DRN-5265249

The complaint

Mr and Mrs D are unhappy that Inter Partner Assistance SA ('IPA') proportionately settled a claim they made on a travel insurance policy.

What happened

Mr D took out a travel insurance policy. He didn't declare any pre-existing medical conditions during the application process. Mr D suffered a heart attack whilst on holiday and IPA accepted there was a valid claim on the policy. However, they said that Mr D had failed to declare pre-existing medical conditions and, had he done so, they'd have charged him a much higher premium. So, they proportionately settled the claim and agreed to pay half of the medical expenses.

Mr D complained to IPA and noted that his name appeared twice on the policy schedule which was an error (as he'd intended to add Mrs D). He was also unhappy with the service he received from IPA. IPA acknowledged there had been delays and poor customer service. They offered £400 compensation to apologise. However, they said the decision to proportionately settle the claim was fair.

Our investigator looked into what happened and partly upheld Mr D's complaint. She didn't think IPA had adequately demonstrated that they had fairly settled the claim. So, she directed IPA to pay the claim in full plus 8% simple interest. And she thought a further £300 compensation should be paid to reflect the impact of the poor customer service Mr D had received.

IPA didn't agree and said they'd provide more information. Mr D explained he was being chased for the outstanding payment by the medical facilities. He also didn't think it was fair to be left with a significant medical bill because he'd made an administrative error when taking out the policy. The complaint was referred to me to make a decision.

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.

The proportionate settlement of the claim

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 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.

IPA says Mr D failed to take reasonable care not to make a misrepresentation when he answered questions about his medical history. Mr D was 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?

A pre-existing condition is defined as:

> This is a medical condition or injury that you've been diagnosed with and have had or are currently receiving treatment for. Examples include, stroke, high blood pressure, anxiety and broken bones.

Mr D's medical records indicate that he had experienced arthritis of the knee and high cholesterol. So, he should have answered 'yes' to the initial question. This would have then prompted a series of more detailed questions about his health.

IPA says that had Mr D answered these further questions he'd have been charged a higher premium of £125.11, rather than the £65.44 Mr D paid. However, whilst they've provided a summary of the underwriting criteria they haven't clearly demonstrated that Mr D would have paid £125.11. IPA has had several opportunities to provide this evidence, but they haven't done so. So, based on the evidence, that's available to me I'm not satisfied that they've demonstrated that Mr D's misrepresentation was a qualifying one.

Therefore, I don't think it's fair and reasonable for IPA to proportionately settle the claim. IPA needs to cover the claim in full and 8% simple interest from the date that IPA agreed to proportionately settle the claim until the date of settlement.

Customer service

IPA acknowledged that there were delays in handling Mr D's claim and that the level of customer service could have been better. That included Mr D being informed by the treating hospital, rather than IPA, that his claim wasn't going to be paid in full. There were also unreasonable delays in assessing the medical evidence and giving Mr D a decision about the cover.

The claim decision ought to have been given more quickly than it was and it was poor customer service that Mr D wasn't told of the claims decision and learned this information from a third party. Mr D has also been chased by the medical facilities for the payment of his expenses, which has caused him a lot of worry and upset.

Mr D had experienced a heart attack and I think IPA's customer service failings added to his worry at an already difficult and distressing time. I think a further £300 compensation (in addition to the £400 offered) would be fair and reasonable. I think that a total of £700 compensation more fairly reflects the impact on Mr and Mrs D.

Putting things right

IPA needs to put things right by settling the claim in full (subject to the relevant policy limits). They should also pay 8% simple interest per annum from the date that IPA agreed to proportionately settle the claim until the date of settlement.

If IPA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs D how much it's taken off. It should also give them a tax deduction if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

IPA should also pay a further £300 compensation for the distress and inconvenience caused, bringing the total compensation to £700.

My final decision

I'm upholding this complaint and direct Inter Partner Assistance SA to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 23 April 2025.

Anna Wilshaw
Ombudsman