

The complaint

G's complaint is about claim on its New India Assurance Company Limited Care Homes Policy.

G says the policy should have engaged when the Care Quality Commission issued a notice proposing to cancel its license.

G is helped by a representative in this complaint, but for ease of reading I shall refer to G's submissions as its own.

What happened

In 2018 the Care Quality Commission issued a notice proposing to cancel G's license and registration following a negative inspection rating. Shortly afterwards, the local authority removed the residents living at G. Without its residents, G was unable to continue running and went into administration later that year.

G is unhappy because it feels its New India policy should have engaged. Specifically, it has cited Section 12 of that policy which covers loss of registration of certificate.

New India didn't respond to G's complaint about this matter when it was raised. An investigator considered G's complaint against New India and concluded that it shouldn't be upheld. She said that New India hadn't declined G's claim under Section 12 of its policy; rather it had asked for copies of all correspondence exchanged with the Care Quality Commission and G hadn't provided this. As things stood, she said it wasn't unreasonable that New India hadn't considered the claim because they weren't able to make a decision.

G isn't happy with this. It feels that New India didn't do enough to request further information from it when the claim was made and that they should have revisited things when G made its complaint about this. G says that New India are seeking to get out of the claim nearly four years after it was made by saying it needed further information that was never requested.

Because G doesn't agree with the investigator's view, the matter has been passed to me to determine.

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 won't be upholding G's complaint. I'll explain why.

When G advised of a potential claim to New India, it did so through its insurance broker. Having considered the correspondence between the broker and New India, I'm satisfied that the broker was, for all intents and purposes, acting as G's agent in making the claim. New India did indicate that it thought this was a claim that wouldn't be covered under the policy, but it also asked for copies of all correspondence between G and the Quality Care Commission to consider things.

G's broker provided one letter from the Quality Care Commission to G in response, but it didn't provide all of the correspondence requested or confirm that there was no further correspondence to send. Because of this New India didn't formally decline the claim. Rather its last email to G's broker pointed out that it wasn't in receipt of all the correspondence it requested. Because of this it neither declined or accepted the claim. That was nearly four years ago.

G feels that further information should have been requested from G directly rather than through its insurance broker by New India. But G's broker was acting on G's behalf when making an enquiry about cover. So, I think it was reasonable for New India to take the view that its position had been communicated to G. If that didn't happen, that's a matter that G will need to take up with its broker and is not an issue I can determine within this complaint.

G is also unhappy that New India didn't then ask for the information it required to review the claim when it complained about its actions. As the investigator said, this Service can't consider complaints about the way in which a business has handled a complaint. At that stage G was making a complaint. And whilst it's right that New India didn't provide a response, the rules that govern this Service mean that we were able to look into things 8 weeks after G's complaint was made. It's right that New India could have considered the claim again and told G again that it needed further information but I can't comment on or determine what it should have done at that stage because that falls out of my remit.

I know G has taken the view that the investigator didn't properly consider its complaint when reaching her conclusions. G has had the benefit of the correspondence the investigator considered, which I agree with. If G wants New India to consider its claim, then it will need to provide New India with copies of all of the correspondence requested between it and the Quality Care Commission. If there is nothing further to send, then G should confirm this to New India.

I know New India has indicated that G's claim is unlikely to be one which attracts cover under the policy because G was placed in special measures around seven months before it notified New India of a claim and the policy contains a condition that policy holders must immediately notify them of actions like this. So, it's possible that New India will decline G's claim on receipt of the information requested. That's not something I can address in this decision save to say that if G remains unhappy it should raise its concerns with New India in the first instance. If New India can't resolve things, then G will be entitled to complain to this Service.

My final decision

For the reasons set out above, I don't uphold G's complaint against The New India Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 7 December 2022.

Lale Hussein-Venn
Ombudsman