

The complaint

Mr and Mrs O complain that U K Insurance Limited (UKI) hasn't settled a cancellation claim they made on a travel insurance policy.

As Mr O brought the complaint to us, for ease, I've referred mainly to him.

What happened

The circumstances of this complaint are well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr and Mrs O hold travel insurance as a benefit of a packaged account with their building society.

In July 2022, Mr O booked a two-night trip. He was due to travel in October 2022. Unfortunately, a few days before the trip, Mr O began to suffer severe back pain. His GP felt he was unfit to travel and so Mr O cancelled the trip. He made a claim on the policy for the associated cancellation costs.

UKI asked for medical evidence to allow it to consider Mr O's claim. It assessed the medical certificate completed by Mr O's GP and noted that the GP had stated that Mr O had suffered from back pain or something directly related to it previously. The policy specifically excluded cancellation cover for conditions which a policyholder had suffered in the 12 months before booking a trip unless they'd been declared to and accepted by UKI. Mr O's medical certificate stated that he'd been seen by a GP in November 2021 for a potential sciatica diagnosis and that he'd been prescribed medication. As Mr O had been seen for back pain and had been prescribed pain relief in the 12 months prior to booking the trip, UKI considered that he ought to have declared this to its medical screening team. But Mr O hadn't done so. And therefore, UKI concluded that Mr O's claim wasn't covered by the policy terms and turned it down.

Mr O was unhappy with UKI's decision and he complained. He didn't agree that the two episodes of back pain were linked. He felt that his failure to tell UKI about his previous back pain had been careless and so he considered that the provisions of the Consumer Insurance (Disclosures and Representations) Act 2012 (CIDRA) should apply to his claim. He provided UKI with a letter from a different GP which broadly stated that Mr O's two episodes of back pain had been unrelated. And he also raised a Subject Access Request (SAR) under the Data Protection Act.

UKI didn't agree that CIDRA applied to Mr O's claim. That's because he hadn't gone through any form of medical screening with and it and so it didn't agree that he'd made a representation or a misrepresentation to it. UKI asked Mr O to complete a consent form to allow it to contact his GP directly to ask some targeted information to clarify the content of the second letter. It said it would then be in a position to further consider the claim. And it told Mr O that it couldn't process a SAR request unless he provided evidence of his identity.

Mr O didn't agree to sign a consent form. He maintained that CIDRA should apply to his

claim. And he felt that UKI was placing unreasonable barriers to him making a SAR. So he asked us to look into his complaint.

Our investigator concluded that UKI had handled Mr O's claim fairly and that CIDRA didn't apply to the circumstances of it. But she did think that UKI had acted unreasonably by requiring Mr O to provide identification documents to support his SAR request while the claim was in progress. So she recommended that UKI should pay Mr O £50 compensation to reflect this.

I issued a provisional decision on 11 January 2024 which explained the reasons why I thought UKI had handled Mr O's claim fairly, but that it should pay him £50 compensation. I said:

'First, I'd like to reassure Mr O that while I've summarised the background to his complaint and his submissions to us, I've carefully considered all he's said and sent us. Within this decision though, I haven't commented on each point he's made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of the insurance policy and the available evidence, to decide whether I think UKI treated Mr O fairly.

Did UKI handle the claim fairly?

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr O and UKI. Page two of the policy terms is named 'Booking a Trip' and includes the following:

'Do you or anyone to be covered by this policy have a medical condition that you need to cover whilst on a trip?

Make sure that you contact us before you book as this Insurance automatically excludes cover for medical conditions. Details on how to do this and what we mean by a medical condition are on page 8. An additional premium may be payable or we may not be able to cover medical conditions.'

Page eight of the contract includes a section called 'Medical Screening'. This says:

'Please read this section carefully. If you don't tell us about a medical condition, you and anyone else insured by this policy will not be covered for any claim connected to your medical condition.

Medical conditions

You need to tell us about any medical conditions when:

- You first become an insured person (If you already have a trip booked).*
- You book a trip...*

We consider an illness or injury to be a medical condition if an insured person would answer 'yes' to one or more of the questions below...

In the last 12 months have you had or been recommended to have:

- *Treatment or medication prescribed by a doctor, including repeat prescriptions, whether taking it or not? You do not need to tell us about hormone replacement therapy or contraception.*

- *Inpatient treatment or been aware of the need for inpatient treatment?*

- *Investigation of a medical condition or awaiting a diagnosis?*

If you answer 'yes' to any of the above questions you must declare all your diagnosed health problems you are either suffering from now or have received treatment or advice for in the last 12 months.'

UKI has defined a 'medical condition' as:

'Any illness or injury for which, at the date you became an insured person or the date when you booked your trip, whichever is later you would have answered 'yes' to any of the questions in the Medical Screening section on page 8.'

Mr O made a cancellation claim, so I think it was reasonable and appropriate for UKI to consider his claim in line with the cancellation section of the policy. This includes a list of specific events UKI has chosen not to pay for. One of these specific exclusion says UKI won't pay:

'Any claim due to a medical condition, unless you had already told us about the condition and we had agreed to cover it.'

The requirement to disclose pre-existing medical conditions to a travel insurer and undergo a medical screening prior to travel in order for pre-existing medical conditions to be covered isn't unusual. And I'm satisfied that the requirement for Mr O to notify UKI of any pre-existing medical conditions which he wanted to be covered was clearly and prominently set out to him. I'm also satisfied that UKI made clear the potential consequences on cover if Mr O didn't tell it about any existing medical conditions.

UKI assessed the available evidence and initially concluded that the claim wasn't covered, because Mr O had suffered from a related condition in the 12 months prior to booking the trip, which he hadn't disclosed. Following the provision of later medical evidence, UKI still wasn't satisfied that Mr O's claim should be covered and so it asked for Mr O's permission to seek further medical evidence so it could review the claim further. I've thought about whether I think this was a fair position to UKI to take.

First, I've considered the medical certificate a GP at Mr O's practice completed. The GP said there'd been a consultation with Mr O on 5 October 2022. The certificate stated that the condition causing the claim was 'lower back pain – severe L4/L5 disc prolapse with nerve impingement.' The certificate asked whether the policyholder had suffered from the condition or anything directly related to it before. Mr O's GP answered 'Yes'. They went on to say that Mr O had been seen in November 2021 for a possible sciatica diagnosis. They added:

'However, no symptoms present since recently 5/10/22.' The GP stated that Mr O had been prescribed three types of medication.

Based on the medical evidence it was presented with, I think it was reasonable for UKI to conclude that Mr O's claim was caused by a condition he'd suffered from in the 12 months before the trip was booked, even if he hadn't been symptomatic in the intervening period. Mr O was clearly prescribed medication at this point. And so I think given the clarity of the policy information, Mr O ought to have been reasonably aware of the need to tell UKI about his

condition so that it could decide whether or not to offer cover for back pain.

Following the initial decline of the claim, Mr O provided a further letter from his GP practice, dated 28 December 2022. I've considered this carefully. I note the GP who signed the letter wasn't the same GP who'd filled-out the medical certificate The GP said:

'Mr O had seen a GP...on 5 October 2022 for lower back pain and sciatica. He had previously been seen for the same condition on 15 November 2021. In between these presentations, Mr O was symptom-free, and the two episodes of pain were unrelated. It was therefore not an ongoing condition from November 2021 – October 2022.'

I appreciate this letter indicates that Mr O's episodes of pain were unrelated and that his condition wasn't ongoing for an 11 month period. But the GP clearly stated that Mr O had been seen for the same condition in November 2021. So I don't think it was unreasonable for UKI to consider that this evidence was somewhat contradictory in nature. And therefore, I don't think it was unfair for UKI to conclude that the evidence wasn't enough to show that Mr O's back pain was unrelated to his episode of pain and prescriptions in 2021. As such, I don't think it's unreasonable for UKI to require further medical evidence from the GP to clarify whether Mr O's 2022 episode of back pain was linked to the 2021 episode before it further reviews this claim.

In line with my remit, I've thought about whether it would be fair and reasonable for UKI to accept Mr O's claim outside of a strict application of the policy terms and conditions (taking into account any additional premium which UKI may have charged to provide cover for pre-existing medical conditions). Based on the circumstances of this case, I don't think it would. Mr O didn't make any declarations to UKI about his previous medical history and, therefore, he didn't have cover for any claims relating to those issues. So the risk which UKI was covering under this policy didn't include claims linked to back pain. When making an independent and impartial decision, I need to be fair to both parties – not just to Mr O. And I don't think it would be fair or reasonable to now require UKI to retrospectively provide cover for a risk which it didn't agree to accept before Mr O booked his trip.

Overall, I currently intend to find that UKI has handled Mr O's claim fairly. It's now open to Mr O to sign UKI's consent form so that it can obtain further medical evidence from his GP and further review his claim.

The SAR

Mr O complains because he says UKI didn't process his SAR request, as it wanted further identification documents from him before it would do so. I appreciate that given the sensitive nature of the information UKI holds, it needs to be satisfied that it's dealing with a party who's entitled to see it. I wouldn't generally seek to interfere with UKI's requirements here.

Nonetheless, in this case, at the time of the SAR, UKI was corresponding with Mr O about an active claim and he was requesting calls which he'd had with its claims handlers during the course of the claim as part of his complaint. UKI seemed to accept that Mr O was who he said he was during the course of the claim and that he was entitled to be sent information about the claim and complaint outcome. And therefore, I can understand why Mr O feels that

UKI was placing additional barriers to his being able to access his own personal data when he made a SAR. So I agree with the investigator that it would be reasonable for UKI to pay Mr O £50 compensation to recognise the resulting trouble and inconvenience he feels he's suffered as a result. I note UKI hasn't disagreed with the investigator's recommendation on this point.'

I asked both parties to send me any further correspondence or arguments they wanted me to consider.

UKI accepted my provisional findings.

Mr O did not and I've summarised his response:

- To the extent it is relevant, he maintained that the 2022 episode of back-pain was unrelated to the 2021 episode, as evidenced by the second GP;
- I had noted that the second GP's letter was written by a different GP without explaining why it was relevant. He felt this statement was loaded with innuendo and implied deceit on his part;
- He considered it was unreasonable for UKI to expect him to revisit the GP for further information, especially given the confirmation he'd provided previously;
- At the time of booking travel, he wasn't suffering from any medical condition, but he conceded that he'd been treated for back pain in the preceding 12 months;
- Mr O maintained that CIDRA applied to all consumer contracts. He felt that as the insurance was already in place, this should be termed a variation of the cover;
- He felt he'd omitted to make a representation, but that UKI had opted not to seek a revalidation of the information given by a consumer at the point of policy inception. Instead, it relied on an ongoing duty to disclose material changes. So he felt it was unfair to disregard CIDRA by virtue of the fact that a screening hadn't taken place;
- UKI had confirmed it would have covered Mr O for an additional premium. In line with CIDRA, therefore, he considered the appropriate redress in this case would be for UKI to pay the claim and charge Mr O an additional premium.

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.

Having done so, whilst I'm sorry to disappoint Mr O, my final decision is the same as my provisional decision and I'll explain why.

The medical evidence

I've explained above why I think it was reasonable for UKI to require further clarification from Mr O's medical practice before it further reviewed the claim. I don't think it was unfair for UKI to conclude that the available medical evidence was contradictory in nature. I must make clear that my reference to the second letter being completed by a different GP was intended to reflect the fact that it appears the writer of the letter wasn't the doctor who saw Mr O in October 2022 or who'd had the chance to assess his condition at the relevant time. So I can understand why UKI might have felt this evidence was less persuasive than the medical certificate which seems to have been completed by the GP who saw and assessed Mr O. As such, I still don't think it was unreasonable for UKI to conclude that it needed further medical evidence from Mr O's GP before it could reconsider the claim.

In any event, as Mr O accepts, he did undergo treatment for back pain in the 12 months before travel was booked. So I still think it was fair for UKI to conclude that the claim fell

within the scope of its exclusion clause.

Relevant law

I've taken into account the law as a relevant consideration (amongst others) when deciding what I consider to be the fair outcome to this complaint. It's clear how strongly Mr O feels that CIDRA applies to the circumstances of his claim.

However, I still don't think it would be fair to apply CIDRA in these circumstances. I don't agree with Mr O's contention that CIDRA applies to all consumer contracts. I'm satisfied that CIDRA isn't relevant where a consumer doesn't make any representations to the insurer. Mr O holds insurance as a benefit of a packaged account he took out through his building society. He had no direct dealings with UKI when he took out the contract, or when the contract renewed, and it didn't provide him with tailored, underwritten cover based on a detailed assessment of risk of his pre-existing medical history.

It's clear that at no point has Mr O gone through a medical screening with UKI. He has made no disclosures or representations to it about his health. And UKI wasn't given an opportunity to ask Mr O questions about his medical history and to assess the terms on which it was prepared to offer him cover. Although UKI may well have simply charged Mr O an additional premium to cover back pain, I don't think it would be fair or reasonable to retrospectively require it to do so in circumstances where it didn't agree to offer Mr O medical cover and where Mr O didn't comply with the policy terms, even if inadvertently.

I'd add too that even if I'd found CIDRA does apply here (and I make no such finding) – or that it would be fair and reasonable to apply CIDRA principles to the circumstances of this claim - the remedy available to UKI wouldn't simply have been to deduct the premium Mr O would have paid from the claim settlement – it would have been entitled to pay his claim proportionately.

The SAR

Neither party has made any further submissions on this point, so I don't intend to comment on this further.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that UKI has handled Mr and Mrs O's claim fairly.

But I direct U K Insurance Limited to pay Mr and Mrs O £50 compensation,

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 27 February 2024.

Lisa Barham
Ombudsman