

The complaint

Mr and Mrs T are unhappy that Great Lakes Insurance SE proportionately settled a claim they made on their travel insurance policy.

What happened

Mr and Mrs T took out an annual travel insurance policy in January 2022. Mr T became unwell whilst they were on holiday and incurred a lot of medical expenses.

They claimed on their travel insurance policy, but the claim was only partially settled. Great Lakes said Mr T hadn't fully declared his pre-existing medical conditions and that if he had they'd have charged a higher premium. Mr and Mrs T complained but Great Lakes maintained their decision was fair. Unhappy, Mr and Mrs T made a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and upheld the complaint. She didn't think Mr T had misrepresented his medical history. She said Great Lakes should pay the claim, 8% simple interest and £200 compensation.

Mr and Mrs T accepted the investigator's findings. Great Lakes asked an ombudsman to review the complaint as they thought Mr T hadn't disclosed relevant medical information when he was asked questions during the sales process. 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.

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.

Great Lakes thinks Mr T failed to take reasonable care not to make a misrepresentation when he answered the medical screening questions as he didn't disclose diverticulitis and medication for constipation.

I've listened to the sales call. The relevant questions Mr T was asked were:

- Are either of you on any hospital waiting list awaiting inpatient treatment?
- Or awaiting any test results for any as yet undiagnosed conditions?
- In the past 12 months have either of you been told to take regular prescribed medication for any chronic or recurring conditions?

Mr T disclosed that he took a statin and medication for an enlarged prostate in response to that question. However, he didn't mention that he had diverticulitis or took medication for constipation.

I've looked at the medical records and I don't think, in the circumstances of this case, Mr T failed to take reasonable care when answering these questions. I don't think the questions Mr T was asked captured his circumstances, based on the available medical evidence.

Mr T had been prescribed medication for constipation in 2016. He was admitted to hospital in June 2021 and was diagnosed with diverticulitis. He followed this up with his GP and had a further appointment with his GP related to constipation a few weeks later. A few days later he was treated at the hospital and the GP notes say:

Adv to continue with one sachet a day for now (sic)
diet and fluids discussed
having CT and consultant apptt (sic) next Wednesday.

Mr T then had some further hospital appointments which concluded in around September 2021. I can also see that Mr T does have the medication for the constipation on the repeat dispensing list.

However, I'm not persuaded that this means Mr T failed to answer the question accurately. I don't think the above evidence is sufficient to say he was regularly prescribed medication for a chronic or recurring condition. For example, there's little information about how often Mr T needed to use it and the connection between the constipation and diverticulitis.

At the time he took out the policy in January 2022 I don't think he was awaiting inpatient treatment or any test results for an undiagnosed condition. I'm also not persuaded it was reasonable for Great Lakes to conclude he was taking regular prescribed medication for a chronic or recurring condition based on the medical evidence they had available to them. It was open to them to obtain more information from the GP if they wished to do so. So, based on the evidence that's available, I don't think Mr T made a misrepresentation and I'm upholding this complaint.

Mr and Mrs T have also been caused distress and inconvenience by the impact of being out of pocket for a considerable sum of money for a long period of time.

Putting things right

Great Lakes needs to put things right by:

- Settling the claim in line with the remaining policy terms
- Paying 8% simple interest per annum from the date the claim was proportionately settled until the date of settlement
- Paying £200 compensation for the distress and inconvenience caused to Mr and Mrs T by their claim not being settled and for being out of pocket for a

considerable sum of money for a long period of time.

If Great Lakes considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs T how much it's taken off. It should also give Mr and Mrs T a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding Mr and Mrs T's complaint about Great Lakes Insurance SE and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 30 October 2023.

Anna Wilshaw
Ombudsman