

## The complaint

Mr J has complained that Astrenska Insurance Limited ('Astrenska') unfairly declined his claim.

All reference to Astrenska includes any agents acting on its behalf.

## What happened

Mr J bought an income protection policy, underwritten by Astrenska. He was made redundant by his employer but Astrenska declined the claim. It said Mr J was aware of problems with his employer and he should have answered the application questions differently. Had he done so, it wouldn't have offered him a policy.

Mr J complained and unhappy with the responses received, referred his complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint and didn't think Astrenska had unfairly declined the claim. But she thought the claims journey could have been better. Mr J had to chase for responses and Astrenska made mistakes so she recommended a total of £350 compensation for the delays and resulting distress and inconvenience.

Mr J disagreed and in summary, he thinks Astrenska made a mistake in declining his claim as he felt he answered the application forms correctly and met the eligibility criteria.

So the case has been passed to me for 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.

Having done so, I agree with the investigator's conclusions. I don't think Astrenska unfairly declined the claim but I agree the claims journey could have been smoother for Mr J for which £350 compensation is reasonable. I'll explain why.

Firstly, I am sorry to hear of Mr J's difficult circumstances. I have carefully considered everything Mr J and Astrenska have said even if I don't explicitly refer to it in my decision. I will only focus on what I consider to be key to my conclusions. This isn't meant as a discourtesy to Mr J – it reflects the quick and informal nature of our service.

- I have taken into account the relevant law, rules and industry guidelines. The background to this matter is well known to both parties so I won't repeat it here.
- The policy application includes the following question: "*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?*". Mr J answered no to this

question but Astrenska thinks Mr J should have answered yes. It said Mr J was aware that his employer was waiting for funding amongst other things.

- The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). 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.
- I have reviewed the information available from around the time of Mr J's application. I have seen an email in December 2022 in which there is mention of an external review and that this "*may be important for the continuation*" of the business Mr J worked for. I think it's more likely than not that Mr J would have been aware of the financial or contractual threat as a result of the review at the time of his application.
- In Mr J's role, although he wasn't a director or shareholder, he would have been aware of the risks to the business and the funding arrangements. Even if he didn't think he would become unemployed, it is more likely than not that he was aware of the threat to the contract and that this was dependent on the external review. As a result, I agree that Mr J should have answered 'yes' to the application question about financial or contractual threats. Had he done so, he wouldn't have been eligible for the policy.
- Astrenska has said Mr J doesn't meet the eligibility criteria outlined in the policy and had he answered the question correctly, it wouldn't have offered cover. It has treated Mr J's misrepresentation as careless and has refunded his premiums. This is in line with the remedies detailed in CIDRA. As Mr J made a qualifying misrepresentation, Astrenska was entitled to cancel the policy and refund the premiums.
- Mr J says Astrenska delayed refunding his premiums and he had to chase for responses and calls. He said he told Astrenska about his vulnerabilities and it failed to take these into account. He has provided a number of emails and examples including an error with his address. I agree that compensation is due for the stress and inconvenience caused to Mr J during the claims journey where he had to chase and wait for responses.
- Our award bands for distress and inconvenience are published on our website. I am satisfied that Mr J was caused significant distress and inconvenience for which £350 compensation is appropriate in all the circumstances. I don't think an additional or separate payment of interest is necessary. The compensation amount is for the chasing and delay in relation to the premium refund and any simple interest which would have been payable has been factored in.

### **My final decision**

For the reasons set out above, I partially uphold this complaint and direct Astrenska Insurance Limited to pay Mr J a total of £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 July 2024.

Shamaila Hussain  
**Ombudsman**