

The complaint

Mrs E complains that U K Insurance Limited trading as Direct Line (UKI) unfairly removed cover for pre-existing conditions on her pet insurance policy

Reference to UKI includes its agents.

What happened

Mrs E had a pet insurance policy with UKI for one of her dogs, and another one with a different provider for her other dog. Both covered her for pre-existing conditions (PECs). Mrs E called UKI to get a new policy with it, to replace the one she had with a different provider. She took the policy out over the phone and cancelled the one with the other provider.

When Mrs E went to make a claim for her dog UKI said she'd answered the questions about her dog's conditions incorrectly. It considered this a careless qualifying misrepresentation, which entitled it to decline her claim and remove the cover for PECs. But UKI didn't think it was fair to not pay Mrs E's claim, so it paid it. But it still removed the cover for PECs when the policy renewed.

Mrs E wasn't happy with this and complained to UKI. She said she took the policy out to be covered for PECs. And had she known she wouldn't be covered for them with UKI, she'd have stayed with the previous provider. UKI didn't change its stance, so, Mrs E brought her complaint to us.

One of our investigators looked into Mrs E's complaint and didn't recommend it be upheld. He didn't think Mrs E had made a careless misrepresentation, but thought it was fair for UKI to remove the cover for PECs when the policy renewed as, ultimately, that renewal was a new contract.

Mrs E didn't agree and asked for an ombudsman's decision. So, the case has come to me.

I issued a provisional decision which said:

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.

UKI thinks Mrs E failed to take reasonable care when she was asked about the conditions her dog had. It says it wasn't told about a number of conditions, but the key condition it wasn't told about was Mrs E's dog's hind limb stiffness. It said had it known about this, it wouldn't have offered cover for any PECs.

UKI has provided evidence in the form of its underwriting criteria that shows that if it were aware of Mrs E's pet's hindlimb stiffness, it wouldn't have offered cover.

UKI has said it wasn't fair to not pay for Mrs E's claim, because it wasn't clear that she should have disclosed the hind limb stiffness as a condition. And for this same reason, I don't think it's fair, or in line with CIDRA that UKI remove cover for PECs.

CIDRA required Mrs C to take reasonable care not to make a misrepresentation to UKI when she took out the policy. And in this case, I'm satisfied she did. UKI have acknowledged that it's not clear Mrs E was aware that her dog had hind limb stiffness, let alone know it was what UKI considered a condition. UKI acknowledge "We do not think we can evidence that the customer should reasonably have had an awareness that the pet had HL stiffness as a condition which needed to be declared. The pet has never had any treatment for this. the pet has never been taken to the vet for this - it has just been noted when being seen for other things. Therefore we feel it is unfair to expect the customer to declare it...". And I agree with this finding. I don't think it's reasonable to require Mrs E to let UKI know about a condition she didn't even know was a condition herself.

It should be noted that UKI tried to treat Mrs E fairly here by paying her claim – which is encouraging. But it's gone far enough. I don't think Mrs E failed to take reasonable care when answering the question she was asked about her dog's conditions, so I don't think UKI can alter the contract it entered into on the basis it's now found out about the hind limb stiffness.

Mrs E took the policy out on the basis it covered her for PECs year on year up to a set limit. Not having cover for those PECs fundamentally changes the cover Mrs E has which I don't find fair. The intention of this policy is to cover ongoing conditions, including some pre-existing ones. But the policy now offers less cover than the policy she took out with UKI, and less cover than the cover with her previous provider. This puts Mrs E in a much worse position, through no fault of her own. I appreciate that UKI wouldn't have offered this cover had it known about the hind limb stiffness. But as Mrs E didn't fail to take reasonable care, it's not though any fault on her part that she didn't let UKI know.

CIDRA only allows UKI to alter the terms of the policy if a qualifying misrepresentation has been made. And as explained, Mrs E didn't fail to take reasonable care, so, there is no qualifying misrepresentation.

So, to put things right I think UKI should continue to offer cover on the terms of the contract as it was entered into. For clarity that means including cover for PECs on an ongoing basis until the policy limits are reached.

I went on to say that I'd consider further comments and evidence that I get. But that unless the information changed my mind, my provisional decision was likely to be to require UKI to amend the policy terms to the ones that were in place at the policy inception. For the avoidance of doubt, this included reinstating cover for PECs on an ongoing basis until any policy limits – set at inception – are reached.

Mrs E accepted the decision and had nothing further to add.

UKI simply confirmed it had nothing further to add.

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.

As I've had no further comments or evidence to consider following my provisional decision, I see no reason to depart from its findings or reasoning.

Therefore, my final decision reaches the same outcome, for the same reasons as set out in that provisional decision.

My final decision

For the reasons set out above I uphold Mrs E's complaint. To put things right I require U K Insurance Limited trading as Direct Line to:

- Amend the policy terms to the ones that were in place at the policy inception. For the avoidance of doubt, this includes reinstating cover for PECs on an ongoing basis until any policy limits – set at inception – are reached

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 31 March 2022.

Joe Thornley
Ombudsman