DRN-4428700

The complaint

Miss P has complained that Liverpool Victoria Financial Services Limited (LV) declined a terminal illness claim she made under her life insurance policy.

What happened

The background to this complaint is well known to the parties. In summary Miss P claimed on the policy she had applied for in 2021. LV declined the claim as it said Miss P had not answered a medical question correctly when the policy was taken out. It cancelled her policy and refunded the premiums paid. Unhappy, Miss P referred her complaint here.

Our investigator didn't recommend that the complaint be upheld. Miss P appealed. Miss P is represented, but for simplicity I shall just refer to representations as being made by Miss P.

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 summarised the background to this complaint and focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. I recognise that Miss P will be very disappointed by my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This 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.

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 bea 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.

When applying for the policy in 2021 Miss P was asked:

In the last 5 years have you had any of these? Asthma, sleep apnoea or anything else affecting your lungs or breathing…?

Miss P's medical notes show that she had a number of appointments with respiratory consultants over the years including in 2016 (but within 5 years of the policy starting) and2018. These indicate a suspected diagnosis of respiratory bronchiolitis associated interstitial lung disease, RBILD.

I do appreciate that Miss P may not have been given this medical diagnosis. But I'm satisfied that the question was clear. I don't find that LV was wrong to conclude she must have been aware of issues with her lungs for which she had been referred to specialists, even if she didn't know the diagnosis. Additionally, her medical notes contain several references to asthma in the five years before the policy commenced. In the circumstances I don't find it was unreasonable for LV to conclude that the question should have been answered positively.

LV has provided underwriting evidence that shows had it known that Miss P had a history of asthma it would have requested further details from her GP. This would have shown the diagnosis referred to above and Miss P's smoking history. Having seen the guidance and referral to its chief medical officer, I'm satisfied that with the medical information it would have then had, LV wouldn't have offered Miss P a policy.

So I find that the misrepresentation was a qualifying one under CIDRA. LV has said it believes this was careless (rather than deliberate or reckless) and I agree this was fair. As it wouldn't have offered Miss P any cover had the medical question been answered correctly, LV has followed the guidance under CIDRA by cancelling the policy and refunding the premiums Miss P paid.

In all the circumstances I don't find that LV treated Miss P unfairly or unreasonably. It follows that I don't require it to take any further action. I'm very sorry that my decision doesn't bring Miss P more welcome news.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 22 December 2023.

Lindsey Woloski
Ombudsman