DRN-5193026

The complaint

Mr and Mrs T are unhappy with the way Great Lakes Insurance UK Limited handled a claim made under their travel insurance policy ('the policy'). They're unhappy that they haven't paid their claim in full.

All reference to Great Lakes includes its agents.

What happened

Mrs T was unwell whilst abroad and required medical treatment on more than one occasion. Mr and Mrs T made a claim on the policy for the medical expenses they incurred.

When assessing the claim, Great Lakes requested Mrs T's medical records and having reviewed them, concluded that Mrs T didn't accurately disclose medical conditions when applying for the policy.

It said, if she had, it would've still offered the policy, but it would've cost much more. So, it's only agreed to cover 29% of the claim (in proportion to the premium Mr and Mrs T paid for the policy and what Great Lakes say they should've paid).

Our investigator considered what had happened and upheld the complaint. She concluded that there wasn't enough evidence to support that the policy would've cost significantly more had Mrs T accurately disclosed her medical conditions, so she didn't think it was fair for Great Lakes to pay only 29% of the claim.

Our investigator recommended Great Lakes settle the remaining outstanding amount (around £18,230) and pay Mr and Mrs T simple interest at a rate of 8% per year on that amount from one month from the date it reviewed Mrs T's medical records.

Great Lakes then provided more information to support its position that Mr and Mrs T only paid around 29% of the premium they should've paid for the policy if Mrs T had declared certain medical conditions. This information didn't change our investigator's opinion, so this complaint has now been passed to me to consider everything afresh to 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.

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, CIDRA says it's for the insurer to show it wouldn't have entered into the insurance contract at all, or would have done so only on different terms.

CIDRA sets out a number of considerations for deciding whether a 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.

Declaring Mrs T's medical conditions when applying for the policy

When applying for the policy I'm satisfied (from the evidence I've been given) that Mr and Mrs T were asked to select 'yes' if they:

a. have, in the last two years, suffered from any medical or psychological conditions and for which they've received treatment, been prescribed medication, attended any consultations, investigations or check-ups.
b. have ever suffered from or received treatment, investigations or tests for:
    - heart attack, chest pain(s) or any other heart condition
    - high blood pressure, blood clots, raised cholesterol, aneurysm or any circulatory disease
    - any form of stroke, transient ischemic attack (mini-stroke) or brain hemorrhage.

They were then asked to add all conditions and answer all follow up questions relating to the conditions declared.

Mr and Mrs T both did declare high blood pressure and answered follow up questions about this.

Great Lakes has said Mrs T didn't disclose multiple other conditions. Having considered Mrs T's medical records, I'm satisfied that Great Lakes has acted fairly and reasonably by concluding that Mrs T made a misrepresentation when applying for the policy by not disclosing other medical conditions.

However, when assessing the claim, Great Lakes only focused on two of these undeclared conditions as being possibly related to her treatment abroad.

I know Mr and Mrs T say they don't believe any of Mrs T's pre-existing medical conditions related to the medical treatment she needed abroad and that she was told by medical professionals that her conditions wouldn't cause any problem travelling. However, I don't think that's relevant in the circumstances of this complaint as I'm satisfied when applying for the policy, the questions asked around health conditions (referred to above) were clear. And Mr and Mrs T were being asked to declare all conditions relating to the medical questions asked.

So, I'm satisfied that IPA acted fairly and reasonably by only focussing on two of the conditions that weren't declared by Mrs T when determining what would've happened if Mrs T had declared these conditions on the application. I'm satisfied that this was to the benefit of Mr and Mrs T.

Was Mrs T's misrepresentation a qualifying one?

Had Mrs T disclosed another two conditions, Great Lakes says the policy would've still been offered but it would've cost around £1,360 more.

Great Lake has provided the additional questions Mrs T would've been asked relating to those two conditions and the answers which would've likely been given based on the medical evidence. It's also said that its' risk rating would've significantly increased.

However, it hasn't provided persuasive evidence to show how that increased risk rating translates into such a high premium increase. Our investigator requested this information on a number of occasions, but persuasive evidence hasn't been provided.

As stated above, under CIDRA it's for Great Lakes to evidence that the policy would've been offered on different terms. Based on what Great Lakes has given us, I'm not satisfied that it has shown on the balance of probabilities that the policy would've cost £1,360 more had Mrs T declared two additional conditions when applying for the policy or that Mr and Mrs T only paid 29% of the premium they should've paid if these two conditions had been declared.

Therefore, I'm satisfied that Great Lakes hasn't acted fairly and reasonably by only agreeing to pay 29% of the claim.

Putting things right

I direct Great Lakes to:

A. pay the balance of the claim made by Mr and Mrs T;
B. pay simple interest at a rate of 8% per year on the amount in A. above from one month after Great Lakes received Mrs T's medical history to the date the amount in A. above is settled*.

*If Great Lakes considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr and Mrs T how much it's taken off. It should also give them a certificate showing this if they ask for one. That way Mr and Mrs T can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I uphold this complaint and direct Great Lakes Insurance UK Limited to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 6 March 2025.

David Curtis-Johnson
Ombudsman