DRN-4721405

The complaint

Miss B is unhappy that Exeter Friendly Society Limited declined an income protection insurance claim and cancelled her income protection insurance policy ('the policy').

What happened

Miss B applied for the policy through a third party in mid-2022.

When doing so, she answered a number of questions – including about her health and medical history. Based on the answers given, Exeter offered the policy to her.

Early in 2023 Miss B sought to make a claim for the monthly benefit payable under the policy. That claim was subsequently declined by Exeter. It concluded that when applying for the policy Miss B didn't answer certain questions correctly about her medical history. And if she had, it wouldn't have offered her the policy. So, it cancelled the policy and offered to refund Miss B the premiums she'd paid the for the policy.

Miss B complained to Exeter and after it maintained its position that it had acted fairly, she brought a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and ultimately didn't uphold Miss B's complaint. Miss B disagreed so her complaint has been passed to me to consider everything afresh and 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.

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. 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 (in this case Exeter) 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.

I know Miss B will be very disappointed but, overall, I think Exeter has acted fairly and reasonably by cancelling the policy and declining the claim. I'll explain why.

Did Miss B make a qualifying misrepresentation?

When applying for the policy, Exeter says Miss B would've been asked a number of questions including:

> Apart from anything that you have already told us about, in the last 5 years (**regardless of whether you've seen a doctor, required treatment or had time off work**) have you had any of the following (**my emphasis**):
>
> - Back pain, neck pain, sciatica, whiplash or anything else affecting your back or neck?
>
> This includes: arthritis, slipped disc, sciatica and whiplash.
>
> - Any form of arthritis, joint pain, gout or anything else affecting your bones, joints, ligaments, tendons or muscles?
>
> Including any conditions or pain affecting your shoulders, knees, hips, ankles, wrists or hands.
>
> - Anxiety, depression, stress or any other mental health issue (including but not limited to work stress, low mood, depression)?

I know Miss B says the questions aren't the same as the ones she was asked, but I'm not persuaded by that. The questions are contained in the application summary sent to the third party who arranged the policy for her, and they were told to let Exeter know if anything was incorrect.

It's reflected Miss B answered 'no' to these medical questions.

When reviewing the claim against Miss B's medical records and other available information, Exeter concluded that she should've answered 'yes' to these questions. Miss B doesn't agree with that.

I'm satisfied that Exeter has acted fairly and reasonably by concluding that the above questions had been answered incorrectly. That's because:

- A letter from a consultant physician and rheumatologist dated early 2023 reflects that since 2008, Miss B has had a number of health problems. It also says: "she feels generally stiff all day, which affects her lower back, right hip, area, neck, shoulders and hands". And "her other problem is of recurrent back pain that can be associated with urination issues". I accept that this letter is dated around six months after applying for the policy and it doesn't give a specific date of when Miss B had stiffness in her back, hip, neck and shoulders. It's possible this could've been historical and more than five years before applying for the policy. It could've also only started after the policy was applied for. However, given that the consultant has said "she feels generally stiff all day" in those areas, I think Exeter has fairly and reasonably concluded in the circumstances of this case that it's likely – on the balance of probabilities – that Miss B was experiencing issues regarding her neck, shoulders and back within the five years before applying for the policy. I think that's also supported by a social media post made by Miss B in the months leading up to applying for the policy saying that she has terrible shoulder and neck pain and asking if anyone knew a good chiropractor.
- In the summer of 2021 Miss B was seen by the trauma and orthopaedics

department as she'd been injured by an animal in her inner thigh 8 weeks before. She was experiencing swelling and it felt uncomfortable. There's also evidence of Miss B's GP making a referral in relation to a more recent injury to her knee in September 2022 – so shortly after applying for the policy. It reflects that Miss B injured her knee last year and that she'd "not fully recovered". And the consultant orthopaedic surgeon also said in a letter dated October 2022 that Miss B has been having some issues with her knee for over a year now following an incident when an animal fell onto her knee. So, although the medical evidence supports that further treatment was needed on her knee after applying for the policy – as a result of an unrelated incident at the gym – the overall medical evidence persuades me that she should've declared having a knee condition when applying for the policy.

- Miss B's social medial post, dated around six months before applying for the policy, describes in detail her "crippling anxiety" and from what she's written, I think Exeter has fairly concluded that the anxiety was more than a one-off event. She concludes: "anxiety is something I'm trying to live with and manage so I get back to feeling like my old self".

Exeter has said that Miss B also failed to declare other medical issues when applying for the policy. But I'm satisfied that I don't need to make a finding on those issues to reach a fair and reasonable decision on this complaint.

That's because Exeter has provided underwriting evidence reflecting that had Miss B answered the above questions correctly, it would've applied certain exclusions to the policy. I'm persuaded by this evidence. I'm also satisfied that it's been able to establish that based on the number of exclusions that would need to be added, it wouldn't have gone on to offer the policy to Miss B at the time.

I'm therefore satisfied that the answer to these questions mattered to Exeter and so, by answering them incorrectly, Miss B's misrepresentation amounted to a qualifying misrepresentation under CIDRA.

Cancelling the policy and declining the claim

I'm satisfied that the misrepresentation was careless rather than deliberate or reckless, as Exeter has already concluded.

I've looked at the actions Exeter can take in line with CIDRA. Under this legislation it's entitled to act as it would've done if it had been told about the information when applying for the policy. As I'm satisfied that the policy wouldn't have been offered to Miss B, I don't think Exeter has acted unfairly and unreasonably by cancelling the policy.

Having fairly cancelled the policy and treating it as never being in place, I'm also satisfied that Exeter has fairly and reasonably declined the claim.

Exeter has also agreed to refund the premiums paid for the policy. I think that's fair and reasonable, and in line with what I'd reasonably expect it to do.

Other issues

Miss B did declare some conditions when applying for the policy and Exeter did ask further questions of her GP about one of these declared conditions before the policy started. Upon receipt of that information, it agreed to offer her the policy.

However, I'm not satisfied that just because Exeter requested further information about one declared condition, it ought to have requested Miss B's entire medical history to ensure that there wasn't anything which could've affected it decision to offer cover. I don't think it had any reason to suspect that Miss B hadn't answered questions correctly at that stage and there's no obligation (legal, regulatory, or otherwise) for Exeter to consider Miss B's entire medical history before offering her the policy.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 6 June 2024.

David Curtis-Johnson
Ombudsman