

The complaint

Mr N and Mrs M are unhappy with Liverpool Victoria Financial Services Limited trading as LV's decision to decline Mrs M's claim and unwind their policy.

This complaint is focused primarily on Mrs M and her disclosure at the beginning of the policy's enrolment. And so, for simplicity, I'll refer to all submissions being made by Mrs M personally.

What happened

Mr N and Mrs M took an income protection insurance policy with LV in June 2023. In August 2024, Mrs M was sadly diagnosed with breast cancer and so she claimed on the policy. The claim was declined owing to a non-declared medical condition, Mrs M's fibromyalgia, which was diagnosed in 2021.

Mrs M initially said she mistakenly didn't tell LV about her fibromyalgia as it was well managed and didn't interfere with her ability to work. She later said the diagnosis was incorrect and provided medical evidence to support her argument. She'd like LV to reinstate the policy and reconsider her claim.

LV said when it asked Mrs M why she didn't declare her condition, she accepted this was a mistake and that she often shares her diagnosis when asked. It acknowledged Mrs M has since changed her position and that she provided evidence to suggest the diagnosis was incorrect. But it said she should have reasonably disclosed this at the time of sale, as that was unknown to her at the time. LV said had it known about her fibromyalgia, it wouldn't have offered a policy until she'd been symptom free for at least three years.

Our investigator didn't uphold this complaint. She said the misrepresentation of Mrs M's medical history was careless and that LV's actions were consistent with the relevant law which is the Consumer Insurance Disclosure and Representations Act (CIDRA) 2012. She said Mrs M hadn't been symptom free for three years prior to taking the policy and so LV's decision to unwind the policy and decline the claim was fair.

Unhappy with this, Mrs M asked for an ombudsman to review her complaint. She said, in summary, LV's decision is unfair as she was never diagnosed with fibromyalgia and that it was never clinically confirmed. She also highlighted her diagnosis has been medically rejected by her GP. And so, it's now for me to decide whether the action LV has taken is fair.

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.

Having done so, I've decided not to uphold it and for the same reasons set out by our investigator. I acknowledge Mrs M's argument about the misdiagnosis and why she said LV should continue to offer the policy, but I find this less persuasive because this was unknown to her at the time she took the policy. Mrs M knew she'd been diagnosed with fibromyalgia in

2021 and had suffered related symptoms before the policy was incepted and so she ought reasonably to have declared that at the point of sale. Therefore, LV doesn't need to take any action in this case. I'll explain why.

The relevant law that applies in this case is CIDRA, in summary, it says Mrs M should have taken reasonable care not to make a misrepresentation about her medical history. CIDRA also sets out the actions LV can take should a misrepresentation occur. If LV can show the misrepresentation was a qualifying one – a case of the insurer would have acted differently had it known the full extent of a consumer's medical history – then it can take certain steps to remedy the situation in line with the act.

LV has unwound the policy and returned the premiums to Mrs M, which is in line with the remedy for a careless misrepresentation – rather than the deliberate or reckless category. I should say, having carefully considered Mrs M's reasons for non-disclosure, I'm also persuaded this was a careless misrepresentation, rather than a deliberate attempt to mislead the insurer.

The question LV asked Mrs M at the point of sale was;

*"In the last 5 years, regardless of whether you've consulted a doctor, required treatment or had time off work, have you had:
... Back pain, sciatica whiplash, or anything else affecting your back neck?"*

I'm satisfied this was a clear question that should have been answered differently. Mrs M answered *no* to this question when I'm persuaded she should have provided a *yes* response. I say that because having carefully considered her medical records, I noted she suffered with symptoms, initially thought to be part of her fibromyalgia condition. Her medical records state;

- *19 April 2021 – mentions reported aches and fatigue, low back pain and referral to musculoskeletal clinic*
- *27 October 2021 – mentions ongoing fibromyalgia*
- *8 Sept 2023 – 'muscle pain, back pain (fibromyalgia)*
- *29 November 2023 – 'Background: Fibromyalgia', and was referred for physio assessment of back.*
- *25 October 2024 – 'she has taken amitriptyline the last 2/7 which was prescribed for her fibromyalgia...*

I should also highlight Mrs M hasn't always lived in the UK and her medical records, therefore, are limited and begin from February 2021. Having carefully considered the available medical records from the time she took the policy out in June 2023, I'm persuaded there's enough evidence to show Mrs M ought reasonably to have been aware she'd been suffering with symptoms related to fibromyalgia and therefore should have declared these when asked by LV.

Mrs M originally said to LV she mistakenly didn't mention it at the time, which I'm persuaded is likely the case. But that's still a careless misrepresentation as this was important information to LV which directly affected the terms upon which cover was going to be offered. I'm aware that since then Mrs M has changed her argument about why she didn't mention her fibromyalgia, and I'll address this later, but I can't ignore her earlier response that it slipped her mind.

It's not enough for LV to unwind the policy on that basis alone. It must also show the misrepresentation was a qualifying one. That means LV must show the impact this had on its decision to offer the policy, by showing what it otherwise would have done, had it known the

full extent of Mrs M's medical history. LV has provided sensitive information, from its underwriters, that shows had it known Mrs M had been diagnosed with fibromyalgia and suffered with symptoms of it in 2021, it would not have offered the policy.

Mrs M would have to be symptom free for at least three years before it would consider offering a policy. And so, Mrs M wouldn't have been able to have a policy then, or until at least 2027. Having considered all of this, I'm persuaded LV's decision to decline her claim and unwind the policy was fair because it's in line with the remedial steps set out under CIDRA. This was never a policy Mrs M would qualify for based on her medical history.

Mrs M's subsequent argument about the legitimacy of her diagnosis does little to alter my view on her complaint. I say that because there's no evidence to support that she doubted the diagnosis or challenged it at the time. Rather, Mrs M continued to seek clinical input for her symptoms and be prescribed medication to alleviate them. I should also say Mrs M is from a medical background and so I think it reasonable to suggest she would have been familiar with how to challenge an incorrect diagnosis, or how to amend and correct her medical records if she felt they weren't accurate.

The only time Mrs M challenged the legitimacy of her fibromyalgia diagnosis was after LV declined her income protection claim and rescinded the policy. I'm persuaded this was an attempt to undermine the insurer's decision by challenging the diagnosis on a technicality. I say that because Mrs M made other arguments saying the clinical diagnosis was given without following the correct procedure or protocols, and said technically, the diagnosis should not stand. But I find that argument less persuasive given Mrs M appeared to fully accept her diagnosis and presented as a sufferer of fibromyalgia before that.

Further, I've seen other medical records provided by Mrs M's consultant oncologist which documented, in July 2024, that she suffered with fibromyalgia and that it was generally well controlled. The letter also noted she suffered flare ups in winter months. This further persuades me that Mrs M accepted her medical condition at that time and that she thought it relevant to tell her treating oncologist about it.

I acknowledge Mrs M's recent letter from her GP which said she was misdiagnosed with fibromyalgia in 2021. But that was well after the event of taking out the policy in 2023 and so it doesn't alter my position on this case as at that time, Mrs M was under the impression she had fibromyalgia and sought advice from her GP at different times when her symptoms flared up. And so, she ought to have reasonably declared this when asked by LV at the time.

I don't think that letter helps support Mrs M's case in the way she perhaps thought it would. It could, however, potentially help her source a new policy with LV sooner, as she may not now need to wait three years since her last flare up of fibromyalgia symptoms. But that's a decision for the insurer and not part of the case I'm considering. As this was a joint policy for Mr N and Mrs M, CIDRA says LV is entitled to withdraw the policy altogether, as it would not have offered it at all had it known the full extent of Mrs M's medical history at the time.

My final decision

For the reasons I've explained, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mrs M to accept or reject my decision before 14 February 2026.

Scott Slade
Ombudsman