

The complaint

Mrs B is unhappy that Great Lakes Insurance SE only agreed to offer a proportionate settlement of a claim made under a travel insurance policy in respect of her husband, Mr B.

What happened

Mr and Mrs B had the benefit of an annual, multi-trip, travel insurance policy, underwritten by Great Lakes ('the policy'). They travelled abroad in October 2021. Unfortunately, whilst away, Mr and Mrs B became seriously unwell, and both were hospitalised.

They both received urgent medical care whilst abroad and were later repatriated, by air ambulance, to the UK. Very sadly, Mr B died after returning to the UK.

Great Lakes agreed to pay Mr B's repatriation costs. But it only agreed to cover 84% of his medical costs. That's because it says Mrs B didn't declare one of Mr B's medical conditions when taking out the policy – so made a qualifying misrepresentation. If the condition had been declared, Great Lakes says it would've charged more for the policy.

Mrs B doesn't think that's fair. So, a complaint was brought to our service.

Our investigator looked into what happened. He didn't think Great Lakes' decision was fair and reasonable. So, he recommended it to put things right by reimbursing the outstanding 16% of medical costs already paid together with interest.

Great Lakes disagreed. So, the complaint has been referred to me to determine.

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.

When doing so I've taken into account 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 (so in this case, Great Lakes) 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.

Great Lakes says, when taking out the policy and answering the medical questions, Mrs B –

on behalf of Mr B - failed to take reasonable care not to make a misrepresentation. So, it only agreed to cover 84% of his claimed costs.

I don't think Great Lakes' position is fair and reasonable. I'll explain why.

I've listened to the call recording from when Mrs B enquired about the policy. Mrs B is asked a number of questions about her and Mr B's medical conditions. The representative runs through a list of conditions Mr B was known to have. Mrs B explains that Mr B also experienced heart failure the year before.

She's also asked: "In the last 2 years, excluding the conditions we've discussed, have either of you suffered from any other medical or psychological conditions which you've had treatment?". Mrs B responds: just the heart failure (in respect of Mr B).

Mrs B is then asked whether they've "suffered from or received treatment or investigation, tests... for heart attacks, angina, chest pain or any other heart condition?" The representative also says: with "that in mind, I'm aware of the following: heart failure..." Mrs B says: no.

She's then asked: "any other medical condition or symptoms we haven't discussed on this call?". Mrs B again replies: no.

Mrs B is then asked specific questions about the heart failure declared for Mr B. She's asked: "is this heart failure connected with any form of cardiomyopathy?" Mrs B replies: no.

Great Lakes says that Mrs B should've answered 'yes' to this question. That's because the medical evidence reflects that Mr B's heart failure was due to "cardiomegaly" – an enlarged heart. And that's a form of cardiomyopathy. However, I don't think it's fair and reasonable to say that Mrs B ought to have reasonably been aware of that. And Great Lakes has accepted that Mrs B might not have been aware.

The answer she provided to the specific question asked was factually correct – as supported by a statement from Mr B's doctor. His heart failure wasn't due to cardiomegaly. If Great Lakes wanted to specifically know whether cardiomegaly played a part on Mr B's heart failure, it was open to ask that question when discussing Mr B's medical conditions.

I've also thought about whether Mrs B ought reasonably to have separately declared Mr B's cardiomegaly when taking out the policy given the other questions asked of her – as summarised above – and that it's listed in the medical notes as being an active problem from the middle of 2020; the same time as Mr B was diagnosed with heart failure. Mrs B declared Mr B's heart failure. Without being asked additional, specific, questions about his heart failure, I don't think Mrs B made a misrepresentation. From her perspective, I can understand why the heart failure and cardiomegaly were, effectively, the same thing. And I think that's reasonable in the circumstances here.

I understand Great Lakes' point, that had it been aware of Mr B's condition of cardiomegaly, it would've gone on to ask further question associated with that condition. And that this would've then led to the policy costing over £100 more than they paid for it.

However, because I don't think Mrs B answered questions incorrectly – and so didn't make a misrepresentation - I don't need to go on to consider whether a qualifying misrepresentation was made, or whether had cardiomegaly been declared, the policy would've still been offered but at a higher premium. That's because I don't think that aspect of CIDRA is relevant here.

And having considered all the circumstances of this case, I don't think it's fair and reasonable for Great Lakes to only pay 84% of Mr B's medical costs – leaving the remainder to be paid on his behalf. I'm satisfied that Mrs B correctly provided the information asked of her and so hasn't failed to take reasonable care not to make a misrepresentation.

It's also worth mentioning that Great Lakes only paid 97% of Mrs B's medical costs because it said she'd failed to answer a medical question correctly about herself. That complaint hadn't been raised by Mrs B to investigate. However, Great Lakes now accepts that it shouldn't have made that deduction and has agreed to reimburse Mrs B for the shortfall of 3%. My decision hasn't dealt with that issue.

Mr and Mrs B's daughter – who is representing Mrs B in this complaint – took out a loan to cover the cost of Mr B's medical costs as Mr and Mrs B couldn't afford this. I understand the loan amount is more than the shortfall in Mr B's medical costs as it was taken out to also cover the shortfall in Mrs B's medical costs and travel costs for Mr and Mrs B's daughter to fly to and from the country Mr and Mrs B were repatriated from to see them.

I'm satisfied from what's been said that Mrs B intends to pay her daughter back from any money received from Great Lakes in respect of the shortfall in Mr B's medical costs. The duration of the loan is 60 months and the date of the first loan repayment was January 2022. The interest rate is 2.8% per annum (fixed).

I'm satisfied that it's fair and reasonable for Great Lakes to pay Mrs B interest at this rate for the duration of the loan in respect of the balance of Mr B's medical costs, as a lump sum payment.

I appreciate that Mrs B's daughter says she's experienced distress and inconvenience but as she isn't party to the contact of insurance Mr and Mrs B had with Great Lakes, I don't have any power to award her any compensation as she isn't an eligible complainant here.

Putting things right

Within 28 days from the date on which our service notifies Great Lakes that this final decision has been accepted by Mrs B, I direct Great Lakes to pay Mrs B:

- the 16% shortfall in respect of Mr B's medical costs; and
- interest at the rate of 2.8% for the duration of the loan in respect of the shortfall in Mr B's medical costs only.

If Great Lakes considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs B how much it's taken off. It should also give her a certificate showing this if asked for one. That way tax from HM Revenue & Customs, can be reclaimed if appropriate.

My final decision

I uphold this complaint and direct Great Lakes Insurance SE to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 16 February 2023.

David Curtis-Johnson

Ombudsman