DRN-5146237

The complaint

Mr and Mrs C are unhappy that Scottish Widows Limited cancelled their decreasing life and critical illness insurance policy ('the policy') and declined a claim Mr C made for the critical illness benefit.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

Scottish Widows' decision to cancel the policy and decline the claim

When determining this issue, I've considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law.

I've also taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. 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 (in this case Scottish Widows) 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 several 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 has cancelled the policy and declined the claim made on it but has refunded the premiums Mr and Mrs C paid for the policy which was applied for and commenced in May 2021 (replacing an existing life and critical illness policy).

It says Mr C didn't take reasonable care when applying for the policy and didn't answer some questions accurately. Had he answered the questions correctly, Scottish Widows says it wouldn't have offered the policy at the time. So, it says it was entitled to cancel the policy, decline the claim, and refund the premiums paid for the policy. I know Mr and Mrs C will be very disappointed but for reasons I'll go on to explain, I'm satisfied Scottish Widows has acted fairly and reasonably by doing this.

Mr and Mrs C applied for the policy via a third-party intermediary. I've seen a letter from Scottish Widows addressed to Mr C at this home address dated May 2021 enclosing the application summary. The letter says:

> As the application was completed by your financial advisor on your behalf, we need to make sure the information we have been given is correct. Please check the enclosed application summary…you must let us know if any of the information on it has changed, is incorrect or is incomplete as failure to do so could invalidate your policy.

Mr C says he can't recall receiving this letter. However, as it's correctly addressed, I find no compelling reason that it wasn't sent to – or received by – him at the time. On the balance of probabilities, I think he most likely received it.

The application contains a number of questions about Mr C's lifestyle and medical history including:

> Have any of these ever applied to you?
>
> Options – I've been advised by a medical professional to cut down or stop drinking alcohol, I've been referred for alcohol or drug specialist support such as Alcoholics or Narcotics Anonymous, I've used recreational drugs in the last 10 years.

I'll refer to this as 'the alcohol question'. It's reflected that Mr C answered: 'no'.

He was also asked:

> Have any of the following applied to you in the last 5 years?
>
> Options – Have had blood tests to determine if my liver is functioning correctly, have been convicted of driving while under the influence of alcohol, have been seen in an Accident and Emergency unit whilst intoxicated, none of the above.

I'll refer to this as 'liver and Accident and Emergency question'. It's reflected that Mr C answered: 'none of the above'.

The bottom of the application says:

> You should answer all questions we have asked in this application honestly and fully. The answers you provide will affect our decision to accept your application or the amount of premium you will pay. We may not pay any claim, or may amend or cancel your policy if you:
>
> - Don't answer the questions honestly
> - Give us incomplete or misleading answers, or
> - Don't advise us of a change in the information your provided in response to our questions prior to the date we have agreed the terms of your cover.

I'm satisfied that Scottish Widows has fairly and reasonably concluded that the answers given to the alcohol and liver and Accident and Emergency questions were incorrect. And I'm satisfied that Mr C didn't contact Scottish Widows to amend his answers as he was asked to if anything wasn't right.

I'm also satisfied that:

- Scottish Widows has fairly concluded that Mr C was admitted to Accident and Emergency, relying on the medical evidence dated March 2020. This reflects that he'd experienced a head injury whilst intoxicated. I've taken into account Mr C's submissions on this incident, but I'm satisfied that Scottish Widows has fairly relied on the contemporaneous medical evidence from the time.
- Mr C's medical records reflect that Mr C had liver function tests within the five years before applying for the policy. Mr C says that he underwent blood tests but didn't know they were specifically for his liver. However, I'm not persuaded by what Mr C says as there's mention in his GP notes about liver function tests. For example, there's a GP entry dated October 2022 which next to the heading: 'problem' says: 'liver function test'. And that Mr C admitted to not having the best lifestyle at that moment in time and the GP notes indicate that they "discussed sensible lifestyle and drinking habits".
- the same GP entry supports Scottish Widows' position that that Mr C was advised to cut down his drinking by a medical professional. When making this finding, I've taken into account that Mr C says it was he who suggested he should cut down his alcohol intake. However, the GP entry doesn't reflect that, and I'm satisfied that Scottish Widows has fairly relied on the contemporaneous medical evidence in the circumstances of this case.

CIDRA says that it's the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer. And that a failure by the consumer to comply with the insurer's request to confirm or amend particulars previously given is capable of being a misrepresentation. So, I'm satisfied that Scottish Widows has fairly and reasonably concluded that Mr C made a misrepresentation here.

Looking at the underwriting guidance it's provided; I'm persuaded the answer to the alcohol question and liver and Accident and Emergency question mattered to Scottish Widows. It's provided underwriting evidence that it would've requested updated liver function tests and based on the results of the last test before applying for the policy and the results of the test which post-dated the policy, I'm satisfied that had it done so, it's fairly concluded on the balance of probabilities that the liver function tests results would've been similar. And that being the case, in conjunction with other medical information, I'm persuaded that it wouldn't have offered the policy at the time. So, I'm satisfied the misrepresentation was a 'qualifying' one.

Scottish Widows has refunded the premiums Mr and Mrs C paid for the policy which it didn't need to do if it thought Mr C had deliberately or recklessly misrepresented the answers to the alcohol and liver and accident emergency questions. So, I find it's fair to assume that it has concluded that the misrepresentations were careless as opposed to deliberately or recklessly made. And that being the case, I think it's acted fairly and reasonably by concluding that.

I've looked at the actions Scottish Widows can take in line with CIDRA if a qualifying misrepresentation is careless and it can do what it would've done if the questions had been answered correctly. As the policy wouldn't have been offered, I'm satisfied that it's acted fairly and reasonably by avoiding the contract of insurance, declining the claim (on the basis that the policy wouldn't have been in place to claim on) and refunding the premiums paid for the policy.

Other issues

After our investigator issued her view recommending the complaint not be upheld, Scottish Widows said it had carried out an internal review and would be considering making an offer of settlement to Mr C in respect of the claim. It later said this was due to it believing that it had recommended the third-party intermediary to Mr and Mrs C and wanted to treat them fairly.

Scottish Widows subsequently discovered that it didn't recommend the third-party intermediary to Mr and Mrs C and said it would no longer be considering offering an amount to settle the claim. It apologised and paid Mr and Mrs C £1,500 compensation to represent the loss of expectation.

I can, of course, understand why having their expectations unnecessarily raised by Scottish Widows would've been very upsetting and confusing for Mr and Mrs C. They thought that Scottish Widows would now be paying them a significant amount of money only to be told that it wouldn't.

I don't think it would be fair and reasonable to direct Scottish Widows to pay the claim (or part settlement of it) as I think it's acted fairly and reasonably by cancelling the policy and declining the claim for reasons set out above. However, although Scottish Widows says it wanted to treat Mr and Mrs C fairly by considering settlement of the claim, I accept that Mr and Mrs C experienced significant upset and disappointment by Scottish Widows' raising their hopes. I'm satisfied that £1,500 fairly reflects the impact on them.

My final decision

My final decision is that Scottish Widows doesn't need to do anything more to put things right. So, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 12 December 2024.

David Curtis-Johnson
Ombudsman