

The complaint

The estate of Mrs M is unhappy that Astrenska Insurance Limited trading as Collinson Insurance declined a claim made on Mrs M's single trip travel insurance policy ('the policy').

What happened

Mrs M cancelled a holiday booked for December 2022 and a claim was subsequently made on the policy to cover her out of pocket expenses.

Astrenska ultimately declined the claim because it said Mrs M hadn't accurately declared all her medical conditions when taking out the policy. It said, had she done so, the policy wouldn't have been offered to her.

The estate of Mrs M complained to Astrenksa. It issued its final response to the complaint in August 2023, maintaining its position that it had fairly declined the claim. However, it accepted that it took too long to reach a final decision on the claim. And apologised for addressing the email to Mrs M, who had sadly recently died. It paid £100 compensation.

Unhappy, the estate of Mrs M brought a complaint a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and didn't think Astrenska had acted unfairly by declining the claim. The estate of Mrs M disagreed so this complaint has been passed to me to consider everything afresh and decide.

I issued my provisional decision in April 2024 explaining why I was intending to partially uphold this complaint. I said:

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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. 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 Astrenska) 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.

Was there a misrepresentation?

I've been provided a screenshot of the online journey which would've been followed when applying for the policy for Mrs M.

Relevant to this complaint, the following questions are asked:

Have you or anyone in your party been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past two years?

I'll refer to this as the 'two-year question'.

And

Have you or anyone in your party ever been diagnosed with or treated for any of the following:

- any heart or respiratory condition?
- any circulatory condition (problems with blood flow, including strokes, high blood pressure and cholesterol)?
- any liver condition?
- any cancerous condition?

I'll refer to this as 'the heart and circulatory question'.

Several medical conditions were disclosed when applying for the policy and the policy was offered to Mrs M for an additional premium.

However, Astrenska says the following conditions weren't disclosed:

- Heart failure
- Hypertension
- Atrial fibrillation

Looking at Mrs M's medical records, I'm satisfied that there's reference to her having had these conditions before the policy was applied for. So, I'm satisfied that they should also have been disclosed in response to the heart and circulatory question along with a heart attack and coronary angioplasty which had been disclosed.

I'm also persuaded that chronic kidney disease should've been disclosed in response to the two-year question.

Mrs M's medical records reflect that this was diagnosed in 2015. And although the records also indicate that she was prescribed medication for this condition in December 2022 – so after the policy was applied for – there's another medication she'd been taken since 2010 (usually to lower uric acid in the blood if the kidneys aren't filtering enough out). So, I think, on the balance of probabilities, this ought to have been disclosed too.

I think not disclosing the above conditions when taking out the policy was careless.

Astrenska also says that the following should've been disclosed.

- Jaundice
- Mitral valve regurgitation

Based on the medical evidence available to me, I'm not persuaded that these conditions ought reasonably to have been disclosed in response to the two-year question or heart and circulatory question.

The first entry of jaundice and Mitral valve regurgitation in Mrs M's medical records is November 2022 – after the policy was applied for.

I've also taken on board Astrenska's point that Mrs M ought to have declared these two conditions to it as a change in health in November 2022, under the policy terms. I'll address that point later in my decision.

Was the misrepresentation a 'qualifying' misrepresentation?

I've gone on to consider whether Astrenska has fairly concluded that by answering the questions incorrectly (by not disclosing all medical conditions Mrs M it says she should have), her misrepresentation amounted to a qualifying misrepresentation under CIDRA. I'm not currently satisfied it has.

Astrenska has carried out a retrospective screening of the medical conditions it says she should've disclosed when taking out the policy. It says if all conditions had been disclosed, the policy wouldn't have been offered to her.

However, included in the retrospective screening are the conditions of jaundice and mitral valve regurgitation which as I've explained about, I don't think could've been disclosed when applying for the policy.

I've asked Astrenska to provide evidence of would have happened if jaundice and mitral valve regurgitation hadn't been included in their retrospective screening. It says it's unable to provide that evidence now the policy has been cancelled and premium refunded. It's also been over a year since the policy was applied for. It says there have been changes to its risk ratings and its scoring has changed.

I understand why an accurate retrospective screening can't now take place but under CIDRA that means Astrenska hasn't been able to establish that had Mrs M declared heart failure, hypertension, atrial fibrillation and chronic kidney disease in addition to other conditions that were disclosed at the time, the policy wouldn't have been offered. Or if it would have still been offered, whether the premium would've been higher – and by how much.

However, when considering what's fair and reasonable, I have also taken into account my experience and what I think is most likely to have happened.

Without firm evidence to contrary, I don't think it would be fair and reasonable to conclude that the policy wouldn't have been offered if Astrenska hadn't included jaundice and mitral valve regurgitation in their retrospective screening. However, I think it's fair and reasonable to assume that the policy would've cost more, as there was a greater risk of a claim being made had the other conditions been disclosed.

I have no way of knowing how much more the policy would've cost. So, in the particular circumstances of this case, I think it would be fair and reasonable to assume that the policy would've cost 50% more. And on the basis that Mrs M paid 50% of the premium she should've been charged, I think it would be fair and reasonable for Astrenska to proportionately settle 50% of the Mrs M's out of pocket costs in connection with the holiday

being cancelled (subject to the financial limits of the cancellation section of the policy and policy excess).

Change in health

Even if I accepted that Mrs M should've declared a change in health having been admitted to hospital in November 2022 for three weeks around the same time as being diagnosed with jaundice and mitral valve regurgitation, the policy terms say that Astrenska may ask her to pay an additional premium or withdraw cover all together.

She didn't contact Astrenska then, but the holiday booked for the following month was cancelled based on the advice of her doctor. The medical declaration made by the doctor dated January 2023, says that they recommended Mrs M cancel the holiday on 18 November 2023, shortly after being discharged from hospital.

I've thought about what is likely to have happened if Mrs M had declared a change in health to Astrenska around that time. Presuming at that stage the policy was still in place, Mrs M having disclosed all the conditions she ought to have done when talking out the policy.

I'm satisfied that it's most likely that cover would've been withdrawn if Mrs M wanted to proceed with her holiday, based on the retrospective screening Astrenska did carry out, including jaundice and mitral valve regurgitation.

But in those circumstances, I'd usually expect Astrenksa to have allowed Mrs M to make a cancellation claim (or in this case, based on my findings above, to cover 50% of the holiday based on her not having declared all of her conditions when applying for the policy). That's also provided for in the terms and conditions of the policy.

So, I'm not persuaded that Mrs M's failure of declare a change in health in this case means that it wouldn't be fair and reasonable for Astrenska to cover half of the claim for Mrs M's out-of-pocket expenses for the holiday being cancelled.

Other issues

Astrenska accepts that it took too long to provide a decision on the claim and for sending correspondence addressed to Mrs M after it had been aware of her death. It's paid £100 compensation for this.

As the contract of insurance was between Astrenska and Mrs M, I have no power to award compensation for distress and inconvenience to those who have brought the complaint on behalf of the estate because of the way the claim was handled.

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

Astrenska replied providing a list of questions Mrs M would've been asked if she'd declared certain conditions along with the retro-screening. Its underwriter didn't include hypertension because Mrs M wasn't taking medication or receiving treatment.

Based on the answers that Mrs M should've provided, even without the inclusion of jaundice and mitral valve regurgitation, Astrenska says the medical risk rating score would've still resulted in the application for the policy being declined (based on the other conditions which should've been disclosed).

The estate of Mrs M replied to say that the medication Mrs M was prescribed in 2010 was for gout and not kidney function. Although kidney failure is documented on Mrs M's GP notes in 2015, the estate of Mrs M says neither she nor her husband was made aware of this until they more recently obtained a copy of Mrs M's medical history.

On 23 May 2024, I requested further information from Astrenska.

As Mrs M's GP notes reflected that she was diagnosed with chronic kidney disease in 2015 – which was more than two years before the policy was applied for – I asked for evidence to support its position that this condition would've been monitored since diagnosis and that Mrs M attended hospital or clinic within the two years before applying for the policy. Particularly as the estate of Mrs M had clarified that the medication taken in 2010 was for gout and the GP notes reflect that the first time she was prescribed medication for chronic kidney disease was after applying for the policy.

I also asked Astrenska to provide a retrospective screening of Mrs M's medical conditions based on the one it provided to us on 16 May 2024, without hypertension, and replacing chronic kidney disease with gout.

Having not received a reply by the deadline, our investigator chased for a response by 6 June 2024. And at the request of Astrenska this deadline was extended to 14 June 2024. However, our investigator made clear that we would be unable to extend the deadline any further, other than in exceptional circumstances.

Our investigator also wrote to Astrenska on 13 June 2024 reminding it of the extended deadline of 14 June 2024 and that if the information requested wasn't received by this date, the case would be referred back to the ombudsman for a decision on 17 June 2024.

Astrenska then provided a further retrospective medical screening, which didn't include hypertension or chronic kidney disease. However, it did include jaundice and mitral valve regurgitation which it had previously disregarded from the retrospective screening. So, the information provided wasn't what was requested.

However, even with those conditions included, the medical risk score was now below the maximum risk score threshold for this product.

With regards to chronic kidney failure, Astrenska referred to a further entry in the GP medical notes reflecting that "chronic disease" is listed as being monitored as "a due diary event". It's also provided a link to an NHS website which it says supports that Mrs M would've been advised to have regular check-ups and this should've prompted Mrs M to have disclosed chronic kidney disease when applying for the policy.

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.

Having done so, I partially uphold this complaint.

In addition to the reasons set out in my provisional decision (an extract of which is set out above and forms part of this final decision), I'm not persuaded that the further information provided by Astrenska supports its initial decision to decline the claim on the basis that the policy wouldn't have been offered to Mrs M had she declared all medical conditions. I'll

explain why.

- As set out in my provisional decision, I'm not satisfied that jaundice and mitral valve regurgitation ought to have reasonably been disclosed by Mrs M when taking out the policy. And in response to my provisional decision, Astrenska accepts that hypertension didn't need to be included in the retrospective screening.
- However, the more recent retrospective screening its provided is not what was requested on 23 May 2024. As it once again includes jaundice and mitral valve regurgitation. Our investigator made clear on 13 June 2024, that if the information requested wasn't received by the agreed date of 14 June 2024, the case would be referred back to the ombudsman for a decision.
- The further retrospective screening did include gout in place of chronic kidney failure. In light of the available medical evidence, I'm now more persuaded that Mrs M acted reasonably by not declaring chronic kidney failure when answering the two-year question. Although this condition is mentioned on her GP notes, the entry is from 2015 – more than two years before the policy was applied for. Whilst the NHS website does say that those with this condition will “be advised to have regular check ups to monitor your condition”, there's nothing to say that Mrs M was prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for chronic kidney failure in the two years before applying for the policy.
- I've taken into account that Astrenska also says there was a due diary entry in Mrs M's GP notes for January 2024 for “chronic dis. monitoring” but I'm not persuaded that supports that she answered the two-year question incorrectly when applying for the policy as there's nothing to show when it was last monitored, if at all.
- Although I'm satisfied that Astrenska has provided an incorrect retrospective screening of Mrs M's conditions, what it has provided reflects that even with the inclusion of jaundice and mitral valve regurgitation, the policy would've been offered to Mrs M but for a higher price. If these conditions had been excluded when retrospectively screening her conditions, I think it's fair to assume that the medial risk rating score would've been reduced further. But I don't know how much by and so, I don't how much more Mrs M would've been required to pay for the policy.
- So, in the particular circumstances of this case, I remain satisfied that it would be fair and reasonable to assume that the policy would've cost 50% more. And on the basis that Mrs M paid 50% of the premium she should've been charged, I think it would be fair and reasonable for Astrenska to proportionately settle 50% of the Mrs M's out of pocket costs in connection with the holiday being cancelled (subject to the financial limits of the cancellation section of the policy and policy excess).

Putting things right

I direct Astrenska to pay:

- A. 50% of claim for out-of-pocket costs claimed for cancelling her holiday.
- B. simple interest at a rate of 8% per year* from one month after the claim was declined to the date it pays A. above.

Astrenska can deduct from the total sum payable to the estate of Mrs M, the premium it has refunded for the policy.

* If Astrenska considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell the estate of Mrs M how much it's taken off. It should also give them a certificate showing this if they ask for one. That way the estate of Mrs M can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold this complaint to the extent set out above and direct Astrenska Insurance Limited trading as Collinson Insurance to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 24 July 2024.

David Curtis-Johnson
Ombudsman