DRN-5572506

The complaint

Ms B complains that Liverpool Victoria Insurance Company Limited ('LV') voided her home insurance policy and didn't pay her claim.

What happened

Ms B took out a home insurance policy underwritten by LV in April 2024. The details of how she took out that policy form the basis of another complaint with this Service – so I won't repeat them here.

Ms B submitted a claim to LV in May 2024 for her cooker hob. LV considered the claim but ultimately declined it and voided the policy. They said this was because while Ms B had disclosed a storm claim from March 2023; LV had identified other claims from 2022 that hadn't been disclosed when the policy was taken out. And they said if they had known about these other claims, they never would have offered to cover her at all. LV also retained the premiums Ms B had paid, as they said she had withheld her claim history deliberately.

Ms B thought this was unfair and complained to LV. She explained that she'd taken out the policy in a branch of her bank and understood the previous claims to be part of the same storm claim she disclosed. LV considered the complaint but didn't uphold it – they said they weren't satisfied Ms B believed the claims were all related to the storm claim she declared as each of the claims were for a different incident and at different times.

Ms B remained unhappy with LV's response to her complaint – so she brought it to this Service. I issued a provisional decision on this complaint, and I said the following:

> *"The relevant law in this case is the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'), which requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance policy. The standard of care is that of a reasonable consumer.*
>
> *If a consumer fails to take reasonable care, and does make a misrepresentation, 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 they 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 for a qualifying misrepresentation under CIDRA depends on whether it was deliberate or reckless, or careless.*
>
> *When Ms B took out the policy with LV, she was asked to disclose her claim history and she disclosed a storm damage claim from March 2023. But LV says that Ms B didn't correctly answer this question when asked at application – because she actually had other claims from 2022 with a previous insurer.*
>
> *So, as I think the principles set out in CIDRA are relevant and it's fair and reasonable to apply these principles to the circumstances of Ms B's claim, that means I need to first*

consider whether Ms B took reasonable care not to make a misrepresentation when she took out the policy.

When considering whether a consumer has taken reasonable care, I need to decide whether the questions they were asked were clear. The question asked was:

> *"Have you or anyone living with you had any home claims in the last 5 years?"*

The description of the question stated "We need to know about any buildings and contents claims that you've made in the past 5 years at any address. These should be before the date you'd like your new policy to start."

The test under CIDRA as to whether Ms B took reasonable care is one of a reasonable consumer, not one unique to Ms B. This means I must consider what a reasonable person would have answered when asked the question she was asked. Having looked at the question asked, I'm satisfied it was clear enough to prompt a reasonable consumer to understand what LV wanted to know. I also think this is supported by the fact that Ms B disclosed a storm damage claim from March 2023 in response to this question.

And overall, I think a reasonable consumer would understand that this question was prompting them to disclose all of their previous claims. But because this didn't happen - I'm satisfied that LV have demonstrated a misrepresentation occurred when Ms B took out the policy.

Turning to whether the misrepresentation was qualifying - LV have provided evidence which shows that, if they had known about the previous claims, they wouldn't have provided cover at all, as it's not within their risk appetite to provide cover in these circumstances. Having considered this evidence, I'm satisfied it shows the misrepresentation was qualifying under CIDRA. So, I think LV is reasonably entitled to apply the relevant remedy available to them.

LV have classed Ms B's qualifying misrepresentation as deliberate or reckless. And under CIDRA, this means they're entitled to avoid the policy, refuse any claims, and retain the premiums paid. CIDRA says that it is for the insurer to show that a qualifying misrepresentation was deliberate or reckless – and LV have said this is demonstrated here due to the following reasons:

- *The claims from 2022 are not similar in circumstance to the storm damage claim.*
- *The claims are not from the same period.*
- *Ms B would have had to speak to her previous insurer several times across several months in order to register and conclude each claim – so it wouldn't be reasonable to believe they are all part of one claim.*
- *Ms B withheld the other three claims, knowing that had she disclosed four previous claims she was likely to either not be given a policy at all or charged a higher premium.*
- *Her testimony was conflicting and contradictory throughout the claim process, which LV felt was done to deceive them further.*

Based on the evidence I've seen; I acknowledge that Ms B's testimony has been conflicting at times and it's been difficult for LV to gather information from her over

the phone. Ms B initially said that she had disclosed her relevant claims history to her bank when taking out the policy, then later told them she had forgotten some of the claims. But when she spoke to LV, she explained that she had thought all of the claims were part of the same storm damage claim that she had disclosed to them.

I recognise making a decision after the event can be difficult. And in situations like this, where the evidence may be incomplete or contradictory, I'll need to make my decision on the balance of probabilities. That is, considering the evidence which is available and the wider circumstances of the complaint. I've thought about this situation very carefully and I've considered Ms B's submissions, her testimony, as well as the submissions of LV.

Overall, I think on balance that Ms B didn't disclose her full claim history when she ought to. And I'm therefore satisfied LV has shown that a qualifying misrepresentation was made, which means they are entitled to the remedy available to them under CIDRA. And as Ms B used a finance agreement to pay for her policy premiums, I think it's fair that they have tried to recover any outstanding balance; given the policy was voided for a qualifying misrepresentation.

However, I don't think that LV can demonstrate the qualifying misrepresentation was deliberate. I appreciate Ms B told LV she thought the previous claims were all part of the same storm damage claim she did disclose. But I'm not persuaded LV can show this was done deliberately, based on the available evidence I've seen. Instead, I think it would be fair and reasonable to class the misrepresentation as reckless. I say this because, based on her own testimony, Ms B would have been aware of other claims but didn't take steps to verify the information she was providing.

I also think this is supported by other testimony Ms B provided in which she explained that she'd forgotten to include a claim for a mobile phone she'd made – but this was because she thought it had been outside of the five-year period asked for. I'm satisfied these explanations demonstrate that, on balance, Ms B likely knew about the other claims and by not taking steps to verify this information, acted recklessly.

I appreciate CIDRA provides the same remedies for a deliberate or reckless misrepresentation. However, this case has an important distinction to make given LV's final response said they retained the right to add Ms B's details to a fraud register. I don't think LV can demonstrate Ms B deliberately withheld her claim history in order to benefit in the way LV has set out. So, I think LV should remove any fraud marker placed against Ms B's name on any external databases if they have done so."

I concluded that I intended to uphold this complaint in part and to direct LV to remove any fraud markers placed against Ms B's name on any external databases. I invited both parties to provide their response to my findings.

LV responded to my provisional findings and said they were in agreement. Ms B didn't respond by the deadline set.

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.

As neither party have provided any additional information for me to consider, I see no reason to depart from the findings that I set out provisionally, which now become my final decision.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part. I direct Liverpool Victoria Insurance Company Limited to:

- Remove any fraud marker placed against Ms B's name on any external databases.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 17 June 2025.

Stephen Howard
Ombudsman