

The complaint

Mr C and Mrs C have complained that Astrenska Insurance Limited trading as Collinson Insurance has declined a claim made under their travel insurance policy.

What happened

The background to this complaint is well known to the parties and not in dispute. In summary Mr and Mrs C took out an annual travel insurance policy with cover commencing on 16 January 2023. Unfortunately Mr C fell whilst on holiday in December 2023, breaking his hip. He was admitted to hospital abroad and underwent surgery. When fit to fly Mr C was repatriated back to the UK with nurse assistance on the flight.

Astrenska, underwrite the policy. All references to Astrenska include its agents. Astrenska considered the claim but declined it, saying that Mr C had not disclosed some medical conditions when taking out the policy. It asked Mr and Mrs C to repay the costs incurred.

Unhappy, Mr and Mrs C referred their complaint to this Service. The investigator didn't recommend that it be upheld. They didn't find that the medical questions had been answered correctly at the application stage therefore they found Astrenska had acted in accordance with the relevant legislation.

Mr and Mrs C appealed. They said that they were under pressure to sign the waiver at the hospital but having done so understood that all costs would be covered. They feel that some decisions were made by Astrenska were not choices that they would have made if it was up to them and that they were not consulted as to what would be the best path. Mr and Mrs C feel that Astrenska were negligent and that it would be fair and just if it offset the monies it was looking to recoup.

As no agreement has been reached the matter has been passed to me to determine.

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'd like to reassure Mr and Mrs C that whilst I've summarised the background to this complaint and some sensitive medical details, I've carefully considered all that they have sent to us. In this decision though I haven't commented on each point or piece of evidence rather I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. Having done so I agree with the conclusion reached by our investigator. I'll explain why.

The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. So I've considered, amongst other things, the answers given to the medical questions when the policy was taken out to decide whether I think Astrenska treated Mr and Mrs C fairly declining their 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.

Astrenska Insurance thinks Mr and Mrs C failed to take reasonable care not to make a misrepresentation when they answered the medical questions when taking out the policy online.

Mr and Mrs C were asked:

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

A pre-existing medical condition is a condition or injury that you've been diagnosed with and have had or are currently receiving treatment for. Examples include high blood pressure, diabetes, anxiety and broken bones. We'll ask for more details about them later. You must let us know the medical history of everyone on this policy to make sure you've got the right cover for the trip. It may not always cost more to cover your medical conditions. The insurer may not pay for any medical treatments you claim for or costs to get home, if it's for something you did not tell us about.

Mr and Mrs C answered 'yes' to this question and were then asked:

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

Again the answer given was 'yes' which then led on to further questions:

Have you, or anyone in your party ever been diagnosed with or treated for any of the following

- *Any heart or respiratory conditions?*
- *Any circulatory conditions (problems with blood flow, including stroke, high blood pressure and cholesterol)?*
- *Any liver conditions?*
- *Any cancerous conditions?*

If the answer to any of these conditions was 'yes' the person proposing for insurance was required to declare the conditions. The screen advised: *Please declare all pre-existing medical conditions for each applicable traveller.* So conditions are entered in turn. Having entered one (Mr C's heart condition) the further conditions should have been added by clicking on the 'declare condition' button.

I've looked carefully at the screens that Mr and Mrs C were presented with – the questions are clear. At the end there is a summary of the conditions declared – here it would have been apparent that the only condition declared for Mr C was myocardial infarction/coronary angioplasty.

Mr C was charged an additional premium of £241.10. However he didn't declare a cancer that had been diagnosed in 2020 or back pain.

Astrenska has shown by underwriting evidence that had these conditions been declared, a policy would not have been offered to Mr C as his medical history exceeded its underwriting threshold. So I find that a qualifying misrepresentation was made. Astrenska has treated the misrepresentation as careless (as opposed to deliberate or reckless) and I find that is fair. Although a refund of premium is usually due in these circumstances, Astrenska explained that there would be no refund as expenses had been paid out on a without admission of liability basis, so it was deducting the premium refund (a total of £613.78) from the amount owed. Again, I find this is fair.

I do understand that Mr and Mrs C may not have made some of the choices that Astrenska made. Likewise I accept that Mr C's fall was totally unrelated to his undisclosed conditions – it was an unfortunate accident. But I have to bear in mind that had the questions been answered correctly they would not have had this policy at all. Additionally they signed a waiver – I understand that they felt under pressure to do so but I don't find that any pressure was applied by Astrenska. I was sorry to note the issues Mr C experienced following the treatment he received abroad. But again, I don't find that Astrenska is responsible here.

I'm very sorry to disappoint Mr and Mrs C but in all the circumstances I don't find that Astrenska treated them unfairly, unreasonably or contrary to law. It has confirmed that it is willing to consider a payment plan – and this is something that Mr and Mrs C may want to discuss directly with Astrenska.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Mrs C to accept or reject my decision before 22 May 2025.

Lindsey Woloski
Ombudsman