

## **The complaint**

Mr and Mrs P complain that Red Sands Insurance Company (Europe) Limited settled their claim against their travel insurance policy on a proportionate basis. Reference to Red Sands includes its agents.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr and Mrs P booked a trip with intended departure and return dates of 22 June 2022 and 4 July 2022 respectively. In early June 2022, Mr and Mrs P bought an annual travel insurance policy underwritten by Red Sands. They paid a premium of £318.87. Mr and Mrs P completed medical screening. The policy certificate shows that Mr P declared a heart attack, coronary artery bypass graft, high blood pressure, cholesterol levels and an implantable defibrillator. Mrs P disclosed two medical conditions which aren't relevant to this complaint.

On 30 June 2022, whilst on their trip, Mr P had chest pains. On 1 July 2022 he sought hospital treatment and Mrs P contacted Red Sands in order to make a claim against the policy. I understand that the treating doctors diagnosed a heart attack, heart failure and pulmonary oedema.

Mr P had treatment and was discharged from hospital on 6 July 2022. He had outpatient treatment and was declared fit to fly on 26 July 2022. Mr and Mrs P paid the extensive medical bills.

Red Sands obtained Mr P's medical history from his GP and retro screened the policy. In late July 2022, Red Sands decided that it would make a proportionate settlement. On 30 September 2022, Red Sands explained that to Mr P. I understand that Mr and Mrs P received a proportionate settlement payment on 11 October 2022. Red Sands said that it was making a proportionate settlement because of non-disclosure of Mr P's medical conditions. It said that its decision was being reviewed.

Red Sands subsequently said that Mr and Mrs P failed to take reasonable care not to make a misrepresentation. It says that when it asked Mrs P the questions about Mr P's implantable defibrillator it was noted that Mr P was taking medication for heart failure. But she answered "no" when asked whether Mr P had suffered any heart related breathlessness or ankle swelling. It said that these are the main symptoms of heart failure and if Mrs P had answered correctly, it would have asked her further questions which would have captured Mr P's heart failure and left ventricular dysfunction (LVD).

Red Sands says that if it had known the true position, it would have charged Mr and Mrs P a higher premium. It agreed to settle 62.77% of the claim for medical expenses. Mr and Mrs P didn't think that was fair and pursued the complaint.

Mr and Mrs P want Red Sands to settle their claim for emergency medical expenses and repatriation in full.

One of our investigators looked at what had happened. Initially, our investigator thought that Red Sands hadn't acted unfairly in settling Mr and Mrs P's claim on a proportionate basis. Mr and Mrs P didn't agree with the investigator and gave more detail about the questions Red Sands asked them at the time of the sale of the policy and the answers they gave.

The investigator reconsidered the matter and recommended that the complaint be upheld. That was because she thought that Mrs P correctly answered the questions she was asked at the time of the sale of the policy and took reasonable care not to make a misrepresentation. So, the investigator didn't think that Red Sands had acted fairly in settling the claim on a proportionate basis. She thought that Red Sands should pay the remainder of the claim for emergency medical expenses and pay interest.

Red Sands didn't respond to the investigator's recommendation. As there was no agreement between the parties, the complaint was 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 law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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 do this, 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.
- CIDRA sets out a number of considerations for deciding whether the 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.
- Red Sands thinks that Mr and Mrs P failed to take reasonable care not to make a misrepresentation. It says that when it asked Mrs P the questions about Mr P's implantable defibrillator it was noted that Mr P was taking medication for heart failure. But she answered "no" when asked whether Mr P had suffered any heart related breathlessness or ankle swelling. It said that these are the main symptoms of heart failure and if Mrs P had answered correctly, it would have asked her further questions which would have captured Mr P's heart failure and LVD.
- I've listened carefully to the recording of the phone call when Mrs P bought the policy. Based on what I've seen and heard, I think that Mrs P took reasonable care to answer the questions she was asked. Mrs P disclosed Mr P's heart attack, which Red Sands confirmed it was already aware of. She explained that Mr P had a defibrillator fitted in January 2021. Red Sands then went on to ask Mrs P questions related to the defibrillator, one of which was whether Mr P had any heart-related breathlessness or ankle swelling. Mrs P replied "no".
- Mrs P says that Mr P doesn't have heart related breathlessness or ankle swelling. She says that Mr P's lower leg circulation assessment was in relation to pain in his

big toe, not ankle swelling. Red Sands haven't produced any evidence to show that Mr P had heart-related breathlessness or ankle swelling in the relevant period.

- I don't think that Red Sands has shown that Mrs P failed to take reasonable care when Mr and Mrs P bought the policy. So, I don't think there's been a misrepresentation. It follows that I don't think that Red Sands acted fairly and reasonably in settling the claim on a proportionate basis.
- In order to put things right, Red Sands should pay the balance of the claim for emergency medical and repatriation costs, in accordance with the remaining terms of the policy.
- There's been significant delay in settling the claim. Mrs P contacted Red Sands on 1 July 2022. It appears that Red Sands made a decision about the claim by the end of July 2022. It wasn't until 30 September 2022 that Red Sands explained that to Mr P. And Mr and Mrs P received only partial reimbursement in October 2022. I understand that Red Sands paid over £6,000 in October 2022 and £6,470.46 in June 2023. Its payments have been confusing for Mr and Mrs P. Red Sands should provide Mr and Mrs P with a statement showing its settlement of the claim. It should also pay interest on the claim from the date of the claim to the dates of its various partial settlements.
- An insurer is, of course, entitled to make appropriate medical enquiries on receipt of a claim. But it's not clear to me why Mr and Mrs P were left to pay all of the substantial costs at an already very worrying time. I think that Mr and Mrs P suffered distress and inconvenience as a result of Red Sands' delay in dealing with this matter and its decision to settle on a proportionate basis. I think that fair compensation for that is £750.

### **Putting things right**

In order to put things right, Red Sands should:

- Pay the balance of the claim for emergency medical and repatriation costs, subject to the policy terms and conditions.
- Provide Mr and Mrs P with a statement showing its settlement of the claim.
- Pay interest on the claim at the simple rate of 8% per year, from the date Mr and Mrs P made the claim until the date of its various payments.
- Pay compensation of £750 in relation to their distress and inconvenience.

HM Revenue & Customs requires Red Sands to take off tax from this interest. Red Sands must give Mr and Mrs P a certificate showing how much tax it's taken off, if they ask for one.

### **My final decision**

My final decision is that I uphold this complaint. I now require Red Sands Insurance Company (Europe) Limited to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 19 September 2023.

Louise Povey  
**Ombudsman**