ISLE OF MAN **OFFICE OF FAIR TRADING**

Financial Services Ombudsman Scheme

Summary of the determination dated 18 May 2023 which refers to the decision of a financial services provider not to make any payment in respect of a life assurance policy.

The Complaint

The Policyholder established a life insurance policy with the Provider in 2006. Upon application, a pre-existing medical condition was disclosed. The life insurance policy was accepted which insured the Policyholder's life to the sum of £100,000 up to the age of 55.

Sadly, the Policyholder passed away from Myocardial Infarction (MI) in July 2020, and the Administrator of their Estate approached the Provider to seek payment under the policy. The claim was rejected by the Provider on the basis that the MI suffered by the Policyholder was caused directly or indirectly by the pre-existing condition. The Provider referred to an online report citing that heart disease is a common complication observed in 16% of patients who have the same pre-existing condition as the Policyholder.

The Complainant was unhappy with the Provider's decision to refuse to pay out under the policy and submitted a complaint to the Financial Services Ombudsman Scheme requesting payment of the monies due under the policy; plus loss of interest; and an additional payment for distress and inconvenience.

Investigation

The policy wording which sets out the contractual relationship contains certain exclusions one of which is directly relevant to the determination of this complaint. The exclusion reads:

> *We will not pay a claim if it is caused directly or indirectly from any of the following:-*
>
> *a) Any pre-existing medical condition*

The policy goes on to say:

> *Pre-existing is any condition, injury, illness, disease or related condition and/or associated signs or symptoms, whether diagnosed or not, which in the 3 years period immediately prior to the start date:*
>
> - *you knew about or should reasonably have known about, or*
> - *you had seen, or had arranged to see a doctor about.*

The Provider sought to rely on an exclusion to the policy. In the view of the Adjudicator it is right that the Provider should bear the burden of proof in establishing that the exclusion is made out. As with all civil matters, the burden of proof is one of balance of probabilities or that one outcome is more likely than another. However, the determination of this complaint does not turn on where the burden of proof lies.

Both parties submitted a certain amount of evidence to support their position.

The Provider referred to the Policyholder's medical history and various medical opinions which state that there is a very strong connection between the pre-existing condition and cause of death of the Policyholder.

The Complainant stood by their position that there is no (or, at least, insufficient) evidence to say that the Policyholder's MI was caused directly or indirectly by their pre-existing condition. The Complainant provided medical evidence from both the Policyholder's GP and the consultant who had overseen the Policyholder's care for some 15 years. Both confirmed that the Policyholder had never consulted them in relation to progressive heart problems.

The Complainant also provided a copy of the Policyholder's death certificate which lists in Part 1 (the cause of death including any underlying condition causing it) MI plus two other heart conditions. In Part 2 (any other significant condition contributing to death but not related to the disease or condition causing it) the pre-existing condition is noted.

The Provider seemed to suggest that the death certificate was only completed following government 'guidance' and is not proof of absolute fact as to the cause of death and the factors which contributed to it. That the pre-existing condition was listed on part 2 of the death certificate does not necessarily mean that it was not a cause of death. The Complainant maintained that the death certificate was completed by a specialist doctor following a post-mortem and as such their opinion should be given greater weight.

Findings

The central question was whether the Policyholder's death was caused, directly or indirectly, by their pre-existing condition.

Medical evidence provided by the Complainant was from doctors who had an intimate knowledge of the Policyholder. This is in stark contrast to that submitted by the Provider which relied on evidence from medical specialists who did not examine the Policyholder and general references from medical literature.

The Provider's evidence has been considered mainly in the abstract rather than in relation to the Policyholder specifically. The evidence suggested there is an increased risk of coronary disease in persons with the pre-existing condition. However, the evidence does not say that it is more likely than not that those with this condition will die as a result of something caused indirectly or indirectly by this. There is an increased risk but that does not amount to a more than 50% chance. This is not sufficient to conclude, on the balance of probabilities that death was caused directly or indirectly by the pre-existing condition.

The GP is clear that in their view the policyholder never had consultations or advice related to a progressive heart condition and had never been diagnosed with a heart condition that could have caused or contributed to their MI. The evidence provided by the two doctors who treated the policyholder provides positive evidence that the pre-existing condition was not causative of the MI.

The death certificate prepared apparently following a post–mortem investigation carried significant weight as to the cause of death and the Provider has not persuaded the Adjudicator that the death certificate is incorrect.

Based on the weight of the medical evidence the Adjudicator concluded that the Provider had failed to prove that death was caused by the pre-existing condition.

The Determination and Award

The complaint was upheld and the Provider instructed to pay to the Estate of the deceased the sum of £100,000.

In addition an award was made for distress & inconvenience in the sum of £500 plus interest at 4% per annum, this being the prevailing High Court rate applied under section 41 of the High Court Act 1991, from the date the claim was rejected in March 2022 to the date of the determination, £4,679.92.

The award therefore amounted to a total sum of £105,179.92