DRN-5033838

The complaint

Mrs K and Mr R have complained that Inter Partner Assistance SA (IPA) declined a claim for cancellation that they made on a travel insurance policy.

What happened

Mrs K and Mr R were due to take a trip abroad beginning on 11 August 2023. However, Mrs K became unwell with severe abdominal pain on that day and was advised by her doctor not to travel. They therefore cancelled the trip and made a claim on the policy.

IPA declined the claim on the basis that Mrs K hadn't declared a pre-existing medical condition (PEMC). It said that, if she had done so, it wouldn't have agreed to provide cover.

In responding to the complaint, IPA paid compensation of £100 for some poor service. However, it maintained its decision to decline the claim.

Our investigator thought that IPA had acted fairly in declining the claim. Mrs K and Mr R disagree 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.

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.

IPA has provided evidence of the online sales journey. I'm satisfied that if an applicant had declared a PEMC, they wouldn't have been offered this particular policy.

IPA thinks that Mrs K failed to take reasonable care not to make a misrepresentation when taking out the policy. When considering whether someone has taken reasonable care, I need to consider how clear and specific the questions asked were.

The policy was purchased using a comparison website. I've seen a copy of the relevant online webpage. It says:

'Do any of these travellers have a pre-existing medical condition?
We need to know about ***any condition, even a minor one, that you've seen a doctor about in the past 2 years.****'*

It goes on to ask:

'Within the last 2 years, have you or anyone to be named on the policy:
Been prescribed medication, or received treatment or attended a medical practitioner's surgery?'

Mrs K has said that this is not the question she saw during the application process. She says the question she answered was:

'*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?'*

The comparison website would not have offered this particular policy as an option if the question had been answered 'Yes'.

Mrs K had consulted her GP about abdominal pain on 16 May 2023 and she was referred for a scan. She had the scan on 21 July 2023, and was discovered to have an ovarian cyst. The plan was to see her again after six weeks to see if it had resolved. The GP discussed the diagnosis with her on 28 July 2023. The policy was taken out on 9 August 2023.

Regardless of which of the questions above Mrs K saw, based on the circumstances, her answer should have been 'Yes', because she had suffered from abdominal pain that had required further investigations. Her GP confirmed in a letter dated 11 August 2023 that she: '*is currently under investigation for abdominal pain and an ovarian cyst…'*

I appreciate that Mrs K says the pain was a residual issue from a medical event that had happened five years previously and therefore she didn't have to declare it. But she was still suffering from the pain, so the issue was ongoing and unresolved. Which is why she required further tests.

The cyst was discovered during those investigations. Mrs K says she didn't think she needed to disclose that either as it was simple, harmless and likely short-lived issue.

But the question Mrs K says she was asked isn't about the seriousness or prognosis of a condition. She was simply asked if she'd had treatment, including tests or investigations, in the last two years.

Mrs K has argued that neither the abdominal pain nor the cyst should be classed as PEMCs. She says her GP also doesn't consider these to be pre-existing issues.

The policy defines PEMCs as:
'Any other medical conditions for which you have been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past 2 year'

So, regardless of her and the GP's position on the matter, I consider that Mrs K did have a PEMC, as defined under the policy terms.

I don’t think that Mrs K intended to mislead IPA. But she didn’t take enough care to ensure she answered the questions correctly.

As Mrs K didn’t take reasonable care, this is a qualifying misrepresentation under CIDRA and so IPA is entitled to apply the relevant remedy available to it under the Act.

I understand what Mrs K is saying about the trip cancellation being unrelated to the diagnosis of the cyst. The cyst was only discovered due to her having a scan to investigate her abdominal pain. Nevertheless, she did receive a diagnosis of an ovarian cyst. And her ongoing abdominal pain also meets the definition of a PEMC.

The issue is about what would have happened if Mrs K had correctly answered ‘Yes’ to the question about having had investigations during the previous two years.

CIDRA says that an insurer is entitled to apply cover as if it had all of the information it wanted to know at the outset. Based on the available evidence, I’m satisfied that it would not have offered the policy if Mrs K had declared her PEMCs.

Therefore, as it wouldn’t have offered cover, there would have been no policy to make a claim on. It follows that it was therefore reasonable for IPA to decline the cancellation claim. In such a scenario, IPA should have refunded the policy premium, which it didn’t do. However, following further contact from this service, it has agreed to now refund the premium and to add 8% interest from the point that it declined the claim until the refund is made.

My final decision

For the reasons I’ve explained, my decision that it was reasonable for Inter Partner Assistance SA to decline the claim. However, it should now refund the policy premium, adding 8% interest as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs K and Mr R to accept or reject my decision before 3 January 2025.

Carole Clark
Ombudsman