

## The complaint

Mrs M complains about the settlement offered by Red Sands Insurance Company (Europe) Limited for a travel insurance claim. She is also unhappy with the assistance she received from the assistance company whilst abroad.

Red Sands are the underwriters of this policy (the insurer). Part of this complaint concerns the actions of the assistance company which acted on Red Sands' behalf. Any reference to Red Sands therefore includes the actions of the assistance company.

## What happened

Mrs M and her late husband Mr M held travel insurance cover with Red Sands. They made a claim after Mr M became unwell on a cruise and needed to be admitted to hospital. Mr M sadly passed away after returning to the UK.

Red Sands assessed the claim, and concluded that Mr M hadn't disclosed relevant information about his health (atrial fibrillation, as well as some other conditions) when taking out the policy. It said if it had known that information, it would have charged a higher premium. It therefore offered to settle the claim on a proportionate basis. Unhappy with this, Mrs M brought a complaint to this Service.

Our investigator recommended the complaint be upheld. She thought Red Sands had failed to ask a clear question which would have required Mr M to disclose his atrial fibrillation. Our investigator therefore recommended that Red Sands reconsider the claim. She also thought Red Sands ought to have provided more assistance and support to Mrs M whilst she was abroad, and recommended it pay her £450 compensation for this.

I issued a provisional decision on 30 August 2023. Here's what I said:

*'I'd firstly like to offer my condolences to Mrs M for the sad loss of her husband. I do understand that dealing with this matter won't have been easy for her.*

*I'll consider both aspects of the complaint separately.*

### Misrepresentation

*As this complaint concerns misrepresentation, I've considered the matter in accordance with the principles set out under 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.*

*Red Sands says that Mr M failed to answer the below question correctly:*

*'any prescription medication, or received any medical treatment in the last two years?'*

*I've listened to the calls between Mr and Mrs M and Red Sands.*

*In the first call, Mrs M spoke with Red Sands and was asked the above question by the adviser. She said her husband took some medication and that she had this in front of her. She read out two medications but was not sure what conditions they were treating. The adviser then spoke to Mr M and asked him what conditions he had diagnosed. Mr M said it was basically for his stomach, and confirmed medication he took for acid reflux. The adviser then mentioned the two medications that Mrs M had referred to and asked what these were taken for. Mr M thought they were for indigestion. The adviser asked Mr M to contact his GP to find out what each prescription was treating before they could continue with the quote.*

*I think Red Sands acted reasonably here as Mr and Mrs M weren't sure of the conditions that each medication was treating. A sensible way forward was for Mr M to find out this information from his GP.*

*Mr M then called Red Sands back after speaking with his GP. He spoke with a different adviser, and explained he'd been asked to get further information from his GP. The adviser said "I can see we needed to clarify your conditions and what you're taking medication for".*

*The adviser then noted that Red Sands already had acid reflux recorded for Mr M. He said that he took drops for his eyes, and after the adviser asked the condition, he said it was to keep the eyes moist. Mr M then said he took Bisoprolol, which the adviser thought was for high blood pressure (Mr M confirmed that was correct). The adviser asked him if it was just the one medication he took for blood pressure, and Mr M said he had another one, and named Rivaroxaban for blood clots. The adviser again asked if it was just one medication for high blood pressure, and Mr M said that was two.*

*The adviser then asked if Mr M had been a smoker or had been advised to take medication to lower cholesterol. Mr M confirmed he took medication to lower cholesterol. The adviser asked if there was anything else he needed to declare, and Mr M said no.*

*Red Sands says that Mr M failed to disclose that he had atrial fibrillation, glaucoma and eczema, and ought to have done so because he was prescribed medication for those conditions.*

*Mr M was prescribed cream for his eczema, so I agree he ought to have disclosed this. Although Mr M did tell Red Sands he was prescribed eye drops, when he was asked which condition the drops were treating, he didn't say he had glaucoma. So I also agree with Red Sands that Mr M ought to have disclosed this.*

*The remaining condition is atrial fibrillation. I've checked Mr M's medical records and I see he was prescribed Rivaroxaban and Bisoprolol for his atrial fibrillation.*

*Mr M did tell the adviser about these medications. However, he said that Bisoprolol was to treat his high blood pressure. Regarding Rivaroxaban, Mr M said this was for blood clots (I understand people with atrial fibrillation are more likely to develop blood clots), but when the adviser asked further about his blood pressure, he made it seem as though both Bisoprolol and Rivaroxaban were to treat high blood pressure. So I can understand why the adviser didn't make further enquiries about him needing treatment for blood clots. Mr M didn't say that he was actually taking this medication to treat atrial fibrillation.*

*Ultimately, whilst Mr M did answer the question correctly in respect of the medication he was taking, it was clear from both conversations that Red Sands wanted to know the conditions that each medication was treating. Mr M unfortunately didn't disclose that he was taking medication for atrial fibrillation. And as I've said, I also find that he should have disclosed that he was prescribed cream for eczema, and that his eye drops were for glaucoma.*

*I think it's apparent that Mr M wasn't deliberately trying to mislead Red Sands. Nonetheless, I find that there was misrepresentation. Red Sands has categorised the misrepresentation as careless rather than deliberate, which I think was fair.*

*Red Sands has provided this Service with evidence that it would have charged a higher premium if it had been made aware of Mr M's above conditions. That means the misrepresentation was 'qualifying', according to CIDRA. Red Sands is therefore entitled to settle the claim based on the proportion of premium that Mr and Mrs M paid compared to what they should have paid, which it has offered to do.*

*However, we've received contradictory information concerning the claim percentage that Red Sands intends to pay. In Red Sands' final response letter to Mrs M, it said the additional premium required would have been £173.05 (total premium would have been £494.99) and therefore only 65.04% of the premium was paid. That would mean that 65.04% of the claim would be payable. But the retrospective screening provided to this Service by Red Sands shows that the additional premium required would have been £142.47 (total premium would have been £464.41). On this basis, it seems that Mr and Mrs M paid just over 69% of the correct premium and therefore a higher percentage of the claim should be paid.*

*In response to this provisional decision, Red Sands should confirm the percentage of the claim it intends to pay, so that I can consider the matter further if necessary.*

#### Assistance provided

*It's standard practice for a travel insurer to require and assess certain information before agreeing to guarantee any medical expenses or arrange repatriation. Generally, the insurer will want to see a medical report from the treating hospital to establish that any treatment is medically necessary, and in respect of repatriation, that the patient is fit to fly back to the UK. The insurer will also want to see a policyholder's GP records to check their medical history in order to see if it impacts the claim at all.*

*After Mrs M returned the consent form for Red Sands to access Mr M's GP records, it requested this information from the GP promptly. However, unfortunately it didn't receive the medical records for eight days. I can see that Red Sands chased this with the GP on several occasions in that timeframe, which is what I'd expect. The GP refused to provide the records until the invoice had been paid, but it did not provide Red Sands with an invoice to pay. I therefore don't hold Red Sands responsible for the delay in the GP surgery providing the information.*

*In cases such as this, where it takes a long time to obtain a policyholder's medical records, an insurer can offer to cover medical expenses and arrange repatriation back to the UK on a 'disclaimer' basis. This would have been subject to Mrs M's written guarantee to pay Red Sands back for any part of the claim that fell outside the scope of cover. I've thought about whether Red Sands ought to have done this here.*

*I see that Red Sands had problems communicating with the hospital. Despite contacting the hospital multiple times, it only received an initial medical report after the British Embassy became involved. This said that Mr M would remain in hospital for ten days, and so Red Sands expected Mr M to remain in hospital until around 5 November. It says it expected to have finalised a decision about cover by that point, and so didn't expect to need to make a decision on repatriation before 5 November.*

*Red Sands was then made aware on 28 October that Mr M had been confirmed as fit to fly (so long as he was intubated in an air ambulance). However, Red Sands says that it had not received updated medical information to support that an air ambulance was medically*

*appropriate, and it would not arrange any repatriation that had not been signed off by its medical team.*

*It seems to me that Red Sands could have offered to arrange the repatriation here on a disclaimer basis. Though I understand Mr M's family had already begun arranging this themselves. So repatriation arranged by Red Sands may not have happened any sooner.*

*I see that after Mr M's family arranged the air ambulance, they wanted Red Sands to arrange a road ambulance in the UK. Red Sands did contact its ambulance provider for Mr M's family in order to try and arrange this, and did then attempt to liaise between that company and the air ambulance provider. I think that was reasonable.*

*Mrs M has expressed concerns about the hospital, but as our investigator has explained, we can't hold Red Sands responsible for the standard of care Mr M received from the hospital or staff there. I understand Mrs M also holds Red Sands responsible for the choice of clinic where Mr M was initially taken before being transferred elsewhere, but Red Sands did not decide where to send Mr M (that decision may have been taken by the cruise company).*

*Mrs M has also said how unhappy she was with the lack of communication from Red Sands. I note that Red Sands often couldn't always get through to Mrs M or her family members on the phone, so it couldn't keep them updated on the attempts that were being made to try and progress the claim. I recognise that Red Sands asked Mrs M for alternative means of contact, but this couldn't be provided. I see Red Sands tried to reach Mrs M through the hospital, and a staff member of Red Sands contacted Mrs M through a messaging application on their own phone at one point. So I appreciate that Red Sands did make some other attempts to contact Mrs M.*

*Having said that, Red Sands were made aware at the outset that Mrs M couldn't always make or receive calls on her mobile, but she was contactable by email. Initially, Red Sands did contact Mrs M in this way, but then it seems to have reverted to mainly attempting to call her and leaving her voicemails. Whilst it would have been preferable for Red Sands to have spoken to Mrs M, it seems to me that on the occasions when it couldn't reach her, it ought to have still emailed her with whatever update it wanted to provide as it's not clear if she was able to access her voicemails. I've noted Red Sands' point about its staff members needing to take other calls, but I remain of the view that more attempts should have been made to keep Mrs M updated by email. I therefore intend to require Red Sands to pay Mrs M £200 compensation to recognise the frustration she was caused by not being kept updated.'*

I asked both parties for any further comments they wished to make.

Red Sands responded to confirm that payment of the claim would be settled at 69.33% on a proportionate basis.

Mrs M's representative responded (together with a supporting letter from Mr M's GP), and made the following main points:

- They think Mrs M should receive 100% of the claim amount, due to the absence of any evidence suggesting deliberate or misleading representations on Mr M's part.
- They think Red Sands ought to have assessed and checked the accuracy of the information provided during the application process.
- They say that given Mr M's condition, waiting for a GP report could be life threatening. And that repatriation was essential for Mr M to receive the best possible care.

## **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.

Red Sands has confirmed that the proportionate settlement will be based on the higher amount of 69.33%. This is in line with the underwriting evidence Red Sands has provided to this Service, so I don't need to consider this further.

Mrs M's representative thinks the full claim should be paid, due to the absence of any evidence suggesting that Mr M made deliberate or misleading representations. To be clear, I haven't found that Mr M deliberately tried to mislead Red Sands. However, I do think he failed to take reasonable care when giving Red Sands information about his conditions, and that this misrepresentation was careless. The information provided by Mr M's GP about his conditions doesn't change my view on this. Under CIDRA, an insurer's remedy is based on what it would have done if there hadn't been misrepresentation.

It might be helpful if I explain that I wouldn't expect an insurer to check information it has been given during the application process. An insurer is entitled to rely on the information it has been given by an applicant.

Red Sands has shown that if it had known about Mr M's conditions, it would have charged a higher premium. Therefore, Red Sands can reduce proportionately the amount to be paid on a claim. Red Sands had already offered to settle the claim proportionately before Mrs M brought her complaint to this Service, and I'm satisfied that was reasonable. It has now clarified the payment of the claim would be settled at 69.33% on a proportionate basis.

Mrs M's representative says given Mr M's condition, waiting for a GP report could be life-threatening (as confirmed by Mr M's GP). If it were the case that medical treatment was denied by the hospital until Red Sands had confirmed cover, then I would agree with this. But Mr M did receive treatment abroad and so the delay in obtaining the GP report didn't impact this.

I do understand that the family wanted to repatriate Mr M so that he could receive treatment in the UK, and I've addressed this in my provisional decision. I said that Red Sands could have offered to repatriate Mr M on 28 October on a disclaimer basis, but Mr M's family had already started this process, so I can't say that repatriation arranged by Red Sands would have happened any sooner.

Whilst I recognise that my decision will disappoint Mrs M, I remain satisfied that Red Sands' offer to pay a proportionate settlement for the claim was appropriate here. I also remain of the view that Red Sands should pay Mrs M £200 compensation for failing to keep her updated whilst abroad, and for the same reasons as set out in my provisional decision.

## **My final decision**

My final decision is that I partly uphold this complaint. I require Red Sands Insurance Company (Europe) Limited to pay Mrs M £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 October 2023.

Chantelle Hurn-Ryan

**Ombudsman**