

The complaint

The estate of Ms M complains that ReAssure Limited declined a claim she made on a Crisis Cash Cover policy.

What happened

Ms M had a Crisis Cash Cover policy which included cover for serious and critical illnesses.

Ms M was diagnosed with Multiple Sclerosis (MS) and claimed on the policy. ReAssure declined the claim and relied on an exclusion in the policy. They said that Ms M had medical issues and symptoms before she took out the policy in July 2004. Ms M referred her complaint to the Financial Ombudsman Service.

Unfortunately, Ms M sadly died during the time that her complaint was made to the Financial Ombudsman Service. Our investigator looked into the complaint made by Ms M's estate and upheld it. The investigator didn't think ReAssure had fairly relied on the exclusion and so he didn't think the claim had been fairly declined. He recommended ReAssure pay the claim and 8% simple interest per annum.

ReAssure didn't agree and asked an ombudsman to review the complaint. They highlighted the medical evidence they felt supported their decision and the commentary from their Chief Medical Officer.

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 rules and industry guidelines say that ReAssure has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

When Ms M took out the policy she wasn't asked screening questions about her medical history. ReAssure has relied on a policy exclusion and so it's for them to demonstrate, on the balance on probabilities, that they've relied on the exclusion fairly.

The relevant exclusion says:

“Benefit will not be paid for claims arising directly or indirectly from any of the following:

A condition for which the insured person had previously received investigation or treatment, or which had previously been diagnosed, or of which they were aware, prior the commencement of the Policy.

I don't think ReAssure has fairly relied on this exclusion because:

- At the point that Ms M took out the policy she had not been diagnosed with MS. There are discrepancies as to when the diagnosis took place. There is

reference to the diagnosis being in August 2005, 2008 (no month is specified) and Ms M's father recalled the diagnosis taking place in 2007. However, all post date the policy being taken out.

- I've considered the available medical evidence and I'm not persuaded Ms M was investigated or treated for MS before the policy commenced. In 2003 Ms M had symptoms of a tremor but this was attributed to medication she was taking at the time. The symptoms also improved when the dosage of the medication decreased. So, I don't think it's fair to conclude this was investigation or treatment for MS.
- Ms M was also referred to a neurologist in August 2004 following a fall around 12 weeks beforehand. ReAssure suggests that this means she was investigated or treated and so the exclusion applies. Ms M was experiencing symptoms including weakness in her legs, swelling in her ankles and feeling unbalanced. However, she was not investigated or treated for these issues until after the policy commenced. There is also reference to a previous episode of ankle swelling and weakness approximately 9 years beforehand. But, on a strict application of the policy terms, the exclusion doesn't apply as Ms M wasn't investigated or treated for MS and nor was she aware of it.
- I've thought about whether it would be fair and reasonable to depart from the policy terms and conditions. I don't think it is because it was open to ReAssure to draft the terms and conditions to encompass situations where a policyholder had experienced symptoms connected to their diagnosis. They didn't do so and I think it would be unfair to deprive Ms M of the benefit of the policy in such circumstances.
- ReAssure has also argued that had the policy been underwritten then the application would have been postponed until the cause of the symptoms was established. They said that a diagnosis of MS would have resulted in critical illness cover being declined. But ReAssure told the Financial Ombudsman Service in previous correspondence that this was not an underwritten policy and made the point that the principles of mis-representation didn't apply. I don't think it would be fair to retrospectively apply an underwriting criteria to Ms M's policy when it wasn't a policy which was underwritten when she took it out. So, I haven't been persuaded by ReAssure's representations on this point.
- I can see that in the final response letter (issued shortly before Ms M died) ReAssure paid her £150 compensation for the delays in handling the claim. Ms M was represented by her father, who was appointed by the court of protection to act on her behalf. He was also later granted letters of administration to administer her estate. As Mr M brings the complaint on behalf of Ms M (as the person authorised in law to do so) I can't compensate Mr M for any distress and inconvenience caused to him personally. Ms M died shortly after the final response letter was issued and had been represented by her father. I'm therefore satisfied the award of £150 is fair and reasonable in all the circumstances as I think it fairly reflects the impact on her.

Putting things right

I think the fair outcome to this complaint is for ReAssure to:

- Pay the estate of Ms M the claim settlement of £25 000 in line with terms and conditions; and
- Add interest to the settlement at an annual rate of 8% simple interest from the 13 January 2023 until the date of settlement. That's because I'm satisfied it's most likely that was the time that ReAssure had sufficient information to demonstrate that the policy terms were met.

My final decision

I'm upholding this complaint against ReAssure Limited and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Ms M to accept or reject my decision before 21 August 2024.

Anna Wilshaw
Ombudsman