DRN-4532472

The complaint

Mr and Mrs K complain because Liverpool Victoria Financial Services Limited ('LV') hasn't paid a claim under a flexible protection plan and has cancelled Mrs K's insurance policies.

What happened

Mr and Mrs K took out a flexible protection plan, consisting of life and critical illness insurance policies, through an independent broker in 2018. The policies were underwritten by LV.

In early 2022, Mrs K tried to make a critical illness claim with LV. LV initially said the claim wasn't covered because Mrs K hadn't been diagnosed with a critical illness as defined by the policy. After carrying out further investigations, LV said Mrs K hadn't told it when taking out the plan that she'd been diagnosed with epilepsy in March 2018 and, if she had, it wouldn't have offered her any insurance cover. LV cancelled the plan, refunded Mrs K for the premiums she'd paid and arranged for a new plan to be set up for Mr K.

Unhappy, Mr and Mrs K brought a complaint about LV to the attention of our service and one of our investigators looked into what had happened. She said she didn't think LV had acted unfairly or unreasonably by declining Mrs K's claim and cancelling her policies. However, our investigator recommended that LV should pay Mr and Mrs K £500 compensation because she wasn't satisfied that LV had sent them a copy of the completed insurance application summary so they could check what answers had been recorded in response to the medical questions asked.

Mr and Mrs K accepted our investigator's recommendations but LV didn't, so the complaint has been referred to me as the final stage in our process.

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.

Mr and Mrs K have also brought a complaint to our service about what they say was the broker's failure to pass relevant medical information to LV when selling the flexible protection plan. Mr and Mrs K's complaint about the broker is being considered separately by our service, under a different complaint reference number. When making my final decision about this complaint, I'm only considering the regulated activities which LV, as the underwriter of Mr and Mrs K's plan, is responsible for.

When considering LV's actions in this case, I've taken into account the relevant law (The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA')). I've also had regard to good industry practice about managing claims for misrepresentation and treating customers fairly (namely, the April 2013 Code of Practice set out by the Association of British Insurers ('ABI')), as well as what I think is fair and reasonable in all the circumstances.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care required is that of a reasonable consumer. If a consumer (or a broker acting on a consumer's behalf) fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a 'qualifying misrepresentation'. For a misrepresentation to be a qualifying one, the insurer must 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 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.

LV thinks Mrs K failed to take reasonable care not to make a misrepresentation. This is because Mrs K's medical records show she was diagnosed with epilepsy in March 2018, but the answer given to the following question on the insurance policy application form submitted to LV in June 2018 was 'no';

> *'In the last 5 years, regardless of whether you've seen a doctor, required treatment or had time off work, have you had:*
>
> *…*
>
> *Multiple sclerosis, epilepsy, Parkinson's disease or any other neurological condition?'*

Our service has issued a final decision in which I said I found it likely that Mr and Mrs K told the broker about Mrs K's epilepsy diagnosis and the broker failed to pass this information on to LV. So, I accept that the error in the answer given to the above question wasn't Mr and Mrs K's. But the broker acting on behalf of Mr and Mrs K, and not LV, is accountable for the misrepresentation. So, LV is entitled to apply the remedies available to it under CIDRA based on the answers that were presented to it – regardless of whether any mistake was Mr and Mrs K's or the brokers.

I'm satisfied with the evidence which LV has provided to our service showing, if it had been told about Mrs K's epilepsy and the results of an MRI scan in April 2018, it wouldn't have offered Mrs K the flexible protection plan.

This means that a qualifying misrepresentation under CIDRA was made to LV. LV has treated the misrepresentation as careless and, as such, CIDRA allows LV to avoid the contract and refuse all claims subject to the return of the premiums paid for the insurance. This is what LV has done and I don't think LV has acted unfairly or unreasonably in the circumstances. So, I won't be directing LV to pay Mrs K's claim and/or to reinstate her policies.

However, based on all the information I've seen, I think it's more likely than not that LV didn't send Mr and Mrs K a copy of the insurance application summary that was completed in June 2018. Mr and Mrs K have, I think, been consistent and plausible in their testimony about not receiving a copy of this application summary with correspondence received that month. I understand LV say their process is for an application summary to be sent to policyholders but LV hasn't been able to provide any evidence that Mr and Mrs K were given an opportunity to check the answers provided in the June 2018 insurance application as I think they should have been and, according to LV's internal notes and an email between LV and the broker, there's no record of this application summary being sent to Mr and Mrs K. I don't think the fact that Mr and Mrs K received a copy of a previously completed application summary is relevant to my decision, as the contents of that previous application summary aren't in dispute. And I don't think the onus was on Mr and Mrs K to query with LV why they

hadn't received an updated insurance application summary. Instead, I think the responsibility was on LV to make sure they were provided with this.

Therefore, I'm satisfied it's likely that Mr and Mrs K were unable to check the answers given to LV in response to the medical questions asked in June 2018. If Mr and Mrs K had been provided with a copy of this completed insurance application summary by LV, I think they would have been in a position to realise at a much earlier point that there'd been a mistake. Instead, Mr and Mrs K didn't discover an unexpected shortfall in their level of financial protection until a number of years later, at what was already a very difficult and stressful time due to Mrs K's illnesses.

Overall, I think it would be fair and reasonable in the circumstances for LV to pay Mr and Mrs K £500 compensation for the considerable distress and inconvenience they experienced as a result.

Putting things right

Liverpool Victoria Financial Services Limited needs to put things right by paying Mr and Mrs K £500 compensation for the distress and inconvenience they experienced.

Liverpool Victoria Financial Services Limited must pay the compensation within 28 days of the date on which we tell it Mr and Mrs K accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I'm upholding Mr and Mrs K's complaint about Liverpool Victoria Financial Services Limited and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 26 January 2024.

Leah Nagle
Ombudsman