DRN-5554812

The complaint

Mr and Mrs P complain that Inter Partner Assistance SA (IPA) has turned down a cancellation claim they made on a travel insurance policy.

As Mr P brought the complaint to us, for ease, I've referred mainly to him.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the main events.

In May 2023, Mr P renewed an annual travel insurance policy through a broker I'll call R. The policy was underwritten by IPA. Mr P didn't tell R or IPA about any pre-existing medical conditions he already had when he took out the policy. He booked a holiday abroad in August 2023 and was due to travel abroad in November 2023.

However, in October 2023, Mr P had to undergo emergency knee surgery and he was advised to cancel his trip. So he made a cancellation claim on the policy.

The contract terms specifically excluded claims arising from pre-existing medical conditions a policyholder had had at the time of sale, unless they'd been declared to and accepted by IPA. So IPA asked for copies of Mr P's medical records to allow it to fully assess the claim. It noted that Mr P had undergone knee surgery in November 2022. And it considered that October 2023 surgery was linked to Mr P's 2022 surgery. Therefore, it concluded Mr P's cancellation claim was due to a pre-existing medical condition he'd had when he bought the policy, which he hadn't declared to it. And so IPA concluded that the claim wasn't covered by the terms of Mr P's policy and it turned it down.

Unfortunately, shortly after IPA told Mr P his claim would be declined, it sent him a letter which indicated the claim had been accepted and would be paid. But a few days later, IPA reiterated its decision to turn down the cancellation claim because it maintained that it was caused by a pre-existing medical condition Mr P hadn't told it about. It paid Mr P £50 compensation to reflect the upset he'd been caused by its error in indicating that the claim would be paid.

Mr P was very unhappy with IPA's decision and he asked us to look into his complaint.

Our investigator didn't think Mr P's complaint should be upheld. He felt the policy terms clearly excluded claims which arose from pre-existing medical conditions a policyholder hadn't declared to IPA. And he thought it was reasonable for IPA to rely on the available evidence to conclude that Mr P's claim was linked to a pre-existing medical condition which he hadn't told IPA about. So he thought it had been reasonable for IPA to turn down Mr P's claim. And he also thought the £50 compensation IPA had already paid Mr P was fair in the circumstances.

Mr P disagreed and so the complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Mr P, I don't think it was unfair for IPA to turn down his claim and I'll explain why.

First, I was sorry to hear about the circumstances that led to Mr P needing to make a claim and it's clear he went through urgent surgery. I understand this must have been a very worrying time for both Mr and Mrs P. I do hope Mr P's made a good recovery from the operation.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the policy terms and the available medical evidence, to decide whether I think IPA handled this claim fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr P and IPA. The policy provides cover if a policyholder needs to cancel their trip due to illness or injury. But that doesn't mean IPA will pay all cancellation claims. Page eight of the contract says:

'Remember, no policy covers everything. We do not cover certain things such as, but not limited to:

• Pre-existing medical conditions as described in the Pre-existing medical conditions section (unless you have contacted us and we have accepted in writing).

- *If you fail to declare any pre-existing medical conditions we may refuse to deal with your claim or reduce the amount of any relevant claims, even if a claim is not related to an undisclosed pre-existing medical condition(s).'*

IPA has defined what it means by a pre-existing medical condition as:

'Pre-existing medical condition(s)

Any of the following medical conditions from which you have suffered from or received medical advice, treatment (including surgery, tests, investigations by your doctor/consultant /specialist) or prescribed drugs or medication in the last five years:

• Any cancer condition (including leukaemia, non-Hodgkin's lymphoma and any type of skin cancer),
• Any heart-related or blood circulatory condition (including high blood pressure and high cholesterol),
• Any diabetic condition,
• Any neurological condition (including stroke, brain haemorrhage, multiple sclerosis, epilepsy and dementia),
• Any breathing condition (including asthma, bronchitis and chronic obstructive pulmonary disease),
• Any renal, kidney or liver condition,
• Any psychiatric or psychological condition (including anxiety, stress and depression),
• Any chronic condition that can be controlled but not cured (including back pain, Crohn's, diverticular and
coeliac disease and ulcerative colitis)

And/or

• Any other medical condition for which you have been prescribed medication or which you have received or are waiting to receive treatment including surgery, tests, or investigations) within the last 12 months. (My emphasis added).

Please also refer to the Waived Conditions Section.'

A 'medical condition' is defined as: *'Any disease, illness or injury.'*

Page 20 of the contract explains IPA's cover for pre-existing medical conditions further. It says:

'You must comply with the following conditions to have the full protection of your policy.

You must tell us of all your pre-existing medical condition(s). If you fail to declare any pre-existing medical condition(s) we may refuse to deal with your claim or reduce the amount of any relevant claims, even if a claim is not related to an undisclosed pre-existing medical condition. Cover for any medical condition may be subject to an additional premium. This will be confirmed when you contact us. Please also refer to the Waived Conditions Section.

It is a condition of this policy that you will not be covered under the following sections:

• Section 1 - Cancellation or Cutting Short your Trip…

For:

Any pre-existing medical condition(s) that you have unless you have contacted us on…and we have agreed in writing to cover you. You have 14 days or up to departure, whichever is soonest, to declare conditions.'

Page 30 of the policy sets out the 'General Exclusions' which apply to the policy. This includes the following:

'Your policy does not cover you for any claim directly or indirectly resulting from…

Pre-existing medical condition(s) as described in Pre-existing medical condition(s) section.'

And the cancellation section of the policy states that pre-existing medical conditions aren't covered by the contract.

I note too that the Insurance Product Information Document Mr P was sent includes a section called 'What are my obligations?' This states that policyholders must tell IPA about the pre-existing medical conditions of anyone to be insured on the policy.

Mr P has also sent us a copy of an email he received from R in May 2023, which says:

'You will not be covered under this policy for any claims arising directly or indirectly from a pre-existing medical condition unless it is on the waived condition list (page 2 of the policy document) or has been declared to us and accepted by us in writing for cover. The medical screening helpline nr (number*) is shown on page 2 as well, which you'll need to ring to discuss any medical conditions not listed under the waived conditions.'*

I think the policy documentation makes it very clear that IPA won't cover claims arising from a policyholder's pre-existing medical conditions, unless those conditions have been declared

to and accepted by IPA. I'm also satisfied that IPA has clearly explained what it considers a pre-existing medical condition to be.

In this case, Mr P bought the policy through R. IPA wasn't involved in the sales process. It was R's responsibility - at the point of sale - to draw Mr P's attention to the requirement to declare medical conditions to IPA. I can see from Mr P's medical certificate that no conditions were declared to and accepted by IPA. Because Mr P didn't contact IPA when the policy was taken out, it didn't have the opportunity to ask him any medical questions or go through a medical screening.

IPA considers that Mr P had a pre-existing medical condition he didn't tell it about. I can see from Mr P's medical records that in November 2022, he underwent a type of knee surgery. This was around six months before he took out the policy and appears to have been undertaken to treat osteoarthritis. As I've set out above, the policy definition of a pre-existing medical conditions specifically refers to treatment and surgery a policyholder's undergone in the previous 12 months. So I think it was fair for IPA to conclude that Mr P did have a pre-existing medical condition in line with the policy terms.

Mr P has referred to the fact that 'knee replacements' are on the waived list of conditions IPA doesn't need to be told about. But Mr P didn't undergo knee replacement surgery in November 2022 – it was a different type of knee surgery. So I don't think IPA acted unfairly when it concluded that Mr P's previous surgery didn't fall within the list of its waived conditions.

I next need to decide whether I think it was fair for IPA to link Mr P's cancellation claim with his pre-existing medical condition. Mr P says that the October 2023 surgery was needed to treat an infection and wasn't down to his previous surgery. So I've looked very carefully at the medical evidence from the specialist who treated Mr P. I've seen a copy of a letter the specialist sent Mr P's GP following a clinic appointment on 1 November 2023. I've summarised below what I consider to be the key points in the letter:

*'**Diagnosis**: rapidly progressing varus osteoarthritis of the right knee*
***Operation:** November 2022 Right knee upper tibial osteotomy*
***Complication**: Right leg cellulitis with pointing abscess in osteotomy wound scar*
***Operation:** October 2023 Removal of metalwork with debridement and primary closure.'*

I'm not a medical expert and it isn't my role to interpret medical evidence to reach a clinical finding. Instead, my role is to weigh-up the available evidence and decide whether I think it was fair for IPA to conclude that Mr P's claim was linked to a pre-existing medical condition.

In this case, I don't think IPA acted unfairly when it made such a link. That's because it seems the treating specialist considered the cellulitis and abscess in Mr P's osteotomy wound scar to be a complication of his previous surgery. And it seems the operation Mr P needed was to ensure that the infection was debrided, together with removal of metalwork in his knee. So I think the specialist clearly linked Mr P's past surgery and the operation he needed in October 2023. It was as a result of the 2023 surgery that the trip had to be cancelled on medical advice.

On balance then, I don't think IPA acted unfairly or unreasonably when it concluded that Mr P's claim was caused by a pre-existing medical condition he hadn't declared to it and which it hadn't agreed to cover. And so I don't think it was unfair for IPA to conclude that Mr P's claim was specifically excluded by the contract terms.

It's clear though that IPA did make an error when, following its initial decline of the claim, it wrote to Mr P to tell him his claim would now be paid. I don't doubt this raised Mr P's

expectations, especially given the value of the cancelled holiday. And I understand how disappointing and upsetting it must have been for Mr P when he was told, a few days later, that in fact, the claim wasn't being paid.

However, I don't think it would be fair or reasonable to require IPA to pay this claim based on a mistake it made when the claim isn't covered by the policy terms. And I'm mindful it wrote to Mr P fairly promptly afterwards to correct its mistake. So in my view, the £50 compensation IPA's already paid Mr P to reflect the trouble and upset its error caused him is fair, reasonable and proportionate in all the circumstances.

Overall, despite my natural sympathy with Mr and Mrs P's position, I don't find that IPA acted unfairly when it turned down their claim. So I'm not telling it to do anything more.

My final decision

For the reasons I've 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 Mrs P and Mr P to accept or reject my decision before 10 July 2025.

Lisa Barham
Ombudsman