

## **The complaint**

Mr P complains Helvetia Global Solutions LTD unfairly declined his claim when he was made redundant by his employer.

## **What happened**

Mr P previously held an income protection policy with another provider. In 2023, he contacted his broker about increasing the level of benefit, and ultimately transferred his policy to one underwritten by Helvetia. The new policy started in late March 2023.

At the end of August 2023, Mr P was notified he was being made redundant by his employer, and so he made a claim against the policy.

Helvetia assessed the claim and said it thought Mr P had not properly disclosed his knowledge of restructures at his company, at the time of taking out the policy. It said it had identified articles in the press related to a restructure in early March 2023. And because of this, it said it didn't think Mr P had answered its questions correctly when he applied for the policy. And it said had he done so, the policy would not have been offered.

Mr P disagreed that he answered any of the application questions incorrectly. He said his role was not made redundant until the end of August 2023 and he had no prior knowledge that this would happen. And he made a complaint.

Helvetia responded to the complaint but did not change its position on the claim. Unhappy with the response, Mr P brought his complaint to this service.

An investigator here looked into what had happened and said they thought Mr P hadn't answered the questions about redundancies and restructures correctly, and the claim had been fairly declined. They said it was reasonable that Helvetia avoided the policy, but Mr P was entitled to a refund of the premiums he had paid.

Mr P disagreed with the investigator's view. In summary he said that it's good business sense for companies to review their operations and he can't accept this as a reason for his claim to be rejected. He said he thought the question asked by the insurer was poorly composed and difficult to understand.

Helvetia confirmed it accepted the investigator's view and would refund the policy premiums with interest after we confirmed the case was closed.

As Mr P didn't agree, the case has been passed to me to 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.

And I've taken into account the relevant law, rules and industry guidelines. Having done so, I'm not upholding this complaint, and I'll explain why.

The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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.

Helvetia has said Mr P failed to take reasonable care in answering one of its questions when he took out the policy.

Mr P applied for the policy in March 2023. As part of the application process via his broker, he was asked the following question over the phone, to which he answered "no". Helvetia has provided a recording of the call with the broker, which took place at the end of March 2023.

*"Do you know of any redundancies, restructure, reorganisation, financial or contractual threats within the organisation you work in, even if you do not believe these actions will result in you becoming unemployed."*

Helvetia has said Mr P should have answered "yes" to the above question. And it's said this is because there were articles in the press in March 2023 relating to a restructuring at his company.

Mr P has said he was asked if he was aware of any *future* redundancies. He said the news announced in March 2023 was not a part of the new policy period, and he'd received an email from the CEO which said further redundancies were not foreseen. Mr P said he feels he answered the question truthfully and the reasons for his own role being made redundant at the end of August 2023, were unrelated to the previous restructure announced in March 2023. He's also more recently said that he believes the announcements in March 2023 relate to standard and good business sense by his employer in stating its intentions to review its operations.

I've considered everything Mr P has said, and have reviewed Helvetia's question carefully. Having done so, I'm satisfied Mr P was asked if he knew of any redundancies, restructures or reorganisations within the company he worked in. No time period was specified, and the word 'future' was not used. And the question went on to qualify *"even if you do not believe these actions will result in you becoming unemployed"*.

I think Helvetia's question was sufficiently clear and I'm satisfied Mr P was required to answer based on any knowledge he had of redundancies, restructures or reorganisations happening at his company, regardless of whether or not he thought his own job role was at risk.

I'm satisfied Mr P made a misrepresentation when he answered the insurer's questions. I say this because I've seen evidence of articles in the press in early March 2023 which stated

*“[employer] is undertaking a restructuring...”*. Mr P has agreed he was aware of this information, and only a short period of a few weeks had passed by the time he answered Helvetia’s questions about the new policy.

I’ve also considered the email Mr P received from his employer on 21 March 2023. However I don’t think this makes a difference. I say that because the email stated *“I foresee this will be the last organisational change...”*, and so it still confirms that an organisational change was happening at that time, even if it was expected there would not be any further change in the future.

I’m satisfied Mr P failed to take reasonable care to answer Helvetia’s question about his employer correctly. For Helvetia to take any action, there needs to have been a ‘qualifying’ misrepresentation. So I’ve considered whether or not the misrepresentation made by Mr P made a difference to the insurer. And in this case I’m satisfied that had Mr P declared his awareness of a restructuring at his company, Helvetia would have been unable to offer the policy. And because of this, I’m satisfied the misrepresentation was a qualifying one.

Helvetia has not said it has treated the misrepresentation as deliberate / reckless. And based on the evidence I’ve seen, including Mr P’s representations about his own role, I’m satisfied the misrepresentation should be treated as careless. In these circumstances, the remedy available under CIDRA is for the insurer to avoid the policy, refuse any claims and refund the premiums.

Helvetia has avoided the policy, which I’m satisfied it was entitled to do, and as this means it was cancelled from the start, there is no policy against which the claim for Mr P’s redundancy can be assessed. However Helvetia is not entitled to keep the premiums Mr P paid towards the policy in these circumstances.

### **Putting things right**

I’m satisfied Helvetia was entitled to take the action it did in the case of a careless misrepresentation, as this is in line with CIDRA. However the insurer should have refunded the policy premiums to Mr P. And as this was not previously done when the claim was declined, Mr P should also be paid interest on the amount due.

### **My final decision**

For the reasons I’ve given, it’s my final decision that I uphold this complaint and direct Helvetia Global Solutions LTD to do the following:

refund the total premiums paid towards the policy if not already done; and

pay interest at 8% simple on the refund amount from the date the claim was declined on 19 December 2023 to the date of settlement.

Helvetia Global Solutions LTD must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this, it must also pay interest on the compensation, from the date of my final decision to the date of payment, at 8% simple.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 7 March 2025.

Gemma Warner

**Ombudsman**