DRN-5497357

The complaint

Mr T complains that HELVETIA GLOBAL SOLUTIONS LTD ("HGS") declined a claim and voided his income protection policy.

What happened

Mr T took out an income protection policy on 24 April 2023, provided by HGS. The policy paid a monthly benefit of £2,500 for up to 12 months if Mr T couldn't work due to an accident or sickness, or if he became unemployed.

Mr T was made redundant on 31 May 2024, and he made a claim to HGS under the policy. However, HGS declined the claim, voided the policy from inception and returned Mr T the premiums he paid. This was because it thought Mr T had made a misrepresentation when he took out the policy. Had he not done so, HGS says it would never have sold him the policy. And in any event, HGS also thought that a policy exclusion applied in the circumstances of Mr T's claim.

Unhappy with HGS's decision Mr T brought a complaint to this Service, and one of our investigators looked into what had happened. Having done so, she didn't think HGS had acted fairly and reasonably in the circumstances. She thought Mr T had taken reasonable care when he answered HGS's questions when he took out the policy, which meant that there was no qualifying misrepresentation. She also didn't think HGS had shown the exclusion applied in the circumstances of the claim.

Overall, our investigator thought HGS should accept and pay Mr T's claim along with interest, as well as pay him £500 for the significant distress and inconvenience caused.

HGS didn't agree with our investigator's findings. Fundamentally, HGS considered it to be inconceivable that Mr T wasn't aware of his company's financial situation due to his senior position within the company, as well as the information that was publicly available.

As no agreement was reached, the complaint 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.

Was there a qualifying misrepresentation?

As HGS has said Mr T made a misrepresentation when he bought the policy, the key considerations under this complaint are the principles set out in the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This is designed to make sure that consumers and insurers get an appropriate remedy if a policyholder makes what is called a "qualifying misrepresentation" under the act.

A misrepresentation is a "qualifying misrepresentation" when 1) a consumer fails to take reasonable care not to misrepresent facts which the insurer has asked about, and 2) the insurer shows that without the misrepresentation it would not have entered into the contract at all or would have done so only on different terms. If there is no qualifying misrepresentation, the insurer cannot take any action.

I've looked to see if Mr T failed to take reasonable care. The standard of care required is that of a reasonable consumer. And one of the factors to be considered when deciding if a consumer has taken reasonable care is how clear and specific the questions asked by the insurer were.

The question that HGS said Mr T answered incorrectly when he took out the policy was:

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

HGS says Mr T answered this "no" when he should have answered it "yes". Had he done so, HGS says it wouldn't have sold Mr T the policy.

Mr T held a senior leadership role, and his job included working on different projects. The project he was working on at the time had administrators appointed on 20 April 2023 – so, four days before Mr T bought the policy. HGS says that considering Mr T's role and the work he was doing, it's likely he would have been aware of the project going into administration. HGS considers that there was a link between the project having administrators appointed and Mr T taking out the policy, as these happened only four days apart.

Overall, HGS thought that given the substantial nature of the financial difficulties at the organisation, and the significant role Mr T held there, it was reasonable to conclude he was likely aware of these threats before they were publicly disclosed and before he bought the policy.

Mr T explained that his role was technical, he wasn't a formal company director and therefore not privy to any discussions at board level or with shareholders. He explained that strategic decisions were made by a foreign company that owned the one where he worked. Mr T says he only found out about the project going into administration after it became public in May 2023. So, he says he didn't know about it at the time he bought the policy.

Mr T has been consistent in his testimony that he didn't know the project was going into administration before he bought the policy, and I find this persuasive. It seems that HGS has made assumptions on what knowledge Mr T likely had, based on his job title. But I'm persuaded by Mr T's testimony on this – that his role was technical, and that he wasn't part of the high-level discussions on the project going into administration.

I'm also mindful that the company worked on more than one project, and Mr T's employer has said part of his role was working on securing future projects. Mr T has also explained that it was normal in the industry to have projects refinanced. I think these further support that Mr T took reasonable care when he answered "no" to the specific question HGS asked.

I've considered HGS's argument that there was a link between Mr T buying the policy and the project having administrators appointed, as these were only four days apart. But Mr T has explained that he bought the policy due to the purchase of a property, and he's shown that the sale completed three days after he bought the policy. I'm persuaded that the timing of buying the policy was linked to the property purchase rather than any knowledge of the appointment of administrators.

Having considered everything, I'm persuaded that it's more likely than not that Mr T wasn't aware of any redundancies, restructure, reorganisation, formal or informal consultations, financial or contractual threats within the organisation he worked in when he bought the policy. That means that I think Mr T took reasonable care when he answered the question "no", and there was no qualifying misrepresentation. So, I don't think HGS can take any action in relation to Mr T's policy.

Did HGS act fairly and reasonably when it said an exclusion applied on the claim?

HGS also said the policy had an Initial Exclusion Period ("IEP"), which meant that Mr T couldn't claim for employment for the 120 days immediately following the policy start date. The unemployment section of the policy said under "What is not covered" the following:

> *"Claims where during the initial exclusion period:*
> - *you are notified of your unemployment even if your last day in work falls outside of this period;*
> - *you are made aware that there is a risk you could be made unemployed even if the formal notification of your unemployment was issued outside of this period;*
> - *you are aware of circumstances which might lead to you having to stop work in order to become a carer."*

HGS said the exclusion applied in Mr T's circumstances, as there was information available publicly about the financial issues within Mr T's company during this period from May 2023 onwards, including the fact that the project had administrators appointed. HGS again referred to Mr T's senior role, and that this meant it was likely he was aware of such a significant event and the impact of it. So, HGS thought it was likely Mr T was made aware that there is a risk he could be made unemployed in the IEP.

Mr T says that he wasn't aware of any risk of redundancy until January 2024 when this was communicated within his company. He has provided evidence from a previous HR staff member who said information was not shared with staff members, directors included, about potential restructures within the company until January 2024. And that conversations about the potential changes at a parent company level only started in October 2023. Mr T's employer also confirmed that the team where Mr T worked became aware of group level discussions about restructuring in January 2024.

Mr T says he continued to work on the project, as well as other projects, during the remainder of 2023. He says the company had started two new projects which were underway in 2023, and he had worked on plans for future projects. So, Mr T says he didn't think there was any concern about his job being at risk until January 2024.

I accept that Mr T was aware of the financial issues within the projects his company was working on during the IEP. But I don't think this automatically means that he was made aware that there was a risk he could be made unemployed – as the exclusion sets out.

Mr T has explained that refinancing was normal in the industry where he worked, and he continued to work on projects during the remainder of 2023 – which included preparing plans for future projects. I think this supports Mr T's testimony that he wasn't made aware of the risk of being made unemployed. This is further supported by the evidence from a previous HR staff member and Mr T's employer.

So, I think it's more likely than not that Mr T didn't become aware of the risk of being made unemployed until January 2024, which was after the IEP. The onus is on HGS to show an exclusion applies, and I don't think HGS has shown that it can fairly apply the exclusion on Mr T's claim.

Having considered everything, I don't think HGS has acted fairly and reasonably in the circumstances of Mr T's complaint when it declined the claim and voided the policy. This has caused Mr T unnecessary distress and inconvenience, and he's explained the impact on him has been significant. Our investigator thought £500 would fairly compensate him for this. Neither party has given any comments on this amount. Having considered everything, I think this is fair compensation for the unnecessary distress and inconvenience HGS caused Mr T when it declined his claim.

For completeness, having considered the timeline of the claim, I don't think HGS caused any unnecessary delays in handling Mr T's claim or the resulting complaint. Mr T first got in touch with HGS about his claim on 5 April 2024. HGS requested more information to consider the claim a few times, and it had enough information to do so on 15 July 2024. HGS then declined the claim on 15 August 2024. Mr T appealed the decision and HGS reviewed this but replied on 30 August 2024 maintaining its decision. Mr T then raised a complaint, and HGS responded within eight weeks, as it's required to do.

My final decision

My final decision is that I uphold Mr T's complaint, and I direct HELVETIA GLOBAL SOLUTIONS LTD to take the following action:

- reinstate Mr T's policy,
- remove any record of cancellation/voidance from any internal and external databases,
- pay Mr T's claim in line with the remaining terms and conditions of the policy,
- if HGS refunded Mr T the policy premiums, it can deduct this payment from the claim amount, as well as any premiums that would have been due under the policy,
- pay Mr T interest at 8% simple per annum from the date each benefit payment should have been made until date of settlement*, and
- pay Mr T £500 for the distress and inconvenience caused**.

*If HGS considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr T how much it's taken off. It should also give Mr T a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**HGS must pay the compensation within 28 days of the date on which we tell it Mr T accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 June 2025.

Renja Anderson
Ombudsman