DRN-5083880

The complaint

Ms D and Mr W are unhappy that The Prudential Assurance Company Limited (Prudential) declined their income protection claim. They're also unhappy with the service they've received from Prudential.

What happened

Ms D and Mr W took out an income protection policy in September 2015 through an independent financial adviser. The policy also included life cover and serious illness cover. Prudential is the underwriter on the policy.

In January 2023, Mr W contacted Prudential to make a claim under the policy. He'd had back surgery. Prudential assessed Mr W's claim and declined it due to undeclared medical conditions at the time the policy was taken out. It said if Mr W had answered the medical questions as he should have, the policy wouldn't have been offered at all. So, Prudential cancelled the policy and kept the premiums because under the Consumer Insurance (Disclosure and Representation Act 2012 (CIDRA), it thought the misrepresentation was deliberate or reckless.

Unhappy, Ms D and Mr W brought their complaint to this service. Our investigator didn't uphold it. She didn't think Prudential acted unfairly in cancelling their policy and retaining the premiums they'd paid. And in relation to the service Prudential provided, she thought £100 compensation offered for the avoidable delay in providing an update was fair and reasonable.

Ms D and Mr W disagreed with the investigator and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

In summary, Ms D and Mr W say the complaint has not been looked at impartially and the full scope of the policy and complaint has not been properly considered.

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 insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Ms D and Mr W's 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 must 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've gone on to think about this when looking at Ms D and Mr W's complaint and their individual circumstances. Prudential has said Ms D and Mr W failed to take reasonable care not to make a misrepresentation when Mr W didn't disclose all the medical information he should've done when the policy was taken out.

I've gone on to look at the medical questions Mr W completed in May 2015. Mr W was asked:

> '*Your health in the last 5 years.*
> *Apart from any condition you have already told us about, have you had any of the following in the last 5 years:*
>
> *Any disorder of the digestive system, liver, stomach, oesophagus, pancreas, colon or bowel, including Gastric ulcer, Hepatitis, Pancreatitis, Colitis or Crohn's disease*
>
> *Any disorder of the kidneys, bladder or prostate, including blood or protein in the urine or urinary tract infection*
>
> *Any disorder, including stress, anxiety, panic attacks, depression, nervous breakdowns or eating disorders'*

Mr W answered '*No'* to all of these questions. But I can see from his medical records that he had pain in his abdomen, including diarrhoea and constipation in 2013 and 2014. He was referred to a surgeon and underwent colonoscopy in 2014. Further references in the GP notes for April and May 2015 are made to urinary and bladder issues, bowel problems and a biopsy.

A medical question about back problems was also asked in the same application:

> *'Your health in the last 5 years.*
> *Apart from any condition you have already told us about, have you had any of the following in the last 5 years:*
>
> *Had any pain or other problems relating to your back, neck, joints, bones or muscles including arthritis, ankylosing, spondylitis, slipped disc, rheumatism or gout (ignore simple muscle strains, sprains or limb fractures, if you have fully recovered).'*

Mr W answered '*No*' to this question. I've considered Mr W's medical records which show a history of lower back pain where he had an orthopaedic referral, physiotherapy, an MRI scan, a car injury where neck and lower back pain was recorded. He also went to hospital for sciatica because of pain to his back. This was over a period from 2013 to 2015.

There was also a question in the application that asked:

> *'Apart from anything you haven't already told us about in this form, do you have any impairment or medical complaints that you intend seeking medical advice for, or are you currently awaiting the results of any investigations.'*

Mr W was waiting for further tests and investigations for his back, bowel and bladder issues.

I've reviewed the medical questions that were asked on the application. I think they were clear and therefore it wasn't unreasonable that Prudential should have expected Mr W to have answered those questions accurately when he completed the form. And based on the answers provided and Mr W's medical records, I'm satisfied the medical questions weren't answered correctly. The medical evidence provided shows Mr W had problems with his back, abdomen and bladder from 2013 to 2015. There's also evidence that Mr W was awaiting further investigations and I don't think this question was correctly completed either.

Ms D and Mr W say the issue about completing the questions inaccurately lies with their financial adviser. I've thought about this. But Ms D and Mr W had an opportunity to raise any concerns when Prudential provided a copy of the form which they completed and included the answers they gave. And the confirmation of the schedule of cover with the copy of the application was sent to Ms D and Mr W in September 2015. This said that if any changes needed to be made, they should let Prudential know. I can't see evidence that Ms D and Mr W contacted Prudential to make any amendments.

On the basis of the medical information provided on the form, Prudential made underwriting decisions on the policy which included the premium Ms D and Mr W were to pay.

I've gone on to think about whether failing to take reasonable care makes a difference in this case.

Prudential has classified the qualifying misrepresentation as deliberate or reckless.

Prudential has provided evidence which shows what it would have happened if the correct information was entered at the time of taking out the policy 2015. It says had the questions been completed accurately, it wouldn't have offered cover at all for the income protection policy. So, Prudential has cancelled the policy and kept the premiums Ms D and Mr W paid. I've carefully reviewed the underwriting evidence. This shows that had Mr W completed the questions about his medical conditions correctly in 2015, Prudential would not have offered the policy at all. This means, I'm satisfied Ms D and Mr W's misrepresentation was a qualifying one.

CIDRA sets out the remedies available to an insurer in the case of deliberate or reckless misrepresentation. CIDRA is concerned with disclosure and representations made by a consumer to an insurer before a consumer contract is entered into or varied. And the law sets out the specific actions an insurer can take where the misrepresentation has been a qualifying one.

It goes on to further to say that a qualifying misrepresentation would be deliberate or reckless if the consumer:

- Knew the information they provided was untrue or misleading or did not care whether it was untrue or misleading; and

- Knew that the matter to which the misrepresentation related was relevant to the insurer or did not care whether or not it was relevant to the insurer.

Having reviewed everything carefully, I think the medical questions on the application were clear. This means Mr W should have been aware to answer these accurately and the onus was on him to do so. And I've taken into account that Mr W had referrals and tests relating to his back, bowel and bladder issues from 2013 to 2015, some of which were carried out just prior to him completing the application. I've also considered that a copy of the completed

application was provided to Ms D and Mr W to review, and they had the option to let Prudential know if any amendments were to be made. The answers Mr W provided were not consistent with his medical history and records provided. I'm satisfied therefore that Prudential is entitled to cancel the policy and keep the premiums as set out under CIDRA.

I note that this policy was set up to be a joint one – it included both Ms D and Mr W – and had life cover for Ms D. The whole policy has now been cancelled and Ms D and Mr W are unhappy about this.

Prudential said because of the joint nature of the policy, both policyholders are jointly liable for what was completed in the application, and it is the same and one contract. I've looked at the policy schedule as well as considered the relevant law. This says an insurer is able to apply the principles of CIDRA to the whole policy. The policy summary also says the plan can be cancelled altogether if any of the information given is incomplete, incorrect or untrue. It goes on to say, if a full disclosure hasn't been made then to inform Prudential. I don't think it's unreasonable therefore that the whole policy has been cancelled as Ms D and Mr W were jointly liable. Th evidence shows that the questions weren't completed accurately and there's nothing to suggest Ms D and Mr W amended the information. Based on the above, I'm satisfied that Prudential cancelled the policy and kept the premiums and that was in line with the policy terms and conditions and as set out under CIDRA.

I understand Mr W had back surgery in 2023 and he says this wasn't related to the issues he had when he took out the policy and his claim. But the crux of the matter is that regardless of what happened in 2023, I'm satisfied there was a deliberate or reckless misrepresentation in 2015 and this is considered to be one that's qualifying under CIDRA. So, I don't think it's unreasonable that the policy has been cancelled and the premiums have been kept.

I've reviewed the customer service Prudential provided. I understand the issue of service was dealt with under a separate complaint and this was upheld by Prudential and compensation paid to Ms D and Mr W. I can't comment on this as it doesn't form part of this complaint.

Having looked at what happened on this complaint from 13 December 2023 to 9 January 2024, I note there was a delay in Prudential providing a decision on the claim Mr W made. The decision on the claim had been made around 22 December 2023 and even though Mr W contacted Prudential for an update on 2 January 2024, he didn't receive this until 9 January 2024. Prudential offered £100 for the delay and inconvenience caused. Taking account of this, I think £100 is fair and reasonable in the circumstances.

I do understand that Ms D and Mr W will be disappointed. But Prudential has followed the law as set out in CIDRA and I don't think its acted unfairly. Overall, I'm satisfied the decision to cancel the policy and keep the premiums is fair and reasonable. And I think £100 compensation in recognition of the delay in updating Mr W of the claim decision is fair and reasonable. If Prudential hasn't paid the compensation to Ms D and Mr W, it should do so directly.

My final decision

For the reasons given above, I don't uphold Ms D and Mr W's complaint about Prudential Assurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D and Mr W to accept or reject my decision before 2 January 2025.

Nimisha Radia
Ombudsman