but he thought Mr P had acted carelessly, not recklessly, which meant LV could still avoid the policy and not deal with the claim, but should return the policy premium to Mr P.

In response, Mr P's representative ('Mr B') said LV's underwriting rules about deliberate 'fronting' by parents didn't apply here, as Mr P was over 40 years old, with a clear driving history and the maximum NCD. He didn't think the premium would have been higher for him than it was for Mr P2 – and he thought LV should have noted the anomalies in the application form. He said LV had tried to mislead us by saying it wouldn't have offered cover to Mr P had known he was the car's owner when it would have done. LV queried Mr P not having asked about the absence of the policy documents at any point.

I issued a provisional decision, not upholding Mr P's complaint, on the following basis:

- I thought the fact that Mr P entered on the proposal form his own email address, his occupation, and his NCD entitlement (as opposed to any details about Mr P2) indicated that he intended LV to have the correct information.
- Even if Mr P thought he'd given the correct details initially, I thought he had a duty to check that the right facts appeared on the form, so LV wasn't misled. I said I thought a reasonable consumer would have checked, and had Mr P done so, he'd have noted that Mr P2 was shown as the proposer / policy holder (and hence the car's owner and registered keeper). So I thought it was fair for LV to say that Mr P didn't take reasonable care and that the information he presented to it was inaccurate and amounted to misrepresentation. I didn't agree with Mr B that LV should have noted that errors had been made – and I pointed out that CIDRA places a duty on consumers to check the facts they've provided are correct.
- I said I agreed with Mr B that the facts in this case didn't support the 'fronting' of the policy. But I thought it was accurate for LV to say that had it known Mr P was the car's owner and registered keeper (*when it had been told that Mr P2 was the policy holder*) it wouldn't have provided cover. I said LV had accepted that there was no deliberate attempt to mislead it, as it had accepted that Mr P acted recklessly.
- I said the claims notes showed that LV's technical team backdated the premium on the basis of Mr P being named as the policy holder (as well as the car's owner / registered keeper) to see what the effect on it was likely to have been. It would almost have doubled, but I thought LV was likely to have offered Mr P cover had all the correct details been provided to it.
- I said there was a qualifying misrepresentation, as having the wrong information meant LV acted differently than it would have done had Mr P's name been shown as the policy holder, and that I thought it was reasonable for LV to conclude that he had acted more than carelessly. Acting recklessly means not caring whether the correct details are provided to the insurer and not caring whether the wrong information will affect its decision. I said I thought it was reasonable for LV to conclude that not checking the application for insurance - and then not checking the policy documents for accuracy - amounted to recklessness. So, subject to any further representations from the parties, I was minded not to uphold Mr P's complaint.

I asked to the parties to comment on my provisional findings.

LV said it had nothing to add. Mr B said Mr P had no reason to check the finished application as he was sure he'd answered the questions correctly - and that it was hard to navigate the application on a mobile phone. He said Mr P had no chance to check the policy documents, as they were addressed to Mr P2. Mr B said LV's final response letter was inaccurate and therefore invalid, as it didn't say Mr P would have had to pay a higher premium, but that it wouldn't have insured the car had it known Mr P was its owner. He said Mr P had been accused of deliberately misleading LV and was placed on a fraud register for a while, but LV hadn't apologised for that. And he said Mr P had no idea of the state or whereabouts of the car's salvage.

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 don't think Mr P or Mr B have provided a compelling reason why Mr P couldn't have checked the details he'd completed on the form, either at the time, or when the documents appeared online. And he could have asked for them to be sent to him by email. I think Mr P should have noted that the policy documents hadn't arrived by post when he got home and queried it. The error about the policy holder would have become apparent then, well before a claim was made on the policy. I don't think it's reasonable for a consumer to assume that they've provided all the correct details, as it's easy to make a mistake when completing a form (especially when using a mobile phone) in my opinion).

In terms of the final response letter from LV, I think Mr P and Mr B may have misunderstood what LV said. The letter was addressed to Mr P2, as LV had been told that Mr P2 was the policy holder. So when LV said it wouldn't have offered cover had it known at the start that Mr P owned the car, *it meant with Mr P2 as the policy holder*. That was the situation it was dealing with. In my opinion, there was no need for it to go further and say in the letter that it would have offered cover to Mr P were he the car's owner *and* the policy holder.

It must have been very upsetting for Mr P to be told that LV thought he'd deliberately misled it, and that his name had been passed to agencies that deal with fraud. On review, LV didn't think the evidence showed the misrepresentation was deliberate, and it said so in its final response letter, having removed Mr P's name from the fraud agencies' registers. I can see why Mr P feels aggrieved, and why he would like an apology. But an insurer is entitled to make decisions it thinks are correct and to change them as appropriate. In the end, LV decided Mr P had acted recklessly, and I think that was a reasonable conclusion to reach.

In terms of the salvage, Mr P told LV initially that he thought his car had been scrapped, and it advised him in its final response letter that in fact it was being held safely by a salvage firm. If Mr P isn't happy about the way LV has handled any aspect of the disposal of his car, he can make a separate complaint about that to LV and if necessary to us.

My final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I must ask Mr P to accept or reject my decision by 10 February 2025.
Susan Ewins
Ombudsman