DRN-5926824

The complaint

Mr J complains that Astrenska Insurance Limited has turned down an unemployment claim he made on an income protection insurance policy.

All references to Astrenska include the actions of its third-party administrators.

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 main events.

On 7 October 2024, Mr J applied for two income protection insurance policies through a broker I'll call Q. One of those policies was underwritten by Astrenska. During the sales process, Q asked Mr J if he'd been working for his employer for six months. Mr J answered 'yes'.

Unfortunately, in April 2025, Mr J became unemployed. So he made a claim on the policy with Astrenska.

But Astrenska turned down Mr J's claim. In brief, the policy eligibility criteria included a requirement for a policyholder to have been working for the same employer for six months. But Astrenska noted that Mr J had started working for his employer in late April 2024 – and so, he'd only been employed for just over five months at the time he took out the policy. It said that Mr J hadn't been eligible for the policy and that if it had known that Mr J hadn't been with his employer for six months, it wouldn't have offered him cover. Therefore, it concluded that Mr J had made a qualifying, reckless misrepresentation under the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA) when he applied for the contract. So it turned down Mr J's claim and kept the premiums Mr J had paid.

Mr J was unhappy with Astrenska's decision and he asked us to look into his complaint. He felt the 'six month' requirement was unclear and ambiguous.

Our investigator didn't think Mr J's complaint should be upheld. Based on the evidence, he thought it had been fair for Astrenska to have found that Mr J had made a qualifying, reckless misrepresentation under CIDRA.

Mr J disagreed. In summary, he maintained that the policy terms were unclear. And he didn't think that CIDRA should apply to the circumstances of his complaint.

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 Mr J, I don't think Astrenska has treated him unfairly and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr J's unemployment. It's clearly been a very worrying and upsetting time for Mr J. I'd also like to reassure Mr J that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the law, and the available evidence, to decide whether I think Astrenska treated Mr J fairly.

In my view, the relevant law in this case is CIDRA. That's because, in my opinion, Mr J took out this personal income protection policy as a consumer, rather than in the course of his trade, business or profession. Therefore, I find it's fair and reasonable to apply CIDRA principles to the circumstances of Mr J's claim.

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 J applied for the policy online through Q, an independent broker, he was asked a series of questions. Astrenska used this information to decide whether or not to insure Mr J and if so, on what terms. Astrenska says that Mr J didn't correctly answer one of the questions he was asked at application. This means the principles set out in CIDRA are relevant. As I've said, I find it's therefore fair and reasonable to apply these principles to the circumstances of Mr J's claim.

Astrenska thinks Mr J failed to take reasonable care not to make a misrepresentation when he applied for and took out the policy. So, I've carefully considered whether I think this was a fair conclusion for Astrenska to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider whether the questions they were asked during the sales process were clear. I have listened carefully to the sales call between Mr J and Q and I have seen a copy of the application form that was completed.

The application form asks:

'Are you now and have you been for the past six months in continuous permanent employment with the same employer for more than 16 hours per week?'

The answer given to this question was 'yes'.

I'm also satisfied that during the sales call, Mr J told Q's sales adviser that he'd been working for his employer for the past six months. Indeed, at the start of the call, Mr J clarified that he hadn't been able to take out a policy earlier that year because he hadn't been with his employer for six months.

Astrenska concluded that Mr J didn't answer this question correctly. Having looked at the section of the claim form completed by Mr J's former employer, I can see that he started employment with it at the end of April 2024. So at the point he took out the policy, he'd been employed for around five months and one week. On that basis, I think it was fair for Astrenska to have concluded that Mr J had made a misrepresentation when he applied for the contract.

Next, I've considered whether I'm satisfied Astrenska has shown that Mr J's misrepresentation was a qualifying one under CIDRA. It's clear from the contract document that in order to be eligible for the contract a policyholder:

'*Must be in work, actively working and continuously employed for at least 6 months prior to the policy start date with the same employer; with no absence, due to accident, sickness, illness or disease, for a period greater than 1 week (5 consecutive working days) prior to the policy start date.'*

In my view, the eligibility criteria, together with Astrenska's statement that it wouldn't have offered Mr J cover if it had known the duration of his employment, is persuasive evidence that Mr J wouldn't have been able to take out this contract had it known the true position. So I find it was reasonable for Astrenska to conclude Mr J's misrepresentation was a qualifying one.

Astrenska concluded that Mr J's misrepresentation was reckless. CIDRA says that a qualifying misrepresentation will 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.

Mr J says that he believes the six month clause to be unclear and ambiguous. He also says that as he'd received six payslips, he'd met the terms. And he says the other income protection insurer hasn't raised this clause. I've considered these points carefully. But I don't agree that the six months clause is ambiguous. I consider a reasonable consumer would understand what Astrenska meant by 'six months' and that in order to take out the cover, they'd need to have been employed by the same employer for a full six month period. I also find that the clause is set out in a clear, fair and not misleading way. I'm mindful too that Mr J had called Q earlier in the year to take out income protection cover and had been told that he'd need to have been working for six months. So I'm satisfied he was aware of the insurer's eligibility criteria and therefore, ought to have reasonably ensured that he answered its questions accurately. And while another insurer may not have relied on this term when assessing Mr J's claim under its policy, I don't think that means it's unfair for Astrenska to rely on its own eligibility criteria when assessing claims.

On balance, I'm not persuaded Astrenska acted unfairly or unreasonably when it concluded that Mr J's misrepresentation was reckless.

CIDRA says that in cases of reckless misrepresentation, an insurer may turn down a claim, cancel the policy from the start and retain the policy premium. Astrenska has turned down the claim and retained the premiums for a policy Mr J wasn't eligible for. And as Astrenska's actions are in line with CIDRA, I think it's reasonably applied the remedy available to it under the Act.

Mr J feels strongly that CIDRA shouldn't apply to his claim. As I've explained, I find it's fair and reasonable to apply CIDRA principles to the circumstances of this claim. But even if I'm wrong on this point and the provisions of the Insurance Act 2015 should apply, the Insurance

Act, in brief, places a duty of fair presentation on an insured. And the remedy available to an insurer for a reckless breach of that duty is effectively the same as the remedy available to it under CIDRA. So I'm not persuaded the application of CIDRA here leads to Mr J suffering any disadvantage.

Overall, despite my natural sympathy with Mr J's position, I don't find that Astrenska has treated him unfairly. And it follows 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 Mr J to accept or reject my decision before 30 December 2025.

Lisa Barham
Ombudsman