

The complaint

Mr and Mrs H have complained about the way Admiral Insurance (Gibraltar) Limited has dealt with their travel insurance claim.

What happened

Mr and Mrs H booked a trip abroad, to depart in July 2022. In May 2022, they took out an annual multi trip travel insurance policy, which was insured through Admiral.

Unfortunately, Mrs H then became unwell which meant she wasn't able to travel. They cancelled their trip and made a claim to Admiral for the costs.

Admiral declined their claim. It said that when Mrs H took out the policy, she didn't declare that she was on a waiting list for treatment or investigation for a condition. It said that, if it had been made aware of this, it wouldn't have offered her the policy cover. It referred to policy exclusions which state no cover will be provided for any claim relating to a pre-existing medical condition or any claim related to the policyholder waiting for treatment or tests for any medical condition.

Unhappy with this, Mr and Mrs H made a complaint to Admiral and brought the matter to this service. Our investigator looked into the complaint and said that it wasn't fair for Admiral to decline the claim using that exclusion as there was no evidence that the condition which caused Mrs H to cancel her trip was related to the condition for which she was waiting for treatment. But he found that Mrs H had made a misrepresentation regarding her medical condition at the point of purchase. He said that this was a careless misrepresentation and Admiral could therefore avoid the policy. But that Admiral should refund the premium.

Mr and Mrs H disagreed with our investigator's opinion. They said that the condition for which Mrs H was waiting treatment for would not have prevented her from travelling and so their claim should be paid. As no agreement could be reached, the matter has been passed to me to decide.

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.

The relevant rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Mr and Mrs H's complaint.

Was the claim correctly declined?

Admiral has referred to the following policy exclusion when declining Mr and Mrs H's claim for their cancelled holiday:

You're not covered for:

- *Any claim related to a pre-existing medical condition, new medical condition, or any health changes that you have not declared to us, or we have not agreed to cover, or where you have not paid any additional premium requested to cover it*
- *Any claim related to you waiting for treatment or tests for any medical condition or symptoms that have not yet been diagnosed.*

Both of the points detailed above refer to the claim being related to the pre-existing medical condition or where the claim relates to the policy holder waiting for treatment or tests. However, the medical condition which caused Mrs H to cancel her trip appears to be unrelated to the condition for which she was waiting on treatment for. So, I don't think these exclusions apply to the claim made by Mr and Mrs H. And therefore, I'm not satisfied it was reasonable for Admiral to reject the claim on this basis.

Misrepresentation

Although I don't think the claim has been declined for the right reasons, I do need to consider if there are any other reasons which mean that the claim shouldn't be paid. Admiral has stated that Mrs H failed to declare that she was waiting for treatment for a medical condition when she took out the policy. It has said that, if she had declared this, it wouldn't have offered her any insurance cover.

When a consumer takes out insurance, they'll typically be asked questions about themselves (and anyone else who is to be insured under the policy) as well as the risks they want to insure. The insurer then uses that information to weigh up whether it wishes to cover those risks and how much it will charge for doing so.

The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) places a duty on consumers to take reasonable care not to make a misrepresentation when entering an insurance contract. They must provide the insurer with accurate information to allow it to assess the risk. If they don't, there are some circumstances in which an insurer may be able to avoid the insurance contract – but that's only if there's been a qualifying misrepresentation. In the absence of this, and where the consumer has taken reasonable care not to make a misrepresentation then the insurer can't take any action at all, even if they were provided with the wrong information.

Under CIDRA, I must first decide whether Mrs H took reasonable care. That can involve several considerations including whether the questions she was asked at the time of taking out the policy were sufficiently clear.

Mr and Mrs H took out the policy with Admiral which they accessed through an online comparison website. Admiral has provided evidence of the questions that were asked during this process. In particular it has referred to the following question:

Are you or anyone in your party currently on a waiting list for treatment or investigation?

I'm satisfied that this is a clear question.

Admiral has said that Mr and Mrs H answered 'no' to this question on the website. When the claim was made, the medical certificate completed by Mrs H's GP stated that, at the time of booking the trip and paying the balance, Mrs H was waiting for outpatient treatment for a condition and had been referred to a consultant or specialist. But this doesn't confirm that Mrs H was on a waiting list at the time of taking out the policy. Our investigator, however, has subsequently been able to confirm with Mrs H that this was in fact the case. This means that Mr and Mrs H should have answered 'yes' to this question.

Admiral has provided evidence to show that, had Mr and Mrs H answered this question correctly, it wouldn't have offered insurance cover to them. So, I'm satisfied this was a qualifying misrepresentation and that Admiral has reasonably declined the claim on the basis that the policy wouldn't have been in place had Mr and Mrs H answered the medical question with reasonable care.

I've noted Mr and Mrs H have said that the condition for which Mrs H was awaiting treatment for wasn't going to stop them travelling and so they don't understand why this means this claim, for a cancelled trip due to a different condition, cannot be met. I appreciate their viewpoint but the situation here is that Admiral would not have been on risk for the cancellation claim, had Mrs H declared her medical history correctly – as Admiral would not have provided Mr and Mrs H with a policy. So, I don't think this makes a difference to the outcome.

I also need to consider whether, by not declaring that she was on a waiting list for treatment, Mrs H acted recklessly or carelessly. I haven't seen anything which suggests that Mrs H knew the information she was providing was misleading, or that she knew how her answer would be relevant to Admiral in deciding about her cover. I'm satisfied she answered the question carelessly. The remedy available to insurers in these situations is that the policy can be made void – which means it is treated as though it didn't exist – and the premiums must be refunded. From what I've seen so far, this hasn't happened.

So, taking everything into account, I think it is fair and reasonable for Admiral to avoid the policy contract, but it must reimburse Mr and Mrs H for the premium they paid for the policy.

Putting things right

Admiral must reimburse Mr and Mrs H the amount they paid in premiums for the travel insurance policy.

My final decision

For the reasons mentioned I partially uphold this complaint.

Admiral Insurance (Gibraltar) Limited must put things right as detailed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 31 March 2023.

Jenny Giles
Ombudsman