

The complaint

Mr and Mrs F complain that CIGNA Life Insurance Company of Europe SA-NV has turned down a claim they made on a global private medical insurance policy.

Mr and Mrs F are represented by Mr C.

What happened

In August 2019, Mr and Mrs F applied for a global private medical insurance policy. Mrs F told CIGNA - amongst other things - that in 2009, she'd undergone treatment for breast cancer. CIGNA agreed to offer cover to Mr and Mrs F and didn't add any medical exclusions to their policy.

Unfortunately, in August 2021, Mrs F was diagnosed with a recurrence of breast cancer. So she made a claim on the policy for the costs of mastectomy and reconstruction surgery.

CIGNA investigated Mrs F's claim and obtained copies of reports setting out the findings of mammograms she'd undergone during 2018 and 2019 – prior to taking out the policy. CIGNA concluded that these reports showed that Mrs F had benign breast disease, which she hadn't disclosed to it. CIGNA said that had Mrs F declared this finding to it, it would've excluded cover for all claims related to her breasts. So it turned down the claim.

Mr and Mrs F were unhappy with CIGNA's decision and so Mr C asked us to look into their complaint. He said, in summary, that the mammogram reports hadn't shown any adverse finding which ought to have been declared to CIGNA.

Our investigator didn't think that CIGNA had treated Mr and Mrs F unfairly. She noted that CIGNA's application form had asked whether Mr and Mrs F had any illness, condition or symptom that they hadn't disclosed. Mrs F had answered no. But having considered both reports, the investigator also noted that the mammograms had found calcification in Mrs F's left breast – even though this had been benign. The investigator felt this calcification was a symptom which Mrs F ought to have disclosed to CIGNA. So she concluded that CIGNA had been entitled to rewrite the policy as if Mrs F had disclosed all of the information it wanted to know.

The investigator was satisfied that based on the evidence CIGNA had provided, it had shown that had Mrs F declared the benign calcification findings to it (in addition to her other medical conditions), it would've added an exclusion at the outset for all breast-related conditions. This meant that Mrs F's claim would never have been covered and so the investigator considered it'd been fair for CIGNA to turn it down.

Mr C disagreed. He maintained that Mrs F had diagnosed her 2009 diagnosis of breast cancer. He argued that classing benign findings as a symptom was absurd and didn't constitute a reasonable basis in fact or law for turning down this claim.

I issued a provisional decision on 13 September 2022. In my provisional decision, I explained the reasons why I didn't think it had been fair for CIGNA to turn down Mr and Mrs F's claim. I said:

'When Mr and Mrs F applied for the policy, they were asked information about themselves, their details and details about their medical history. CIGNA used this information to decide whether or not to insure Mr and Mrs F and if so, on what terms.'

CIGNA says that Mrs F didn't correctly answer a question about her existing medical history. This means the principles set out in the Consumer Insurance (Disclosures and Representations) Act 2012 ('CIDRA') are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mr and Mrs F's claim.

CIDRA is designed to make sure consumers and insurers get an appropriate remedy if a policyholder makes what is called a 'qualifying misrepresentation' under the Act. A qualifying misrepresentation is when a consumer fails to take reasonable care to correctly answer an insurer's questions and provides inaccurate information.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. So I've looked carefully at what Mr and Mrs F were asked when they took out the policy. For completeness, I'd add that there's some dispute about which version of the online application form Mr and Mrs F sent to CIGNA. But this doesn't make any difference to my consideration of their complaint. That's because the evidence clearly shows that Mrs F did verbally disclose her previous cancer diagnosis to CIGNA ahead of the policy becoming active. And in both versions of the application form I've seen; the following question has been answered in the same way:

'Does anyone have any illness, condition or symptom not already mentioned? Please include details of any known or suspected issues whether or not medical advice has been sought or a diagnosis reached.'

Both Mr and Mrs F answered 'no' to this question on the online application form. It isn't clear whether they were asked it again during the telephone medical screening, but I'm satisfied that they saw this question and answered it in the negative. CIGNA says that Mrs F should've answered 'yes' to this question, given the findings of her mammogram screenings in 2018 and 2019. So I've looked closely at these reports to decide whether I think she took reasonable care to answer the question she was asked.

I've first considered a report dated 9 July 2018 – over a year before Mr and Mrs F applied for the policy. This stated: 'there are benign-appearing calcifications located within...the left breast post lumpectomy.'

This report concluded that there were 'benign findings' and recommended that Mrs F should have an annual mammogram.

The second mammogram report is dated 27 August 2019 (which is after Mrs F completed the online form but appears to be prior to her verbal medical declaration to CIGNA on 30 August 2019). This stated: 'There is (sic) a few scattered punctuate calcification again noted on the left.' This report also stated: 'IMPRESSION: Benign findings' and it recommended correlation with a physical examination and an annual mammogram.

Both reports both broadly conclude that there were no suspicious findings to indicate malignancy.

Mr C says as that the mammogram didn't make any finding of growths, lumps, cancerous tumours, malignancy etc.; he considers that it's absurd to consider the calcifications to be a symptom. CIGNA hasn't suggested that the mammograms did find any evidence of the recurrence of cancer or any sign of malignancy. Instead, it concludes that Mrs F ought to

have disclosed the findings in the mammogram.

I've thought about this very carefully. I've placed significant weight on the clarity of the question Mrs F was asked and the conclusions of the mammogram reports. In my view, the question is rather wide. It makes no reference to the relevant timeframe CIGNA wants to know about. And it asks a policyholder to declare any symptom, illness or condition they haven't already disclosed, including any known or suspected issues. From my own research, I understand that breast calcifications are small calcium deposits which are found in the breast, which can be very common and are often benign. The reports here indicate that the findings of both mammograms were benign. No diagnosis of any particular condition was made – neither report refers to benign breast disease or to breast lumps. Nor do the reports suggest that the calcification are 'issues' – either

Given the above, I don't think CIGNA's question was clear enough to have prompted Mrs F to declare a benign finding during a routine mammogram. And I also don't think that Mrs F is likely to have considered a benign finding of calcifications and an overall conclusion of 'benign findings' to be a symptom, illness or a condition that she'd need to tell CIGNA about.

On that basis then, whilst I accept this complaint is finely balanced, I currently think that Mrs F did take reasonable care to answer the question she was asked by CIGNA. This means that I don't currently think there was any misrepresentation by Mrs F at the time of policy sale. And so it follows that I'm not persuaded that CIGNA is reasonably entitled to apply the legal remedy set out in CIDRA to Mr and Mrs F's policy. For clarity, I don't find that CIGNA is entitled to re-underwrite the policy or apply the retrospective exclusion for breast conditions.

In my view, the fair outcome to this complaint would be for CIGNA to remove the exclusion for breast conditions from Mr and Mrs F's policy and to reconsider the claim subject to the remaining terms and conditions of the contract. I should make it clear that I don't intend to direct CIGNA to pay this claim – it will be for CIGNA to assess the claim without reference to the exclusion for breast conditions and to consider whether it's covered by the policy terms and conditions.

I must also make it clear that I don't plan to direct CIGNA to pay Mr and Mrs F's legal fees. That's because we are a free and accessible service and consumers don't need legal representation in order to bring their complaint to us. Neither do they require legal representation to make a claim. And the policy terms don't cover any legal expenses a policyholder incurs if they opt to use legal representation to do so. So I don't think it would be fair or reasonable for me to require CIGNA to pay Mr and Mrs F's legal costs.'

I asked both parties to send me any additional comments or evidence they wanted me to consider.

Both CIGNA and Mr C, on behalf of Mr and Mrs F, confirmed that they had nothing more 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.

Having done so, as neither party has provided any further evidence or information, I see no reason to change my provisional findings. So my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct CIGNA Life Insurance Company of Europe SA-NV to:

- Remove the exclusion for breast conditions from Mr and Mrs F's policy; and
- Reconsider Mr and Mrs F's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 28 October 2022.

Lisa Barham
Ombudsman