

The complaint

Mr L and Mrs P complain that Inter Partner Assistance SA proportionately settled a claim they made on their travel insurance policy.

What happened

Mr L and Mrs P took out a travel insurance policy online with IPA. Mrs P declared some pre-medical conditions during the application process and the policy was set up. Their travel plans changed and they needed to amend the policy to reflect the changes. Mr L contacted the business that had sold the policy (who I'll refer to as 'S') to discuss the changes. This contact took place by phone.

Whilst they were on holiday Mrs P needed medical treatment. IPA accepted there was a valid claim but said they would settle it proportionately as Mrs P hadn't declared that she had asthma and non-cardiac chest pain. Mr L and Mrs P complained about the proportionate settlement of the claim and delays in handling the claim.

IPA looked into what happened and upheld the complaint in part. They maintained the settlement of the claim was fair but offered £150 compensation for delays during the claims process. Mr L and Mrs P complained to the Financial Ombudsman Service.

Our investigator looked into what happened and upheld IPA's complaint. He asked IPA on multiple occasions for the questions that they said Mrs P had failed to answer correctly and for the underwriting information to demonstrate that a higher premium would have been charged. In the absence of this information he upheld the complaint and directed IPA to settle it in full. He also thought IPA should pay Mr L and Mrs P an additional £150 compensation for the customer service issues.

IPA didn't agree and asked an ombudsman to review the complaint. They did provide a copy of a phone call between Mr L and S. However, the call didn't change the investigator's view on the complaint. That's because it was Mr L's initial contact with S was to say that amendments to the policy were needed. It wasn't the call that included the medical screening. So, the complaint was passed 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 that Mrs P failed to take reasonable care not to make a misrepresentation when she answered questions about her medical history.

As I've outlined above Mrs P answered medical questions when she took out the policy online. Mrs P and Mr L didn't declare asthma or non-cardiac chest pain during the original application. But I'm not persuaded it's fair and reasonable in the circumstances of this case to conclude that the questions asked in the original application reflect the final disclosures made by Mr L and Mrs P prior to the claim.

I'm satisfied it's most likely that Mr L contacted S to discuss amendments to the policy – that's reflected in the changes to the length of the trip and the location prior to Mr L and Mrs P travelling. Mr L says that during the call medical information was discussed, including Mrs P's asthma. It's fairly typical, in my experience, for amendments to the policy to include a further medical screening. So, I find Mr L's testimony that the medical questions were revisited to be plausible and persuasive.

IPA hasn't provided the relevant call where the amendments to the policy were made, despite repeated requests for information. And it's not provided compelling evidence about what questions Mrs P was asked about her asthma or what questions Mrs P didn't correctly answer about the chest pain during that call.

IPA has provided some example questions in relation to the cardiac and asthma screening. But it's not demonstrated that's what Mrs P was asked during the call. Furthermore, even if I accepted that the cardiac questions were asked Mrs P's GP records indicate she'd experienced non-cardiac chest pain. I'm therefore not persuaded that those questions would have prompted her to disclose non-cardiac chest pain. So I'm not persuaded that IPA has adequately demonstrated what questions they say Mrs P failed to answer correctly.

In any event, I think there are other reasons it's fair and reasonable to uphold this complaint. IPA also has not provided any detailed or meaningful breakdown of the premium increases if Mrs P had declared the two conditions. So, I'm not persuaded they've provided enough evidence to demonstrate that the disclosure of the conditions would have made a difference to the premium and specifically how it would have impacted the premium charged. Whilst IPA says a retro-screening was carried out it's not provided any detailed supporting evidence of the impact of the alleged non-disclosures.

Taking all of the above into account, based on the available evidence, I'm not satisfied that IPA has adequately demonstrated Mrs P made a qualifying misrepresentation. Therefore, I'm not persuaded it was fair and reasonable to proportionately settle the claim in the circumstances of this case.

Customer service

IPA accepted there were delays in handling and settling the claim. They offered £150 compensation to acknowledge the poor service. I think it's fair and reasonable for IPA to pay Mr L and Mrs P a further £150 compensation.

I think a further £150 compensation more fairly reflects the impact of the delays in handling and settling the claim on Mr L and Mrs P. It's caused them worry and upset over a prolonged period of time.

Putting things right

IPA needs to put things right by paying:

- The claim in full;
- 8% simple interest from the 23 June 2023 until the date the settlement is made; and
- An additional £150 compensation for the distress and inconvenience caused.

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

My final decision

I'm upholding Mr L and Mrs P's 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 L and Mrs P to accept or reject my decision before 15 May 2025.

Anna Wilshaw
Ombudsman