

## **The complaint**

Mr F complains that CIGNA Europe Insurance Company SA-NV cancelled his private medical insurance policy from the outset.

## **What happened**

In summary, in October and November 2023, Mr F's mother called CIGNA on his behalf and took out a private medical insurance policy with a start date of 1 December 2023. On 30 November 2023, Mr F contacted CIGNA by e-mail and asked if his policy covered a consultation with an ear, nose and throat (ENT) specialist. CIGNA replied to Mr F on 12 December 2023. I'll refer to that response in more detail below.

In late December 2023, Mr F had a consultation with a consultant laryngologist and ENT surgeon. He subsequently made two claims against his policy in relation to an investigatory procedure and a consultation on 22 December 2023. CIGNA settled those claims on 27 December 2023. Mr F's consultant recommended surgery.

In January 2024, after Mr F had asked CIGNA for an authorisation code in relation to surgery, CIGNA asked Mr F questions about his symptoms, diagnosis and treatment. After considering Mr F's response, on 12 January 2024, CIGNA told Mr F it wouldn't provide him with any further cover. It cancelled his policy from the outset and retained the premium. CIGNA said Mr F hadn't disclosed the symptoms he had in relation to his throat when he took out the policy. Mr F continued to have treatment privately on a self-funded basis.

Mr F doesn't think CIGNA treated him fairly. He says he couldn't be expected to know he had the medical condition he was later diagnosed with at the time he took out the policy, so he didn't know he should have mentioned it.

In response to Mr F's complaint, CIGNA said he was aware of the symptom relating to his throat problem eight months before the start date of his policy and he asked for a referral to a specialist the day before the policy started. CIGNA maintained its position in relation to its decision to cancel Mr F's policy from the outset. Mr F pursued his complaint.

One of our Investigators looked at what had happened. He thought Mr F had made a qualifying misrepresentation when he took out the policy. But he didn't think it was fair and reasonable for CIGNA to cancel the policy from the outset. The Investigator said that was because CIGNA affirmed the contract when it settled two claims for Mr F's treatment of his throat symptoms.

The Investigator recommended CIGNA reinstate Mr F's policy and deal with the claims in line with the policy terms. He said that was subject to Mr F paying any backdated premiums. The Investigator said CIGNA should also reimburse Mr F in line with the policy terms for treatment he had paid for himself and pay interest on those amounts. He recommended CIGNA pay Mr F compensation of £150 in relation to his distress and inconvenience.

CIGNA didn't agree to reinstate Mr F's policy. It acknowledged it paid two claims in error, which gave Mr F false expectations. It offered to cover treatment Mr F received between the date it paid two claims in error - 27 December 2023 - and the date it told Mr F it would cancel his policy from the outset - 12 January 2024. It agreed to reimburse Mr F for any amounts he paid for treatment between those dates and to pay compensation of £150. Mr F didn't accept CIGNA's offer.

The Investigator considered what CIGNA said but didn't change his view. He said we don't believe it's fair and reasonable for a consumer to be told a policy term applies when it's clear there's been a misrepresentation, only to be told later the insurer has changed its mind. CIGNA asked that an Ombudsman consider the complaint, so it was passed to me to decide.

### **My provisional decision**

On 9 December 2024, I sent both parties my provisional decision in this case in which I indicated I intended to uphold the complaint but with different redress than had been suggested before. I said:

- *'The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 (CIDRA) 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. 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.*
- *CIGNA thinks Mr F made a misrepresentation about his symptoms. I've listened to the phone calls when Mr F's mother answered medical questions on his behalf. One of the questions CIGNA asked in the October 2023 call was:*

*'Does anyone have any illness, condition or symptom not already mentioned? Please include details of any known or suspected issues whether or not medical advice has been sought or a diagnosis reached.'*

*Mr F's mother answered 'No'. I think CIGNA asked a clear question about Mr F's symptoms before he took out the policy. CIGNA didn't ask that question again in the November 2023 phone call but I don't think that alters the outcome here. CIGNA told Mr F's mother it would link the answers she gave in both calls for underwriting purposes.*

- *Mr F has provided details from his consultant which say he was suffering from symptoms several months before the start date of the policy. And Mr F contacted CIGNA the day before his policy started. Mr F says at the time he took out the policy, he couldn't be expected to know he had the medical condition he was later diagnosed with, so he didn't know he should have mentioned it. But that's not the determining issue here – Mr F knew he had symptoms at the time he took out the policy. Based on what I've seen, I don't think Mr F took reasonable care not to make a misrepresentation when taking out the policy.*
- *CIGNA has provided information showing that, if it had known the true position about Mr F's symptoms, it wouldn't have offered Mr F the policy. So, I think there's been a qualifying misrepresentation here. Usually, that means there are certain remedies available to the insurer, such as cancelling the policy from the outset. But I don't think that's fair and reasonable in the particular circumstances of this case and I'll explain why.*
- *On 30 November 2023, one day before the policy start date, Mr F contacted CIGNA about a claim in relation to a consultation with an ENT consultant. Mr F repeated his request on 11 December 2023. On 12 December 2023, CIGNA sent Mr F a response in which it said:*

*'For a consultation with an ENT we will to cover (sic) this as you do not have outpatient coverage benefit purchased on your policy.*

*If this is something you would like to purchase I can get in touch with the agent that sold your policy as you are still within your cooling-off period.'*

*I think this response was confusing and unclear. I don't think Mr F understood this to mean he wouldn't be covered for a consultation as he went on to make a claim. I think Mr F understood from CIGNA's response that it would cover his treatment. I've thought about whether Mr F should have sought clarification from CIGNA but I think it was reasonable for Mr F to proceed on the basis that his claim had been authorised. CIGNA is the expert here and we'd expect its communication with Mr F to be clear and not misleading, which wasn't the case here.*

- *CIGNA says as Mr F was asking about treatment before his policy began, it's clear he didn't disclose his symptoms. I agree with CIGNA about that. I think when Mr F contacted CIGNA on 30 November 2023 and asked about cover for a consultation with an ENT consultant, CIGNA knew or should have known Mr F had made a misrepresentation before he took out the policy.*
- *CIGNA didn't take any action following Mr F's phone call on 30 November 2023. I've set out above CIGNA's response to Mr F's second request. CIGNA subsequently reimbursed Mr F on 27 December 2023 in relation to two invoices for an investigatory procedure and a consultation. It says it did so in error. However, in doing so it has, in effect, affirmed the contract it had with Mr F by relying on policy terms in settling his claim. CIGNA affirmed the contract it had with Mr F and waived its right to rely on the misrepresentation. Although the case law I've seen on affirmation of insurance contracts pre-dates CIDRA and the obligations of consumers and insurers were different then, I think it's fair and reasonable to apply the principle of affirmation in the particular circumstances of Mr F's case.*

- *Even if I came to a different view about CIGNA's affirmation of the contract, I think it would be fair and reasonable in this case to come to the same conclusion on a fair and reasonable basis. That's because Mr F relied on CIGNA's response to his requests and its payment of his claim and proceeded with treatment on the basis that the treatment was covered.*
- *I don't think it would be a fair and reasonable outcome for CIGNA to now rely on the qualifying misrepresentation made by Mr F when he took out the policy, having ignored this originally and having dealt with his claim by relying on the policy terms. There needs to be certainty for consumers and insurers need to act when they know about a misrepresentation. The only exception might be where an insurer makes it very clear it's dealing with a claim while it investigates a potential misrepresentation. CIGNA didn't say that here.*
- *CIGNA says it should only deal with Mr F's claim until it told him it had cancelled his policy from the outset. Based on what I've seen, I don't think Mr F incurred any unpaid treatment costs up to 12 January 2024, but even if he had, I don't think that would be a fair and reasonable outcome in this case. I agree with the Investigator that we don't believe it's fair and reasonable for a consumer to be told a policy term applies when it's clear there's been a misrepresentation, only to be told later the insurer has changed its mind*
- *In summary, while I think Mr F made a qualifying misrepresentation when he took out the policy, I don't think CIGNA treated Mr F fairly and reasonably when it cancelled his policy from the outset.*
- *In cases of this nature, we'd generally say an insurer should reinstate the policy and deal with the claim. Mr F has said he doesn't want his policy reinstated and so I don't need to direct this, in this specific case. But I think it's fair and reasonable for CIGNA to deal with his claim in accordance with the policy terms. This is on the basis that CIGNA waived its right to rely on the qualifying misrepresentation and instead affirmed the contract it had with Mr F. I think in the particular circumstances of this case and for the reasons I've set out above, it was reasonable for Mr F to continue with his private treatment and it's fair and reasonable for CIGNA to deal with his claim in accordance with the policy terms.*
- *Mr F would have needed to have paid premiums if his policy hadn't been cancelled. So CIGNA will need to deduct any premiums that would have been payable whilst Mr F was having treatment. CIGNA should make this clear in its settlement breakdown so Mr F knows the amount deducted for unpaid premiums, if any.*
- *As there's been a delay in CIGNA settling Mr F's claim, it should also pay interest on the settlement amounts. CIGNA should also remove any record of misrepresentation and cancellation of Mr F's policy from any internal and external databases.*
- *CIGNA's errors in this case have caused Mr F distress and inconvenience. I agree with the Investigator that fair compensation for that is £150. In reaching that view, I've taken into account the nature, extent and duration of Mr F's distress and inconvenience caused by CIGNA's errors in this case.'*

## **Responses to my provisional decision**

CIGNA responded to say it would not present any further information. It subsequently reiterated its previous position and said it would not reinstate the policy as Mr F was aware on 12 January 2024 that it would cancel the policy but continued to receive treatment after that date. CIGNA said it understood it paid two claims in error which led Mr F to believe that future claims would be reimbursed under the policy. So, it is willing to accept claims relating to Mr F's throat condition for the period 27 December 2023 to 12 January 2024. It said it wasn't willing to reimburse Mr F for treatment after 12 January 2024 or reinstate the policy but it was willing to pay Mr F compensation of £150 in relation to his distress and inconvenience.

Mr F said he agreed with the provisional decision but asked that the policy be reinstated. The Investigator told Mr F that if the policy is reinstated, CIGNA may deduct from any settlement any unpaid premium for the policy year.

## **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 taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say CIGNA should deal with claims promptly and fairly.

I've looked again at the circumstances of this complaint. CIGNA has reiterated its position. I've considered what CIGNA has said but for the reasons I set out in my provisional decision, I don't agree that it's fair and reasonable for CIGNA to rely on the qualifying misrepresentation and cancel Mr F's policy from the outset.

CIGNA says it accepts that, in paying two claims in error, it led Mr F to believe it would reimburse future claims. So, it's willing to accept claims for treatment between 27 December 2023 and 12 January 2024. For the reasons I set out in my provisional decision, I don't think CIGNA's suggested redress is sufficient for the fair resolution of this complaint. I remain of the view that it's not fair and reasonable in this case for Mr F to be led to believe a policy term applies when it's clear there's been a misrepresentation, only to be told later CIGNA has changed its mind.

Mr F has changed his position and now wants CIGNA to reinstate the policy. As I said in the provisional decision, in cases of this nature, we'd generally say an insurer should reinstate the policy and deal with the claim. In light of Mr F's request, I think CIGNA should reinstate Mr F's policy and deal with his claim. As the Investigator has explained to Mr F, that means CIGNA may deduct from any settlement any unpaid premium for the policy year.

CIGNA has provided no new information or evidence. For the reasons I've set out above and in my provisional decision, I remain of the view that the outcome and redress I set out in my provisional decision is a fair and reasonable response to Mr F's complaint, subject to a change, at Mr F's request, that CIGNA reinstate the policy.

## **Putting things right**

In order to put things right, CIGNA should:

- reinstate the policy and deal with Mr F's claim in accordance with the policy terms, deducting an amount equal to the premiums Mr F would have paid had the policy remained in force,
- pay interest on any settlement amount at the simple rate of 8% per year, from the date Mr F made the payments, to the date CIGNA makes the payment,
- remove any record of misrepresentation or reference to its cancellation of Mr F's policy from internal and external databases and
- pay Mr F compensation of £150 in relation to his distress and inconvenience.

## **My final decision**

My final decision is that I uphold this complaint. CIGNA Europe Insurance Company SA-NV should now take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 March 2025.

Louise Povey  
**Ombudsman**