

The complaint

P, an exempt charity, complains SiriusPoint International Insurance Corporation turned down a claim it made on its Staff Absence Insurance policy.

What happened

In October 2023 P (a school) claimed on its policy. It said one of its teachers was being treated for cancer and was on long term leave. It wanted the policy to cover the cost of a temporary replacement. After obtaining further evidence Sirius Point turned down the claim. It said the policy didn't provide cover for pre-existing conditions. In this case evidence from the teacher's GP showed there had been a consultation for cancer prior to the start date of this policy (which was 1 September 2023). It thought that would fall within the definition of a pre-existing condition the policy contained meaning the claim P made wasn't covered.

Our investigator was satisfied the claim did arise out of a pre-existing condition and the policy exclusion applied. But he didn't think it was fair of Sirius Point to rely on that in the circumstances of this case. He thought if P had been aware of the pre-existing condition prior to renewal of the policy it would have been able to declare that to Sirius Point and cover could have been provided for it. Alternatively, if the medical advice had been provided three weeks later the claim would have been covered under this policy.

Taking all of that into account he didn't think it was fair of Sirius Point to rely on the exclusion to decline the claim and said it should reassess this on the basis P had declared the medical condition prior to renewal (meaning it could deduct any increased premium that would have been charged from the settlement amount).

Sirius Point didn't agree. It accepted P might well have been unaware of the teacher's diagnosis at the point it took out cover. But it offered a policy that covered pre-existing conditions which P was aware of (and had previously had cover for). However, P had chosen not to continue with that cover which led to it paying a reduced premium. And while in some circumstances it would offer cover for a declared pre-existing condition the claim risk in this case was significantly more than the policy premium. So the option to include the known absence is not something that if offered would be equitable.

I issued a provisional decision on the complaint last month. In summary I said:

The relevant rules and industry guidelines say Sirius Point has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of P's policy. That says "if an insured staff member is absent from work as the result of an accident or illness which occurs during the period of insurance, we shall pay the daily benefit shown in the schedule for up to a maximum of 190 working days or such other period as is shown in the schedule for each working day of absence after the claim waiting period".

And the definition of illness is "Sickness or disease, excluding stress, mental health, anxiety or depression, that both manifests itself and results in an insured staff member becoming

unable to carry out their usual occupation during the period of insurance". So while I appreciate P had cover in place with Sirius Point prior to 1 September 2023 that wouldn't cover the claim it subsequently made. It was only during the period of insurance this policy relates to that the staff member was unable to carry out their usual occupation.

But this policy doesn't cover "Claims arising out of a pre-existing condition." And the definition of that includes "a procedure or hospital treatment (excluding routine screening) which becomes necessary as the result of a condition, bodily injury or illness (excluding minor ailments such as colds, influenza or other non-recurring condition but including stress, mental health, anxiety or depression) for which medical advice was received from a doctor and recorded in the insured staff members medical records within the 12 months prior to inception of the policy".

In this case I've seen evidence from the teacher's GP which says the first consultation relating to the cancer condition was on 6 July 2023. A diagnosis was made (and the teacher told about that) on 18 August 2023. There's no dispute the claim which was subsequently made arose out of that condition. I think it was reasonable of Sirius Point to conclude this would fall within the definition of a pre-existing condition the policy contains.

I've gone on to consider whether it's fair of Sirius Point to rely on that to turn down the claim P made. I think it's accepted P wasn't aware of the teacher's diagnosis at the point it took the policy out. So it couldn't have declared this to Sirius Point at that time. But our investigator thought if it had done so Sirius Point would have covered the claim for an increased premium and it wasn't therefore fair to rely on the pre-existing exclusion to decline the claim.

I appreciate in some circumstances Sirius Point will offer cover for a declared pre-existing condition but it's not clear to me it would have done so in this case. It's referenced the high value risk associated with the potential claim and that this was significantly in excess of the premium P was paying. Given that I think it's possible that even if it had offered cover for the pre-existing condition the amount charged for that wouldn't have been at a level P would have been prepared to pay.

In any case I don't think that's the key issue here. P wasn't able to declare the pre-existing condition because it wasn't aware of it. But it does appear to have been aware in general terms of the risk a member of staff might have such a condition which it wasn't aware of. I say that because it had previously selected a policy which covered that situation. And it subsequently chose cover which didn't do that. For this policy the 'Key Facts' document, which Sirius Point was responsible for producing, detailed the pre-existing exclusion. And it explained that it wouldn't apply "if Policy Plus cover was purchased or with the agreement of the insurer the exclusions are removed for payment of an additional premium.". It went on to explain "If you do not want these exclusions, please ask your account manager".

It doesn't appear P did agree to take out enhanced cover or ask for the exclusion to be removed. That may well have been for perfectly understandable commercial decisions; Sirius Point says not including cover for pre-existing conditions has resulted in premium savings to P of around £8,000. But that reflects a choice P appears to have made. I don't think it would be fair to expect Sirius Point to pay a claim that is caught by the policy exclusion for pre-existing conditions and where P appears to have made a decision not to take out a policy which would have covered that.

Responses to my provisional decision

Sirius Point agreed with my provisional decision. P didn't agree. It said while the school might previously have decided against taking out cover for pre-existing conditions this wasn't something staff involved in the renewal of this policy were aware of. And the school's

circumstances had changed as it now had around 250 pupils compared to around 800 previously. So it didn't think a decision it previously made in relation to insurance coverage was relevant here.

It said if Sirius Point had given it the option of insuring the teacher with a pre-existing condition it wouldn't have taken the cover and would have opted to take the teacher off its policy to reduce the premium. As that option wasn't provided by Sirius Point it thought it should be refunded the cost of insuring the teacher who went off sick and only returned to work after the policy expired. It also queried why this complaint hadn't progressed to a panel assessment given my view was different from the investigator who previously considered it.

So I need to reach a final 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.

First, I recognise P feels the complaint should progress to panel assessment because I've disagreed with the outcome reached by our investigator. However, that isn't how our process works. It's for an investigator to reach an initial assessment of a complaint. If either party disagrees the case progresses for review by an Ombudsman. It's then for the Ombudsman to look at all details of the complaint afresh and make a decision on it. And a final decision from an Ombudsman brings our complaint handling process to a close.

Turning to the further points P has made, I appreciate the individuals involved in dealing with insurance for P may have changed. But I understand this was a non-advised sale (the terms of business of the broker acting on behalf of Sirius Point say that's the case). So it was for P to decide whether the policy taken out in September 2023 met its needs. Sirius Point was responsible for producing policy information which would enable P to do so. But, as I've already said, the 'Key Facts' document, detailed the pre-existing exclusion. And it explained that it wouldn't apply *"if Policy Plus cover was purchased or with the agreement of the insurer the exclusions are removed for payment of an additional premium."* It went on to explain *"If you do not want these exclusions, please ask your account manager"*.

It doesn't seem to be disputed that P didn't do that. And it remains my view that cover wasn't in place for pre-existing conditions because of a decision P made. I continue to feel it would be unfair to expect Sirius Point to pay a claim that is caught by the policy exclusion for pre-existing conditions and where P could have taken out a policy which would have covered that and didn't.

P says if Sirius Point had given it the option of insuring the teacher with a pre-existing condition it would have opted to take them off cover to reduce the premium. But it's not clear to me what difference removing that teacher from the policy would make to the premium. In any event that's a hypothetical situation which couldn't have arisen in this case. At the point the policy was taken out neither P or Sirius Point were aware the teacher was already unwell. So there was nothing that should reasonably have prompted Sirius Point to suggest removing that teacher from cover (and P would have had no reason to do so in any case). So I don't consider any premium refund is due here.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 8 April 2025.

James Park
Ombudsman