DRN-4954055

The complaint

Mrs T has complained that Unum Ltd declined a claim under her critical illness policy.

What happened

Mrs T has a critical illness policy through her employer; she joined the scheme on 1 October 2020. She made a claim in March 2022 as her husband, Mr T, had suffered a stroke.

Unum accepted that the definition for 'stroke' had been met. However it applied the related conditions exclusion to decline the claim. This says that a member will not be able to claim for a critical illness event which is linked to a related condition which the member was aware of, or received treatment or advice for, on or before the date they joined the policy. The related conditions for stroke (which is included in the heart and circulatory diseases category) includes Blood pressure treated at any time by any prescribed medication. Mr T had been prescribed blood pressure medication.

In 2023 Mr T suffered another stroke, and Mrs T submitted a further claim. It is the decline of this claim that Mrs T has complained about. Unum declined this claim under the pre-existing condition clause which says:

Where a member has experienced a critical illness before joining the policy or when they have made a claim under the policy, other than for cancer – second or subsequent event, they will not be able to claim for a recurrence of that condition or certain other critical illnesses.

Unum said a claim had already been made so the clause applied.

Our investigator didn't recommend that the complaint be upheld. They felt that Unum had fairly declined the claim in line with the pre-existing conditions exclusion.

Mrs T appealed so the matter was passed to me to determine. I issued a provisional decision on 11 July 2024. I said that I'd look at any more comments and evidence I received but unless that information changed my mind my final decision was likely to be along the lines of my provisional decision. I said as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mrs T's policy and the circumstances of the claim, to decide whether I think treated her fairly. Having done so, I don't find Mrs T has been treated fairly. I'll explain why.

There is no dispute that Mr T suffered a second stroke in June 2023. Unum accepts this met the policy definition of 'stroke'. Unum declined the claim on the basis of the pre-existing condition exclusion set out above. It is necessary to consider the full wording which is as follows:

Pre-existing conditions

Where a member has experienced a critical illness before joining the policy, or when they have made a claim under the policy, other than for the cancer – second and subsequent event, they will not be able to claim for a recurrence of that condition or certain other critical illnesses.

A member will not be able to claim for a critical illness where they were aware of, or being treated for, a related condition on or before the cover started. Some related conditions are disregarded once the member has been covered under the policy for 2 years.

The pre-existing and related conditions exclusions apply from:

- *When the member joins the policy*
- *After a successful claim, and*
- *To all increases in benefit that are not related to an increase in salary*

If a policy is moved to us from another insurer on the same benefit basis, the pre-existing conditions exclusions will start from the date the member's cover started with the previous insurer.

The pre-existing and related conditions exclusions also apply to the employees' children, spouses and partners covered under the policy.

Full details of the pre-existing and related conditions exclusions are described in the general terms on the opposite side of this page and in section 10.

The opposite side of the page explains that the terms described in the user guide are incorporated into the policy. It then defines the pre-existing and related conditions exclusions:

***Pre-existing conditions**: The pre-existing conditions exclusion means that if a member has suffered from a medical condition, or undergone one of the surgical procedures before they joined the policy, they will not be able to claim for any further incidents of that critical illness.*

***Related conditions:** Under the related conditions exclusion, a member will not be able to claim for a critical illness event which is linked to a related condition which the member was aware of, or received treatment or advice for, on or before the date they joined the policy.*

The related conditions for each group of illnesses are listed in section 10. The related conditions either apply indefinitely or are limited to the two years after joining.

***Heart and circulatory diseases**: For this exclusion if a member experiences any of the heart and circulatory diseases, they may not claim later for any critical illnesses in that group.*

Section 10 defines related conditions and whether they will apply indefinitely or for 2 years. For Heart and Circulatory diseases (which includes stroke) it shows that the related condition of 'blood pressure treated at any time by prescribed medication' will apply for 2 years.

Mr T suffered a related condition before joining the policy, and for this reason the first claim was declined. There is no complaint about this. However the second claim was for a stroke that occurred more than two years after cover commenced. As the pre-existing and related conditions exclusions apply from joining the policy or after a successful claim, neither of these apply to Mr T. That is because the stroke isn't a pre-existing condition – he hadn't

suffered a stroke before the cover commenced and his first claim had been declined. There is the related condition exclusion – which applied to the first claim. But in relation to the second claim two years had passed since the start of the policy so the related conditions exclusion was no longer applicable.

The policy does state, as set out above Heart and circulatory diseases: For this exclusion if a member experiences any of the heart and circulatory diseases, they may not claim later for any critical illnesses in that group.

But this is at odds with Section 10 which clearly shows that for heart and circulatory diseases the related conditions exclusion is only applicable for two years. It may the intention of the insurer was to exclude such diseases indefinitely. But where there's ambiguity in the way contract is drafted, as I find there is here, I must construe the policy wording in a way favourable to the party that didn't draft it. In this case, that's Mrs T. As I don't find that the exclusion applies here, my provisional finding is that Unum should now assess the claim in accordance with the remaining policy terms.

Mrs T is unhappy that she was advised before making the second claim that she could claim– and wasn't advised that the claim may be declined. I can see how frustrating and upsetting it would have been for Mrs T when her claim was declined. I can see that enquiries were made from Mrs T's employer to their insurance broker, who agreed that further claims could be made (but that there was no guarantee of payment). As Unum didn't give this information, I don't find that it was to blame for this misunderstanding.

Mrs T has also said that she was advised by Unum that if Mr T had another stroke (after the first), she would be able to submit another claim. I haven't seen a call note of this conversation, so I don't know the full context. But it would seem to me that the advice was correct. Of course, any claim would need to be assessed by Unum when made.

My provisional decision was that I was minded to uphold the complaint and to conclude the pre-existing and related condition exclusions do not apply. I was minded to require Unum to assess the claim in accordance with the remaining policy terms.

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.

As both parties accepted my provisional decision, there is no reason for me to change the conclusion I reached. I adopt the reasoning in my provisional decision here.

My final decision

My final decision is that the pre-existing and related condition exclusions do not apply to this claim. I uphold the complaint and require Unum assess the claim in accordance with the remaining policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 4 September 2024.

Lindsey Woloski
Ombudsman