DRN-4197027

The complaint

Mrs N, through her representative, complains that Liverpool Victoria Financial Services Limited (LV) unfairly declined insurance claims she made following the death of her husband.

What happened

To summarise, in April 2020, Mr and Mrs N took out a joint decreasing term life insurance policy to protect their mortgage. Mr N also took out a level term life insurance policy. The policies were taken out through a broker, following a telephone meeting in March 2020.

Very sadly, in January 2022, Mr N died. In February 2022, Mrs N sought to claim on the policies. LV declined the claims. It said Mr N hadn't accurately answered questions asked during the application process about his lifestyle and health - specifically, about mental health and alcohol use. It considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to avoid his policies, decline the claims because of this and keep the premiums already paid.

Mrs N brought a complaint to the Financial Ombudsman Service. Our investigator didn't think it should be upheld. He agreed there had been a qualifying misrepresentation. He also agreed it was deliberate or reckless and that LV was entitled to avoid the policies and retain the premiums paid.

Mrs N didn't accept the investigator view. She disagreed with the interpretation of the medical evidence and said Mr N had answered every question to the best of his knowledge and understanding. She also said that the 'information you have provided' document sent to her and Mr N after the policies commenced wasn't clear. She asked for an ombudsman's decision.

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'm not upholding this complaint. I know this will be extremely unwelcome news for Mrs N and I'm very sorry about that. I'll explain my reasons, focusing on the points and evidence I consider material to my decision. So, if I don't refer to a particular point or piece of evidence, it's not because I haven't thought about it. Rather, I don't consider it changes the outcome of the complaint.

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 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 N failed to take reasonable care not to make a misrepresentation when he gave 'no' answers to the following questions:

> *'Have you ever taken an overdose of drugs, attempted suicide, attempted to harm yourself, or had any thoughts or intentions to do so?'*
>
> *'Have any of these applied to you?*
> *I've been advised by a medical professional to cut down or stop drinking alcohol, I've been referred for alcohol or drug specialist supports such as Alcoholics Anonymous, I've used recreational drugs in the last 10 years?*

There was also some disagreement about whether Mr N should've disclosed a diagnosis of COPD. His GP subsequently commented that Mr N may well have been unaware of the diagnosis prior to taking out the policy. However, LV has said this issue didn't have a bearing on its decision to avoid the policies, so I'll only be considering the suicide/self-harm and alcohol/drugs questions in my decision.

I've reviewed the medical evidence carefully. I'll focus initially on the question relating to Mr N's state of mind, although the same medical evidence is relevant to both key questions. In early 2020, Mr N participated in three telephone treatment sessions with a mental health service provider, before being discharged back to his GP as his preference was for face-to-face contact - at the time not possible due to the pandemic. Mr N's presenting problem was depression.

In a letter to the GP, dated 6 April 2020, the practitioner records that during treatment Mr N reported '*no suicidal thoughts'* and, in respect of suicide/self-harm, *'no historical attempts.'* The practitioner goes on to record:

> *'[Mr N] reported self-harm historically through alcohol. Signposted Mr N to [named alcohol/drugs service]. He stated he was attending AA meetings, however these had stopped following Covid-19. He said there was a lot of shame in relation to use of alcohol, however described in our telephone contact that this was currently under control. He stated that his GP was aware of his use of alcohol.'*

Within three weeks of the policies commencing, Mr N had attempted to harm himself twice. He was seen by a crisis team on 7 May 2020. Under a section entitled *'mental state examination: thoughts'* the practitioner records:

> *'generally negative, ruminating thoughts, reports ongoing suicidal thoughts for some months and again states that drinking improves his mood and make[s] him feel normal.'*

In the *summary of assessment* section, the practitioner further notes that Mr N admits he has been self-medicating with alcohol for several years.

Mr N was referred for further support and at an assessment on 13 May 2020, reported that he *'currently does not have thoughts of ending his life and wants to focus on trying to change his situation.'* He subsequently engaged in community treatment and was recorded as being abstinent from alcohol in July 2020.

Mrs N has pointed out what she sees as a discrepancy and inconsistency in these records. I can understand her point of view, but I don't agree with it. The mental health and treatment practitioners are simply recording what Mr N said to them at the time. The full record for 7 May 2020 shows that, in the aftermath of a second self-harm episode, Mr N was frank in discussing his mental health and alcohol issues. And his reference to 'ongoing suicidal thoughts for some months' indicates that those thoughts likely predated the start of the policies, something which ought to have triggered a positive response to the question about suicide and self-harm.

I'll turn now more specifically to the question relating to alcohol and drugs. There's been some debate regarding Mr N's acknowledged attendance at AA and whether this was self-referred or a referral from his GP. Mr N told his broker he referred himself to AA. In a letter to LV dated 5 July 2022, his GP said Mr N was *advised on referral to alcohol services in November 2019*, but went on to state that *he was referred to alcohol special services in June 2020*. I acknowledge this distinction. However, to me, the significant element of the question is whether Mr N had been advised by a medical professional to cut down or stop drinking alcohol.

In the July 2022 letter to LV, Mr N's GP states:

> *'We can confirm that [Mr N] unfortunately did drink alcohol in excess and had been advised on several occasions to reduce his alcohol intake. He was advised regarding his alcohol intake in March 2018…April 2018…[and] again…in November 2019.'*

In the same letter, Mr N's alcohol intake is recorded in October 2018 as 30 units per week and in November 2019 as approximately 72 units per day.

After the policies commenced, LV sent Mr and Mrs N policy documentation, including an 'information you have provided' form, showing their application answers. Mrs N has said the form isn't clear because it also includes previous answers given during the application process, but not forming part of the application information relied upon. LV has said that it can only take into account, in other words, base cover on the final answer submitted.

I've looked at this and can see that, specifically, under a section entitled *'questions answered but no longer included in your application'* it shows that the answer regarding alcohol support was initially answered 'yes'. I understand it was changed to 'no' following a discussion with the broker about whether this was a self-referral or on medical advice. The information about historic answers comes towards the end of the document, under a heading stating it is information no longer included in the application. So I don't accept that the information later sent to Mr and Mrs N by LV wasn't clear. But in any event, the medical evidence shows that Mr N had been advised to reduce his alcohol intake on several occasions – something which ought also to have triggered a positive answer to the alcohol/drugs question.

In respect of both his mental health and alcohol history, I think Mr N failed to take reasonable care not to make a misrepresentation when applying for the policies. So I now need to consider whether the misrepresentation was a qualifying one under CIDRA, that is, would LV have come to a different decision about cover had it been given correct information.

LV has provided evidence from its underwriting guidance. This shows that if Mr N had declared his suicidal thoughts LV would've postponed his application for two years. However, regarding the alcohol/drugs question, the advice to reduce his consumption, coupled with the levels recorded in the months prior to taking out the policy, would've resulted in a decline. That is, LV would not have offered cover at all. So I'm satisfied Mr N's misrepresentation was a qualifying one.

LV has treated the misrepresentation as deliberate or reckless. Under CIDRA this means the customer knew or didn't care whether the information given was untrue or misleading; and knew it was relevant to the insurer or didn't care whether or not it was.

Industry guidance from the Association of British Insurers says since lifestyle information – such as alcohol history – is usually more familiar and easier for customers to understand, it follows that there should be a particularly credible and convincing explanation for clearly evidenced misrepresentation not to be classified as deliberate or reckless.

Given the history of Mr N's mental health and alcohol issues, the medical evidence, including recorded self-report evidence from Mr N, and the proximity to the application of advice to reduce his intake, I think it was reasonable for LV to treat the misrepresentation as deliberate or reckless.

CIDRA sets out the actions an insurer can take where a misrepresentation is deliberate or reckless. LV has acted in line with CIDRA by avoiding Mr N's policies, declining Mrs N's claims and retaining the premiums paid. I think that was reasonable in all the circumstances. I'm therefore not going to ask LV to do anything more in respect of this complaint.

Once again, I'm sorry to send what I'm sure will be very difficult and disappointing news for Mrs N.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 2 August 2023.

Jo Chilvers
Ombudsman