

The complaint

Mrs D on behalf of the estate of Mr D complains that Liverpool Victoria Life Company Limited (LV) proportionately settled a life assurance claim.

Mrs D is being represented by a third party in bringing the complaint to us. Reference to Mrs D below includes comments from both Mrs D and her representative.

What happened

Mr D took out a life assurance policy with LV which started in December 2021. The policy was taken out through an independent financial advisor. I was sorry to hear that Mr D passed away in May 2022. As a result, Mrs D raised a claim with LV.

LV said Mr D answered questions about his health incorrectly when applying for the policy. LV considered this to be a careless qualifying misrepresentation, which entitled it to proportionately settle the claim.

Mr D brought the complaint to us and our investigator didn't think LV had done anything wrong. They agreed there had been a qualifying misrepresentation and the claim had been settled correctly.

Mrs D didn't agree with the investigator's outcome and has asked for an ombudsman's decision. They provided the following reasons:

- Mr D hadn't acted carelessly and provided the ordinary definition of careless.
- There was no evidence that the premium would have been different had the correct information been disclosed
- Mr D wasn't asked to apply with his medical records in front of him so carelessness should be more than failure to get a fact wrong.
- There is no record of Mr D acknowledging a condition existed or that he was advised of the findings in technical terms.
- Mr D told Mrs D that there were no concerns with his health.
- No record of Mr D being informed of a condition to his bowel or that he had any actions to take.
- No suggestion that Mr D was told about a condition of his liver or that this was a result of alcohol.

The complaint has 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.

At the outset I acknowledge that I've summarised his complaint in far less detail than Mr F has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly. The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). I've thought about whether LV acted in line with these requirements when it proportionately settled Mrs D's claim.

Having done so, and whilst I appreciate it'll come as a disappointment to Mrs D, I've reached the same outcome as our investigator for the same reasons.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer. 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 the insurer has to show it 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 under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

LV thinks Mr D failed to take reasonable care not to make a misrepresentation when he answered the following questions:

- *In the last 5 years have you had any of these: Crohn's, Colitis, IBS or anything else affecting your stomach, bowel or digestive system; kidney stones, urinary infection or anything else affecting your kidneys, prostate, bladder or urine, anything affecting your liver or pancreas?*
- *Have any of these applied to you: I have been advised by a medical professional to cut down or stop drinking alcohol.*

Mr D answered both of the above questions no.

I've looked at Mr D's medical records and have noted the following entries:

- June 2017 – intermittent abdominal issues and heavy drinking at weekends.
- July 2017 – further complaint about abdominal issues. Ultrasound confirmed abnormal liver and pancreas; Friday/Saturday nights drinks 4-5 pints each night and two nights during the week drinks 2 pints. Advised to reduce alcohol intake.

- June 2019 – diagnosed with a condition of his digestive system
- March 2022 – bloating several years

Based on the questions asked, the answers given and Mr D's medical history, I don't think Mr D took reasonable care. I think that the above questions are clear and unambiguous. This means there was a misrepresentation.

Mrs D has said that Mr D didn't have his medical records in front of him when completing the application. I think this validates that Mr D didn't take reasonable care as if he had sought his records, he might not have answered the questions incorrectly. Mr D was also suffering from bloating at the time of the application and had done so for several years. Mrs D has also said that she was told by Mr D that there were no concerns with his health. This might be the case, and I don't doubt Mrs D's recollection. However, the first question simply asks if the applicant has had anything affecting them, not about medical concern. I'm satisfied that Mr D has something affecting his digestive system which should have been disclosed.

Under CIDRA, after establishing there has been a misrepresentation, it needs to be confirmed if it was qualifying. This means, had the correct information been given, would the terms of the policy offered been impacted.

LV has provided the relevant parts of their underwriting manual as well as the comments from their underwriting department. I note the point made in response to our investigator's view regarding underwriting evidence. I'm afraid I can't share the evidence in full here, as it's commercially sensitive, but I'm satisfied that had LV been aware of Mr D's medical history it would have applied a premium loading. This shows that LV would've still offered Mr D cover but would've done so for a higher premium. This means I'm satisfied Mr D's misrepresentation was a qualifying one.

LV has said that Mr D's misrepresentation was careless. As a careless misrepresentation offers the most favourable outcome for a consumer, I find that it was reasonable for the misrepresentation to be classified as careless. Mrs D has provided the ordinary definition of careless and has said based on this, she doesn't think Mr D was careless. Under CIDRA, when a misrepresentation is qualifying, it can only be categorised as deliberate, reckless or careless. CIDRA gives a definition for deliberate and reckless. It states that if the misrepresentation isn't either deliberate or reckless, then it should be deemed to be careless. Careless is the lowest category of qualifying misrepresentation under CIDRA. The dictionary definition of careless in this instance isn't applicable. I find that LV's categorisation of careless under CIDRA was fair.

As I'm satisfied Mr D's misrepresentation should be treated as careless, I've looked at the actions LV can take in accordance with CIDRA. Under CIDRA, where the misrepresentation is deemed careless, there has been a claim and the insurer would have charged more, the insurer is allowed to pay the claim proportionately. Therefore, I'm satisfied LV was entitled to take the actions they have. I've reviewed the proportionate settlement amount and find that LV have acted fairly and in line with the calculation set out in CIDRA.

My final decision

For the reasons set out above, I've decided not to uphold Mrs D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr D to accept or reject my decision before 30 May 2024.

Anthony Mullins
Ombudsman