

The complaint

Mr and Mrs E are unhappy that Admiral Insurance (Gibraltar) Limited ('Admiral') has declined their claim for medical costs due to a misrepresentation made when the policy was taken out.

All reference to Admiral includes any agents acting on its behalf.

What happened

Mr and Mrs E bought a travel insurance policy, underwritten by Admiral. Unfortunately, whilst abroad, Mrs E required emergency medical treatment and they made a claim.

Admiral declined the claim and said when buying the policy, Mrs E had answered questions about her medical history incorrectly. And it considered this to be a careless qualifying misrepresentation which entitled it to cancel the policy and return the premiums.

Mr and Mrs E brought the complaint to us. Our investigator didn't think it should be upheld as the medical evidence showed that Mrs E didn't declare her medical history properly.

Mr and Mrs E didn't agree with the investigator and asked for an Ombudsman's decision as they said the medical report from the GP was incorrect.

And so the case has been passed to me.

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, I don't think this complaint should be upheld. I'll explain why.

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 (a policy). 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 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.

Admiral thinks Mrs E failed to take reasonable care not to make a misrepresentation because she didn't accurately declare her medical history. It says Mrs E should have

declared that she was under investigation for palpitations and that she had cauda equina syndrome.

Based on the information available to Admiral at the time of the claim, including the letter from her GP, I don't think it was unreasonable for Admiral to conclude that Mrs E failed to take reasonable care.

Admiral has shown that had Mrs E answered the questions correctly, it wouldn't have offered a policy. And it says it will treat Mrs E's misrepresentation as careless rather than deliberate or reckless. This means Admiral would be able to cancel the policy and return the premiums - which is the most favourable outcome for Mrs E.

However, Mrs E told Admiral that the information from her GP was incorrect and it agreed that it would review any further, corrected information from her GP once this was available. If this didn't change its position, it would cancel the policy and return the premiums.

Mrs E has since provided further information from her GP but as explained by our investigator, this will need to be reviewed and assessed by Admiral in the first instance. I cannot comment on the new evidence in this decision. But based on the medical evidence available to Admiral at the time it initially assessed the claim, I agree that the actions Admiral said it would take are in line with the remedies available to it under CIDRA.

Mr and Mrs E were also unhappy that they didn't receive a claims decision in writing but Admiral clearly provided its decision over the telephone and again in response to the formal complaint. I think that was reasonable.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E to accept or reject my decision before 25 April 2024.

Shamaila Hussain
Ombudsman