

The complaint

Miss M complains that Scottish Widows Limited unfairly declined her insurance claim and cancelled her cover. Miss M also says she paid more in premiums than the refund Scottish Widows gave her.

What happened

The history of events is well known to the parties, so I won't repeat all the details here. In brief summary, Miss M applied for a Scottish Widows critical illness with life policy in 2014. In 2023, Miss M made a claim under the policy. But Scottish Widows declined the claim, saying Miss M had failed to disclose important information at application. It said had full disclosure been made, it would not have offered Miss M cover. Scottish Widows cancelled Miss M's policy, but refunded her the premiums she'd paid.

Miss M complained, but Scottish Widows didn't uphold her complaint. So Miss M came to the Financial Ombudsman Service. Our investigator didn't uphold Miss M's complaint, so Miss M asked for an ombudsman to review things. Her complaint has now come to me for a final 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 carefully reviewed everything, I'm not upholding this complaint. I know this will be unwelcome news for Miss M. So I'd like to explain my reasoning, focusing on the points and evidence I consider material to my decision. 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.

Scottish Widows says Miss M failed to take reasonable care not to make a misrepresentation when she answered 'no' to the following question on her application form:

'Do you now have, or have you ever had, any of the following:

A positive test for HIV or Hepatitis B or C?'

Miss M's medical records show that she was diagnosed as HIV+ in April 2001. A letter from Consultant Physician Dr R to Miss M's GP, dated December 2018, confirms the diagnosis and history of antiretroviral therapy since diagnosis.

I've considered whether Miss M took reasonable care to answer Scottish Widows' question correctly. Reviewing the question, I'm satisfied it was clear. Miss M has acknowledged the positive test result but said she believed it was a mistake. Nevertheless, the question requires disclosure of a positive test result. So I think Miss M failed to take reasonable care when applying for her policy.

I now need to consider whether the misrepresentation was a qualifying one under CIDRA, that is, would Scottish Widows have come to a different decision about cover had it been given correct information.

Scottish Widows has provided evidence from its underwriting guidance. This shows that, had Miss M declared her positive test result, Scottish Widows would not have offered any cover. So I'm satisfied Miss M's misrepresentation was a qualifying one.

CIDRA sets out the actions an insurer can take where there's been a misrepresentation. In Miss M's case, Scottish Widows has declined to pay her claim but refunded the premiums she paid. These actions are in line with categorising her misrepresentation as careless under CIDRA, which I think is fair.

In October 2023, Scottish Widows refunded Miss M £11,765.94. Miss M says this isn't the correct amount. She provided a summary of the amounts she says she paid yearly and her bank statements covering the life of the policy.

I know this is an important issue for Miss M, so I want to assure her that both I and our investigator have reviewed her information and bank statements carefully and in detail. There is broad agreement between the information provided by Miss M and Scottish Widows. Where there were some discrepancies, I sought further information from Scottish Widows to get to the bottom of things.

Miss M's bank statements show she paid £11,880.37 towards her policy. This figure is agreed by Scottish Widows. However, the business has also provided evidence to show that Miss M's initial policy payment of £114.43 was wrongly attributed to her previous policy and subsequently refunded to her in December 2014. Along with the £11,765.94 Miss M received in October 2023, this means Miss M has received a refund of £11,880.37 – that is, all of the money she paid towards her policy.

Overall, I'm satisfied Scottish Widows' claim decision was fair and that Miss M has been refunded all of the money she paid towards her policy. So I'm not asking Scottish Widows to do anything more in respect of this complaint.

My final decision

For the reasons set out above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 20 August 2024.

Jo Chilvers
Ombudsman