

complaint

Miss G complains about St Andrew's Insurance Plc's decision to turn down her disability claim made under a mortgage payment protection insurance ("MPPI") policy.

background

Briefly, St Andrew's turned down Miss G's claim – for chronic fatigue syndrome ("CFS") – because it felt the illness was chronic and pointed out the policy didn't cover chronic conditions. It also said she'd suffered with the illness before the start of the policy in June 2008 and that the policy didn't cover claims for pre-existing medical conditions.

St Andrew's explained it was willing to reassess the claim with Miss G's updated consent to approach her doctors for more information about her illness, which she'd not given. Miss G complained to us.

The complaint was looked at by two of our adjudicators, neither of whom recommended Miss G's complaint be upheld. The second said he felt there wasn't conclusive evidence that the condition was chronic or pre-existing, although he believed St Andrew's was entitled to ask for more information to help with its assessment of the claim given the available information. As Miss G had withheld her consent, it was reasonable for St Andrew's to turn down her claim. The adjudicator didn't think there were shortcomings in the way St Andrew's had sold the policy to Miss G, as she'd more recently argued.

Miss G didn't agree, so the complaint was passed to me to look into afresh.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I'll deal with each of the main issues as I see them in turn.

what this service can and can't consider

Miss G has criticised the second adjudicator in particular for reaching opinions based on his persuasion and on hearsay evidence rather than evidence from someone under oath or subject to penalty for perjury.

As such, I'd emphasise that our service is intended to be informal, functioning as an alternative to the courts and without charge to the consumers that use us. That being the case, we don't operate in the same way as the courts.

Equally, we have no powers to "*sanction*", as Miss G puts it, St Andrew's. We are not the industry regulator and cannot punish or fine financial businesses. We can, however, make awards requiring them to put consumers back in the position they would have been had things not gone wrong.

St Andrew's response to Miss G's claim

Regarding the merits of Miss G's complaint itself, I can see that there is evidence on both sides of the argument as to whether her illness can be considered either chronic or

pre existing as defined by the policy. For example, Miss G points to information from April 2011 from her consultant endocrinologist showing medication she was prescribed was for a condition other than CFS – contrary to what had been said previously. The consultant says Miss G did have an episode of CFS before taking out the policy but that when the policy was sold Miss G was free of the illness.

On the other hand, St Andrew's has understandable concerns about the claim because of evidence, such as the report from Miss G's specialist registrar in diabetes and endocrinology dated April 2010. I realise Miss G's evidence raises doubts about some of the information in the letter of April 2010, but I can see why St Andrew's would want to investigate further.

In November 2009, a consultant in respiratory medicine and general internal medicine wrote to Miss G's GP to say her CFS had recurred and had been present for some time.

Since the medical evidence is inconclusive either way, and not all the information it wanted from her GP had been sent, I think it was reasonable for St Andrew's to try and get more information about Miss G's health by asking her to complete an updated consent form. I can see that St Andrew's sent the form and then sent reminders before closing her file.

St Andrew's has confirmed it will request and pay for the information it wants and will do so in a targeted way that will mean Miss G's other medical history will remain undisclosed.

Taking everything into account, I don't think St Andrew's acted unreasonably in refusing to accept Miss G's claim based on the available evidence. I think the information it was looking to obtain was fair when balanced against its entitlement to ensure the claim is valid and isn't excluded under the policy terms.

If Miss G now agrees to allow St Andrew's to get the information it wants, she should contact it directly.

Miss G's concerns about the sale of the policy

More recently, Miss G has raised concerns about the above, although she has clarified that she is not making a mis-sale complaint. I've carefully considered what she's said, but unfortunately a call recording of the sale is, according to St Andrew's, no longer available for me to listen to.

From the available evidence, I don't share Miss G's concerns about the sale of the policy. For example, it's not in dispute that Miss G was aware the policy was optional and didn't have to take it out. The policy was taken out separately from the mortgage it was protecting. Miss G was eligible for the policy under its terms.

It's possible Miss G might have been affected by some of the main policy limitations, for example, those relating to chronic or pre-existing conditions. But I don't think these would have affected her decision to buy the policy. I say that because she has argued in making her claim that she was not suffering with a chronic or pre-existing condition when she took out the policy. So if these issues were discussed with her when the policy was sold, I don't think she would have made a different decision and decided against buying the MPPI.

Miss G suggests we would need to see originals of the sales papers before reaching a fair and reasonable decision. But, for practical reasons, we frequently rely on copies of documents at this service and I see no reason why I can't do so in this case.

my final decision

For the reasons given, I've decided not to uphold Miss G's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss G to accept or reject my decision before 22 December 2014.

Nimish Patel
ombudsman