

The complaint

The estate of Mrs B is unhappy with the assistance Mrs B received from Red Sands Insurance Company (Europe) Limited under a travel insurance policy (the policy) after she became unwell abroad.

All reference to Red Sands includes its agents, such as the medical assistance team.

What happened

I issued my provisional decision in April 2025 explaining why I was intending to find that Red Sands should do more to put things right in this complaint.

An extract of my provisional decision is set out below:

.....

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

That includes the detailed submissions provided by the estate of Mrs B. I won't respond to each point made. I hope the estate of Mrs B understands that no discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to be able to fulfil my statutory remit.

Medical assistance and not arranging repatriation to the UK

Red Sands has a regulatory obligation to handle insurance claims fairly and promptly.

The estate of Mrs B has also referred to the Consumer Duty which I've taken into account as it's a relevant consideration. Principle 12 of the Financial Conduct Authority's Principles for Businesses (known as 'the Consumer Duty') says a firm must act to deliver good outcomes for retail customers. And the cross-cutting obligations at PRIN 2A.2 set out that this includes avoiding causing foreseeable harm.

I know the estate of Mrs B feel very strongly that Red Sands has acted unfairly when providing medical assistance to Mrs B but for reasons set out below, I don't intend to uphold this part of their complaint.

- From the internal notes provided by Red Sands, I'm satisfied that Mrs B's daughter raised concerns with the standard of care Mrs B was receiving in the emergency department of the hospital she was taken to. She requested that Mrs B be repatriated back to the UK or moved to another hospital. However, by that stage, Red Sands hadn't been provided with a medical report. So they didn't know the extent of Mrs B's condition or whether it was medically necessary or safe to transfer her. Further, once Mrs B was transferred to a ward, the internal contact notes reflect that the standard

of care on the ward was much better. I've seen nothing to suggest that the hospital was unable to provide the medical treatment Mrs B required at that time, so I think it was reasonable for Red Sands not to explore transfer options again then.

- From what I've seen, I'm satisfied that Red Sands promptly contacted a doctor at the treating hospital. Mrs B was diagnosed with having had a major brain haemorrhage and if everything went well Mrs B would need to remain at the hospital for ten days before considering repatriation options.
- I'm satisfied that Red Sands was proactively trying to obtain up to date information from the treating hospital to help inform possible repatriation plans and was being informed by the treating hospital that there was no major improvement in Mrs B's condition, and it was too soon to be thinking about repatriation.
- The family of Mrs B notified Red Sands on 22 May 2024 that they'd been advised by the treating hospital that Mrs B's next scan was scheduled for 27 May 2024 and if there had been no deterioration, they would be happy to arrange repatriation. The family asked for Red Sands to start making repatriation plans for Mrs B to travel on 28 May 2024. I can of course understand why Mrs B's family were keen for her to travel back to the UK. However, from what I've seen the situation was very fluid and there was no guarantee that Mrs B would be fit to fly on 28 May 2024. I'm satisfied Red Sands acted fairly by informing Mrs B's family that until the scan results had been reviewed, it couldn't provide comments and complete a pre-travel assessment. So, I don't think it acted unfairly but not making arrangements to repatriate Mrs B until she had been deemed fit to fly, and if so, on what basis. I wouldn't reasonably expect Red Sands to do that. Until the fit to fly certificate has been issued, and updated medical report been provided, the prognosis or medical advice could've changed. And unnecessary costs could've been incurred making arrangements.
- In cases such as this one, it's common for insurers to want to obtain the medical history before cover is verified. This is to check whether the condition being treated abroad is related to a pre-existing medical condition, or whether there were other conditions not declared when applying for the travel insurance which may have affected the insurer's decision to offer insurance, or the terms on which the insurance was offered (including the price). So, I'm satisfied that it was fair and reasonable for Red Sands to request Mrs B's medical records from her GP surgery.
- It took a few days for Red Sands to do this. Even if I thought this information should've been requested earlier, ultimately, I don't think it had an impact on Mrs B. The majority of the information was received within the ten days of the treating hospital initially advising Mrs B should remain there. So, I don't think any delay in Red Sands initially requesting the medical history from the GP surgery ultimately impacted any decision on repatriation or the medical assistance given.
- I can see that Mrs B's family were unhappy with the time taken to verify cover. Unfortunately, there were some gaps in the medical information provided by the GP surgery. I'm satisfied Red Sands promptly requested this from the GP surgery and then had to chase for further information. I know Mrs B's family also chased the GP surgery, but I don't think I can reasonably hold Red Sands responsible for the delays in obtaining the follow up information from the GP surgery. Until all relevant past medical history had been obtained from the GP surgery, I don't think Red Sands was in a position to verify cover, and on what terms.
- On 27 May 2024, the treating hospital advised that Mrs B was in a deep coma and

her life was in danger. Sadly, a second haemorrhage had been discovered and there were no prospects of repatriating Mrs B at that time.

- I can see that Mrs B's family raised concerns with Red Sands about the treating hospital again on 3 June 2024, and the standard of care received. I'm satisfied that this was the first time these issues had been raised again after Mrs B was on the hospital ward. So, I don't think Red Sands acted unreasonably by not looking into any concerns about the treating hospital up until that point. Red Sands isn't responsible for the conditions in the hospital abroad or the standard of care.
- However, upon being notified, I'm satisfied Red Sands spent time trying to understand these concerns and investigated them. It also arranged for one of its agents to attend the hospital to check on her welfare and the standard of care being received. Unfortunately, before the agent attended the hospital, Mrs B died.
- Whilst I can completely appreciate how difficult it would be for Mrs B's immediate family to think she wasn't getting the standard of care needed, as I mentioned above, Red Sands isn't responsible for the actions of the hospital. And even if it had arranged for the agent to go to the hospital earlier, I'm not persuaded on the balance of probabilities that this would've resulted in Mrs B receiving better care. Although I have every empathy for those who visited her abroad and witnessed her end of life care, they aren't personally named as beneficiaries on the insurance policy she had. So, they aren't eligible complainants party to this complaint in their personal capacity. Therefore, even if I did think Red Sands ought to have reasonably done more, I don't have any power to direct it to pay them compensation for any distress and inconvenience they personally incurred.
- The policy terms say: "air ambulances are flying intensive care units and are only used to transport critical patients to a hospital in the United Kingdom when medically necessary". And: "if you require emergency treatment during your trip, we reserve the right to bring you back home, providing the 24/7 emergency assistance doctor in consultation with the treating doctor agree you can safely travel home..."
- Given the poor prognosis from the end of May 2024, I can understand why Mrs B's family wanted Red Sands to arrange for an air ambulance to repatriate Mrs B to the UK. Mrs B's family said they'd sign a disclaimer taking full responsibility and that they were aware that Mrs B could die during the flight back to the UK. However, from the evidence I've seen, I'm satisfied that it wasn't medically necessary to repatriate Mrs B by air ambulance. The medical evidence from the treating hospital was that it was providing end of life care with no further treatment or investigations planned. I'm also not persuaded that there was evidence that it was medically safe for Mrs B to travel home. So, although Mrs B's family offered to sign a waiver, I don't think Red Sands unreasonably relied on the policy terms and the information available at the time, by declining this request.
- The estate of Mrs B is also unhappy that local agents used by Red Sands didn't visit the treating hospital in person. That isn't uncommon and I don't think it was unreasonable here. The local agents usually act as a liaison between the medical assistance team and the hospital, and this can involve telephone and email communication. I don't think it would be reasonable for me to hold Red Sands responsible for delays in the hospital providing medical reports or updates to it and its agents. And, even though Mrs B's family was able to obtain the information from the hospital, I'm persuaded Red Sands made reasonable attempts to obtain the necessary information.

Proportionately settling the claim

I'm satisfied The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') is relevant to this case. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract.

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, CIDRA says it's for the insurer (in this case, Red Sands) to show it wouldn't have entered into the insurance contract at all, or would have done so only on different terms.

CIDRA sets out a number of considerations for deciding whether a 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.

I've listened to the available calls when Mrs B applied for the policy. Unfortunately, they're incomplete. One of the recordings has captured most of the questions and answers which are set out in the medical declaration form sent to Mrs B after the policy was taken out.

However, the recording starts part way through those questions so I don't know what question Mrs B was asked which initially prompted her to disclose the five conditions which are set out in the medical declaration.

However, the medical declaration form does start with more general questions and it's recorded that Mrs B answered 'yes' to the following two questions:

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?

On the balance of probabilities, I think it's more likely than not that Mrs B was asked these questions are the start of the call which prompted her to say 'yes' and then to declare (and answer follow up questions) about the conditions she did declare.

And after declaring the conditions she did declare, the call recording does show that Mrs B was asked to confirm the next medical condition to declare, and she confirmed "that's it", and there was nothing else.

Red Sands has concluded that Mrs B didn't disclose multiple other conditions which she should've done.

Having considered Mrs B's medical history, and based on the likely questions asked when applying for the policy, I'm currently satisfied that Red Sands' has fairly concluded that Ms B didn't accurately disclose some conditions including: anxiety, urinary tract infection and hypertension. I'll refer to these as "the other medical conditions".

Red Sands have also included constipation and shingles / scabies when retrospectively

screening Mrs B's medical history. I'll refer to these as "the post-application conditions".

Based on the medical evidence available to me, I'm not persuaded that the post-application conditions ought reasonably to have been disclosed when applying for the policy. It looks like Mrs B sought medical advice about these after applying for the policy. I'll make further provisional findings about these conditions later in my provisional decision.

However, as Mrs B didn't declare the other medical conditions when applying for the policy, I'm satisfied Red Sands has fairly concluded that she made a misrepresentation.

Had Mrs B declared the other conditions, Red Sands says the policy would've still been offered but it would've cost more.

Red Sands has provided the additional questions Mrs B would've been asked relating to the other medical conditions she didn't disclose and the answers which would've likely been given based on the medical evidence.

Looking at the underwriting information provided by Red Sands – along with the relevant medical history from the time – I'm satisfied that if Mrs B had declared the other medical conditions the policy would've still cost more (but not as much as Red Sands says the policy would've cost if the post-application conditions are also included). So, not declaring the other medical conditions mattered and I'm persuaded Mrs B's misrepresentation is what CIDRA refers to as 'qualifying' misrepresentation.

Red Sands has concluded that the misrepresentation was careless (as opposed to deliberately or recklessly made). I find Red Sands has acted fairly and reasonably by reaching that conclusion.

I've looked at the actions Red Sands can take in line with CIDRA if a qualifying misrepresentation is careless. I'm satisfied it can do what it would've done if the other medical conditions had been disclosed.

As the policy would've cost more, I'm satisfied that Red Sands has acted fairly and reasonably by settling the claim in proportion to the premium paid for the policy (compared with premium which would've been charged if all medical conditions had been declared by Mrs B).

Based on the information provided by Red Sands, I'm satisfied Mrs B paid 91.15% of the premium she would've been charged rather than the 90.51% Red Sands concluded when taking into account the post-application conditions.

Change in health (after applying for the policy)

The policy says that if Mrs B experiences a change in health (as defined by the policy terms) after taking out the policy but before starting the trip, she should notify Red Sands of this.

For the change in health to be covered, Red Sands would need to accept it in writing.

If she had declared the post-application conditions before taking her trip, it's likely they would've been covered but Mrs B would've been charged more for the policy. However, given their nature, I'm not currently satisfied that a reasonable person would consider post-application conditions amount to a significant change of health which reasonably ought to have prompted Mrs B to declare these to Red Sands in the circumstances of this case.

So, I don't think it's fair and reasonable for Red Sands to include the post-application conditions when re-screening Mrs B's medical conditions.

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I invited both parties to provide any further information in response to my provisional decision.

The estate of Mrs B replied. In summary they said:

- They want to obtain an independent view from the Financial Ombudsman Service on whether Red Sands failed to meet the Consumer Duty. They say the Consumer Duty is in its infancy and industry is still learning what it means and how to apply it in the spirit the Financial Conduct Authority (the regulator) intended.
- Any final decision should address this specific point. And if not upheld, I should explain why.

Red Sands replied saying it agreed with my provisional findings and it would look to settle the difference between the claim amount paid and what I'd provisionally decided it should've paid in my provisional 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.

That includes the points raised by the estate of Mrs B in response to my provisional decision and all previous submissions made by them.

Having done so, I find no compelling reason to depart from my provisional findings. That's because I'd considered the points raised previously when provisionally deciding this complaint.

I know the estate of Mrs B has requested that I make specific findings on whether Red Sands has complied with the Consumer Duty. However, my role is to decide what's fair and reasonable in the individual circumstances of this complaint.

As I explained in my provisional decision, to do that, I've taken the Consumer Duty into account as it's a relevant consideration (along with relevant law and other relevant industry rules and regulations, good industry practice and regulatory guidance).

My provisional decision (an extract of which is set out above) forms part of this final decision. And I'm satisfied that I've set out in sufficient detail why I think Red Sands acted fairly and reasonably when providing medical assistance when Mrs B was hospitalised abroad and when considering possible repatriation.

Putting things right

I direct Red Sands to pay:

- A. the difference between the claim amount it paid and what Red Sands should've paid (91.15% of the claim).

B. simple interest at a rate of 8% per year* from the date the claim was paid to the date it pays the amount in A. above.

* If Red Sands considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell the estate of Mrs B how much it's taken off. It should also give them a certificate showing this if they ask for one. That way the estate of Mrs B can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold this complaint to the extent set out above and direct Red Sands Insurance Company (Europe) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 5 June 2025.

David Curtis-Johnson
Ombudsman