

The complaint

Mr H is unhappy that Great Lakes Insurance SE declined a claim made on his travel insurance policy ('the policy').

All reference to Great Lakes includes its representatives.

What happened

Whilst abroad in 2022, Mr H was admitted to hospital and diagnosed initially with atrial fibrillation.

Mr H made a claim on the policy to cover his medical costs abroad. Ultimately Great Lakes declined the claim on the basis that he hadn't accurately declared his medical history when taking out the policy. Great Lakes concluded that had he done so, the policy wouldn't have been offered to him. This was explained to him in its email dated 28 March 2023.

After Mr H complained to Great Lakes and it maintained its position to decline the claim, he brought a complaint a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and didn't think Great Lakes had acted unfairly by declining the claim. However, having cancelled the policy as it should never have been offered, she didn't think it was fair for Great Lakes to keep the premium Mr H had paid for the policy. She recommended the premium be refunded to Mr H.

Mr H disagreed so his complaint has been passed to me to consider everything afresh and 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.

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. 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 (in this case Great Lakes) 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 says Mr H failed to take reasonable care not to make a misrepresentation when answering questions about his medical history.

I have a lot of empathy for the situation Mr H finds himself in and I know he'll be very disappointed but, overall, I think Great Lakes has acted fairly and reasonably by declining the claim and cancelling the policy. However, I do think Great Lakes should refund the cost of the policy to him. I've set out my reasons below.

Did Mr H make a qualifying misrepresentation?

Given how long ago Mr H applied for the policy, Great Lakes says it no longer has a recording of the call during which he was asked about his medical conditions and history. So, I've considered the type of questions Mr H was most likely asked on a balance of probabilities.

Great Lakes has said its representative would've asked the following questions:

For each traveller named on this policy, please select yes if they:

- A. Have, in the last two years, suffered from any medical or psychological conditions and for which they've received treatment, been prescribed medication, attended any consultations, investigations or check-ups.
- B. Have ever suffered from or received treatment, investigations or tests for:
 - Heart attack, angina, chest pain(s) or any other heart condition
 - High blood pressure, blood clots, raised cholesterol, aneurysm or circulatory disease
 - Any form of stroke, transient ischemic attack (mini-stroke) or brain hemorrhage.

I'm satisfied on a balance of probabilities that those questions were likely asked. The types of conditions being asked about are similar to how pre-existing conditions are defined under the policy. And the medical declaration policy says that claims arising directly or indirectly from a pre-existing condition aren't covered unless all pre-existing medical conditions have been declared and accepted by Great Lakes in writing. So, I think it's reasonable to assume that that Great Lakes would've asked questions similar to how pre-existing conditions are defined in the policy.

Further, Mr H did declare some medical conditions when applying for the policy and these are reflected on the insurance schedule. Having considered his GP records, it looks like the conditions he declared were in answer to a question similar to A. above. I'm therefore satisfied that this is supportive of him being asked the questions Great Lakes has said he answered.

The medical records from the treating hospital abroad reflect Mr H's "pertinent other medical problems" include history of DVT, PE and HLD. I'm satisfied this refers to deep vein thrombosis, pulmonary embolus and hyperlipidaemia and that he should've answered 'yes' to question B above.

Mr H says he has no knowledge of experiencing DVT. However, without anything from the treating hospital abroad explaining why DVT was mentioned as being part of his "pertinent other medical problems", I'm persuaded that it's more likely than not that he had experienced this in the past and I find it likely that Mr H would've been aware of the issue.

Mr H has said that he had PE in around 2015/2016. He's also more recently said that he declared PE when taking out a different travel insurance policy. So, I think it's something he was aware of.

I've seen a two-page letter Mr H sent to Great Lakes (undated) in which he says: "In taking out the policy I was aware that I should declare any existing condition which might give rise to a claim. I took this to mean a condition which existed at the time I took out the policy and did not require a declaration of my entire medical history".

However, I'm satisfied that the questions set out above are clear and the question at B above is asking whether Mr H whether he'd ever had ever suffered from or received treatment, investigations or tests for certain medical issues. It wasn't restricted to when he was applying for the policy or the two years before.

I've gone on to consider whether Great Lakes has fairly concluded that by answering the questions incorrectly Mr H's misrepresentation amounted to a qualifying misrepresentation under CIDRA. And I'm satisfied it has.

Great Lakes has carried out a retro-screening of all the conditions which should've been disclosed. I'm satisfied that it's answered the questions fairly and Mr H wouldn't have been offered the policy had he answered the questions correctly, declaring all conditions.

Declining the claim and cancelling the policy

Great Lakes has concluded that Mr H's misrepresentation was deliberate or reckless. However, in response to our investigator's view it has agreed to now treat the misrepresentation as careless. I think that's fair and reasonable in the circumstances of this complaint.

I've looked at the actions Great Lakes can take in line with CIDRA. Under this legislation it's entitled to do what it would've done had Mr H did not make a careless qualifying misrepresentation. As I'm satisfied from what I've seen that the policy wouldn't have been offered to Mr H, I think it's fair and reasonable for Great Lakes to cancel the policy. And as the policy wouldn't have existed, I'm satisfied Great Lakes doesn't have to pay any claims.

However, I do think it should refund the premium Mr H paid for the policy to him.

I've taken into account all other points made by Mr H including what's said about the reason he required medical attention abroad being unrelated to any conditions he didn't declare when taking out the policy. I can see that Great Lakes did initially decline the claim on the basis that the claim related to an undeclared pre-existing medical condition.

However, whether the atrial fibrillation was directly or indirectly related to an undeclared medical condition isn't relevant to the reason why the claim was ultimately declined. I'm satisfied that the policy wouldn't have been in place had Mr H answered the medical questions correctly when applying for the policy so there would've been no policy to claim against.

Mr H has also said that he'd taken out a travel insurance policy and declared all his conditions and the policy was still offered to him. That may be the case. But underwriting criteria does change and, in my experience, the intended destination can make a difference to the decision whether to offer a travel insurance based on the medical conditions declared.

As stated above, in this case I'm satisfied Great Lakes has been able to fairly establish that if all medical conditions had been declared as they ought to have been by Mr H, he wouldn't have been offered the policy.

Other issues

I can see that Great Lakes did pay the hospitalisation benefit to Mr H for the days in hospital abroad after he paid the excess. I've seen in its internal notes that it says this was paid prematurely but it isn't looking to ask Mr H for that sum back. I think that's fair and reasonable in the circumstances of this complaint.

Putting things right

I direct Great Lakes to refund the premium Mr H paid for the policy.

My final decision

I partially uphold this complaint to the extent set out above and direct Great Lakes Insurance SE to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 22 May 2024.

David Curtis-Johnson
Ombudsman