DRN-5417880

The complaint

Mrs A is unhappy that Liverpool Victoria Financial Services Limited ('LV'):

- cancelled a life insurance policy she held jointly with her husband, Mr A ('the policy'); and
- declined a claim for the life benefit made on the policy after Mr A sadly died.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my decision.

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've also taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract.

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, it's for the insurer to show it would've offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out several 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.

I understand Mrs A's strength of feeling and can see that LV's decision to cancel the policy and decline the claim has greatly impacted her and her family. I have a lot of empathy for what she's going through. I know she'll be very disappointed but for reasons I'll go on to explain, I'm satisfied LV has acted fairly and reasonably.

Was there a misrepresentation?

When applying for the policy, Mr A was asked a number of questions about his health, medical history and lifestyle including:

> Other than what you've already told us about, in the last 3 months have you:
>
> Had any of these symptoms, even if you haven't consulted a doctor?
>
> …any other symptoms you are planning to consult a doctor, medical professional or therapist about?

I'll refer to this as 'the symptoms question'.

I'm satisfied this question is reasonably clear and it's reflected that Mr A answered 'no'.

The medical evidence reflects that Mr A made an 'e-consultation' with his GP surgery in mid-June 2022 about "dull pain just below the ribcage".

It's reflected that he'd had these symptoms for eight weeks and they were getting "slightly worse". A face-to-face appointment was arranged for early July 2022.

Mr and Mrs A answered the application questions around 11 May 2022 so around a month before Mr A contacted his GP surgery and a face-to-face appointment was arranged for July 2022.

When initially answering the symptoms question, although Mr A would've been experiencing a dull pain just below his ribcage, I don't think there's enough to conclude that he was planning to consult a doctor or other medical professional about this then. So, I think he reasonably answered that question 'no' at the time.

However, the insurance schedule reflects that the policy didn't start until 23 June 2022, around a week after the Mr A made the e-consultation and a face-to-face appointment had been arranged.

Mr A was sent a letter from LV on 11 May 2022 enclosing a document reflecting the answers he gave in his application. And in the letter, it says, by completing the application form, Mr A confirms that he'll let LV know if anything is incorrect or changes before the policy starts. It goes on to say:

> If you don't provide complete, accurate or up-to-date information, LV may not be able to pay your claim. Your policy may be cancelled or changed to apply the correct policy terms or you may be asked to pay any additional premiums due.

Under CIDRA, a failure by a consumer to comply with an insurer's request to confirm or amend information previously given is capable of being a misrepresentation.

I'm satisfied that between the date of applying for the policy and the date the policy started, Mr A did have symptoms which he was planning to consult a doctor / medical professional about, so he should've contacted LV to update his answer to the symptoms question.

I'm therefore satisfied LV has fairly and reasonably concluded that Mr A misrepresented the answer to the symptoms question before the policy started.

When making this finding I've taken into account Mrs A's point that LV's letter dated 11 May 2022 also says:

> It's important you tell us about any error or changes within 30 days of the date of this letter. This helps prevent any delays with a claim in the future and helps reduce the risk of us being unable to pay a claim.

She says this isn't consistent with what's written in the letter about letting LV know of any changes to the answers to the questions in the application before the policy starts. And Mr A made the e-consultation after 30 days of the date of LV's letter.

However, I'm not persuaded that what's said is inconsistent. I think it's made reasonably clear in the letter that there was an ongoing duty to disclose any changes to the answers to the questions in the application before the policy started – not just within 30 days from the date of the letter enclosing the answers given in the original application.

Was this a 'qualifying' misrepresentation?

Had the symptoms question been answered correctly, LV has provided underwriting evidence to support that it wouldn't have offered the policy at the time.

I think it's acted fairly by relying on this and I'm therefore persuaded that Mr A's misrepresentation is what CIDRA refers to as a 'qualifying' misrepresentation.

Has LV acted fairly and reasonably by taking the action it did?

LV has concluded that the misrepresentation was reckless. Given the proximity between Mr A making an e-consultation with his GP surgery which resulted in a face-to-face appointment being arranged for the following month and the policy starting, I don't think that's unreasonable.

However, even if the misrepresentation was careless (as opposed to reckless), I don't think that results in a different outcome in the circumstances of this case.

That's because even if the misrepresentation was careless, under CIDRA, LV can do what it would've done if the answer to the symptoms question had been changed before the policy started. LV has cancelled the policy on the basis that the policy wouldn't have started.

I think it's acted fairly and reasonably by doing so as that's in line with the underwriting guidance provided. I'm also satisfied it's fairly declined the claim for the life benefit on the basis that the policy wouldn't have been in place for the claim to have been made.

And although LV has considered the misrepresentation to be reckless, it has agreed to refund the premiums paid for the policy to Mrs A which it didn't need to do. It only needed to do this is the misrepresentation was careless. So, either way, I'm satisfied that it's acted fairly by refunding the premiums.

When deciding this complaint, I've taken into account all other points made by Mrs A including what she says about she and Mr A having life insurance in place before applying for the policy, but they chose to take out new cover around the time of remortgaging their house on the advice of their financial advisor.

I understand why this would be upsetting for Mrs A; if she and Mr A had retained their old policies, and not applied for the policy, she might've been able to make a successful claim on the previous policies. However, I don't think this means that it would be fair and reasonable for LV to accept the claim under the policy when it wouldn't have been in place if Mr A hadn't made a qualifying misrepresentation.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 18 April 2025.

David Curtis-Johnson
Ombudsman