DRN-5645949

The complaint

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

Mrs R has been represented by a family member during this complaint. But for ease of reading, any reference to 'Mrs R' includes submissions made by her representative.

What happened

The following is intended as a brief summary of key events only.

Mrs R originally took out a home insurance policy with LV in 2015, which subsequently renewed each year up until 2023. Mrs R says that when she originally set the policy up, she was specifically asked about previous subsidence claims within the past five years. Mrs R says she disclosed two claims that had been dealt with by her previous insurer, from 1998 and 2008.

Mrs R noticed cracking to her property in July 2023, so she contacted LV to raise a claim. While the claim was initially accepted, Mrs R was unhappy with how LV were dealing with the claim. So, she commissioned her own structural report and submitted this to LV. But after considering this report, LV voided the policy, retained the premiums paid, and declined cover for the claim. They said that Mrs R hadn't told them about the previous subsidence claims and, if she had, they never would have offered to cover her at all. LV said Mrs R's renewal documents from her 2023/24 policy stated that her property - *"Has not suffered from or shown signs of subsidence, landslip or heave."* - but LV said Mrs R hadn't corrected this.

Mrs R felt this was unfair and raised a complaint. She said the policy documents didn't give any detail of how far back this statement referred to, and Mrs R had considered it to be in line with the disclosure she gave in 2015 when she says she told LV about the previous subsidence claims. LV considered the complaint but didn't change their outcome. They said Mrs R had an obligation to ensure all the information LV had on record was correct and Mrs R should have corrected this at renewal. They maintained that they were not told about previous subsidence when Mrs R took out the policy in 2015. Mrs R remained unhappy with LV's handling of her claim so, she brought it to the Ombudsman Service.

An Investigator looked at what had happened and thought Mrs R's complaint be upheld in part. She said was satisfied Mrs R made a qualifying misrepresentation and thought LV's actions were in line with the relevant law, the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). But she also thought LV couldn't demonstrate that the qualifying misrepresentation was deliberate or reckless. She thought it would be fair and reasonable to treat it as careless instead, which would require LV to refund Mrs R's premiums paid for the policy. The Investigator also thought LV should pay £100 compensation for delays in providing their outcome on the claim.

LV accepted the Investigator's outcome and said they had nothing further to add. But Mrs R did not. She provided a response to the Investigator's view – the key points of which were:

- Mrs R maintained that subsidence was disclosed and discussed in 2015 as part of a full discussion over subsidence and any previous claims.
- There was no incentive or intention to conceal anything and Mrs R answered all the questions honestly and fully.
- Mrs R understood the policy statement about signs of subsidence to relate to the five year timeframe LV asked about when she took pout the policy in 2015.
- LV never repeated their questions at renewal, so Mrs R says she could only understand the renewals through the lens of her original discussion with LV.
- There is nothing in the renewal document to clearly and specifically outline what LV were asking for. Mrs R said in an adjacent statement about flooding, the statement uses specific qualifiers such as “as far as you’re aware” and “has never”, which were omitted for subsidence.
- Mrs R raised a contradiction in her policy documents, where the renewal documents issued after she raised her subsidence claim records both the claim and

  simultaneously includes the wording that says “the property has not shown signs of subsidence”. Mrs R says this shows LV do not reliably or accurately record subsidence disclosures in the way that they claim, despite saying they would have done so.

Mrs R asked for an Ombudsman to consider the complaint – so, it’s been passed to me to decide.

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 should first set out that I acknowledge I’ve summarised Mrs R’s complaint in a lot less detail than she has presented it. However, in this decision, I haven’t commented on each and every point raised, but instead I’ve focussed on what I consider to be the key points I need to think about to reach an overall fair outcome. I don’t mean any discourtesy by this; it simply reflects the informal nature of this Service. I assure Mrs R, however, that I have read and considered everything she’s provided, and where I haven’t commented on a specific point, it’s not because I’ve ignored it.

As the Investigator has previously set out, the law relevant to this complaint is The Consumer Insurance (Disclosure and Representations) Act 2012 (‘CIDRA’). This requires a consumer to take reasonable care not to make a misrepresentation when taking out or renewing a consumer insurance contract. 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 a 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.

When considering whether a consumer has taken reasonable care, the ordinarily approach is to decide whether any questions asked during the sales process were clear. However

here, the relevant policy was the renewal from September 2023. Additionally, Mrs R says she was only asked about subsidence when she originally took out the policy with LV in 2015, but LV do not have any records of this. I should also point out that Mrs R says she wasn't asked any specific questions when the policy was renewed each year, as she understood the statement about previous subsidence to relate to the disclosure she gave in 2015.

As such, the key issues in this complaint come down to whether Mrs R, on balance, disclosed her previous subsidence claims in 2015; and whether she ought reasonably to have corrected the information in her renewal documents, specifically the renewed policy from 2023/24. I will address each of these points below in turn, for ease of reference.

Were the previous claims disclosed in 2015?

I should first highlight that I acknowledge there has been some disagreement over how the policy in 2015 was first taken out. Mrs R's testimony is that she recalls speaking to LV on the phone and answering questions when taking out the policy. But LV says that the policy was taken out online.

I've considered the relevant evidence here and I note that LV's system notes show the inception channel is recorded as "web" - but they also acknowledge that while a new sales quote may have been done online, it's possible that Mrs R may have called in to accept the quote over the phone; but they can't search for any calls that far back.

In situations like this, where the evidence may be incomplete or contradictory, I'm required need to make my decision on the balance of probabilities, given the evidence which is available and the wider circumstances of the complaint, as well as how much weight to give to any piece of evidence. Additionally, Under DISP 3.6.1, my remit is to determine a complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case.

On balance, it may be that both of these points are correct. Mrs R may well have taken out an initial quote online and then followed this up over the phone. However, setting this aside for a moment, even if Mrs R did take out the policy over the phone, I think it's more likely than not that she failed to disclose the previous subsidence claims.

I appreciate that Mrs R has referred to an article from online in which another mainstream insurer sets out its own approach to properties with a history of subsidence. That article explains that where subsidence works have been carried out more than five years ago they may still offer cover depending on when the damage occurred and how it has been resolved. Mrs R says that she thinks it is credible that LV, as a compatible mainstream insurer applied a similar approach.

However, as Mrs R acknowledges herself that article is not in relation to LV. And so all I can consider is LV zone underwriting criteria when considering the circumstances of this complaint.

LV's underwriting criteria specifically outlines that for new sales they will not accept any properties of suffered or are suffering for any subsidence, landslip, or heave. There is no mention of a time limit within these criteria, or that LV will accept subsidence as long as it is more than five years old. As such, on balance, I think it's more likely than not previous subsidence claims were not disclosed. Because if they had been, it's likely that LV would have declined to cover at all rather than providing a policy on the basis that no claims had been made in the five years immediately before taking out the policy.

Did Mrs R take reasonable care to consider the information in her renewal documents?

Having looked at the Statement of Fact provided with the relevant renewal documents, I can see that it says:

> ***"Your property details***
> *Is all this information correct? If not, please let us know straight away so we can get it right."*

One of the property details listed said the property being insured: *"Has not suffered from or shown signs of subsidence, landslip or heave."*

So, the question I need to decide is whether Mrs R took reasonable care when considering this information. And it's important to outline that the test under CIDRA as to whether Mrs R took reasonable care is one of a reasonable consumer, not one unique to Mrs R. This means I must consider what I think a reasonable person would have done when presented with this information.

Having looked at the information provided, I'm satisfied it was clear enough to prompt a reasonable consumer to understand that the information was wrong if there had been previous subsidence claims. I've taken on board Mrs R's submissions around what she understood the information to mean in respect of her believing she had disclosed previous claims - but I think a reasonable consumer would have been able to understand that this information was incorrect and should have ensured the answers they were giving were accurate. Given Mrs R says she was aware of previous subsidence claims, I think she ought reasonably to have been aware that this information was incorrect. I'm therefore satisfied that LV has demonstrated a misrepresentation occurred when Mrs R's policy renewed.

Turning to whether the misrepresentation was qualifying, LV has provided evidence which shows that, if they had known about the previous subsidence 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 was reasonably entitled to apply the relevant remedy available to them.

LV initially classed Mrs R's qualifying misrepresentation as deliberate or reckless. Under CIDRA, LV would be 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 is deliberate or reckless. But the Investigator felt that the qualifying misrepresentation was more likely careless in the circumstances – which CIDRA says means an insurer should refund the premiums paid.

Putting things right

Having considered all the available evidence, I don't find that there is enough evidence for LV to demonstrate the qualifying misrepresentation was deliberate or reckless. I also have concluded it would be fair and reasonable to treat it as careless in the circumstances. This means LV is entitled to void the policy and refuse any claims – but they must refund Mrs R her premiums paid.

I also think that their treating the qualifying misrepresentation as deliberate or reckless from the outset was unfair – and I agree this would have caused some additional distress and inconvenience to Mrs R over and above the normal process I would expect to see. As such, I think LV should pay £100 compensation to account for this.

My final decision

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

- Treat the qualifying misrepresentation as careless
- Refund Mrs R's premiums paid
- Pay £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 23 September 2025.

Stephen Howard
Ombudsman