

The complaint

Mr T complains because CIGNA Life Insurance Company of Europe SA-NV ('CIGNA') retrospectively added an exclusion to his private medical insurance policy and declined his claim.

What happened

Mr T holds a private medical insurance policy, underwritten by CIGNA. The policy was taken out through an independent broker in 2022.

In 2024, Mr T tried to make a claim under the policy, but CIGNA said it wasn't covered because Mr T had experienced symptoms of the condition he was claiming for before the policy started. CIGNA added a retrospective exclusion to Mr T's policy for claims relating to the upper back and neck.

Mr T provided evidence clarifying that he'd only had symptoms of the condition for five months, and not for five years as his doctor had originally incorrectly stated. However, CIGNA said its position remained unchanged because Mr T hadn't told it about surgery he'd had in 2010 when taking out the policy.

Unhappy, Mr T brought his complaint to the attention of our service.

One of our investigators looked into what had happened. She issued a number of opinions but ultimately said she didn't think CIGNA had acted fairly and reasonably in the circumstances. So, our investigator recommended that CIGNA should remove the exclusion from Mr T's policy, reimburse him for the medical treatment he'd paid for with interest and pay £250 compensation.

CIGNA didn't agree with our investigator's opinion so Mr T's complaint has now been referred to me to make a decision, as the final stage in our process.

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 understand Mr T says he wasn't asked about his previous medical history when taking out this policy. However, based on the evidence I've seen, I'm satisfied that the application form for the policy submitted to CIGNA by Mr T's broker set out medical questions and recorded the answers given. If Mr T says he wasn't ever directly asked these questions, then this is a matter which he'd need to raise with his broker.

As I'm satisfied Mr T was asked questions about his previous medical history when he brought this policy, this means the principles set out in the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') are relevant and I think it's fair and reasonable to apply these principles to the circumstances of Mr T's complaint.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when

taking out an insurance policy. The standard of care required is that of a reasonable consumer. If a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a qualifying one. For the misrepresentation to be a qualifying one, the insurer must show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation. The remedies available to an insurer under CIDRA depend on the classification of the misrepresentation and apply regardless of whether the medical condition being claimed for is linked to the misrepresented medical condition.

CIDRA sets out a number of considerations for deciding whether a consumer failed to take reasonable care. One of these considerations is how clear and specific the questions asked by the insurer were.

CIGNA says Mr T should have told it about back surgery he'd had in 2010 in response to the following questions:

'Q1 Has any applicant had symptoms of, been diagnosed with or had treatment for Cancer or Tumour: Heart Condition: Stroke, Brain or Neurological Disorders: Diabetes: Hepatitis or any Musculo-skeletal condition?

...

Q5 Does anyone have any illness, condition or symptom not already mentioned. Please include details of any known or suspected issues whether or not medical advice has been sought or a diagnosis reached.'

I don't think question one is clear or specific. This is because of both the manner in which the question is set out, and the use of the term 'Musculo-skeletal condition'. The question lists numerous unrelated medical conditions in the same sentence which I think is confusing and isn't easily understandable to a reasonable consumer. Furthermore, the question doesn't provide any examples of what sort of issues the term 'Musculo-skeletal' might cover and I don't think that term makes it clear to a reasonable consumer what sort of medical conditions CIGNA wants to know about.

I note the retrospective exclusion which CIGNA has applied to Mr T's policy is in clearer terms and refers to the upper back and neck. I accept it's not possible for CIGNA to list each and every Musculo-skeletal condition but I see no reason why it couldn't list some common examples of Musculo-skeletal conditions (which CIGNA acknowledges that neck and back conditions are) to make it clear to the reasonable consumer what is meant by that term. I understand CIGNA says the question has always been worded in this way but neither this, nor the fact that regulators haven't raised concerns about the question, prevent me from making a finding that I don't think the question is clear or specific.

Turning now to question five, while I'm satisfied this question is clear and specific, I don't think the question as it's worded would prompt a reasonable consumer to declare surgery which they've undergone some 12 years previously for a medical condition which they now consider resolved.

So, for these reasons and based on the circumstances of this complaint, I don't think Mr T failed to take reasonable care when answering the questions CIGNA asked through his broker.

In any event, even if I thought Mr T had made a misrepresentation to CIGNA in this case, I'm not satisfied CIGNA has demonstrated that any misrepresentation was a qualifying one (i.e. that it would have applied an exclusion to Mr T's policy if it had known about the 2010

surgery). In order for an insurer to demonstrate that they would have offered cover on different terms under CIDRA, and in order for CIGNA to demonstrate that Mr T was treated in the same way as any other customer in the same situation, I'd expect to see an extract from an underwriting guide or a detailed statement from an underwriter confirming that an exclusion would have been added to the policy. CIGNA hasn't provided either of these things and the information which it has provided from individuals whose job titles are unclear appears to me to be heavily based on the incorrect statement that Mr T had been experiencing symptoms for five years before the claim.

Overall therefore, I don't think it's fair or reasonable for CIGNA to seek to rely on the remedies set out under CIDRA to decline Mr T's claim and add a retrospective exclusion to his policy. For the avoidance of doubt, CIGNA cannot contract out of CIDRA so it wouldn't be fair or reasonable for CIGNA to turn down Mr T's claim based on any policy exclusion relating to pre-existing medical conditions in these circumstances either.

This means I think CIGNA should remove the exclusion and accept Mr T's claim subject to the remaining terms and conditions of the policy. Mr T will need to provide CIGNA with any reasonable evidence it requires to do this. If there is any subsequent dispute about the amount due to Mr T, then this would need to be the subject of a new complaint.

I think CIGNA should also pay Mr T compensation for the distress and inconvenience he experienced as a result of its unfair decision to decline the claim. Mr T had to fund his own treatment during a time of ill health and I think it's clear that CIGNA's communications with Mr T about his claim caused him frustration. Overall, I'm satisfied that a payment of £250 compensation would be fair and reasonable in the circumstances.

As a final point, I understand Mr T is also unhappy with issues surrounding the renewal of his policy. Mr T will need to raise a formal complaint with CIGNA before our service would have the power to consider this.

Putting things right

CIGNA Life Insurance Company of Europe SA-NV must put things right and do the following:

- remove the exclusion relation to upper back/neck conditions from Mr T's policy;
- reimburse Mr T for medical treatment he paid for which would otherwise have been covered under the policy, together with interest at 8% simple per annum from the date of payment of the bills under the date the settlement is paid;
- pay Mr T £250 compensation for the distress and inconvenience he experienced.

CIGNA Life Insurance Company of Europe SA-NV must pay the compensation within 28 days of the date on which we tell it Mr T accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I'm upholding Mr T's complaint about CIGNA Life Insurance Company of Europe SA-NV and I direct it 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 T to accept or reject my decision before 1 August 2025.

Leah Nagle

Ombudsman