

The complaint

Mr W complains that Covea Life Limited unfairly declined a claim he made on a life insurance policy. He also complains about delay in dealing with his claim and feels he's been treated poorly.

What happened

To summarise, in July 2022, Mr W bought a life insurance policy online. The policy was to run for ten years and would pay £350,000 in the event of Mr W's death. It also included a 'near-death' benefit which would pay half the life benefit up front, if Mr W was diagnosed with one of the policy's defined critical illnesses.

Very unfortunately, in August 2022, Mr W was diagnosed with cancer. He made a claim on his policy. But Covea declined the claim. It said Mr W hadn't given honest answers to questions asked during the application process about his health - specifically, about PTSD and symptoms of a continuous cough, fever or shortness of breath. It considered this to be a deliberate or reckless qualifying misrepresentation, which entitled it to decline the claim and avoid his policy.

Mr W brought a complaint to the Financial Ombudsman Service. Our investigator initially upheld the complaint as she'd not received full information from Covea. However, after receiving full information, she changed her mind. She agreed there'd been a qualifying misrepresentation. She also agreed it was deliberate or reckless and that Covea was entitled to avoid the policy.

Mr W didn't accept the investigator's view. He disagreed with the interpretation of the medical evidence and said there were inconsistencies. He said his symptoms related to a sore rib and long Covid. And he said the online policy application form didn't allow him to enter PTSD. He asked for an ombudsman's decision, so his complaint has been passed to me.

For clarification, I'll set out the scope of my decision. Mr W has talked about difficulties he experienced with the online platform when applying for the policy. But the policy was sold by another company, so that's not something for which Covea is responsible, as our investigator's already explained. The scope of my decision is limited to Mr W's complaints about his claim being declined and the time taken to reach a claims decision – matters addressed in Covea's final response letter, dated 29 November 2022.

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'm not upholding this complaint. I know this will be extremely unwelcome news for Mr W and I'm very sorry about that. I'll explain my reasons, focusing on the points

and evidence I consider material to my decision. So, if I don't refer to a particular point or piece of evidence, it's not because I haven't thought about it. Rather, I don't consider it changes the outcome of the 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 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.

Covea says Mr W failed to take reasonable care not to make a misrepresentation when he gave 'no' answers to the following questions:

'Has there been anything wrong with you in the last couple of years?'

'Have you currently got any of these symptoms?'

- *Continuous cough*
- *Fever*
- *Shortness of breath'*

I'll focus initially on the question relating to whether Mr W had had anything wrong with him in the last couple of years. Having reviewed the medical evidence, I've noted Mr W was signed off work because of PTSD between February and June 2021. He was referred for and completed a course of therapy sessions.

Mr W has sent us screenshots showing that PTSD wasn't a recognised category on the seller's online form, so he was unable to disclose. But I can't hold Covea responsible for any difficulties Mr W experienced when taking out the policy. It was his responsibility to take reasonable care to ensure the information he gave was accurate. And I note he was sent confirmation of his answers and could've questioned anything that wasn't right. Covea, like any insurer, makes a decision to offer cover based on the health and lifestyle answers provided by the customer. When assessing the claim, Covea was entitled to rely on the information recorded during the sale.

Covea says it won't pay out where a customer hasn't given honest answers. I can see this is detailed in the policy information from Covea. But I have to consider whether Covea acted in line with CIDRA. And for the misrepresentation to be a qualifying one, Covea would need to show that accurate disclosure would've led to it doing something different.

However, I've not seen evidence of any specific underwriting criteria in relation to PTSD/mental health conditions. I've decided not to request this information again from Covea, as it doesn't make a difference to the outcome of the complaint – for reasons I'll go on to explain. But in the absence of underwriting evidence, I can't say what would've happened if Mr W had disclosed fully at the time of application, and therefore whether the non-disclosure made a difference. So I'm not satisfied this was a qualifying misrepresentation.

However, Covea says Mr W also failed to disclose symptoms of a continuous cough and shortness of breath. This is the far more significant issue in this complaint.

The medical records show that on 11 June 2022, Mr W sought out of hours medical advice. Under *presenting complaint, patient's reported condition*, it notes:

'not alone thought rib injury about 4 weeks ago still in pain, crunches when sitting down cough since December pain moving into back.'

And on 8 July 2022, Mr W had a telephone appointment with a nurse at his GP surgery. The notes record:

'pain to abdomen, SOB, continuous [sic] cough, lethargy, had covid at Christmas, lost his sense of smell or taste has never really lost the cough, pain to lower rib cage'

As a result of this appointment, Mr W was referred to gastroenterology for further tests. His investigations with gastroenterology identified anomalies which led to an urgent further referral under the lung 2 week wait procedure, ultimately resulting in his positive diagnosis of cancer.

Mr W has sent us an extract from his medical records which he argues contradicts the medical evidence cited above. I can see the extract relates to a record of his urgent referral under the lung 2 week wait procedure. I note that both 'unexplained or persistent (>3 weeks) cough' and 'breathlessness' are marked 'no'.

I've not seen any explanation for this discrepancy. But on balance I place more weight on the two entries from 11 June and 8 July 2022, which provide contemporaneous notes of what Mr W told the medical professionals when he was seeking help. These notes indicate Mr W's symptoms had not resolved over time and were longstanding.

Mr W says he thought his discomfort was related to long Covid. But the cause of his discomfort is not the issue. The insurer's question required him to report symptoms, regardless of their perceived cause. Relying on the medical records and recorded duration of the symptoms reported in June and July, on balance I'm satisfied the symptoms likely persisted, and Mr W ought reasonably to have disclosed that he was currently experiencing a continuous cough and shortness of breath when he applied for the policy. These were symptoms Covea wanted to know about.

So in respect of Covea's second question, I think Mr W failed to take reasonable care not to make a misrepresentation when applying for his policy. I now need to consider whether the misrepresentation was a qualifying one under CIDRA, that is, would Covea have come to a different decision about cover had it been given correct information.

Covea has provided evidence from its underwriting guidance. This shows that if Mr W had declared his persistent cough/shortness of breath, cover would've been declined. That is, Covea would not have offered a policy at all. So I'm satisfied Mr W's misrepresentation was a qualifying one.

Covea has treated the misrepresentation as deliberate or reckless. Under CIDRA this means the customer knew or didn't care whether the information given was untrue or misleading; and knew it was relevant to the insurer or didn't care whether or not it was. Given the duration of symptoms and likelihood that those symptoms were current at application, I think it was reasonable for Covea to treat the misrepresentation as deliberate or reckless.

CIDRA sets out the actions an insurer can take where a qualifying misrepresentation is deliberate or reckless. In declining Mr W's claim and avoiding his policy, I'm satisfied Covea has acted in line with CIDRA. Mr W also said he received a refund of the money he'd paid to the online seller, something that isn't required under CIDRA.

Finally, in respect of Mr W's complaint about the time taken to give him a decision about his claim, I've looked at the timeline between when the claim was first registered with Covea - on 25 August 2022 - and when the decline decision was issued to Mr W - on 10 November 2022. The claim form was posted to Mr W on 30 August 2022 and received back on 15 September 2022. Covea sought medical records on 21 September 2022 and these were received on 19 October 2022. Covea then referred the claim to its reinsurer and received a response on 10 November 2022. Its decline decision was issued the same day. I appreciate Mr W has found his dealings with Covea stressful. But overall, I think Covea provided its decision within a reasonable timeframe.

So in all the circumstances, I think Covea has acted fairly. I'm therefore not going to ask it to do anything more in respect of this complaint.

Once again, I'm sorry to send what I appreciate will be difficult and disappointing news for Mr W.

My final decision

For the reasons set out above, I've decided not to uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 August 2023.

Jo Chilvers
Ombudsman