

## **The complaint**

Miss D and Mr M have complained that Red Sands Insurance Company (Europe) Limited avoided an insurance policy (so cancelled it as if it had never existed), declined a claim Mr M made on the policy and retained the premium.

They are being represented in making the complaint by a family member. However, for ease, I will mostly just be referring to Mr M in this decision.

## **What happened**

Mr M was on a trip abroad in December 2023. Unfortunately, he was injured following a fall, resulting in the need for surgery and an extended stay in hospital. He therefore made a claim on the policy for medical bills and associated costs.

Red Sands declined the claim on the basis that Mr M had failed to declare all of his pre-existing medical conditions when applying for the policy.

Our investigator thought that Red Sands had acted reasonably in declining the claim. Mr M disagrees and so the complaint has been passed to me for 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.

I've carefully considered the obligations placed on Red Sands by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Red Sands to handle claims promptly and fairly, and to not unreasonably decline a 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.

If a consumer fails to take reasonable care, 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 misrepresentation was deliberate or reckless, or careless.

When considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked during the application process were.

Mr M purchased the policy online on 25 November 2023 and was asked:

*'Have YOU or anyone in YOUR party:*

*1) taken any prescribed medication, had any symptoms for any illness or received any medical treatment in the last 2 years.*

*2) attended a medical practitioner's surgery, hospital or clinic (out-patient or in-patient) in the last 2 years.'*

As our investigator has mentioned, the medical declaration confirmation sent to Mr M stated:

*'Please note: You must declare all existing medical conditions as well as any previous medical conditions you have had that fall within the medical declaration questions.*

*You must answer all questions accurately and honestly. If you don't, for example by declaring some conditions and not others, your policy may be cancelled, or treated as if it never existed, and your claims may be rejected or not fully paid. This could result in you being responsible for paying your own emergency medical and repatriation costs abroad.'*

In my view, the medical questions asked were clear, specific and understandable. So I think that Mr M, or someone doing the application on his behalf, would have understood the importance of fully answering the questions.

In completing this section, Mr M declared an eye condition. However, the medical history provided by his GP show a number of other conditions that he'd received treatment for within the previous two years. Most notably, he'd had a spinal x-ray in August 2023. This was due to being in a car crash the previous month and reporting reduced mobility. 'Active problems' listed in the GP report include a fracture of the lumbar spine dated 29 August 2023. It was also noted that he had a repeat prescription for medication to maintain bone strength.

Given that investigations into his reduced mobility and the diagnosis of a fracture took place only three months before the purchase of the policy, I consider Mr M ought reasonably to have known that he needed to declare this.

Mr M was aware of his fractures. He'd had a diagnosis of fracture of the lumbar spine in May 2021 and the GP notes say that was explained to him and that he'd asked for a printed x-ray report to show the physio. Although that was over two years before buying the policy, the medical notes for 13 August 2021 mention that he should keep appointments with the fracture clinic at four and twelve months. And, as already mentioned, his x-ray in August 2023 also showed a spinal lumbar fracture.

Mr M says he had never been told he had a diagnosis of osteoporosis and so wasn't in a position to declare it. The way the online questions fall is that someone is asked if they have osteoporosis if they answer 'yes' to having had fractures. So, he should still have declared that he had fractures, even if he went on to answer 'no' to the question about osteoporosis.

I take Mr M's point that the medication he was on were supplements for general bone health. However, the application question simply asks if you have been prescribed any medication in the last two years. As Mr M had been prescribed it by the doctor, rather than buying it over the counter himself, he should have declared it.

Mr M has been keen to point out that the injuries he suffered on his trip were the result of an accident rather than being related to any pre-existing medical conditions. That may be the case, but the matter at hand is about what Red Sands would have done if he had accurately declared his medical history when buying the policy.

Red Sands considers Mr M's misrepresentation to have been deliberate or reckless. CIDRA states:

*'A qualifying misrepresentation is deliberate or reckless if the consumer –*

- a) Knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading or misleading, and*
- b) Knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.'*

Overall, based on the available evidence, I think it was reasonable for Red Sands to conclude that he had made a deliberate or reckless misrepresentation.

As such, Red Sands is entitled to use the available remedy under CIDRA, which is that it can avoid the contract, refuse all claims and retain the premium paid for the cover. By turning down the claim and keeping the premium, I consider that Red Sands has acted in line with CIDRA.

I have sympathy for Mr M's position. He had an accident abroad and is out of pocket as a result. The question is whether Red Sands has done anything wrong and overall, I don't think that it has. Based on the available evidence, I consider that it has acted reasonable in declining the claim and retaining the premium.

### **My final decision**

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D and Mr M to accept or reject my decision before 30 April 2025.

Carole Clark  
**Ombudsman**