DRN-5165719

The complaint

Mr F is unhappy that The Original Holloway Friendly Society Limited trading as Holloway Friendly (HFS) declined his income protection claim and voided the policy.

What happened

In June 2020, Mr F took out an income protection policy through a broker. The policy is underwritten by HFS.

In April 2024, due to a shoulder condition, Mr F submitted a claim to HSF. As part of the claim validation process, HSF requested Mr F's medical records. The records confirmed that Mr F had shoulder pain for around 18 months, and he'd been referred for physiotherapy in 2017.

HFS looked at whether the policy would have been offered on the same terms had Mr F declared his shoulder pain at inception. It said Mr F wouldn't have been offered cover at all and cancelled the policy and refunded the premiums.

Unhappy, Mr F made a complaint to HFS. It maintained its position to cancel the policy and refund the premiums to Mr F.

Mr F brought his complaint to this service. Our investigator didn't uphold the complaint. He didn't think HFS had unfairly cancelled Mr F's policy. He said under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), HFS has shown that it wouldn't have offered the policy to Mr F had he declared his medical condition. And as HFS thought the mistake was careless, it was entitled to cancel the policy and refund the premiums to Mr F.

Mr F disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

At the outset I acknowledge that I've summarised this complaint in far less detail than Mr F has, and in my own words. I won't respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern our service allow me to do this as we are an informal dispute resolution service.

The relevant rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Mr F's complaint.

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 must 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've gone on to think about this when looking at Mr F's complaint and his individual circumstances. HFS has said Mr F failed to take reasonable care not to make a misrepresentation when Mr F didn't disclose all the medical information he should have when the policy was taken out.

The medical question Mr F was asked at the time of the policy inception was:

'7. *In the last 5 years have you had or suffered from any of the following:*

7b. Musculoskeletal

ii. any rheumatic, arthritic or muscular complaints, joint pains including shoulder pain, gout, repetitive strain injury, carpel tunnel syndrome?'

Mr F answered *'Yes'* to this question. And he went on to say that he had left elbow pain in 2019. Mr F also disclosed other medical conditions on the application form.

I've considered Mr F's medical records. This shows Mr F had right shoulder pain which had lasted 18 months, and he was referred for physiotherapy in 2017. I can't see that he disclosed this on the application form.

Having reviewed the medical questions that were asked on the application, I think they were clear and therefore it wasn't unreasonable for HFS to have expected Mr F to have answered those questions accurately when he completed the form. And based on the answer provided and Mr F's medical records, I'm satisfied the medical question wasn't answered completely or correctly.

After completing the application form, Mr F received a letter in June 2020, which confirmed the exclusions that would be applied to his income protection policy for any claims related to the medical conditions he'd disclosed. The letter also asked Mr F to check all the details were correct and if any changes needed to be made, then to contact HFS. I can't see that Mr F contacted HFS to make any changes to the policy. HFS made underwriting decisions on the policy which included specific exclusions and the amount of premium Mr F had to pay. I'm satisfied that the relevant medical question wasn't answered correctly.

I've gone on to think about whether failing to take reasonable care makes a difference in this case.

Under CIDRA, HFS has classified the qualifying misrepresentation as a careless one.

HFS has provided underwriting evidence which shows what would have happened if the correct information had been entered at the time of taking out the policy in 2020. It says had the questions been completed accurately, it wouldn't have offered Mr F cover on the income protection policy. So, HFS cancelled the policy and refunded the premiums. I've carefully

reviewed the underwriting evidence. This shows that had Mr F completed the questions about his medical condition accurately in 2017, HFS would not have offered the policy at all. This means, I'm satisfied Mr F's misrepresentation was a qualifying one.

CIDRA sets out the remedies available to an insurer in the case of a careless misrepresentation. CIDRA is concerned with disclosure and representations made by a consumer to an insurer before a consumer contract is entered into or varied.

Based on the available evidence, I'm satisfied that HFS has followed the law as set out in CIDRA and cancelled the policy and refunded the premiums. Under CIDRA, HFS is entitled to do this. Taking everything into account, I'm satisfied this is fair and reasonable.

Mr F has said that he had a duty to take reasonable care to answer all the questions honestly and to the best of his knowledge. He says he did do this, but he just didn't recall the problem with his shoulder. Therefore, the misrepresentation has been classified as careless rather than deliberate or reckless. So, while the policy is cancelled in both scenarios, in this case, Mr F has been refunded the premiums he's paid because the misrepresentation wasn't considered to be a deliberate or reckless one.

Mr F also says at the very least the exclusion could have been considered as reviewable rather than have the policy cancelled. The situation has left him and his family in a vulnerable position. I do understand that this has put Mr F in a difficult situation, but the law is clear in situations like this and allows the insurer to consider what it would have done at inception had the information been accurately completed.

Overall, I'm sorry to disappoint Mr F, but based on the circumstances, I'm satisfied that CIDRA has been applied fairly and Mr F hasn't been treated unfairly when HFS cancelled his policy and refunded the premiums to him. It follows therefore that I don't require HFS to do anything further.

My final decision

For the reasons given above, I don't uphold Mr F's complaint about The Original Holloway Friendly Society Limited trading as Holloway Friendly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 14 January 2025.

Nimisha Radia
Ombudsman