DRN-5734584

The complaint

Mrs and Mr W complain that Inter Partner Assistance SA has turned down a cancellation claim Mrs W made on a travel insurance policy.

As Mrs W brought the complaint to us, for ease, I've referred mainly to her.

What happened

On 1 February 2024, Mrs W took out a single trip travel insurance policy online which was underwritten by IPA. The policy provided cover for a trip she planned to take a couple of weeks later. During the policy sale, Mrs W declared that she had high blood pressure and high cholesterol. IPA agreed to cover these conditions.

However, unfortunately, Mrs W was diagnosed with shingles and wasn't able to travel as planned. So she and Mr W made a cancellation claim on the policy.

IPA paid Mr W's share of the claim. However, it turned down Mrs W's claim. It considered a copy of her medical records and it considered she'd failed to tell it about some of her medical conditions. It said it needed a fuller copy of Mrs W's medical information so it could carry out a retrospective medical screening. But it said the claim was specifically excluded by the policy terms and that Mrs W had made a qualifying misrepresentation under relevant law.

Mrs W was unhappy with IPA's decision and she asked us to look into her complaint.

After a period of some delay, IPA provided us with some evidence, such as the policy terms, its claims notes and a copy of the questions Mrs W asked at the time of sale. It maintained that Mrs W had made a qualifying misrepresentation under the law and that it needed more information before it could carry out a retrospective medical screening.

But our investigator thought Mrs W's complaint should be upheld. In brief, he didn't think it was reasonable for IPA to require Mrs W to provide it with any more medical evidence. And he didn't think it had shown that any misrepresentation Mrs W had made was qualifying.

IPA disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 8 July 2025, which explained the reasons why I didn't think IPA had treated Mrs W unfairly. I said:

'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, together with other relevant considerations, such as regulatory principles and guidance, the

relevant law and the policy terms, to decide whether I think IPA treated Mrs W fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). 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, 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.

When Mrs W applied for the policy online, she was asked questions about herself and her health. IPA used this information to decide whether or not to insure Mrs W and if so, on what terms. IPA says that Mrs W didn't correctly answer the questions she was asked at application. This means the principles set out in CIDRA are relevant. So I think it's fair and reasonable to apply these principles to the circumstances of Mrs W's claim.

Page 17 of the policy terms is titled 'Important conditions relating to health.' It includes the following term:

'You must tell us of all your pre-existing medical conditions. Failure to do so will be treated as a deliberate or reckless misrepresentation by you, even if a claim is not related to an undisclosed pre-existing medical condition. If you do not comply with these conditions we may cancel the policy with no refund of premium, or refuse to deal with your claim or reduce the amount of any claim payment.'

In my view, this particular term would allow IPA to go further than the law, set out by CIDRA, legally entitles it to do. That's because it states that IPA will consider any failure to declare a medical condition to be deliberate or reckless. But section five of CIDRA clearly sets out how insurers should classify a qualifying misrepresentation and the presumptions it should apply. It says:

'A qualifying misrepresentation is deliberate or reckless if the consumer—

(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

(3) A qualifying misrepresentation is careless if it is not deliberate or reckless.

(4) It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.'

As such, I don't think it's fair or reasonable for IPA to rely on this term when assessing Mrs W's claim because I don't think it's in line with CIDRA, or indeed, in line with the long-established approach of this service when considering misrepresentation. There's no indication that under the terms of this policy, IPA will consider whether a misrepresentation was careless or, in some cases, that a consumer simply made an innocent mistake.

IPA thinks Mrs W failed to take reasonable care not to make a misrepresentation when she applied for and took out the policy. So I've carefully considered whether I think this was a fair conclusion for IPA to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider whether the questions they were asked during the sales process were clear. IPA has now

provided us with a copy the questions Mrs W was asked during the online sale. These include:

'Do any of these travellers have a pre-existing medical condition?

We need to know about any condition, even a minor one, that you've seen a doctor about in the past 2 years.

We need to know about any serious illness you've ever had. Examples include strokes, high blood pressure, cancer, diabetes and anxiety.'

Mrs W was asked to choose yes or no.

In my view, this question is clear enough to prompt a consumer to realise what information IPA wanted to know. And it seems Mrs W did understand the question. I say that because it's clear she did disclose that she had high blood pressure and high cholesterol to IPA.

IPA obtained a summary of Mrs W's medical notes. It believes the following conditions are relevant and should have been declared:

- *Bilateral cataracts*
- *Malignant neoplasm of breast*
- *High risk of heart disease*
- *High risk of diabetes mellitus.*

It also noted that Mrs W was prescribed a statin and a blood pressure medication.

It isn't clear whether Mrs W had been given a formal diagnosis of heart disease or of diabetes, which she'd need to disclose to IPA. But I accept that Mrs W didn't tell IPA about the neoplasm she'd been diagnosed with in April 2023, or the cataracts she'd been diagnosed with in March 2022. So, I think it was reasonable for IPA to conclude that Mrs W likely did make a misrepresentation when she applied for the policy – particularly because cancer is listed as a serious illness IPA wants to know about.

CIDRA says that a misrepresentation must be a qualifying one. As I've set out above, a misrepresentation would be classed as qualifying if an insurer can show that it would have offered cover on different terms, or not at all, if it all known all of the facts at the outset.

The investigator concluded that IPA hadn't shown Mrs W had made a qualifying misrepresentation because IPA hadn't provided underwriting evidence to show that it would have acted differently had it known about all of Mrs W's medical conditions.

However, I don't think it was unfair for IPA to conclude that it doesn't currently have enough medical evidence to carry out a retrospective screening and assess whether it would've acted differently had Mrs W disclosed all her medical conditions. That's because, amongst other things, it doesn't know what Mrs W's treatment plans were or are; what medications she may take for those conditions; or information about any other referrals/investigations she's had or waiting for, etc. I think it's reasonably entitled to require more information about

Mrs W's medical conditions before it can carry out a retrospective assessment and decide whether it would have offered to cover Mrs W at all, and if so, on what terms.

IPA's final response letter of November 2024 explained to Mrs W that it needed her full medical history to allow it to reassess her claim. It asked her to provide a copy of her full medical history at her earliest convenience. I think this was a fair and reasonable request for

IPA to make in the circumstances. However, to date, it doesn't appear that Mrs W has provided IPA with a copy of her full medical history from her GP. This means that IPA doesn't have the medical evidence it needs to carry out a retrospective medical screening and to accordingly review the claim.

Given Mrs W hasn't sent IPA the information it asked for several months ago, I don't think I could fairly or reasonably find that it's in a position to show whether Mrs W made a qualifying misrepresentation. Until it's had a chance to review Mrs W's full medical history, I don't think it can reasonably assess whether it would have acted differently at the outset if it had all the information it had asked for.

It's open to Mrs W to obtain a copy of her full medical history from her GP and to send this directly on to IPA so it can carry out a retrospective medical screening and accordingly review whether or not Mrs W did make a qualifying misrepresentation under CIDRA. If she's unhappy with any ultimate claims decision IPA may make, she can make a new complaint to IPA about that issue.

But based on the evidence IPA had at the time it sent Mrs W its final response to her complaint, I don't think I could fairly find that it's unreasonably asked her for more medical evidence so it can carry out a retrospective screening. And that means I don't think IPA has treated Mrs W unfairly. So I'm not planning to tell it to take any action.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

IPA didn't respond by the deadline I gave.

Mrs W didn't accept my provisional decision. In brief, she said she'd asked IPA for a copy of the questions and answers she gave during the application process and hadn't been provided with this. She told us that she'd paid her GP for her medical records in March 2024 and that she'd sent this on to IPA. And she felt that IPA had the wrong medical records because they referred to conditions she didn't have.

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 Mrs W, my final decision is the same as my provisional decision and for the same reasons. I'll now go on to address Mrs W's further points.

I can see from IPA's claims notes that on 16 September 2024, Mrs W asked for a copy of the application questions and the answers she gave when she took out the policy. It seems IPA directed Mrs W to the policy seller so she could ask it for this information. IPA didn't sell the policy to Mrs W – she originally went through a price comparison website and the policy was arranged by a broker I'll call S. So, in these particular circumstances, I think it was reasonable for IPA to suggest that Mrs W should ask the policy seller for this information. It's open to Mrs W to contact S directly to ask for a copy of the questions she was asked and the answers she gave during the application process should she wish to do so.

Mrs W sent IPA a copy of her completed claim form on 23 April 2024. I've seen a copy of the cover letter she sent, along with copies of the documents she enclosed. The documents included a medical certificate which had been filled out by Mrs W's GP. The form asked the GP for information about Mrs W's associated medical conditions and the GP answered, '*see*

medical summary'. A copy of the medical summary was also included in the documents Mrs W sent IPA at this point, along with a receipt for the administration fee the GP had charged her.

I can see that the GP's summary clearly sets out Mrs W's full name and both the date of birth and address she's provided to us. So I don't think it was unreasonable for IPA to conclude that this medical document related to Mrs W, that it set out her health conditions and to therefore rely on it when it assessed her claim.

As I explained in my provisional decision, the medical information Mrs W sent IPA stated that in addition to the high cholesterol and high blood pressure she'd already declared, Mrs W had bilateral cataracts and malignant neoplasm of the breast. I still think Mrs W ought to have been prompted by the questions she was asked at application to tell IPA about these conditions. So I still think it was fair for IPA to conclude that Mrs W made a misrepresentation when she took out the policy.

And I still don't think it was unfair for IPA to conclude that it needs more medical evidence before it can fully assess the claim and decide whether or not Mrs W made a qualifying misrepresentation under CIDRA. That's because it isn't clear whether the medical summary which Mrs W sent to IPA is a copy of her full medical history – or her medical history for the previous five-year period. I say that because the notes do appear limited and there isn't information about treatments Mrs W may have received; referrals which were and/or may have been made or detailed information about any medications she was prescribed. Nor is there any evidence from any hospitals or other medical professionals who may have been involved in Mrs W's care. So I don't find IPA has acted unreasonably by concluding that the medical information Mrs W sent it in April 2024 isn't enough to allow it to undertake a retrospective medical screening and accordingly review the claim.

IPA asked Mrs W to provide it with a copy of her full medical history in November 2024, when it issued its final response to her complaint. To date, it doesn't appear it's received that information. In the absence of that evidence, I don't think IPA's in a position to further review this claim.

It remains open to Mrs W to obtain a copy of her full medical history from her GP and to send this directly on to IPA so it can carry out a retrospective medical screening and accordingly review whether or not Mrs W did make a qualifying misrepresentation under CIDRA. If she's unhappy with any ultimate claims decision IPA may make, she can make a new complaint to IPA about that issue.

But based on the evidence IPA had at the time it sent Mrs W its final response to her complaint, I still don't think I could fairly find that it's unreasonably asked her for more medical evidence so it can carry out a retrospective screening. And that means I still don't think IPA has treated Mrs W unfairly. So while I sympathise with Mrs W's position, I'm not telling IPA to do anything more.

My final decision

For the reasons I've given above and in my provisional decision, 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 W and Mr W to accept or reject my decision before 8 September 2025.

Lisa Barham

Ombudsman