DRN-4806645

The complaint

Mr and Mrs G are unhappy that Inter Partner Assistance SA (IPA) declined a claim made on their single trip 'bronze' travel insurance policy ('the policy').

All reference to IPA includes its medical assistance team.

What happened

Whilst abroad in 2023, Mr G required medical treatment. He contacted IPA for assistance and to cover his medical costs abroad.

Ultimately IPA declined the claim on the basis that he hadn't correctly answered a question about his medical history when applying for the policy.

IPA concluded that had he done so, Mr and Mrs G wouldn't have been offered a bronze travel insurance policy. Instead, they say they would've been asked further, more detailed, questions about Mr G's medical history and then offered the choice to take out a different policy with a different level of cover – either 'select silver', 'select gold' or 'select platinum'.

After Mr and Mrs G complained to IPA and it maintained its position to decline the claim, they brought a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and upheld Mr and Mrs G's complaint. He recommended IPA settle the claim in line with the remaining policy terms and conditions. That included reimbursing Mr and Mrs G for the medical costs they've already personally incurred together with simple interest at a rate of 8% per year. Our investigator also recommended IPA pay Mr and Mrs G £250 compensation.

IPA disagreed. So, this complaint was passed to me to consider everything afresh to decide. I issued my provisional decision in April 2024 explaining why I was intending to reach a different conclusion to our investigator. I said:

……

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes Principle 12 of the Financial Conduct Authority's Principles for Businesses ('the Consumer Duty') which says a firm must act to deliver good outcomes for retail customers (such as acting in good faith and avoid causing foreseeable harm).
It also includes 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 IPA) 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.

I have a lot of empathy for Mr and Mrs G's situation, and I know they'll be very disappointed, particularly given the amount of medical costs incurred abroad which were significant. However, I intend to find that IPA has acted fairly and reasonably by declining the claim in the circumstances of this case. Although, I do think IPA should refund the premium Mr and Mrs G paid for the policy. I've set out my reasons below.

Did Mr G make a misrepresentation?

IPA has provided the online process Mr and Mrs G are likely to have followed when applying for the brand of policy they ended up with.

In the absence of anything to the contrary, I accept that the questions asked in the example online journey I've been provided are likely to be the ones answered by Mr and Mrs G when applying for the policy.

There are four eligibility questions and one of these asks:

> 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?

I'll refer to this as the "medical eligibility question".

I'm satisfied that this question is clear, and that Mr G most likely answered 'no' to the medical eligibility question, as IPA says. I think that's supported by what Mr and Mrs G say in their complaint form to the Financial Ombudsman Service:

> I was only asked to disclose any medical conditions not whether or not I had caught a cold and been prescribed antibiotics for a sore throat…Their policy should state even a cold or any mental or physical illness where medicine has been prescribed counts as a previous condition.

Further the policy terms and conditions set out the demands and needs statement on page 3. It says:

> Single trip – This policy meets the Demands and Needs of a customer wishing to buy a basic travel insurance policy covering one trip, who has not suffered a medical condition nor required prescribed medication, surgery, treatment, tests or investigations within the two years leading up to the policy purchase date.

Under the policy, medical condition means any medical or psychological disease, sickness, condition, illness or injury.

So, I think that also supports that Mr and Mrs G answered 'no' to the medical eligibility question. Because if they'd answered 'yes', I don't think they would've ended up with the bronze policy.

I know Mr G says he didn't think he had any medical conditions to disclose but I don't think

that's right. Mr G's medical records reflect that in the two years leading up to applying for the policy he'd seen his GP and been prescribed medication for a lower respiratory tract infection and medication for anxiety.

I think IPA has fairly concluded that Mr G answered the medical eligibility question incorrectly as it should've been answered 'yes' and so a misrepresentation was made.

Was this a 'qualifying' misrepresentation?

I've gone on to consider whether this amounted to a qualifying misrepresentation under CIDRA. And I think it did.

That's because I'm satisfied that if the medical eligibility question had been answered correctly, Mr and Mrs G would've been asked some follow up medical questions about their pre-existing medical conditions and would've been offered one of the 'select' insurance products still part of the same brand of policies.

When retrospectively answering those follow up questions, I don't think IPA answered all of the follow up questions correctly. For example, it's said that Mr G had one lower respiratory tract infection which required antibiotics in the last year. However, the medical records reflect that's not the case. It was between 12 and 24 months before the policy was applied for (but still within the two years before the policy was applied for).

Whilst that may have impacted the price of the select insurance products Mr and Mrs G were offered, I don't think that impacts whether they would've been offered the bronze policy they ended up with.

I'm satisfied that if they'd answered the medical eligibility question correctly, the bronze policy would never have been presented as an option because Mr G had seen his GP about two medical conditions requiring medication within the two years before applying for the policy.

I think Mr and Mrs G were careless when answering the medical eligibility question.

I've looked at the actions IPA can take in line with CIDRA. Under this legislation it's entitled to do what it would've done if Mr and Mrs G hadn't made a careless qualifying misrepresentation. As I'm satisfied that the bronze policy wouldn't have been offered to them, I think it's fair and reasonable for IPA to cancel the policy. And as the policy wouldn't have existed, I'm satisfied IPA doesn't have to cover any claims.

However, I do think it should refund the premium Mr and Mrs G paid for the policy to them.

I've taken into account all other points made by Mr and Mrs G including what they say about the reason Mr G requiring medical attention abroad being unrelated to any conditions he didn't declare when taking out the policy. I understand the point they make.

However, whether the condition Mr G had abroad was linked to an undeclared medical condition isn't relevant to the reason why the claim was ultimately declined. I'm satisfied that the bronze travel insurance policy wouldn't have been in place had Mr and Mrs G answered the medical eligibility question correctly when applying for the policy, so no claim could've been made on it.

……

I invited both parties to provide any further information in response to my provisional decision.

IPA didn't reply.

Mr G replied. In summary he said:

- The principle of Consumer Duty sets out that insurers must consider their products and services with consideration of the "average consumer".
- He was unhappy with the medical eligibility question. He thinks it's unreasonable to expect an average consumer to remember that they have seen a doctor and been prescribed medication more than 12 months previously. They would need to call their GP surgery if unsure. It's unlikely they'd receive a quick reply.
- Once you go past 12 months, medical issues are irrelevant.
- No evidence has been provided that IPA would've offered a different policy or whether it would've paid a claim in the circumstances, if a different answer had been provided.
- There have been recent news articles recently about the "vast" number of claims rejected by IPA.

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.

That includes the further points Mr G has raised in response to my provisional decision. Having done so, I'm not going to depart from my provisional decision. I know Mr and Mrs G will be disappointed, but their further points haven't changed my mind. I'll explain why.

- As I explained in my provisional decision, I took into account the Consumer Duty when determining this complaint.
- I also took in account CIDRA – including section 3 – which sets out examples of things which may need to be taken into account when considering whether or not a consumer has taken reasonable care not to make a misrepresentation. And that the standard of care is that required of a reasonable consumer.
- In principle, I don't think it's unreasonable for IPA to ask about whether Mr and Mrs G had seen a doctor and prescribed medication in the last two years. That's not an unusual question to be asked when applying for travel insurance.
- As I explained in my provisional decision, I think the question was clear. This was an eligibility question and I'm satisfied from what I've seen that Mr and Mrs G would've been asked more specific questions about their medical history if this question had been answered 'yes'.
- In the circumstances of this case, I'm satisfied that Mr G should've answered 'yes' to this question. He'd received two prescriptions for two separate medical conditions in the two years leading up to the applying for the policy. From his GP notes it also looks like that he'd been signed off work by his GP for these two conditions, so I think he ought to have reasonably recalled having seen his GP and prescribed medication.
- From what I've seen, I'm satisfied that the bronze policy wouldn't have been offered to Mr and Mrs G if this question had been answered correctly. So, for reasons set out in my provisional decision, I think the answer mattered to IPA.

- I've taken into account Mr G's submission that there is information in the public domain about IPA declining "vast" numbers of claims. I'm looking at the circumstances of this particular complaint when deciding whether IPA has acted fairly and reasonably by declining the claim and cancelling the policy. For reasons set out here and in my provisional decision (an extract of which is set out above and forms part of this final decision), I think it has acted fairly and reasonably in this respect.
- However, I do think it would be fair and reasonable for IPA to refund Mr and Mrs G the premium paid for the policy.

Putting things right

I direct IPA to refund the premium Mr and Mrs G paid for the policy.

My final decision

I partially uphold this complaint and direct Inter Partner Assistance SA to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs G to accept or reject my decision before 17 June 2024.

David Curtis-Johnson
Ombudsman