DRN-4854472

The complaint

Mr and Mrs E have complained that Inter Partner Assistance SA (IPA) has only partially settled a claim made on a travel insurance policy.

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

What happened

Mr E was taken ill whilst on holiday abroad and spent some time in hospital, so he therefore made a claim on the policy. IPA accepted the claim. However, it then paid a settlement amount of 55% of the full claim. That's because Mr E hadn't declared a pre-existing medical condition when applying for the policy. IPA says that, if he had declared it, they would have been charged a premium of £469.68 instead of the £259.79 that they did pay. Therefore, as they had only paid 55% of the correct premium, the claim would be proportionately settled at that figure.

Our investigator didn't think IPA had done enough to show that it had fairly reduced the settlement amount. So, she recommended that the claim should be paid in full, plus interest.

IPA disagrees with the investigator's opinion 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 IPA by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for IPA to handle claims promptly and fairly, and to not unreasonably decline a claim.

IPA says that Mr E made a misrepresentation when applying for the policy as he didn't declare that he had asthma and it's this which has led to the claim not being paid in full. So, to reach a fair and reasonable outcome in this case, I need to apply the principles set in 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.

Mr E has been keen to point out that the illness he suffered on his trip is completely unrelated to his asthma. However, the matter at hand is whether he made a misrepresentation when taking out the policy and whether he was charged a lower premium as a result.

During the application process, one of the questions was: '*Do any of the travellers have a pre-existing medical condition?*'. It also states: '*You must declare pre-existing medical conditions such as, but not limited to: Any condition for which you have received prescribed medication or checkups within the last 12 months*'.

Mr E's medical records show that he has been diagnosed with asthma and that he'd last been prescribed medication a month before buying the policy.

Mr E says he didn't think he had to declare it because his asthma very rarely caused him any issue and he had the prescription as a precaution in case it was triggered by hay fever. I appreciate his point of view. However, I find that the application question is clear. So, whilst I don't think Mr E was deliberately trying to mislead, he didn't take reasonable care to provide an accurate answer.

However, for it to be a qualifying misrepresentation, IPA needs to show that it would have done something differently had the asthma diagnosis been declared.

IPA only paid out 55% of the claim on the basis that Mr and Mrs E only paid 55% of the premium they would have been charged.

Our investigator asked IPA to provide underwriting evidence that the premium would have been £469.68 at the point of sale in January 2023 had Mr E disclosed his asthma.

IPA provided information in relation to retro-screening it had carried out, with an outcome premium of £469.68. However, it sent us a combination of two screenshots, from different dates, to demonstrate that.

It also provided some information about scheme dates to support that the price would have been £469.68 between 28 December 2022 and 4 April 2023. However, the two retro-screens carried out both appear to have been run after the scheme end date. It appears that the price remained stable at that amount from when the first retro-screen was run in September 2023 to when our investigator ran a dummy quote in March 2024. However, none of that is evidence that the premium would have been £469.68 at the point of sale.

I more recently asked IPA for further substantiation of what the price would have been. Ideally, we would require evidence of the underwriting criteria or guidance, or some direct contact from its underwriting team to provide clarity.

It has now provided a further retro-screen purporting to show the price in January 2023, although I can't see the date on the actual screen-shot. This time the premium, with declared asthma, is showing as £366.86. This is very different from the amount of £469.68 that it has previously insisted the cost would have been. And again, the information has not been provided by a member of the underwriting team.

The information provided by IPA is inconsistent, so I find that I'm unable to rely on it. I'm satisfied that IPA hasn't provided this service with sufficient evidence to support that Mr and Mrs E only paid 55% of the premium they would have been charged if asthma had been declared. As such, IPA hasn't been able to show that a qualifying misrepresentation has occurred, because it hasn't been able to demonstrate that it would have done anything differently had Mr E disclosed his pre-existing medical condition.

Therefore, my decision is that IPA has unfairly settled the claim.

Putting things right

My understanding is that IPA has paid 55% of the claim direct to the providers and left Mr E to settle the rest, for which he has set up a payment plan. Therefore, IPA should:

- Pay the remainder of the claim.
- Any settlement amount being paid directly to Mr and Mrs E (to refund them for the payments they have already made to the providers) should include 8% simple interest from the date the claim was first accepted in part until the date the settlement is paid in full.†

† HM Revenue & Customs requires IPA to take off tax from this interest. IPA must give Mr and Mrs E a certificate showing how much tax it's taken off if they ask for one.

My final decision

For the reasons explained above, I uphold the complaint and require 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 Mrs E and Mr E to accept or reject my decision before 28 October 2024.

Carole Clark
Ombudsman