

The complaint

Mr M is unhappy with how Red Sands Insurance Company (Europe) Limited (Red Sands) has settled his travel insurance claim.

What happened

On 3 August 2023, Mr M took out a single trip travel insurance policy with Red Sands.

On the same day, Mr M booked a cruise with his grandchildren. The trip was paid for by Mr M to remember his late wife. They were due to depart on 20 October 2023 and to return on 27 October 2023.

Mr M went to see his GP in April 2023 for bereavement reaction and was signed off from work. On 25 August 2023, Mr M went to see his GP again who diagnosed him with Bereavement Reaction and Adjustment Disorder. The GP said Mr M wasn't fit to travel.

Mr M cancelled the cruise on 5 October 2023 – he said he had every intention of travelling at the time of his diagnosis. Mr M received a refund of £388.68 from the cruise provider for the cancellation.

Mr M submitted a claim to Red Sands. It assessed the claim and paid one third of the claim for Mr M's portion of the total cost of the trip. It also said if Mr M had declared his medical conditions, his premium would have increased by 16.46% and so his settlement has been proportionate to the amount he actually paid for his policy. Red Sands paid Mr M £458.78. Red Sands said Mr M didn't cancel his trip in August 2023, when his GP advised him which incurred a further penalty by the cruise provider for cancelling the trip. And as Mr M didn't accurately disclose his medical conditions when he took out the policy, the amount settled was proportionate.

Unhappy with Red Sands' response, Mr M brought his complaint to this service. Our investigator upheld the complaint. He said, based on all the information, Mr M paid for the full cost of the trip, which included his grandchildren. Mr M suffered the financial loss himself as the entire trip was paid for by Mr M and was a trip that was personal to him. He didn't think Red Sands had acted fairly in partially settling the claim. He recommended that Red Sands reassess the claim and add 8% simple interest.

Following further comments from Red Sands, our investigator issued a view recommending that the claim should be settled on a proportionate basis and add 8% simple interest. He said when Mr M took out his policy, he was asked health questions and Mr M didn't declare anything about his mental health condition at the time.

And under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA), this was considered to be a misrepresentation. As Mr M didn't take reasonable care in answering the question accurately, Red Sands could increase the premium. Red Sands said it would have charged Mr M a higher premium as the misrepresentation wasn't deliberate and it was a qualifying one under CIDRA. The original premium was £56.25, and the new premium would have been £65.51. Our investigator said Mr M wasn't diagnosed with his condition until 25 August 2023 he had no diagnosis at the time, he took out his policy on

3 August 2023.

Red Sands disagreed and asked for the complaint to be referred to an ombudsman. So, it was passed to me.

In summary, Red Sands said:

- The policy provides cover for Mr M only. It doesn't provide cover for the amount paid on behalf of others. The policy terms and conditions are clear in explaining this.
- It had already paid a proportionate settlement on 24 April 2024 due to the medical condition not being declared at the start of the policy. So, there are no further payments outstanding on the claim. It questioned why the 8% simple interest should be added and the dates for when this should be calculated.

I issued a provisional decision on 11 November 2024.

I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Mr M's complaint.

Firstly, I understand that the sad loss of Mr M's late wife has meant that the last year has been difficult for Mr M. I'm sorry for Mr M's loss.

Turning to the complaint itself, my understanding is that there are two issues in dispute:

- *Red Sands has proportionately settled the complaint. Red Sands said if Mr M had accurately declared his condition, a higher premium would have been charged when he took his policy out and this was reflected in the settled amount.*
- *Our investigator said the trip was a 'gift' to Mr M's grandchildren and he paid the full cost on behalf of them. His financial loss therefore is the full cost of the trip. The investigator recommended that Red Sands settle for the remaining loss Mr M incurred and add 8% simple interest to that amount.*

I'll consider each of the points below.

Declaration of medical condition

Red Sands said Mr M didn't declare his medical condition when he took out the policy on 3 August 2023. And it said if Mr M had declared the condition at the time, the premium it would have charged Mr M would have been 16.46% more. That is instead of £56.25, it would have charged Mr M £65.51.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). 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 must 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.

I've gone on to think about whether failing to take reasonable care makes a difference in this case.

Red Sands has provided evidence which shows what would have happened if the correct information was entered at the time of taking out the policy. (This shows that had Mr M completed the question correctly about his Bereavement Disorder when he took out the policy on 3 August 2023, Red Sands would have increased the premium to £65.51). This is because Mr M's GP has said in a letter dated 30 November 2023 to Red Sands that Mr M was faced with bereavement due to the loss of his wife in April 2023. He was signed off from work and due to return to work in late August 2023. The GP saw Mr M on 25 August 2023 and at that point he was diagnosed with Bereavement Reaction and Adjustment Disorder and advised that he wasn't fit to travel. I've also looked at the claim form submitted to Red Sands. This says on 20 April 2023 Mr M had Bereavement Reaction and he was off from work because of this.

So, when Mr M took out the policy on 3 August 2023, he was asked certain medical questions. One of those was:

'Have YOU or anyone in YOUR party:

[...]

4. Ever had any stress, anxiety, depression or psychiatric condition such as eating disorders, drug or alcohol abuse or mental illness for which you haven't been treated or diagnosed.'

Mr M answered:

'No'

I appreciate that Mr M doesn't think he had medical conditions. But the information provided on his medical history shows Mr M had Bereavement Disorder in April 2023 and he was signed off work until August 2023. So, he would have been expected to disclose this when he took the policy out in August 2023. He was aware in April 2023 of his Bereavement Disorder, and I also note that in July 2023, he was referred for bereavement counselling.

Red Sands has classified the qualifying misrepresentation as a careless one (as opposed to deliberate or reckless).

Having considered what happened in the circumstances here, I'm satisfied that Mr M's misrepresentation was a qualifying one and that it was careless. CIDRA sets out the remedies available to an insurer in the case of careless misrepresentation. CIDRA is concerned with disclosure and representations made by a consumer to an insurer before a consumer contract is entered into or varied.

I do understand that Mr M will be disappointed. But Red Sands has followed the law as set out in CIDRA and applied the medical condition as it should have been in August 2023. And this shows that the premium would have been increased to £65.51. I'm satisfied this is fair

and reasonable, taking everything into account.

Does the policy cover the cancellation costs for others not insured on the policy?

Mr M's policy schedule confirms that he is the only policy holder on the policy. I've considered therefore whether it's fair for Red Sands to pay the cost of cancelling the trip on the policy for Mr M's two grandchildren.

The policy terms and conditions on page 12 state:

'We will pay up to the amount shown in the schedule of cover for your portion of:

1. pre-paid excursions booked before you go on your trip up to a maximum £250

2. loss of pre-paid accommodation

3. pre-paid foreign car hire; and

4. pre-paid transport charges that you have paid or agreed to pay and that you cannot recover from any other source if you were forced to cancel your trip because the following unexpectedly happened before you left home and which you could not have been expected to foresee or avoid:

Provided:

12. you are able to prove your financial loss.'

The policy defines 'You/Your as:

'Each individual person in their own right named on the schedule of cover.'

Additionally, page 4 of the policy terms and conditions state:

'Cover is provided for each traveller whose name appears on the insurance documentation and where the policy premium has been paid.

In the event that you have paid for a trip on behalf of other individuals not insured by this policy please be advised that your policy only provides cover for your proportion of trip costs, as opposed to the amount you have paid on behalf of others.'

Based on the above, I think the policy wording is clear in that cover is only provided for the person named on the policy schedule. As Mr M is the only named person on this, cover for cancelling the trip is for Mr M's proportion only. Neither of his grandchildren are included on the policy so I'm not persuaded that Red Sands has unfairly declined to settle for their portion of the cancellation cost.

I acknowledge that Mr M says he paid for his grandchildren to go on the trip with him and that the trip was to scatter his late wife's ashes. I completely understand why he would have wanted to pay for his grandchildren. But unfortunately, the policy terms are clear that there is no cover for this. And just because Mr M paid for the entire trip, it doesn't mean that Red Sands should be responsible for the total cost of cancelling. In the circumstances here, I don't think Red Sands has declined this part of the claim unfairly.

Is the current proportionate settlement fair and reasonable?

Mr M's claim was for the full cost of the cancellation of the trip. The total cost of the trip was

£3,886.80. Red Sands said its settlement was for Mr M's portion of the cancellation costs, with a deduction of 16.46% deducted and a deduction of £75 for the policy excess. And as Mr M cancelled the trip in October 2023, instead of August 2023 when he was diagnosed for his condition, there was also a 70% cancellation penalty by the cruise provider.

Having reviewed the settlement amount paid to Mr M of £458.78. This is calculated from Mr M's portion of the cancellation cost at £638.95, with 16.46% deducted, £75 excess deducted and less any airport duty/taxes.

Overall, based on the available evidence, I'm satisfied this settlement amount is in line with Mr M's policy terms and conditions and is fair and reasonable.

My intention is not to uphold the complaint and I now invite both parties to provide any further comments or arguments by 25 November 2024.

Red Sands didn't respond to my provisional decision.

Mr M responded on 3 January 2025. He provided notes made on his GP medical records from June 2023 and July 2023 for me to consider.

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 considered Mr M's further comments and the additional information he's provided from his GP.

The GP notes confirm in June 2023, Mr M was signed off work and the problem stated was 'bereavement'. Mr M also went to see his GP in July 2023 about how he was feeling since his wife had passed away. The notes say Mr M had been coping well until recently. Mr M was referred for bereavement counselling. The GP signed him off from work until 4 September 2023.

I appreciate Mr M says he wasn't diagnosed with bereavement reaction in April 2023. However, in the claim form his GP completed, it says Mr M had bereavement reaction in April 2023.

The crux of the issue here is that Mr M's GP said he wasn't fit to travel on 25 August 2023. But the holiday wasn't cancelled until October 2023. And when Mr M took out the travel insurance, he didn't inform Red Sands that he'd been signed off work by his GP or that his GP had said he wasn't fit to travel in August 2023. So, it's not that Mr M has no cover at all on the policy. The issue is that had Mr M disclosed accurate information at the time of taking out the policy, the premium charged would have been higher. So, the claim has been proportionately settled.

Overall, whilst I've taken Mr M's comments and information into account, I don't think his claim has been settled outside the terms and conditions of the policy. And I don't think it's been done unfairly or unreasonably. I'm sorry to disappoint Mr M, but it follows therefore that I don't require Red Sands to do anything further.

My final decision

For the reasons given above, I don't uphold Mr M's complaint about Red Sands Insurance Company (Europe) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 February 2025.

Nimisha Radia
Ombudsman