

## **The complaint**

Mr F, Mrs F and Miss F complaint that Inter Partner Assistance SA declined a claim they made on their travel insurance policy.

## **What happened**

Mr F, Mrs F and Miss F were due to go on holiday. Unfortunately, they had to cancel due to Mr F experiencing stress. They claimed on their travel insurance policy but IPA declined the claim as they said Mr F hadn't declared a pre-existing medical condition. They said that if he had he wouldn't have been able to take out this particular policy and would have been directed to alternative policies.

Mr F complained to IPA but they maintained their decision to decline the claim. However, they refunded the premiums and offered £100 compensation due to delays in handling the claim. Unhappy, Mr F complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He was satisfied that Mr F wouldn't have been offered this policy and would have been directed to alternative policies if he'd declared his pre-existing medical condition.

Mr F didn't agree and asked an ombudsman to review the complaint. He says, in summary, the policy doesn't make it clear that having any pre-existing condition invalidates claims made for unrelated reasons. So, I need to make 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.

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.

IPA says Mr F failed to take reasonable care not to make a misrepresentation when he answered questions during the application process. He was asked:

“Within the last 2 years has anyone you wish to insure on this policy suffered any

medical condition, (medical or psychological disease, sickness, condition, illness or injury) that has required prescribed medication (including repeat prescriptions) or treatment including surgery, tests or investigations?"

Mr F answered 'no' to this question.

When the policy renewed he was sent information which included:

We would like to remind you that your chosen policy will continue to provide cover as long as you, or anyone you wish to insure on this policy, are not:

- Waiting to receive, or have received, any medical treatment (including prescribed medication, surgery, tests or investigations) within the last 2 years; or
- Currently aware of any reason that may cause to claim (such as suffering symptoms not yet discussed with a doctor or health of relative or other third parties which may cause the cancellation or the cutting short of a trip)

If either of these circumstances apply, please contact us. If we have not been made aware of changes to health of the people named on your policy, your insurer could treat it as if it never existed, or refuse a claim or not pay a claim in full."

When IPA was considering the claim, they were sent medical evidence from Mr F's GP which said that he'd had a consultation for high cholesterol in February 2022 and had been prescribed medication. I'm satisfied Mr F ought to have disclosed this information when he took out the policy and at renewal as he was receiving medical treatment. This was within the relevant time frame set out in the question and so it ought to have been disclosed. I think the question is clear that any medical condition which has required prescribed medication or treatment needed to be disclosed.

IPA has provided evidence that if Mr F had disclosed this information he wouldn't have been offered this policy. It's not offered to anyone who discloses any medical issues within the last two years and so Mr F wouldn't have been able to select this policy if the question had been answered correctly. This means I'm satisfied Mr F's misrepresentation was a qualifying one.

IPA accepts that Mr F's misrepresentation was careless. I agree as I think it's most likely this was an oversight by Mr F, rather than a deliberate or reckless attempt to mislead IPA. As I'm satisfied that Mr F's misrepresentation was careless I've looked at the actions IPA can take in accordance with CIDRA. It says that where IPA wouldn't have offered cover they can avoid the policy and not deal with any claim. They should also return any unused premiums the consumer paid. IPA has agreed to do this and so I don't think they need to do anything further to put things right. I think what they've agreed to do is therefore fair and reasonable in the circumstances.

Mr F did experience distress and inconvenience as a result of delays in handling the claim. IPA accepts that the claim could have been progressed more quickly. But I think £100 compensation fairly reflects the impact of the avoidable distress and inconvenience caused.

### **My final decision**

Inter Partner Assistance SA has already made an offer to refund the premiums and pay £100 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Inter Partner Assistance SA should pay Mr F, Mrs F and Miss F a total of £100 compensation and refund the premiums if it hasn't done so already.

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

Anna Wilshaw  
**Ombudsman**