DRN-3944293

The complaint

Mr and Mrs F complain because Great Lakes Insurance SE hasn't paid a claim for a cancelled holiday under their travel insurance policy.

All references to Great Lakes include the agents it has appointed to handle claims on its behalf.

What happened

Mr and Mrs F held a single trip travel insurance policy, provided by Great Lakes. The policy was sold over the phone, by an independent broker who I'll call 'S'.

Mr F bought the policy on 18 September 2021. During the call, Mr F told S about his and Mrs F's pre-existing medical conditions. Mr F also said Mrs F had recently visited her doctor concerning symptoms which the doctor thought might be IBS. Mr F said Mrs F was awaiting the results of tests. S said that, because Mrs F was awaiting the results of tests, Great Lakes wouldn't cover any claims which were linked to or associated with any of her pre-existing medical conditions. S said, when Mrs F received the test results, Mr F should contact it to see if it could then include cover for Mrs F's pre-existing medical conditions.

On 7 October 2021, Mr F contacted S to say that the test results which Mrs F had been undergoing for abdominal pain had come back clear, and that no medical conditions had been diagnosed. Mr F said Mrs F had all the tests completed and had been discharged from all follow-ups. However, Mr F said Mrs F had been given medication for acid reflux. So, S added acid reflux to the list of Mrs F's declared medical conditions and confirmed that Great Lakes would now cover Mrs F's pre-existing medical conditions.

Unfortunately, on 8 October 2021, the day Mr and Mrs F were due to travel to the departure point of their trip, Mrs F attended hospital with nausea and severe abdominal pains. Mr and Mrs F were unable to travel and made a claim under their policy with Great Lakes. Mrs F was subsequently diagnosed with a bacterial stomach infection in November 2021.

Great Lakes said Mr and Mrs F's claim wasn't covered under their policy, because Mrs F had consulted a doctor on 15 September 2021 (before the policy was purchased) and was awaiting investigations for the medical condition which subsequently led to the claim. Great Lakes said this doctor's consultation, the medical condition for which Mrs F's GP was consulted and the referral which was made for further investigations hadn't been declared to it.

Unhappy, Mr and Mrs F complained to Great Lakes before bringing the matter to the attention of our service.

One of our investigators looked into what had happened and said, based on the telephone call of 7 October 2021, that she thought Great Lakes should accept Mr and Mrs F's claim. Great Lakes didn't agree with our investigator's opinion and has since provided a copy of the original sales call between Mr F and S from 18 September 2021.

As a resolution couldn't be reached, the complaint was referred to me to decide.

I requested additional medical information from Mr and Mrs F and sent copies of this medical evidence to Great Lakes with my provisional decision in January 2023. In my provisional decision, I said:

'*Great Lakes isn't responsible for the sale of this policy. This policy was sold by S, who is a separate and distinct business to Great Lakes and one which is regulated by the Financial Conduct Authority in its own right. When making this decision, I'm only considering the regulated activities which Great Lakes is responsible for – that is, the decision to decline Mr and Mrs F's claim. However, I have made findings of fact about the information which Mr and Mrs F provided to S in its capacity as Great Lakes' agent under the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA').*

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 insurers must provide a policyholder with appropriate information on the progress of a claim. I've taken these rules into account when making my provisional decision about Mr and Mrs F's complaint.

Great Lakes says Mr and Mrs F's claim isn't covered because of the following general policy exclusion:

> *'No section of this policy shall apply in respect of:*
>
> *1. Claims arising as a result of the following:*
> *…*
>
> *b) If you … have suffered from any of the following in the 2 years before purchasing your policy, unless you have made a declaration to us and we have agreed to provide cover in writing:*
>
> *i. you have a medical condition for which you have been prescribed medication; or*
>
> *ii. you have received treatment, investigative tests, or had a consultation with a doctor, or a hospital consultant.'*

I also note that Mr and Mrs F's policy doesn't cover undiagnosed medical conditions or symptoms which require attention or investigation in the future.

Mr F was asked questions about his and Mrs F's previous medical history when he bought the policy. As Great Lakes will be aware, this means the principles set out in CIDRA are relevant. 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.

I've listened to both the call on 18 September 2021 and the call on 7 October 2021 and I've considered all the available medical evidence. Having done so, I don't think it's fair or reasonable for Great Lakes to rely on the general policy exclusion set out above to decline Mr and Mrs F's claim. I also don't think the application of the principles set out in CIDRA means that Mr and Mrs F's claim isn't covered under their policy. I'll explain why.

Mrs F consulted her GP on 15 September 2021, before the policy was purchased. The GP's records of this attendance show that Mrs F consulted for abdominal pain, was referred for tests and that the GP thought this 'sounds like IBS'.

During the telephone call between Mr F and S on 18 September 2021 when the policy was purchased, Mr F told S that Mrs F had attended her GP the previous week, was awaiting test results and that the GP thought Mrs F was displaying symptoms of IBS. As a result, Mr F was told that the policy wouldn't provide cover for any of Mrs F's pre-existing medical conditions, including suspected IBS, but that Mr F should phone S back when Mrs F's test results were returned so it could see if Mrs F's medical conditions could be included.

Mr and Mrs F have now provided evidence that Mrs F test results were returned as 'negative'. Mr and Mrs F have also provided evidence of Mrs F's A&E attendance on 4 October 2021 which states that Mrs F's GP tests returned negative results and that she was discharged from A&E with 'No Follow Up'. The A&E discharge letter also shows that Mrs F was recommended medication for acid reflux.

Mr F telephoned S on 7 October 2021 and said that Mrs F's test results were clear, she hadn't been diagnosed with any new medical conditions and she had been completely discharged from all follow-ups. Mr F told S that Mrs F had been given medication for acid reflux, so S added acid reflux as one of Mrs F's declared pre-existing medical conditions and said that cover for Mrs F's declared pre-existing medical conditions was now included under the policy. The evidence which I've seen supports what Mr F told S and I'm satisfied that all the information he gave S was accurate, based on his and Mrs F's knowledge at the time.

Having taken into account all the available medical evidence, I don't think Mrs F was awaiting investigations or had a medical condition which Mr F didn't tell S about. As far as Mrs F was aware, on 7 October 2021, she didn't have any undiagnosed medical condition or undiagnosed symptoms as defined in the policy. Her test results had been returned clear, she had been discharged from hospital with no follow-up and she had been told by a medical professional that she had acid reflux, which she declared to S. I think the medical certificate completed by the GP in connection which Mr and Mrs F's claim further supports this, as it says it's 'unclear' whether Mrs F had a history of the medical issue leading to the claim, and that the consultation on 15 September 2021 was 'likely to be [sic] different cause but unclear.'

I appreciate that this may be a situation which Great Lakes doesn't wish to cover under this policy, but I don't think the policy exclusion quoted above applies to the individual circumstances of this claim. I also think Mr F took reasonable care when making disclosures to S about Mrs F's medical history, so I don't therefore think Mr F made a misrepresentation under CIDRA.

I therefore intend to direct Great Lakes to accept Mr and Mrs F's claim.

I don't think it was fair or reasonable for Great Lakes to conclude that Mr and Mrs F didn't tell it about Mrs F's GP consultation on 15 September 2021. I also don't think it was fair or reasonable for Great Lakes to rely on the reasons it gave to Mr and Mrs F for declining their claim. Furthermore, I note there were delays and a lack of communication by Great Lakes when dealing with Mr and Mrs F's claim, which Great Lakes acknowledged in its correspondence with Mr and Mrs F. I think it would be fair and reasonable for Great Lakes to pay Mr and Mrs F compensation for the distress and inconvenience they experienced as a result of these issues. I've set out the level of compensation which I think is appropriate below.

However, as a final point, although I understand Mr and Mrs F believe Great Lakes didn't contact Mrs F's GP when it said it would, I've seen evidence which suggests Great Lakes did do this.

…

My provisional decision is that I intend to uphold Mr and Mrs F's complaint and direct Great Lakes Insurance SE to do the following:

- *pay Mr and Mrs F's claim, subject to any applicable policy limits and/or excesses;*
- *add interest to the settlement at 8% simple per annum, from the date of the claim until the date the payment is made;*
- *pay Mr and Mrs F £200 compensation for the distress and inconvenience they experienced.'*

Great Lakes accepted my provisional decision. Mr and Mrs F also accepted my provisional decision. Mr and Mrs F have subsequently told us that Great Lakes' agent has paid £100 compensation into their bank account.

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 both parties have accepted my provisional decision, I see no reason to change my findings.

Great Lakes should clarify with Mr and Mrs F whether the payment of £100 compensation which has been made forms part of my compensation recommendations below.

Putting things right

Great Lakes Insurance SE needs to put things right by doing the following:

- paying Mr and Mrs F's claim, subject to any applicable policy limits and/or excesses;
- adding interest to the settlement at 8% simple per annum, from the date of the claim until the date the payment is made[1];
- paying Mr and Mrs F £200 compensation for the distress and inconvenience they experienced.

My final decision

I'm upholding Mr and Mrs F's complaint against Great Lakes Insurance SE 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 Mr F and Mrs F to accept or reject my decision before 3 March 2023.

Leah Nagle

[1] If Great Lakes Insurance SE considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs F how much it has taken off. It should also give Mr and Mrs F a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Ombudsman