

The complaint

Mr B complains that Inter Partner Assistance SA (IPA) declined this travel medical insurance claim. My references to IPA include its agents.

What happened

On 4 June 2021 Mr B took out a single trip travel insurance policy which he extended through an online sales process while travelling. The extended policy covered from 1 January 2022 to 31 December 2022. The insurer was IPA. Mr B paid £473.37 for the extended policy.

In October 2021, before the policy was extended, Mr B discovered a lump in his thigh. He saw a doctor, who I'll refer to as Dr M, and was sent for an ultrasound. He was diagnosed as having an epidermal cyst and told by Dr M that no further action was needed. In April 2022, after the policy was extended, Mr B felt the cyst has increased in size so he had another ultrasound to check. A biopsy followed and unfortunately in June 2022 Mr B was told the lump was a cancerous tumour. He had urgent surgery and claimed on the policy for the cost of treatment.

IPA declined the claim. It said:

- When the policy was extended online Mr B was asked if in the last two years he'd had a medical condition for which he had treatment, consultation or investigations.
- Mr B should have answered yes to that question as he'd attended a consultation and an investigation for the cyst within the last two years.
- As Mr B hadn't told it about the cyst that was a pre-existing condition not covered by the policy, so even though the cyst was later diagnosed as a cancerous tumour his claim for treatment wasn't covered.

Mr B said he didn't declare the cyst as a separate condition as in October 2021 Dr M told him the cyst was like a spot under his skin related to with his lifelong acne. Under the policy terms acne was listed as an automatically covered pre-existing medical condition which didn't need declaring. Mr B sent us information from a NHS website which he said supported that his skin cyst and acne were related.

Our investigator said Mr B had made a careless misrepresentation in not disclosing the cyst to IPA. IPA had told us that if Mr B had disclosed the cyst it would have charged an additional premium of £9.81 for the policy. That worked out to be about a 2% increase on the premium had Mr B paid. Our investigator recommended it would be fair and reasonable for IPA to pay a proportional settlement of 98% of the claim to represent the portion of the premium Mr B had paid.

Mr B agreed our investigator's recommendation.

IPA initially also agreed but ultimately disagreed when it reviewed the ultrasound report. It sent us the ultrasound report and said the report didn't say that Mr B's cyst was acne. IPA believed Mr B had made a deliberate/reckless misrepresentation so it shouldn't have to pay any of the claim. IPA wanted an ombudsman's decision.

What I provisionally decided – and why

I made a provisional decision explaining why I was intending to uphold the complaint and require IPA to pay 98% of the claim subject to the remaining policy terms, conditions and limits plus interest. I said:

'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.

And 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.

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.

IPA thinks Mr B failed to take reasonable care not to make a misrepresentation when he answered the medical declaration when he extended the policy in January 2022.

I've looked at the online policy extension process that IPA sent us. The medical declaration wording that Mr B saw says:

'You must declare any pre-existing medical conditions you may have. If you fail to declare any medical conditions this may mean any claim you may need for medical treatment abroad may not be covered.'

'We have many Automatically Accepted Medical Conditions which you can review by clicking here. If all your pre-existing conditions are on this list, then you can answer No to the question below. If not then you must declare all your pre-existing conditions, including any on the automatically accepted list.'

Do you or any other travellers have any medical conditions?

Yes/No

If you're unsure whether you have any medical conditions you need to make us aware of, please click here'.

If Mr B had clicked yes to the above question he would have been asked:

'You have in the last two years, suffered from any medical or psychological condition and for which you've received treatment, been prescribed medication, or attended consultations, investigations, or check-ups Yes /No'.

Mr B has shown us evidence that acne is on the automatically accepted medical conditions. He says he was told by Dr M in October 2021 that the cyst was related to his acne so he didn't think he needed to declare the cyst as a separate condition.

I've read the ultrasound report of 26 October 2021 and agree with IPA that the report doesn't say the cyst was related to Mr B's acne. The reports gives the '*radiological conclusion*' as:

'Epidermal inclusion cyst in the distal thigh'.

However, Mr B has sent us a report from Dr M dated 27 October 2021. I don't think IPA has seen this report and I've arranged for the report to be send to IPA with this provisional decision.

Dr M's report says:

'An ultrasound scan was requested, which showed an epidermal inclusion cyst in the medial thigh measuring 11 x 8 x 10.5 mm.'

In accordance with the ultrasound scan, the patient presented an unclassified non-infiltrative pathology, which appeared to be consistent with a cyst.

Due to the patient's history of multiple complex acne lesions, again a possible complication is suspected'.

I think Dr M's report supports Mr B's evidence that Dr M told him it was 'suspected' that the cyst was a possible complication of his acne lesions. So I understand why Mr B thought the cyst was related to his acne.

But Dr M's evidence is that he only told Mr B that the cyst was a 'possible' complication'. The medical declaration said *'If you're unsure whether you have any medical conditions you need to make us aware of, please click here'*. I think it would have been reasonable for Mr B to have contacted IPA to discuss whether he should disclose the cyst as a separate condition. So I don't think Mr B took reasonable care when he answered the medical declaration.

If Mr B had contacted IPA I think it would have told him to disclose the cyst as a separate medical condition. IPA has provided evidence that if he had disclosed his epidermoid cyst as a pre-existing condition it would have charged him an additional £9.81 in premium. This means I'm satisfied Mr B's misrepresentation was a qualifying one.

IPA has said Mr B's misrepresentation was deliberate/reckless because the ultrasound report didn't say the cyst was related to acne.

I don't agree with IPA that Mr B's misrepresentation was deliberate/reckless. Dr M's report shows he and Mr B had discussed that the cyst was a possible complication of Mr B's lifelong acne so I think it's understandable that Mr B thought the cyst might be related to a pre-existing condition that was automatically covered by the policy. I'm satisfied Mr B's misrepresentation should be treated as careless.

As I'm satisfied Mr B's misrepresentation was careless, and not deliberate/reckless, I don't think IPA acted fairly and reasonably by not paying his claim. CIDRA reflects our long-established approach to misrepresentation cases. As explained above, had IPA known about Mr B's cyst it would have covered the condition but charged him an additional £9.81 for his policy premium, about 2% more than he actually paid'.

Responses to my provisional decision

Both IPA and Mr B accepted my provisional 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 both IPA and Mr B have accepted my provisional decision I've no reason to change my mind. For the reasons I've given in my provisional findings and these findings I'm satisfied Mr B's misrepresentation to the medical question he was asked when buying the policy was careless, and not deliberate/reckless.

CIDRA reflects our long-established approach to misrepresentation cases and if IPA had known about Mr B's cyst it would have covered the condition but charged him an additional £9.81 for his policy premium, about 2% more than he actually paid. So I don't think IPA acted fairly and reasonably by not paying his claim.

Putting things right

I think the fair and reasonable outcome to the complaint is for IPA to pay the claim with a proportionate settlement of 98% of the claim subject to the remaining policy terms, conditions and limits plus interest as I've set out below.

My final decision

I uphold this complaint.

I require Inter Partner Assistance SA to pay 98% of Mr B's claim subject to the remaining policy terms, conditions and limits. Interest* should be added at 8% simple a year from the date of claim to the date of settlement.

*If Inter Partner Assistance SA considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr B how much it's taken off. It should also give Mr B a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 August 2023.

Nicola Sisk
Ombudsman