

## **The complaint**

Mrs H has complained that Admiral Insurance (Gibraltar) Limited declined her claim on her travel insurance policy.

## **What happened**

Mrs H took out an annual insurance policy with Admiral through an online price comparison website in April 2023 for her holiday in May 2023. Mrs H disclosed some pre-existing medical conditions during her application. Whilst Mrs H was away on holiday, she was admitted to hospital. On her return she submitted a claim to Admiral. Admiral declined Mrs H's claim and said this was due to her failing to disclose she was awaiting some investigations on her application. Admiral said if she'd done so, the policy wouldn't have been offered. Mrs H complained to Admiral and said that she didn't think the question was clear. She also didn't think she needed to disclose the investigations as they were related to the disclosed pre-existing condition. Admiral didn't change their outcome and so Mrs H brought her complaint to our service.

Our investigator upheld Mrs H's complaint. Whilst she didn't think Admiral had done anything wrong in declining the claim, she thought they should have refunded the premiums paid by Mrs H. Admiral accepted our investigator's outcome. Mrs H didn't agree and so the complaint has been passed to me to decide.

## **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.

When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly and fairly, and not unreasonably decline it. So, I've thought about whether Admiral acted in line with these requirements when it declined to settle Mrs H's claim.

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 (an insurance policy). If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is, what CIDRA describes, a qualifying misrepresentation. For it to be a qualifying misrepresentation, the insurer has to show that had there not been a misrepresentation, it would have offered the policy on different terms or not at all.

Mrs H applied for the policy on 13 April 2023 as she was due to go away the following month. She was asked whether she had any pre-existing medical conditions. Mrs H answered this question yes and disclosed more than one condition. This led to the following question being asked:

*'Have you, or anyone to be named on the policy:*

*been currently put on a waiting list for treatment or investigation?’*

Mrs H answered ‘no’ to this question. Admiral say she should have answered yes. I’ve looked carefully at the medical evidence and the representations made by Mrs H to determine whether Admiral’s finding that Mrs H failed to take reasonable care when answering the question was fair.

It’s not in dispute that Mrs H saw her GP on 3 April 2023, just 10 days before she applied for her policy. It’s also not disputed that following this appointment it was agreed that Mrs H would undergo 24-hour monitoring.

Mrs H has said that she doesn’t think the above question was clear. She’s said she thought it was in relation to investigations for conditions not disclosed. I find that the question is clear. The question doesn’t specify that it’s only for new conditions and she doesn’t need to disclose anything relating to an already disclosed condition. I also find it reasonable for Admiral to conclude that Mrs H failed to take reasonable care when answering the question. This is because Mrs H saw her GP to discuss and agree to the monitoring, less than two weeks before she took out the application.

The remedy available to Admiral under CIDRA depends on whether the misrepresentation was a qualifying one. Admiral has provided underwriting evidence which demonstrates that had Mrs H answered the question correctly, they wouldn’t have offered her cover at that time. I’m satisfied Admiral would have acted differently and so; the misrepresentation is qualifying.

Admiral hasn’t confirmed how they’ve categorised the misrepresentation. However, since the complaint was brought to our service, they’ve offered to refund the premiums to Mrs H. Under CIDRA, the remedy for a careless misrepresentation, when no cover would have been offered, which is the least severe category, allows the insurer to decline any claims and avoid the policy, but they must refund the premiums paid by the consumer. As this is now what Admiral are doing, I don’t think this is unreasonable in the circumstances. I find that it is fair for the misrepresentation to be considered careless.

In line with CIDRA, Admiral should have refunded Mrs H’s premiums sooner. As such, I find that Admiral should pay Mrs H 8% simple interest\* on the premium refund, from the date of declining the claim to the date of making payment.

\*If Admiral considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs H how much it has taken off. It should also give Mrs H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I recognise my decision will be very disappointing to Mrs H. However, I don’t think Admiral has treated Mrs H unfairly, contrary to the policy terms or to law. It follows that there is no basis for me to require Admiral to pay Mrs H’s claim

### **My final decision**

Admiral Insurance (Gibraltar) Limited has made an offer to refund the premiums paid. If they haven’t done so already, they should make payment of this to Mrs H. They should also pay Mrs H 8% simple interest on the premium refund, from the date of the claim decline to the date they make payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 19 April 2024.

Anthony Mullins  
**Ombudsman**