

The complaint

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

What happened

Mr and Mrs H were on a trip abroad in November 2023 when Mrs H suffered a serious medical event and needed to be hospitalised. They therefore made a claim for medical costs and other incurred expenses.

IPA declined the claim on the basis that Mrs H hadn't declared a number of pre-existing medical conditions (PEMCs) at the time of purchasing the policy. It said that, had she done so, they would not have been sold the policy.

Our investigator explained to IPA that he would be looking at whether it had acted fairly under The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). In order to do so, he asked IPA to provide evidence of the questions Mr and Mrs H had been asked when buying the policy, the relevant sections of IPA's underwriting guidance showing what the outcome would have been had Mrs H disclosed her PEMCs, together with a copy of the retro-screening it said it had undertaken to show that cover would not have been offered.

IPA failed to provide any of this information. Due to the lack of evidence, our investigator was unable to conclude that Mr and Mrs H hadn't taken reasonable care when taking out the policy. As such, it wasn't fair for IPA to decline the claim.

His recommendation was therefore that IPA should reassess the claim in line with the remaining policy terms. He also recommended that it should pay £150 compensation for delays which had caused Mr and Mrs H distress and inconvenience.

IPA didn't understand the content of our investigator's assessment. Because it then said it accepted the findings and would arrange for another retro-screen. And it also wrote to Mr and Mrs H to say the outcome of the retro-screen was that it would have provided cover if Mrs H had declared her PEMCs, but at a cost of £86.86 rather than the £58 they had paid. So, it offered a 67% settlement for the cost of flights and accommodation. It didn't mention anything about the medical bills.

Our investigator reminded IPA that no evidence had been provided that Mr and Mrs H hadn't taken reasonable care not to make a misrepresentation at the point of sale. As such, there was also no option for IPA to proportionately settle the claim.

IPA subsequently provided a webpage from the online sales journey it says Mr and Mrs H would have seen. But our investigator concluded that this did not change his view.

Therefore, as IPA disagrees with the investigator's opinion, 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 and Mrs H made a misrepresentation when applying for the policy as they didn't declare Mrs H's PEMCs and it is this which has led to the claim being declined. So, to reach a fair and reasonable outcome in this case, I need to apply the principles set out in 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 originally said that it wouldn't have provided cover at all if Mrs H's PEMCs had been declared. It then later said that it would have provided cover, but at a higher premium. Therefore, the information from IPA is inconsistent and can't be relied on. It also hasn't provided the underwriting evidence that it was initially asked for. So, it has not satisfactorily demonstrated what the outcome would have been had Mrs H been in a position to declare her PEMCs.

Regardless of that, the crux of the matter is whether Mr and Mrs H made a qualifying misrepresentation under CIDRA.

As mentioned above, IPA belatedly provided a copy of the webpage Mr and Mrs H would have seen, describing this as the 'sales journey'. There is a section which states:

'Terms and conditions

By ticking the box below, you are confirming all those who need to travel are:.....

4. Aware that not all pre-existing medical conditions are automatically covered in our waived conditions list'

So, Mr and Mrs H simply had to tick to say they agreed with the list of assumptions, which included item 4 above. I haven't seen that they were asked any specific health questions that should have elicited a response from Mrs H about her PEMCs.

Overall, based on the available evidence, I'm not persuaded that IPA has done enough to show that Mr and Mrs H made a qualifying misrepresentation. Therefore, it has no recourse under CIDRA to decline or proportionately reduce any settlement amount on the basis of non-disclosure of PEMCs. It follows that I uphold the complaint

Putting things right

IPA should:

- Re-assess the claim, disregarding Mrs H's pre-existing medical conditions, but in line with the remaining policy terms

- Pay Mr and Mrs H £150 compensation for distress and inconvenience.

My final decision

For the reasons I've explained, 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 H and Mr H to accept or reject my decision before 13 December 2024.

Carole Clark
Ombudsman