

## **The complaint**

Mr and Mrs E have complained that Aviva Insurance Limited unfairly declined their claim.

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

## **What happened**

Mr and Mrs E had a travel insurance policy, underwritten by Aviva. They went abroad on holiday when Mr E fell ill. He received treatment in hospital and returned home.

They made a claim for their costs but Aviva declined the claim. It said, at renewal, Mr E had answered questions about his pre-existing medical conditions incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to decline the claim.

Mr and Mrs E brought their complaint to the Financial Ombudsman Service and our investigator didn't think it should be upheld as he agreed that Mr E had made a qualifying misrepresentation.

Mr and Mrs E disagreed and have asked for an Ombudsman's decision. So the case 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.

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

The background to this matter is well known to both parties so I won't repeat the facts here. Instead, I will focus on what is key to my conclusions. I have also considered everything Mr and Mrs E have said in detail even if I don't explicitly refer to it below.

- 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.

- Aviva thinks Mr E failed to take care not to make a misrepresentation when he failed to declare a medical condition.
- I've looked at the question and I agree that Mr E didn't take reasonable care especially as the condition he says he declared on the telephone was missing from the insurance policy documentation. The telephone call isn't available so I can't say whether the condition was declared on the phone or not. But the paperwork clearly shows that it is missing and so Mr E should have contacted Aviva to include it. I am satisfied that the policy documents make it clear that the information provided needed to be checked to ensure it was complete and accurate and if it wasn't, a claim may not be paid.
- Aviva has provided underwriting evidence to show that had Mr E declared the condition, it would have added an exclusion to his policy for all related conditions. This means I'm satisfied that Mr E's misrepresentation was a qualifying one.
- I've looked at the actions Aviva has taken in accordance with CIDRA and I agree it has fairly applied an exclusion. As the condition Mr E became unwell with related to the exclusion that would have been applied at renewal, I am satisfied the claim wasn't unfairly declined.
- Mr E says he was under the impression that he had declared all his conditions and even though the paperwork didn't show one of the declared conditions, he thinks this is the way the system works – that if conditions are related to each other, only one of them will be listed. Aviva has shown all conditions are declared separately. Mr E has also mentioned the new renewal which included the missing condition but a different (related) one had been removed. He says this shows the system doesn't record all the conditions he had declared. But this is after the event and at the time Mr E received his renewal paperwork before travelling, it would have been reasonable for him to call Aviva to query the missing condition and correct the details.

### **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 4 July 2024.

Shamaila Hussain  
**Ombudsman**