

## **The complaint**

Mr and Mrs P are unhappy that Admiral Insurance (Gibraltar) Limited only agreed to pay a proportionate settlement of a claim made under their travel insurance policy. They're also unhappy with the overall service they received whilst abroad including unreasonable delays.

All references to Admiral include its medical assistance team.

## **What happened**

Mr and Mrs P had the benefit of an annual, multi-trip, travel insurance policy, underwritten by Admiral ('the policy'). They travelled abroad in May 2022. Unfortunately, whilst away, Mrs P became unwell. She was hospitalised and received urgent medical care.

After receiving a report from Mrs P's GP, Admiral agreed to cover 80% of the expenses incurred. That's because it says Mrs P didn't declare some medical conditions when taking out the policy – so made a qualifying misrepresentation. If these conditions had been declared, Admiral says it would've charged more for the policy – so it decided to proportionately settle the claim.

Unhappy, Mr and Mrs P complained to Admiral. They also raised concerns about the service received by Admiral whilst abroad, after it was notified that Mrs P needed medical attention – including delays.

Admiral partially upheld their complaint. It accepted that there were service failings, apologised for this and offered Mr and Mrs P £300 compensation in recognition of the distress and inconvenience caused. However, Admiral maintained its decision to proportionately settle the complaint.

Mr and Mrs P referred their concerns to the Financial Ombudsman Service. Our investigator looked into what happened. She didn't uphold Mr and Mrs P's complaint and didn't recommend Admiral do anything more in this case. Mr and Mrs P disagreed. So, their complaint was referred to me to determine.

I issued my provisional decision in June 2023 setting out my reasons why I was intending to partially uphold this complaint – an extract of which is set out below.

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At the outset I acknowledge that I've summarised this complaint in far less detail than Mr and Mrs P have, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair and reasonable outcome here.

Proportionately settling the claim

When considering whether Admiral has acted fairly and reasonably, I've taken into account The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) as I think it's relevant here. 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.

And 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 (so in this case, Admiral) 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.

It's Admiral's position that when taking out the policy and answering the medical questions, Mrs P failed to take reasonable care not to make a misrepresentation. So, it only agreed to cover 80% of the claimed costs. For the reasons set out below, I'm satisfied Admiral's decision to only cover a percentage of the claim is, in principle, fair and reasonable.

Mr and Mrs P applied for the policy online. I've been provided with the sales process journey they followed when applying for the policy, including the questions they were asked at the time. The questions included:

*Have you, or anyone to be named on the policy, ever been diagnosed with or treated for any:*

*Psychological conditions such as stress, anxiety, depression, or eating disorders?  
And:*

*Within the last 2 years, have you or anyone to be named on the policy:*

*Been prescribed medication, or attended any type of medical facility such as a medical practitioner's surgery? Or attended a hospital as an out-patient or in-patient?*

I'm satisfied these questions are clear.

If any of these questions were answered "yes", I'm satisfied that the applicants are then asked to input the medical conditions and they're asked further, specific questions about these.

It's accepted that Mrs P declared mild depression and anxiety and depression. And Admiral has taken no issue with the way in which she answered the follow up questions relating to those conditions.

However, the completed GP report dated 30 May 2022 also lists other psychological conditions which Mrs P had been diagnosed with in 2007 and 2014. The report also reflects that Mrs P had either been prescribed medication, received treatment or had a consultation with a doctor for other medical conditions not disclosed when taking out the policy. I think Admiral was entitled to rely on the contents of the GP report when determining whether Mrs P had answered questions about her medical conditions with reasonable care.

And, having done so, I'm satisfied that Admiral has fairly concluded that Mrs P didn't

disclose all her medical conditions as she ought to have in response to the questions asked. And, because of this, I'm satisfied that Admiral has fairly concluded that she made a qualifying disclosure as she acted carelessly.

Admiral says had Mrs P declared the other conditions, the policy would've still been offered but Mr and Mrs P would've paid around £22 more for the annual premium. And it's provided evidence showing how it's reached that conclusion. I'm satisfied that Admiral has accurately rescreened Mrs P's medical conditions by answering the follow up questions she would've been asked if she'd declared her other medical conditions in the way most favourable to her. And that this resulted in a higher weighting being applied to the premium resulting in the increase in premium.

I'm satisfied Mr and Mrs P only paid around 80% of the correct premium. And I don't think, in principle and subject to my provisional findings further below, Admiral has acted unfairly by offering to proportionately settle the claim made on the policy and paying 80% of the claimed expenses.

Admiral has confirmed that the claim totalled approximately £24,600 and it's agreed to pay 80% of that amount in the region of £19,400.

Mr and Mrs P personally paid around £5,200 (including ambulance fees, a hospital room for Mr P and return flights to the UK) – which Admiral hasn't taken issue with and seems to accept the sums as claimed on the claim form. And as that's more than 20% of the total expenses, Admiral has also agreed to reimburse Mr and Mrs P around £280. I think that's fair and reasonable.

Looking at the amount of around £5,200 claimed by Mr and Mrs P on their claim form, this includes the amount Mr P initially contributed to the ambulance for Mrs P. We've also received a remittance advice from Admiral showing its contribution was paid in mid-February 2023. So, whilst I know Mr and Mrs P raised concerns in February 2023 that they were being chased for payment for the ambulance costs, based on what I've seen, I think this has now been settled.

The service received by Admiral

Admiral has a regulatory obligation to treat customers fairly. And it must handle insurance claims fairly and promptly. It agrees it should've provided Mr and Mrs P with better service. In its final response letter dated July 2022, it accepts that:

- there were delays in providing Mr and Mrs P with consent forms to enable it to contact Mrs P's GP to obtain a medical report.
- it didn't explain to Mr and Mrs P that it was still carrying out checks to verify whether cover was in place. And that it wouldn't be able to take over payment of costs or begin arrangements to repatriate them back to the UK until this was done.
- it failed to manage Mr and Mrs P's expectations in relation to the checks which had been completed and still outstanding.
- it wasn't proactive in providing Mr and Mrs P with updates, resulting in them having to chase Admiral for information on numerous occasions.
- it provided Mr and Mrs P with inconsistent information about whether the guarantee of payment had been accepted by the treating hospital – including for Mr P's stay there.

- there hadn't been a seamless transfer between case handlers, meaning Mr and Mrs P had to repeat themselves during calls.

It's offered £300 compensation to Mr and Mrs P to reflect the distress and inconvenience they experienced as a result. For the reasons set out below, I'm intending to find that isn't fair and reasonable to compensate Mr and Mrs P in this case.

I know Admiral initially agreed to provide cover for initial medical costs and issued the hospital with a guarantee of payment. But after it was notified that Mrs P needed to be transferred to another hospital for scans and to see a neurologist, I don't think it unfairly sought an updated medical report before agreeing to further coverage. It then promptly agreed for this to be covered under the existing guarantee of payment.

Further, once it became clear that Mrs P's condition may have been more serious than first thought, with Mrs P having been transferred to the intensive care unit and an updated guarantee of payment requested for \$9,000, I don't think Admiral acted unfairly by seeking to verify cover. Particularly as an updated medical report from the treating doctor at the time set out pre-existing medical conditions which Mrs P hadn't disclosed when taking out the policy.

And whilst Mr and Mrs P says that Admiral agreed to initially cover the cost of first ambulance and Mr P's room at the hospital, in the circumstances of this case, I don't think it was unfair of Admiral to later conclude that it needed verify cover for these to be considered. I've seen reference to Mr and Mrs P saying that Mrs P wouldn't have continued with treatment if they'd known at the outset that costs might not be covered. But given Mrs P's condition and the medical advice being received, on the balance of probabilities, I don't think that's likely. And even before Mr P had contacted Admiral for assistance, he'd already arranged for an ambulance to take Mrs P to hospital.

I don't think Admiral acted unfairly by awaiting the medical report from the treating doctor and then wanting to obtain a medical report from Mrs P's GP to validate cover. This is also standard industry practice. When requesting medical assistance, it's not unusual for insurers to want to check whether those insured under the policy correctly answered questions about their medical history when applying for the policy before validating cover.

However, having carefully considered the available information, I'm satisfied on the balance of probabilities that there were delays caused by Admiral in obtaining Mrs P's medical report which ultimately resulted in a delay to Mr and Mrs P's repatriation. That's because:

- The treating doctor advised in a medical report dated 26 May 2022 (local time) / 27 May 2022 (GMT) that Mrs P was fit to fly on a commercial airline. She and Mr P ended up departing the country they were staying in for the UK on 31 May 2022 (local time).
- Admiral hadn't yet formally retro screened Mrs P's undisclosed medical conditions by the time Mr and Mrs P departed the country they were staying in. However, if it had acted promptly and without unreasonable delay, I'm satisfied on the balance of probabilities that it's likely Admiral would've been in receipt of Mrs P's GP report - and a retro screening of her undisclosed medical conditions would've been carried out - by around the time the treating doctor advised that she was fit to fly.
- Admiral accepts it delayed sending Mrs P a consent form to obtain a GP report and it ought to have been sent on 23 May 2022. I've got no reason to think that the consent form wouldn't have been promptly completed by, or on behalf of, Mrs P and returned to Admiral as it had been after it was eventually sent to her four days after it ought to

have been.

- Mrs P's GP surgery was able to return the completed GP report to Admiral a day after it was requested. Admiral has said that it can take up to 30 days. That may be the case but here the GP surgery efficiently dealt with the request as it was urgent and there's no compelling reason why it wouldn't have done so if the request for the GP report had been made earlier on 23 or 24 May 2022. So, at the latest, I'm satisfied that the GP report would've been sent to Admiral by 25 May 2022.
- Admiral was able to promptly refer the medical report to its underwriters to carry out a retrospective medical screening based on Mrs P's undisclosed medical conditions and receive confirmation that the policy would've still been offered to Mr and Mrs P at an additional cost within 48 hours.
- I can see no compelling reason why a similar turnaround time wouldn't have been met if Admiral's underwriter had received the information a few days earlier than it did. And this being the case, I'm satisfied that Admiral would've been able to confirm to Mr and Mrs P that there was cover under the policy – albeit with Mr and Mrs P being responsible for 20% of the costs – around the same time the treating doctor confirmed that Mrs P was fit to fly.
- In my experience, it's standard industry practice for the insurer's medical assistance team to require its own medical team to consider the treating doctor's recommendation about whether the patient is fit to fly. In this case, there are notes made by Admirals' medical team recommending a medical escort on the flight home as there hadn't been a formal diagnosis of what caused Mrs P to become hospitalised. But it's also reflected that Mrs P could fly home without a medical escort but it wouldn't be liable if she'd had any problems during the flight.
- The medical reports from the treating doctor form around that time suggest that there had been no deterioration in health, and Mrs P was still able to "make a trip back to her home country". Given the situation Mr and Mrs P found themselves in, the advice of the treating doctor and their clear desire to want to get back to the UK, I think it's likely that they would've travelled back to the UK as soon as they could, even if that meant not waiting for a medical escort to be flown out to them to be escorted back to the UK. Afterall, Mr and Mrs P received the same advice from Admiral before they ended up flying back to the UK at the end of May 2022 and it didn't deter them.

So, I think it's likely that had Admiral not caused unreasonable delays here, Mrs P would've been ready to be repatriated at some time by 27 / 28 May 2022.

However, there would've still been many variables to consider including the availability of flights and obtaining clearance from the airline to repatriate Mr and Mrs P home. Given the frequency of flights between the city in the UK to which they were travelling back to and the nearest local airport to them in the country they were residing, I think it's likely that they would've been able to have secured flights back to the UK by the end of 28 May 2022.

So, I'm satisfied Admiral caused Mr and Mrs P's repatriation to be delayed by around three days and that this ended up causing them additional and unnecessary expenses (having had to contribute 20% to claimed expenses incurred between 29 and 31 May 2022 inclusive).

There's no way of me knowing whether the cost of the flights back to the UK would've been more or less expensive if they'd been repatriated on 28 May instead of 31 May 2022. Given

that it was a similar time of year and bookings close to the departure date are usually more expensive, and unless I'm provided any more information to the contrary, I think it's fair and reasonable to assume that flight costs would be similar.

I am, however, satisfied that being back in the UK three days earlier, without the uncertainty of whether the claim was covered, and not knowing when they'd be able to leave the hospital to be repatriated to the UK, would've prevented Mr and Mrs P a significant amount of distress and inconvenience.

The GP report reflects that Mrs P lives with anxiety and depression and I accept that this would've been exacerbated by the delays, not knowing what was happening and not receiving call backs from Admiral as promised. This would've also added to Mr P's worry.

Mr and Mrs P had to rely on family members to book their flights back to the UK on 31 May 2022 as Admiral hadn't verified their claim by this stage. Other family members were also understandably worried about what was happening to Mr and Mrs P. Those family members aren't eligible complainants to this complaint because they aren't named on the schedule of insurance so there's no contract of insurance between them and Admiral. So, I can't award compensation for any distress and inconvenience they would've personally experienced.

However, I'm satisfied that their concern would've impacted the distress Mr and Mrs P was feeling – having to rely on family to arrange flights back to the UK rather than Admiral.

Mr and Mrs P told Admiral that there were security personnel at the hospital preventing Mr P leaving. I've got no reason to doubt what they say about that and as such he had no clean clothes and says he was running out of medication he brought with him. So, some of this worry would've also been alleviated if Mr and Mrs P had been repatriated sooner, as I think they reasonably ought to have been. That includes Mr and Mrs P having to provide an indemnity confirming that they would be responsible for hospital expenses, which wouldn't have been required if the GP report had been requested when it reasonably ought to have been, resulting in the retro screening being undertaken more quickly.

It's also likely that Mr and Mrs P would've received more proactive assistance because they say – and it looks like Admiral accepts – that they were left to deal with the hospital themselves even though staff spoke little English. This would've also unnecessarily exacerbated their worry, stress and inconvenience. Along with the other service failings already accepted by Admiral which I'm satisfied would've cumulated to make an already difficult situation much worse than it needed to be for Mr and Mrs P. The call notes provided by Admiral show that Mr and Mrs P were becoming increasingly frustrated and on 29 and 30 May 2022, it's reflected that Mr P was "feeling desperate" and at his "wits end". I can understand why given – as Admiral already accepts – Mr and Mrs P weren't being kept up to date or being told what was happening and the information they were still waiting on.

Putting things right

I intend to direct Admiral to:

- reimburse Mr and Mrs P for the 20% share of the costs they contributed to medical and hospital costs incurred for the period 29 – 31 May 2022 inclusive.
- pay Mr and Mrs P £900 for the distress and inconvenience they experienced as a result of the poor serviced received by Admiral and unreasonable delays. Admiral can deduct from this amount the £300 it agreed to pay Mr and Mrs P in its final response letter if this has already been paid.

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I invited both parties to provide any further comments in response to my provisional decision.

Mr and Mrs P replied asking how much they'd be receiving from Admiral in monetary terms. Without knowing, they said they were unable to accept the provisional decision. However, they were willing to accept £900 as compensation for distress and inconvenience.

Our investigator contacted Admiral, asking it to confirm Mr and Mrs P's contribution to hospital and medical costs for the period 29 - 31 May 2022 (inclusive), in monetary terms.

Admiral hasn't responded or provided any comments in response to my provisional decision. So, I need to make a decision.

### **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 Admiral hasn't responded to my provisional decision and Mr and Mrs P haven't provided any substantive comments about my provisional findings, I'm satisfied there's no reason to depart from my provisional decision.

Because of this, and for reasons set out in my provisional decision (an extract of which is set out above and forms part of my provisional decision), I partially uphold Mr and Mrs P's complaint.

I know Mr and Mrs P would like to know the exact amount they'd be receiving from Admiral, but Admiral hasn't confirmed this to our Service. However, I don't think this prevents me from making a final determination in this complaint.

As the parties will see, I have, however, set out below a further direction for Admiral to provide a breakdown of the payment it will be reimbursing to Mr and Mrs P for the period 29 – 31 May 2022 inclusive.

### **Putting things right**

I direct Admiral to:

- A. reimburse Mr and Mrs P for the 20% share of the costs they contributed to medical and hospital costs incurred for the period 29 – 31 May 2022 inclusive.
- B. provide Mr and Mrs P a written breakdown of how the amount in A. above has been calculated.
- C. pay Mr and Mrs P £900 for the distress and inconvenience they experienced as a result of the poor serviced received by Admiral and unreasonable delays. Admiral can deduct from this amount the £300 it agreed to pay Mr and Mrs P in its final response letter if this has already been paid.

### **My final decision**

I partially uphold this complaint and intend to direct Admiral Insurance (Gibraltar) Limited to put things right in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 15 August 2023.

David Curtis-Johnson  
**Ombudsman**