DRN-4765837

The complaint

Mr and Mrs T have complained that Red Sands Insurance Company (Europe) Limited hasn't paid out the full amount on a claim they made on their single trip travel insurance policy.

As it is Mr T leading on the complaint, I will mostly just be referring to him in this decision.

What happened

Mr T had an emergency admission to hospital just prior to the start date of their planned holiday in July 2023 and was deemed unfit to travel. They therefore made a cancellation claim on the policy.

Upon reviewing the information provided for the claim, Red Sands identified that Mr T hadn't declared all of his medical conditions. It therefore undertook a retrospective medical screening by asking Mr T more questions about these additional conditions, to determine what it would have done had it know about these at the point of sale.

The outcome was the Red Sands would still have provided cover. However, the premium would have been £936.44, instead of the £482.33 that was actually quoted and paid. As the sum paid by Mr and Mrs T was only 51.51% of what they should have paid, Red Sands said it would only pay out that proportion of the claim amount. It paid the amount of £4,530.73 in November 2023.

Our investigator thought that Red Sands had acted fairly in reducing the claim amount in this way. Mr T disagrees and so the complaint has been passed to me for a decision.

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.

I've carefully considered the obligations placed on Red Sands by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Red Sands to handle claims promptly and fairly, and to not unreasonably decline a claim.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract.
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.

When they took out the policy, they were asked about any medical conditions they'd had in the last two years. Red Sands used this information to decide whether or not to insure Mr and Mrs T and if so, on what terms. Red Sands says that Mr T didn't correctly answer all of the questions he was asked during the screening process. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mr T's claim.

Red Sands thinks Mr T failed to take reasonable care not to make a misrepresentation when he took out the policy. So, I've considered whether I think this was a fair conclusion for Red Sands to reach.

Firstly, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions they were asked were. Mr T was asked the following:

'Have you or anyone in your party:

1) Taken any prescription medication or received medical treatment in the last two years?

2) Attended a medical practitioner's surgery, hospital or clinic (out-patient or in-patient) in the last two years?'

Mr T did declare a number of medical conditions in relation to the above questions. However, he didn't declare four additional conditions that came to light when Red Sands reviewed his medical notes to assess the claim.

Mr T says he disclosed his much more significant conditions. But as he felt that the four additional conditions were resolved, and not ongoing, he didn't think he had to declare them.

I understand Mr T's reasoning. But, looking at the questions he was asked, I consider it is clear that Red Sands was asking about any conditions that he had received treatment for in the previous two years, whether resolved or not.

The available evidence suggests that Mr T did make a qualifying misrepresentation under CIDRA. So Red Sands is entitled to apply the relevant remedy available to it under the Act. It concluded that Mr T's misrepresentation was careless, rather than deliberate or reckless. I think this was a reasonable conclusion for it to reach. I don't think he intended to mislead Red Sands, but he didn't take enough care to ensure he answered its questions correctly.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to apply cover as if it had all of the information it wanted to know at the outset. If it would still have offered cover, but charged a higher premium, then it may settle the claim proportionately, in line with the premium it would have charged. And if it would never have offered cover at all, it's entitled to cancel the policy from the start and refund the premium.

In this case, that means that it has settled 51.51% of the value of Mr T's claim. In the circumstances, I consider that Red Sands has acted fairly, in line with the relevant legislation.

So, whilst I know it will be disappointing for Mr and Mrs T, I'm unable to conclude that Red Sands has done anything wrong. It follows that I do not uphold the complaint.

My final decision

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 17 June 2024.
Carole Clark
Ombudsman