

The complaint

Mr T and the estate of Mrs T are unhappy that Red Sands Insurance Company (Europe) Limited declined a claim they made on a travel insurance policy.

What happened

Mr T and the late Mrs T booked a holiday and took out insurance. At the relevant time Mrs T had a terminal diagnosis for lung cancer. She also had other pre-existing conditions. Whilst they were away Mrs T became very unwell with sepsis and needed hospital treatment.

Red Sands said, in summary, Mrs T had failed to declare her medical history and declined cover. Mr and Mrs T complained but Red Sands maintained their decision to decline the claim. Unhappy, Mr and Mrs T complained to the Financial Ombudsman Service.

Our investigator looked into what happened and considered the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA). He thought Mr and Mrs T had not taken reasonable care when answering the questions and recommended Red Sands proportionately settled their claim. This was on the basis that Mr and Mrs T would have been charged a much higher premium if the condition had been declared.

Mr T didn't agree. He said he'd answered the questions correctly and declared the conditions. He highlighted the questions on the policy schedule confirmed this. He also said that Red Sands had no medical evidence of a link between Mrs T's lung cancer and the sepsis she developed on holiday. He thought Red Sands' system ought to have flagged that there was a discrepancy between the screening questions documented on the schedule and the fact that no pre-existing medical conditions were covered under the policy. He felt that he'd been misled. 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.

In September 2023 I issued a provisional decision. I said:

I'm very sorry to hear that Mrs T sadly passed away during the time that the Financial Ombudsman Service was investigating this complaint. I'd like to offer my condolences to Mr T and his family.

I'm intending to uphold Mr T's complaint in part and direct Red Sands to put things right in a different way. I'll explain why.

Mr and Mrs T contacted their usual insurer when they planned their trip. However, due to Mrs T's pre-existing medical conditions, they couldn't insure Mrs T. They were referred to a website ('the website') which offered policies underwritten by Red Sands.

Mr T completed a medical declaration which comprised of six questions. The answers to those questions are recorded on the second page of the policy schedule.

It says:

Have you or anyone in your party:

1. Taken any prescription medication or received medical treatment in the last 2 years – yes
2. Attended a medical practitioner's surgery, hospital or clinic (out-patient or in-patient) – yes
3. Awaiting any medical treatment or investigation – yes
4. Ever had or have any stress, anxiety, depression or psychiatric condition such as eating disorders, drug or alcohol abuse or mental instability for which You have ever been treated or diagnosed – no
5. Been diagnosed by a medical practitioner as suffering from a terminal illness – yes
6. How long is the terminal prognosis from the date of return from your trip – more than six months.

The policy schedule also has a heading, 'Medical Conditions' and underneath it says, 'No pre-existing medical conditions covered'.

Mr T says he added the medical conditions as required. Red Sands said that in the sales journey, where a medical condition was added, Mr T would need to click save to ensure that the medical condition remains on the policy. They said Mr T would be unable to continue with the quotation until this is done unless the condition has been removed.

I'm not dealing with the sale of the policy via the website and the sales journey as part of this complaint. That isn't something that Red Sands is responsible for. If Mr T has concerns about the online sales process, including why the conditions weren't passed to Red Sands, he'll need to make a complaint to the seller of the policy.

However, as the underwriter of the policy, Red Sands is responsible for ensuring that Mr T was given enough information to decide if the policy was right for him. That includes giving him information that is clear fair and not misleading.

I think the schedule, in the very specific circumstances of this case, was misleading. It captures that Mr T had declared information about pre-existing conditions, including a terminal diagnosis. So, I can understand why Mr T thought he was covered as the schedule indicates he'd declared a number of conditions. I don't think it would have been clear to Mr T that something had gone wrong.

The schedule refers to no pre-existing conditions being covered. It doesn't say that no pre-existing conditions were declared. So, I can understand why Mr T didn't realise that there was no cover for the pre-existing conditions particularly as the schedule included the medical declaration I've set out above. I think if the schedule had been clearer Mr T would have realised there was a problem with the medical

screening and would have been able to address this with Red Sands. That means they'd have paid an additional premium of over £1000 to cover Mrs T's medical conditions.

Red Sands received the information from the seller of the policy and was entitled to rely on that information. But I do think it's surprising that Red Sands issued a policy with no pre-existing medical conditions covered when they had the answers to the medical screening questions which confirmed one of the travellers had a terminal diagnosis, was taking medication and was awaiting treatment or investigation. In any event, I don't think the schedule was sufficiently clear about what was covered, and what wasn't, in the circumstances of this case for the reasons I've already explained. Ultimately, Mr and Mrs T ended up with a product which wasn't right for them. I can't hold Red Sands responsible for any failings in the sales process. Red Sands received the information from the seller of the policy and was entitled to rely on that information. So, I don't think they are responsible for the medical conditions not appearing.

Based on the evidence I've been provided with I think Mr T did declare the medical conditions he needed to. So, I don't agree with our investigator's conclusions that CIDRA applies. But, I do think Red Sands should pay compensation for the distress and inconvenience that resulted from the lack of clarity of this policy schedule.

I've thought about the impact on Mr and Mrs T. They were left without cover for the medical conditions they thought they'd declared, and Mrs T became unwell. So, they've incurred significant medical bills. And they had the distress and inconvenience of having to sort out Mrs T's return home without the financial and practical support of Red Sands. This had a considerable impact on them at an already worrying and difficult time. They thought they had the reassurance of cover and I don't think it was sufficiently clear from the schedule that they didn't have the cover they expected. I think Red Sands should pay compensation for distress and inconvenience for this – both to Mr T and to the estate of Mrs T for the impact of the situation on her in the time before she sadly passed away.

I also think Red Sands should refund the premiums Mr and Mrs T paid as I think the policy was of very limited benefit to them. They were travelling to the Channel Islands and it's clear that Mr and Mrs T's primary motivation was to ensure Mrs T's health condition was covered. So I think it's fair and reasonable the premiums are refunded too.

But I don't think it's fair and reasonable for Red Sands to pay the claim because I don't think Mr and Mrs T's financial losses flow directly from the lack of clear information in the policy schedule.

Putting things right

I'm intending to direct Red Sands to pay Mr and Mrs T £600 compensation for the distress and inconvenience caused by the impact of discovering they didn't have the level of cover they expected. They should also refund the premiums Mr and Mrs T paid.

Red Sands didn't respond to my provisional decision.

Mr T made some further representations. He said he was confused why Red Sands weren't responsible for the sale of the policy and the sale is where it all began. He resent some of screen shots and highlighted that he completed a medical declaration not a medical

screening. He said that if the software had been fit for purpose it would have picked up that he'd answered 'yes' to five of the questions and not allowed him to purchase the policy.

I asked our investigator to clarify why the complaint was about Red Sands and explain what Mr T needed to do if he wanted to pursue a complaint about the sale of the policy.

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 is the insurer and underwriter of the policy. So, they are the business responsible for deciding whether a claim should be declined. Mr and Mrs T's claim was declined because Red Sands said that Mrs T wasn't covered for her pre-existing medical conditions. The Financial Ombudsman Service considered whether it was reasonable for Red Sands to decline the claim on that basis, bearing in mind the information they'd received from the seller. Red Sands is also responsible for the information contained in the schedule of insurance.

Another business is responsible for the sale of the policy – including the questions asked and the way the website is constructed. That business is responsible for collating the information and passing it to Red Sands. Usually, where there is a complaint about a declined claim and a mis-sale the Financial Ombudsman Service will firstly consider whether a claim was declined. The Financial Ombudsman Service was not investigating a complaint about the sale of the policy at the time I issued my provisional decision. Our investigator has explained to Mr T what the next steps are and is taking forward a complaint about the sale of the policy.

Mr T did complete a medical declaration as the screenshot he's provided and the schedule of insurance shows. But the medical screening follows on from this in the sales process and refers to the more detailed questions he was asked as a result. So, when I refer to the 'medical screening' I'm referring to the more detailed questions which follow the medical declaration. When I refer to the 'medical declaration' I'm referring to the six questions which appear on the schedule and in the screenshot Mr T provided.

For the reasons I explained in my provisional decision I don't think it would have been clear to Mr T that even though he had completed the medical declaration there was an issue with the medical screening questions which resulted in him not having cover. I think when looking at the schedule, which is Red Sands responsibility, he'd have thought he had cover for the medical conditions referred to in the medical declaration. It's on that basis that I am upholding Mr T's complaint against Red Sands.

As I'm not considering a complaint about the business which sold the policy, I am not making a finding about the issues in the sales process which Mr T has raised.

Putting things right

I'm intending to direct Red Sands to pay Mr T and the estate of Mrs T £600 compensation for the distress and inconvenience caused by the impact of discovering they didn't have the level of cover they expected. They should also refund the premiums Mr and Mrs T paid.

My final decision

I'm upholding Mr T and the estate of Mrs T's complaint about Red Sands Insurance Company (Europe) Limited 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 T and the estate of Mrs T to accept or reject my decision before 2 November 2023.

Anna Wilshaw
Ombudsman