

The complaint

The estate of Mr P complains about Union Reiseversicherung AG's (URV's) decision to decline a claim for a medical emergency made under Mr P's travel insurance policy. The complaint also relates to URV's handling of the claim and the level of assistance provided by URV when Mr P fell ill abroad.

The estate of Mr P is represented by Mr S, who himself has appointed a representative to act on his behalf. For ease, I've referred to Mr S throughout this decision, but all references to Mr S's submissions include those of his representative.

All references to URV include the agents appointed to handle claims on its behalf.

What happened

Mr P was the sole insured under an annual travel insurance policy provided by URV. The policy was purchased online in December 2018 and several medical conditions were declared for Mr P. Mr S telephoned URV on 4 January 2019 and obtained a quotation to upgrade the policy from European to Worldwide cover. On 7 January 2019, Mr S telephoned URV again and went ahead with the upgrade.

Unfortunately, while on holiday abroad, Mr P was taken ill and was admitted to hospital. Mr S contacted URV to notify it about the claim, but URV initially refused to speak to Mr S and there was subsequent confusion by URV about the relationship between Mr P and Mr S.

More than two weeks after Mr P was admitted to hospital, URV said the claim wasn't covered because it hadn't been told about Mr P's medication and a pre-existing medical condition. URV later declined the claim for a different reason – because Mr P had a stroke previously and this wasn't declared to it. URV said if it had been told about the stroke when the policy was sold, it wouldn't have offered cover to Mr P. As a result of URV's decision, Mr S incurred significant costs in paying for Mr P's medical bills and in arranging for his return to the UK with a medical escort.

Very sadly, Mr P passed away a number of months later.

Unhappy, Mr S complained to URV. He said URV had been told about Mr P's stroke during telephone calls in January 2019. Mr S also complained about the level of service provided by URV when it was informed about Mr P's medical emergency abroad.

URV responded to the complaint and said five online medical screenings had been completed for Mr P in the lead-up to the policy being purchased and different medical conditions were disclosed on each screening – but a stroke wasn't disclosed on any. URV said the questions it asked when the policy was sold weren't complicated or confusing and the calls made by Mr S in January 2019 weren't for the purpose of declaring a health condition, so its agent wouldn't have been required to do anything more than what had been done. Finally, URV said it acknowledged that data protection requirements could be onerous and inconvenient in the circumstances which Mr S was in, but it needed to comply with legislation designed to protect confidential medical information.

Mr S brought the matter to the attention of our service. Initially, one of our investigators said the complaint wasn't one which this service had the power to look into, but another ombudsman disagreed. So, an investigator considered the merits of the complaint. She said she didn't think URV had acted unfairly by declining Mr P's claim, and that the content of the telephone calls in January 2019 didn't change this. But she said URV should retrospectively avoid Mr P's policy and return the premiums to his estate. Our investigator concluded that there were delays by URV in deciding whether Mr P's claim was covered but, because Mr P was the sole policyholder, she was limited in what (if any) compensation could now be awarded in respect of this complaint.

Mr S didn't agree with our investigator's conclusions, so the complaint has been referred to me as the final stage in our process.

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.

I'm very sorry to hear about what happened to Mr P, and about his subsequent sad passing. I don't doubt that this must have been a very worrying and distressing time for Mr S, and I'd like to offer him my sincere condolences for his loss.

I've read and considered all the detailed submissions provided by Mr S, and I've also taken into account all the information which URV has provided. But, reflecting the informal nature of our service, I won't be referencing and/or addressing each and every complaint point raised – nor am I obliged to. Instead, I only intend to address what I think are the key complaint issues.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims promptly and fairly and shouldn't unreasonably reject a claim. The rules also say that insurers must provide reasonable guidance to help policyholders make a claim and provide appropriate information on its progress. I've taken these rules into account when making my decision about Mr P's complaint.

URV's decision to decline Mr P's claim

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'), and I'm satisfied that it's fair and reasonable to apply the principles set out in CIDRA to Mr P's claim. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care required is that of a reasonable consumer.

If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying one. For the misrepresentation to be a qualifying one, the insurer must 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 a 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.

The sale of this policy didn't take place during the January 2019 calls. The sale took place online in December 2018 and URV thinks Mr P failed to take reasonable care not to make a misrepresentation when he answered 'no' to the following question:

'You should tell us if you:

a) ...

b) have EVER been diagnosed with or treated for any of the following:

i. any heart or circulatory condition

ii. a stroke, TIA (transient ischaemic attack) or high blood pressure

iii. a brain haemorrhage

iv. a breathing condition (including asthma)

v. any type of cancer

vi. any type of diabetes'

URV says Mr P should have answered 'yes' to this question because he'd had a stroke in 2017.

I'm satisfied that this question is clear and specific in prompting a reasonable consumer that URV would want to know if a policyholder had ever suffered from a stroke. I don't agree with Mr S's submissions that long questions set out on separate webpages and/or the way in which medical conditions are grouped together makes the question asked or the overall sales process unclear or confusing.

Mr S has quoted from regulatory guidance '*FG21/1 Guidance for firms on the fair treatment of vulnerable customers*'. But this guidance was published in 2021 and doesn't apply retrospectively - so it isn't relevant to Mr P's complaint. Prior to the publication of FG21/1, insurers were bound by obligations set out in the regulator's '*Principles for Business*' to treat customers fairly, and I also note the regulator's stated expectations to exercise particular care when dealing with vulnerable customers. However, this doesn't change my decision that I think the sales process which Mr P followed, and the questions which he was asked about his previous medical history, were clear.

The fact that the content of certain questions in the online sales journey may now have changed doesn't, in itself, demonstrate that the original sales process was inadequate. In any event, the underwriter of this brand of policy has changed since Mr P bought his cover. And, if Mr P had any questions about what medical conditions he needed to tell URV about, or if he was unsure what he was being asked, he or a representative on his behalf could have contacted URV to check before the purchase of the policy was concluded.

This means I don't think Mr P took reasonable care when answering the questions asked when he bought his policy online and, therefore, he made a qualifying misrepresentation under CIDRA.

I've carefully considered the content of the telephone calls which took place between Mr S and URV in January 2019. In doing so, I've had particular regard to the 'reasonable care' provisions set out under Section 3 of CIDRA.

These calls weren't sales calls – they were calls made after the sale of the policy had already taken place, to make enquiries about and to amend the extent of the geographical cover. It's not in dispute that Mr S told URV that Mr P had a stroke. But the purpose of the calls wasn't to make – or to change a previously made – medical declaration on behalf of Mr

P. Instead, the purpose of the calls was to amend what Mr S said was a mistake in the policy cover, and to upgrade the policy from European to Worldwide. In these circumstances, I wouldn't necessarily expect URV's call advisor to have gone through a medical declaration, and URV's procedures don't require its advisors to do so. I understand Mr S says he believed Mr P's stroke had been declared when the policy was purchased online in December 2018. But a stroke wasn't mentioned as a declared medical condition on the original policy schedule which was sent to Mr P. And I note Mr P was sent another policy schedule after the policy was amended in January 2019, to check the details were correct. A stroke also wasn't mentioned as a declared medical condition on that policy schedule. The onus was on Mr P not to make a misrepresentation when he bought the policy in December 2018 and the calls that took place in January 2019 don't change my decision that Mr P made a qualifying misrepresentation under CIDRA. Any obligations on the insurer with regard to the treatment of vulnerable customers prior to the introduction of FG 21/1 also don't change my findings on this point.

This means I think URV is entitled to rely on the relevant remedy for qualifying misrepresentation set out in CIDRA. URV has accepted our investigator's findings that Mr P's misrepresentation was careless.

I'm satisfied, based on the explanations and evidence provided by URV, that if Mr P had answered 'yes' to the question set out above, no cover would have been provided. I understand Mr S disputes this but I'm satisfied that URV has demonstrated it wouldn't have offered any cover at all if Mr P had declared all the medical conditions he was asked about during the online screening – including the stroke. Mr S has questioned the underwriting ratings quoted by URV but, based on my experience of dealing with complaints of this type, I'm satisfied with the information URV has provided. I haven't been sent copies of the alternative quotes obtained by Mr S which he says produced an offer of cover for an additional premium, so I can't fairly give these quotes any persuasive weight in support of an argument that URV's submissions on this point are incorrect.

As URV wouldn't have offered Mr P any cover at all if he'd declared his stroke, it's entitled to decline the claim in full under CIDRA. However, in line with CIDRA, URV should avoid the policy and refund the premiums paid, which it has now agreed to do.

In these circumstances, where no cover at all would have been offered were it not for the qualifying misrepresentation (rather than a situation where cover would have been offered for the undeclared medical condition for an additional premium), there are no reasonable grounds upon which I could fairly ask URV to pay Mr P's claim on a proportionate basis.

URV's handling of the claim

An insurer is entitled to make reasonable enquiries to satisfy itself that a claim is covered. In cases like Mr P's, involving medical emergencies abroad, this would generally include asking for details of a policyholder's medical history from their GP. But, in making such enquiries, I'd expect URV to act without any excessive or undue delay, and to keep Mr P's representatives reasonably informed of the progress of the claim.

I understand there were initial difficulties by URV in communicating with Mr S in this case, as Mr P was the sole policyholder. URV was asking for Mr P's consent to deal with Mr S, when Mr P wasn't in a position to give such consent. I can understand why this would have been very frustrating for Mr S. But, although I think URV could have given more consideration to how best to deal with the situation, businesses are obliged to incorporate data protection checks into their processes and it's not within my remit to direct a business to change its internal procedures. So, I can't fairly conclude URV should have done something differently here.

However, I also understand Mr P was incorrectly referred to by URV on various occasions as female, Mr S's wife, Mr S's mother and Mr S's father. These were unavoidable errors by URV, and I don't think these errors should have happened. URV could have updated its claims notes to ensure that the relationship between Mr S and Mr P was clear to any of its advisors reading the notes. This could have avoided the frustration and upset experienced by Mr S and avoided Mr S having to unnecessarily repeat himself at an already distressing time. But, while I don't wish to dismiss Mr S's strength of feeling about the matter, I'm satisfied that these mistakes were caused by human error on the part of URV, rather than because of any less favourable treatment to Mr S because of the nature of his and Mr P's relationship.

I think it's clear from URV's claims notes that it didn't keep Mr P updated as I'd have expected it to. Mr S – and later his representative – was repeatedly chasing URV for information and updates. Furthermore, Mr S says he was on hold to URV for extended periods of time and was told he'd receive call-backs which didn't happen. In situations such as this, I'd generally expect an insurer to request a medical report regarding the policyholder's admission to hospital as soon as reasonably possible. But it seems to have taken URV a number of days to do this. Furthermore, I don't think URV requested details of Mr P's medical history from his GP as early as it could have. And, when URV received the medical records, I don't think it reviewed these as quickly as it could have. If URV had acted sooner, it's likely a decision to decline cover could have been made and communicated to Mr S more efficiently. Like our investigator, I'm not satisfied that the retrospective screening call between URV and Mr S was necessary in order for URV to make a decision about cover, and I don't think there's any doubt that this call will have added to Mr S's already considerable stress and upset. In addition, I think it would have been helpful if URV had declined the claim for the correct reason from the outset, and I think its failure to do so caused further frustration and inconvenience to Mr S.

Mr S has also expressed concerns about the level of assistance URV provided with the repatriation arrangements for Mr P. It seems URV initially indicated that it could '*support*' Mr S with the arrangements. In circumstances where a claim isn't covered under a travel insurance policy, I wouldn't generally expect an insurer to have done more than URV did here. But I think URV could have been clearer in its communications with Mr S in explaining the limitations of the support and/or information it could provide relating to repatriation from the outset.

In summary therefore, I don't think URV handled this claim as it should have. I hope my explanations in where I think there were failings have been helpful to Mr S in understanding how the claim could have been handled differently by URV. But I have no power to direct URV to pay any compensation to Mr S for any personal distress which he experienced. This is because Mr S wasn't insured under this policy and therefore isn't an eligible complainant in his own right in relation to this claim. Mr S is an eligible complainant only in his capacity as the personal representative of Mr P's estate, and I have no authority to award compensation for distress or inconvenience to an estate.

While I would, in certain limited circumstances, have the power to award compensation to Mr P for any distress and inconvenience he experienced before he sadly passed away, I don't think there are any reasonable grounds upon which I could fairly do so in this case. I don't think URV acted incorrectly by declining this claim, so no compensation is due for URV's failure to accept responsibility for Mr P's medical costs and repatriation. And, although I agree that there were failings on the part of URV in the handling of Mr P's claim, Mr P wasn't aware of what was happening with his claim during the first seven days of his hospital admission. And, after this point, I must have regard to the fact that, understandably, Mr S – and later Mr S's representative – was dealing with matters relating to the claim on behalf of Mr P, thereby reducing the effect of the situation on Mr P. Based on the individual

circumstances of this case, I don't think it would be fair or reasonable to direct URV to pay any compensation for the impact of its actions on Mr P.

I'm sorry to disappoint Mr S and I know he has incurred significant costs. But I won't be directing URV to do anything further than what I've outlined below.

Putting things right

Union Reiseversicherung AG needs to put things right by retrospectively avoiding Mr P's policy and refunding the premiums paid to his estate. Interest should be added at 8% simple per annum from the date the premiums were paid until the date of settlement.

My final decision

I'm upholding the estate of Mr P's complaint against Union Reiseversicherung AG in part, and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr P to accept or reject my decision before 11 January 2023.

Leah Nagle
Ombudsman