

The complaint

Mr S is unhappy with the way Red Sands Insurance Company (Europe) Limited handled a claim made under a travel insurance policy ('the policy').

What happened

At the end of July 2023, Mr S cancelled a pre-booked holiday (which he'd fully paid for) because he was unwell.

Red Sands requested information in support of his claim – and subsequently more information about his medical conditions it said he hadn't declared when applying for the policy.

Although Mr S cancelled his holiday at the end of July 2023, Red Sands concluded that he was aware that he needed to cancel the holiday earlier than this, at the end of May 2023. Had he done so then, it says he would've received the money paid for the holiday back from the holiday provider, less the deposit paid for the holiday. So, Red Sands said it would only cover the deposit.

Red Sands also concluded that although Mr S declared some medical conditions when applying for the policy, there were other conditions that he didn't declare which he should've.

Had he done so, it says the premium charged would've been higher and that Mr S only paid around 45% of the premium he would've been charged. So, it only agreed to cover around 45% of the deposit, subject to other deductions like the excess to be paid under the policy.

Unhappy, Mr S brought a complaint to the Financial Ombudsman Service. Our investigator considered what had happened and partially upheld the complaint. She ultimately recommended that Red Sands pay Mr S £250 compensation for distress and inconvenience. And reassess the claim on the basis that Mr S became aware of the need to cancel the holiday in mid-July 2023 rather than late May 2023. However, she did ultimately conclude that Red Sands had acted fairly by paying around 45% of the claim.

Red Sands didn't agree. So, this complaint has been passed to me to consider everything afresh and decide.

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.

Declaring Mr S's medical conditions when applying for the policy

I'm satisfied The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') is relevant to this case. CIDRA 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 has to show it would've 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.

Amongst other questions, when applying for the policy, Mr S was asked:

Have you...

Taken prescribed medication, had any symptoms for any illness or received any medical treatment in the last 2 years?

Attended a medical practitioner's surgery, hospital or clinic...in the last 2 years?

I'm satisfied that these questions are reasonably clear. And Mr S answered 'yes' to these questions and declared a number of medical conditions.

However, looking at the medical information I've been given for Mr S, I'm satisfied that Red Sands has fairly and reasonably concluded that he ought to have disclosed other medical conditions and symptoms when applying for the policy.

I'm satisfied that had he done so, Mr S would've been asked some follow up medical questions. I'm satisfied that Red Sands has fairly used the information received about those other conditions/symptoms when assessing the claim to answer the follow up questions. And it's provided evidence, which I'm persuaded by, that supports that the premium payable for the policy would've increased by a little over £230.

Therefore, based on what I've seen, I'm satisfied that Red Sands has acted fairly by concluding that Mr S paid around 45% of the premium that he would've been charged if he'd accurately answered questions about his health and medical history when applying for the policy. And not declaring all the medical conditions and symptoms that he ought to have done when applying for the policy mattered to Red Sands.

Red Sands has agreed to pay the claim in proportion to the premium Mr S paid for the policy and what he should've paid for it. This suggests that it's concluded that Mr S was careless when answering the questions about his health and medical history at the time of applying for the policy, rather than answering them recklessly, or deliberately not disclosing all his conditions. I think that's fair and reasonable.

Under CIDRA Red Sands is entitled to do what it would've done if Mr S hadn't made a careless qualifying misrepresentation. From what I've seen, I'm satisfied he would've still been offered the policy, but he'd have paid a higher price for it at the time.

I find that it's fair and reasonable for Red Sands to be pay around 45% of the claim.

When Mr S became aware of the need to cancel the holiday

It isn't disputed that the holiday was cancelled because Mr S was unwell and that's an insured event which is covered under the cancellation section of the policy terms.

The same section of the policy also says:

You must inform your travel agent, tour operator, event or flight company as soon as you are aware you need to cancel and request a cancellation invoice.

Mr S's medical centre wrote to Red Sand in February 2024 to say that Mr S wasn't registered at the practice on the dates in question. However, it goes on to say that:

he did see his practice nurse on 30 May 2023 and reported deterioration in his mental health. The contents of the mental health clinic letter of 5 June 2023 support this and cancellation at this stage would have been appropriate given the need to engage with treatment.

Red Sands has relied on the contents of this letter to conclude that Mr S was aware that he needed to cancel the holiday then.

However, I don't think that's fair and reasonable in the circumstances of this complaint. The letter dated February 2024 doesn't say that Mr S was medically advised that he should cancel his holiday in late May / early June 2023.

Mr S says that at that time – even though he'd been referred to the community health team and was receiving support from them and his GP - he was still looking forward to his holiday and considered it to be something which may lift his spirits. However, his mood significantly deteriorated in mid-July 2023 and he was admitted to hospital for several days. It was then that he says he knew that he wouldn't be able to go abroad.

I find the submissions on this point to be plausible, persuasive and consistent. And in the absence of any contrary medical evidence from that time, I accept what's said.

Mr S cancelled the holiday at the end of July 2023, around 12 days after he'd been admitted to hospital and around a week after being discharged from hospital.

The terms of the holiday provider say that if the holiday is cancelled between 15 and 28 days before the holiday is due to start, the traveller will lose 90% of the amount they'd paid for the holiday. This reduced to 70% if the holiday is cancelled between 29 and 48 days before the holiday was due to start.

Mr S cancelled his holiday on 29 July 2023 – which would be between 15 and 28 days from the start of the holiday. However, he was admitted to and discharged from hospital between 29 and 48 days before his holiday. Mr S says that when speaking to his family and medical professionals upon discharge that he knew he wouldn't be able to travel abroad. So, on the balance of probabilities, I'm satisfied that Mr S was reasonably aware that the holiday needed to be cancelled between 29 and 48 days before the holiday was due to start.

When making this finding, I in no way seek to diminish the very difficult time Mr S was going through then. I appreciate that he had been admitted to hospital and his mental health had significantly deteriorated. I have a lot of empathy for his circumstances. But I do think, having been discharged from hospital, he or someone on his behalf, could've contacted the holiday provider to cancel the holiday.

I'm satisfied that it would be fair and reasonable for Red Sands to reassess the cancellation claim (in line with the remaining terms of the policy) on the basis that had he cancelled his holiday then, he would've lost 70% of the amount he'd paid for the holiday as reflected in the holiday provider's terms and conditions.

The handling of the claim and distress and inconvenience

Having looked at the correspondence Red Sands sent to Mr S when looking to assess the claim, I do think there were times when the information it requested around his medical information could've been more sensitively handled and explained in better detailed why this was required, particularly given that Mr S was vulnerable at the time. I'm satisfied that this would've caused Mr S some unnecessary upset at an already difficult time for him.

I'm satisfied this upset would've been exacerbated by unfairly concluding that Mr S ought to have cancelled his holiday in late May 2023, reducing the value of his claim. I'm satisfied Red Sands should pay Mr S £250 compensation for the impact of this on him.

Putting things right

Within 21 days from the date on which the Financial Ombudsman Service tells Red Sands that Mr S has accepted my final decision, I direct Red Sands to reassess the cancellation claim in line with the remaining terms of the policy.

That's on the basis that:

- had Mr S cancelled the holiday when he reasonably ought to have done, he would've lost 70% of the amount he'd paid for it;
- it can reduce any further amount to be paid to Mr S under the cancellation section of the policy by around 55% (taking into account my findings above around proportionately settling the claim); and
- it can deduct the amount its already paid Mr S for the claim it has accepted.

I also direct Red Sands to pay Mr S £250 compensation for distress and inconvenience.

My final decision

I uphold this complaint to the extent set out above and direct Red Sands Insurance Company (Europe) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 January 2025.

David Curtis-Johnson
Ombudsman