DRN-5236197

The complaint

Mr C and Miss M complain that Inter Partner Assistance SA has turned down a cancellation claim they made on a travel insurance policy.

As Miss M brought to the complaint to us, I've referred mainly to her throughout this decision.

What happened

On 5 April 2024, Miss M and Mr C took out a single trip travel insurance policy through a price comparison website. The policy was underwritten by IPA. They were due to travel in June 2024.

Unfortunately, in late May 2024, Miss M and Mr C had to cancel their trip, as Miss M was suffering from complications of pregnancy. So they made a claim on the policy.

IPA assessed the claim, taking into account Miss M's medical history. It noted that Miss M had suffered from depression in the two years before the policy was taken out, as well as a urinary tract infection. And it noted she'd sought medical assistance for pregnancy complications the day before the policy was taken out. It said that the policy Miss M had taken out didn't cover a policyholder's pre-existing medical conditions and if she'd declared them, she wouldn't have been offered this particular policy. Therefore, it turned the claim down and cancelled Miss M's policy from the start. However, IPA did refund the premiums Miss M had paid for the policy. And it acknowledged there'd been an unreasonable period of delay in the handling of her claim, so it offered £200 compensation.

Miss M was unhappy with IPA's decision and she asked us to look into her complaint. She said her previous medical conditions were unrelated to the illness which had caused the cancellation of the holiday.

Our investigator didn't think Miss M's complaint should be upheld. She considered Miss M's medical history and she didn't think it had been unfair for IPA to conclude that Miss M had suffered from medical problems during the two years before she took out the policy which she hadn't declared at the point of sale. And she was satisfied that IPA had shown that if it had known about Miss M's medical history, it wouldn't have offered her this policy. Therefore, she concluded that IPA had acted in line with the relevant law when it turned down Miss M's claim, cancelled the policy and paid a refund of premiums. She also thought IPA had already made a fair offer of compensation.

Miss M disagreed and so the complaint's been passed to me 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.

Having done so, whilst I'm very sorry to disappoint Miss M, I think IPA has already made a

fair offer to settle this complaint and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the law and the medical evidence, to decide whether I think IPA handled this claim fairly.

Was it fair for IPA to turn down this 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. 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 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.

When Miss M took out the policy by online through a price comparison website, she was asked information about herself and any medical conditions she'd had in the last two years. IPA used this information to decide whether or not to insure Miss M and if so, on what terms.

IPA says that Miss M didn't correctly answer the questions she was asked during the online sales process. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Miss M's claim.

As IPA thinks Miss M failed to take reasonable care not to make a misrepresentation when she took out the policy online, I've considered whether I think this was a fair conclusion for IPA to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were.

The first medical question Miss M was posed during the online sales process asked:

'*Do any travellers have, or have any travellers had any pre-existing medical conditions or is anyone on a waiting list for treatment or investigation?'*

The explanatory notes stated that a pre-existing condition is a medical condition which a policyholder has had or are currently receiving treatment for. It included examples of stroke, high blood pressure and anxiety and broken bones.

Miss M answered 'no' and therefore, she was able to proceed with selecting the particular policy she took out. She was then asked further eligibility questions, which asked:

'Within the last 2 years, has anyone you wish to insure on this policy suffered any medical or psychological condition, disease, sickness or injury that has required prescribed medication (including repeat prescriptions) or treatment including surgery, tests or investigations?'

Miss M answered 'no' to this question.

In my view, these questions were asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information IPA wanted to know. IPA thinks that Miss M ought to have disclosed existing medical conditions, including depression, a urinary tract infection and the fact she'd sought medical advice the day before she took out the policy. So I've looked carefully at Miss M's medical records in the two years prior to the purchase of the policy (from April 2022 onwards) to decide whether I think she took reasonable care to answer the questions she was asked at the time of sale.

Miss M's medical records show that in August 2022, she was assessed by a psychological therapy service with symptoms of low mood and anxiety. In November 2022, Miss M attended the GP surgery with symptoms of depression. That month, she was also diagnosed with a urinary tract infection and prescribed antibiotics. She had regular reviews for ongoing mixed anxiety and depressive disorder throughout 2023. And in October 2023, she was seen in A&E due to a deterioration in her condition. She was also prescribed anti-depressant medication later that month. She remained under review.

Additionally, in February 2024, Miss M was prescribed medication to treat pregnancy symptoms. There's a discharge letter from A&E dated April 2024 which states that Miss M was suffering from pregnancy complications and was given medication.

Given the conditions I've noted and given Miss M appears to have been still suffering from some of those conditions at the time she took out the policy, I think it was fair for IPA to conclude that Miss M's medical conditions fell within the scope of the questions. I think too that Miss M ought reasonably have been prompted to answer 'yes' to IPA's eligibility question.

IPA says that had Miss M answered this eligibility question correctly, it wouldn't have offered her this insurance policy. It says that consumers with medical conditions aren't eligible for this cover. This is also noted in the demands and needs section of the contract, which says:

'This policy meets the Demands and Needs of a customer wishing to buy a comprehensive travel insurance policy… who has not suffered a medical condition nor required prescribed medication, surgery, treatment, tests or investigations within the two years leading up to the policy purchase date.'

In my view then, the available evidence suggests that Miss M did make a qualifying misrepresentation under CIDRA. So I think IPA is reasonably entitled to apply the relevant remedy available to it under the Act. IPA has told us that it classed the misrepresentation as careless. I think this was a fair response from IPA because I don't think Miss M intended to mislead IPA – but it seems she didn't take enough care to ensure she answered its questions correctly.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. If it wouldn't have offered the policy, it may cancel the contract from the outset and refund the premium. In this case, as I've explained, IPA says had Miss M answered its eligibility question correctly, she wouldn't have been able to take out this policy and it wouldn't have offered cover. I'm satisfied, based on the evidence its provided, that this was the case. So whilst I sympathise with Miss M's position, I think it was fair and reasonable for IPA to decline her claim, cancel the policy and refund her premium. So I find its actions are in line with CIDRA and it follows that I'm not directing IPA to pay this claim.

DID IPA handle this claim fairly?

IPA accepts there were delays in its handling of this claim. It appears it had the information it

needed to fully assess Miss M's claim around three months before it made a claims decision and communicated this to Miss M. I think this was an entirely unreasonable period of delay and I don't doubt Miss M was worried and frustrated when she didn't get a prompt response to her claim. I can see too from IPA's notes that Miss M called it a number of times to chase up the claim and wasn't called back when she ought to have been.

So I think IPA's claim handling caused Miss M some additional unnecessary trouble and upset. And I think it's appropriate that IPA recognised its mistake for its claims delays. It's offered Miss M £200 compensation to reflect the distress and inconvenience it caused her.

I appreciate Miss M doesn't feel this award goes far enough and I've considered this carefully. But our awards aren't intended to fine or punish the businesses we cover. And in this case, I think compensation of £200 is a fair, reasonable and proportionate award to recognise IPA's mistakes. So I'm not telling it to pay anything more.

IPA should now pay Miss M and Mr C total compensation of £200 if it hasn't already done so.

My final decision

For the reasons I've given above, my final decision is that Inter Partner Assistance SA has already made a fair offer to settle this complaint and it must now pay Mr C and Miss M total compensation of £200 if it hasn't yet done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Miss M to accept or reject my decision before 12 February 2025.

Lisa Barham
Ombudsman