

The complaint

Mrs K and Mr S are unhappy that Inter Partner Assistance SA (IPA) declined a claim they made on their travel insurance policy.

What happened

Mrs K and Mr S were on holiday with their two children in the summer of 2022. One of their children became unwell and required treatment.

Mrs K and Mr S's claim was declined on the basis they hadn't accurately declared their child's medical history. Mrs K and Mr S complained to IPA but they maintained the decision to decline the claim.

Our investigator looked into what happened and upheld the complaint in part. He thought the claim had been fairly declined but he thought that IPA should refund the premiums in full, in line with the relevant legislation.

IPA accepted our investigator's findings. Mrs K and Mr S didn't agree and asked an ombudsman to review their complaint. They highlighted that some of the dates IPA referred to weren't correct and that they'd relied on incomplete or inaccurate information. They also said that IPA kept on referring to page 17 of the policy document which didn't apply in this case.

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.

I'm very sorry to hear about the circumstances of Mrs K and Mr S's complaint, particularly as it arose from one of their young children being unwell and as I understand that they've been left with considerable medical bills.

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 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.

IPA says Mr S failed to take reasonable care not to make a misrepresentation when he answered questions about the family's medical history. I've looked at the available information about what questions were asked during the sale.

I accept the policy was sold over the phone but unfortunately the call recording is no longer available. So, I've considered what's most likely to have happened during the sale. The call was reviewed by IPA as part of the complaint process. The notes say that Mr S was asked by the call handler, who was following a script:

Within the last 2 years has anyone you wish to insure on this policy suffered any medical condition, (medical or psychological disease, sickness, condition, illness, or injury) that has required prescribed medication (including repeat prescriptions) or treatment including surgery, tests or investigations?

According to the notes Mr S answered 'no'. As this is a detailed note of the relevant question, from someone with access to the original call recording, I think it's most likely this is what was said in the call. I also think it's reasonable to rely on this record of the call in the absence of other information. I've taken into account Mr S's recollection of the sales process but I think it's fair and reasonable to place more weight on the detailed note of the call as I think it most accurately reflects the conversation that took place.

Based on the evidence I've been provided with I think Mr S ought to have answered 'yes' to that question. The medical evidence provided to IPA during the claims handling process indicated that Mr S's child had received treatment within the relevant timeframe for a number of conditions.

IPA has provided evidence that if Mr S had answered 'yes' to this question he wouldn't have been offered this policy as IPA doesn't offer cover for previous medical conditions under this particular brand of policy and Mr S would have been directed to a different type of policy. This means I'm satisfied Mr S's misrepresentation was a qualifying one.

IPA accepted our investigator's findings that Mr S's misrepresentation was careless, not deliberate or reckless. I agree it was a careless misrepresentation as I don't think Mr S was trying to deceive or mislead IPA. I think it's more likely it was an honest mistake.

I'm satisfied Mr S's misrepresentation should be treated as careless so I've looked at the actions IPA can take in accordance with CIDRA. As IPA wouldn't have offered cover they can avoid the policy and refuse all claims. But they should return the premiums.

When Mr S referred his complaint to the Financial Ombudsman Service Mr S hadn't been offered a refund of his premiums. I think he should have been, in line with the remedy outlined in CIDRA.

I've also considered what Mr S has said about page 17 of the policy documentation. But it hasn't changed my thoughts about the outcome of this complaint. Page 17 is entitled, 'Important conditions relating to health'. At the top of the page it says:

'PLEASE NOTE THAT THIS POLICY DOES NOT COVER PRE-EXISTING MEDICAL CONDITIONS'.

The policy document then goes on to explain what a pre-existing medical condition is. That includes any medical condition treated which has been diagnosed or treated within the last two years.

I appreciate that Mrs K and Mr S may not have been claiming for a pre-existing condition but I do think it is relevant to their complaint. That's because I think it was a further prompt to Mrs K and Mr S to check that they'd accurately disclosed information about their medical history. If they'd contacted their insurer upon reading this, and discussed their children's medical history, IPA would have been able to let them know that they wouldn't have cover under this policy. So, this hasn't changed my thoughts about the overall outcome of the complaint.

Putting things right

I'm upholding this complaint and direct IPA to put things right by avoiding the policy and refunding the premiums Mrs K and Mr S paid. They should also pay 8% simple interest per annum on the premiums from 7 September 2022 until the date of settlement.

If IPA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs K and Mr S how much it's taken off. It should also give them a tax deduction certificate if they ask for one so they can reclaim the tax from HM Revenue & Customs if appropriate.

I don't think IPA needs to do anything more to put things right.

My final decision

I'm upholding this complaint in part and direct Inter Partner Assistance SA to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr S to accept or reject my decision before 18 September 2023.

Anna Wilshaw
Ombudsman