

The complaint

The estate of Mr F complains that HSBC Life (UK) Limited has turned down a life insurance claim it made on a Life Protection Policy.

Mr F's estate is represented in bringing this complaint.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In December 2020, Mr F took out a Life Protection policy through a broker which was underwritten by HSBC Life.

Sadly, in September 2022, Mr F passed away and so his estate made a claim on the policy.

HSBC Life asked for Mr F's medical records so that it could assess the claim. It noted that in 2004, Mr F had attempted to take his own life and that in December 2018, he'd been suffering from anxiety and depression and had been undergoing counselling. It also noted that Mr F's records showed he had a long history of mental health concerns.

Based on the available medical evidence, HSBC Life concluded that Mr F hadn't fully and accurately answered some of its medical questions when he took out the policy. It said that if Mr F had told it about his previous suicide attempt and that he'd suffered from anxiety and depression, it wouldn't have offered him the policy. So HSBC Life concluded that Mr F had made a careless misrepresentation under the relevant law. It turned down Mr F's claim, cancelled the policy from the start and refunded the premiums Mr F had paid for the cover.

Mr F's estate was very unhappy with HSBC Life's position and so its representative asked us to look into this complaint. In brief, it didn't think HSBC Life had acted reasonably by expecting Mr F to disclose a suicide attempt which had happened 14 years before the policy was taken out. And it didn't consider that Mr F's episode of depression and anxiety in December 2018 would have resulted in HSBC Life declining to offer Mr F a policy.

Our investigator didn't think HSBC Life had handled this claim unfairly. He felt Mr F had been asked clear questions during the application process which ought to have prompted him to declare his suicide attempt and that he'd suffered from anxiety and depression in December 2018. He also considered that Mr F had answered HSBC Life's questions inaccurately. And he was satisfied that HSBC Life had provided evidence which showed that if Mr F had answered its questions correctly, it wouldn't have offered Mr F a policy. So the investigator concluded that it had been fair for HSBC Life to consider that Mr F had made a qualifying, careless misrepresentation under the relevant law. And so he thought it had been reasonable for HSBC Life to turn down the claim, cancel the policy and refund the premiums Mr F had paid for it.

The estate of Mr F disagreed. In summary, the representative felt that the use of the word 'ever' in HSBC Life's questions placed an unfair burden on an applicant to disclose and

recall incidents from their childhood, especially if they believed them to be irrelevant to their current health or circumstances. It considered that most people would reasonably assume events from their distant childhood wouldn't need to be disclosed. It didn't believe HSBC Life's questions were clear or specific enough. While it acknowledged that Mr F had been careless in not declaring his episode of anxiety and depression in 2018, it didn't think this would have had any impact on the terms HSBC Life would have offered. And it didn't consider that HSBC Life had acted in line with regulatory rules and industry guidance.

The complaint's 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.

Having done so, whilst I'm very sorry to disappoint the estate of Mr F, I don't think that HSBC Life has handled this claim unfairly and I'll explain why.

First, I'd like to offer my sincere condolences to Mr F's family and friends for his sad loss. I don't doubt what a difficult and distressing time this has been for them.

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 relevant law, relevant regulatory rules and principles, industry codes of practice, the available medical evidence and the policy documentation, to decide whether I think HSBC Life handled this claim fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). 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 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.

When Mr F took out the policy through a broker, he was asked a number of questions about his health and his circumstances. HSBC Life used this information to decide whether or not to insure Mr F and if so, on what terms. HSBC Life says that Mr F didn't correctly answer the questions he was asked during the application process. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mr F's claim.

HSBC Life thinks Mr F failed to take reasonable care not to make a misrepresentation when he applied for the policy. So I've considered the available evidence to decide whether I think this was a fair conclusion for HSBC Life to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. During the sales process, Mr F was asked:

'In the last 5 years have you had any of these?

Options – Depression, Anxiety, Stress, Any other mental health issue, None of these.'

Mr F answered: 'none of these.'

During the sale, Mr F was also asked:

'Have you ever:

Options – Tried to take your own life, Had thoughts about taking your own life, Neither of these.

Have you ever:

Options – Intentionally harmed yourself, Had thoughts about harming yourself, Neither of these.'

Mr F answered 'neither of these' to both questions.

In my view, HSBC Life's questions were clear and specific enough to have prompted Mr F to provide it with the information it wanted to know. I think the questions were asked in an understandable and explicit way. I don't think they're ambiguous or unclear.

Next, I need to consider whether I think HSBC Life has shown that Mr F didn't take reasonable care to answer its questions. So I've turned to consider Mr F's medical records and the available medical evidence to assess whether or not I think HSBC Life's provided sufficient evidence to demonstrate, on balance, that Mr F did misrepresent his mental health at application.

Mr F's records show that in June 2004, he was admitted to hospital after attempting to take his own life. He was reviewed by a psychiatrist and their letter states that Mr F had times when he'd become acutely depressed and could feel suicidal. The letter also says that this had been the case for around 18 months. The letter said too that Mr F had considered ending his life by more violent means.

In December 2018, Mr F's GP noted that Mr F was suffering from anxiety and depression; that he was currently under counselling and had been for many years. It seems the plan had been to refer Mr F to psychiatry, but he was instead referred to the Community Mental Health Team.

And in March 2022, Mr F's GP noted that Mr F had a long history of mental health concerns and that he'd been having therapy for the last seven years. The notes suggest this was a combination of CBT and counselling.

Based on the available medical evidence then, I don't think it was unreasonable for HSBC Life to conclude that Mr F hadn't answered the questions I've set out above correctly. That's because I think the medical evidence clearly shows that Mr F had previously attempted to take his own life. And that he'd suffered from depression and anxiety for which he'd sought medical help around two years before he applied for the policy.

I appreciate the estate's representative considers that it isn't reasonable for HSBC Life to have expected Mr F to declare his suicide attempt, given it happened around 14 years before he took out the policy and given Mr F's age at the time. I've considered this carefully.

But, like the investigator, I do think this was a significant event. Mr F was admitted to hospital, was reviewed by a psychiatrist and described his intention to take his own life. And I think Mr F ought to have been prompted by HSBC Life's questions to declare this event and answer its questions correctly. I've considered the relevant regulatory rules and industry guidance. But having done so, I don't think HSBC Life acted unfairly or unreasonably when it concluded that Mr F had made a misrepresentation when he applied for the policy.

In order for HSBC Life to rely on the legal remedy available to it under CIDRA, it needs to show, on balance, that Mr F's misrepresentation was a 'qualifying' one. In other words, that it would have offered cover on different terms - or not at all - if it had been aware of all the facts.

HSBC Life has provided us with commercially sensitive, confidential underwriting information and additional evidence from its underwriting team. This evidence shows that if it had been told about Mr F's suicide attempt and his 2018 episode of anxiety and depression, it wouldn't have offered him a life protection policy.

This means then that I think HSBC Life has shown that Mr F did make a qualifying misrepresentation under CIDRA and that it's therefore entitled to rely on the remedy available to it under the Act. HSBC Life has categorised Mr F's misrepresentation as careless. In my view, that was a reasonable response from HSBC Life. That's because while I don't think Mr F sought to deliberately mislead HSBC Life, I'm not persuaded he took enough care to answer its questions accurately.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. If it wouldn't have offered the policy, it may cancel the policy from the outset and refund the premium. In this case, as I've explained, HSBC Life has shown that if Mr F had correctly answered its questions, it wouldn't have offered him this cover. I'm satisfied, based on the evidence its provided, that this was the case.

Overall, despite my natural sympathy with the estate of Mr F's position and I'm very sorry to cause his family more upset, I don't think HSBC Life acted unfairly when it turned down this claim, cancelled Mr F's policy and refunded the premiums he'd paid. I find HSBC Life's actions are in line with CIDRA and so I'm not telling it to do anything more.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint,

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr F to accept or reject my decision before 25 March 2025.

Lisa Barham
Ombudsman