

The complaint

Mr A and Mr G have complained that AWP P&C SA failed to meet a claim made under their travel insurance policy in full.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. In summary our investigator recommended that the complaint be upheld and the claim paid up to the policy limit. He didn't find that there was a failure to take reasonable care on the part of Mr A.

AWP, who underwrites the policy, didn't agree. It said that Mr A had had the condition for which he was taken ill abroad since 2016. It said it wouldn't be practical to ask customers if they have specific conditions, rather it is the customer's responsibility to call to tell the insurer about any medical conditions they have. Accordingly it proportionately paid the claim – reducing the settlement by the percentage that it considered Mr A underpaid.

As no agreement has been 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.

Having done so I agree with the conclusions reached by the investigator for these reasons:

- The relevant law in this case is 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.
- If a consumer fails to take reasonable care, 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 has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.
- AWP felt that Mr A had failed to take reasonable care – in that he didn't disclose that he had previously suffered with atrial fibrillation. I've considered the questions that Mr A was asked when taking out the policy. The relevant question here is: *Have you been diagnosed with or treated for any cancerous, respiratory, heart or circulatory conditions, that's problems with blood flow including high blood pressure, strokes, and high cholesterol?* Mr A answered 'Yes' to this question. In response to this the call handler asked Mr A further questions with regard to blood pressure but failed to clarify if there were any further heart or circulatory conditions.
- I'm satisfied that during the call Mr A is very frank and answers all questions he is

asked accurately. By way of example he offered to disclose all medications and disclosed recent shoulder treatment. AWP argues that it wouldn't be possible or practical to ask customers if they have specific conditions but as per the policy terms and conditions and that it is the customers responsibility to call and tell AWP about any medical conditions they have. But AWP *did* ask about heart or circulatory conditions and Mr A answered positively.

- Whether or not a customer has taken reasonable care is to be determined in the light of all the relevant circumstances. The question asked covered various conditions. Mr A's positive answer should have prompted the call handler to ask follow up questions. He did, but these were limited to blood pressure. In all the circumstances I can't conclude that there were any failings on Mr A's part. He took reasonable care not to make a misrepresentation to AWP. As there was no misrepresentation the remedies available under CIDRA, such as the proportionate settlement made here, don't apply.
- For completeness I would add that notwithstanding the health declaration and exclusions in the policy, I find there was no misrepresentation. Having answered all the health questions he was asked truthfully and having been told that he was covered Mr A was entitled to believe that this was so. He was entitled to understand that he had done all he needed to with regard to disclosing his health conditions.

Putting things right

For the reasons given I don't find that CIDRA applies, and it follows that AWP cannot proportionally settle this claim. It must therefore settle the claim up to the relevant policy limits.

AWP should add simple interest to the additional sum due at the annual rate of 8% from the date of the claim until settlement.

My final decision

For the reasons set out above I uphold this complaint. AWP P&C SA must settle Mr A and Mr G's claim as set out in the putting things right section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mr G to accept or reject my decision before 28 June 2023.

Lindsey Woloski
Ombudsman