

The complaint

Mr and Mrs N complain because Red Sands Insurance Company (Europe) Limited hasn't paid a claim under their travel insurance policy.

All references to Red Sands include the agents appointed to handle claims and complaints on its behalf.

What happened

Mr and Mrs N held a family travel insurance policy, provided by Red Sands.

Unfortunately, Mrs N fell ill so she and her family were unable to travel on a planned holiday. Mr and Mrs N made a claim with Red Sands, who said the claim wasn't covered because Mrs N hadn't told it about some pre-existing medical conditions when the policy was purchased.

Unhappy, Mr and Mrs N brought their complaint to the attention of our Service.

One of our Investigators looked into what had happened and said she thought Red Sands should reassess Mr and Mrs N's claim. Red Sands ultimately didn't agree with our Investigator's recommendations, so the 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'd like to say at the outset that I'm sorry to hear about the circumstances which led to this complaint, and I hope Mrs N is now in better health.

Industry rules set out by the regulator say an insurer must handle claims promptly and fairly and shouldn't unreasonably reject a claim. I've taken these rules, as well as other relevant considerations such as Consumer Duty principles, into account when making this final decision.

Red Sands relied on a policy exclusion relating to pre-existing medical conditions when declining Mr and Mrs N's claim. But, as Mr and Mrs N were asked to answer questions about their health when buying this policy, the relevant law is The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). I'm satisfied that it's fair and reasonable to apply the principles set out under CIDRA to the circumstances of this complaint.

Our Service always makes decisions based on the specific circumstances of each individual case. However, we have a long-standing and published general approach to certain insurance cases involving misrepresentation. This approach is set out on our website and says an insurer must use CIDRA. There are numerous published decisions available on our website relating to the application of CIDRA in travel insurance.

The case study which Red Sands has referred to isn't based on a real case and doesn't set a precedent. The third-party organisation text which Red Sands has quoted from isn't persuasive evidence that it's not fair or reasonable to apply CIDRA principles in this case.

CIDRA has been in force since 2013. CIDRA specifically states that an insurer cannot contract out of the legislation via the use of a policy term which would put a consumer in a worse position than they would be in under the Act. This is what Red Sands is attempting to do here.

In addition, it's good (and standard) industry practice for travel insurers to apply CIDRA to cases involving misrepresentation, rather than applying any standard general policy exclusions relating to pre-existing medical conditions. Such general policy exclusions may be relevant in different circumstances to this, where a consumer hasn't answered medical screening questions at sale or renewal.

So, I don't agree with Red Sands' submissions that applying CIDRA principles in this case has wide ramifications for the travel insurance industry (which, in any event, isn't a determining factor in what I consider to be fair and reasonable). The application of CIDRA by our Service to a case like Mr and Mrs N's is not a new or novel approach.

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. CIDRA sets out a number of considerations for deciding whether a consumer failed to take reasonable care – including how clear and specific the insurer's questions were. If a consumer fails to do this, the insurer has certain remedies available to it provided the misrepresentation is - what CIDRA describes as – a 'qualifying misrepresentation'.

For a 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 remedy available to the insurer for a qualifying misrepresentation under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless. These remedies apply regardless of whether or not the condition claimed for is linked to the condition which has been misrepresented.

Red Sands thinks Mr and Mrs N failed to take reasonable care not to make a misrepresentation because they answered 'no' to the following question which they were asked when they bought the policy.

'Have YOU or anyone in YOUR party:

...

4. ever had any stress, anxiety, depression, or psychiatric condition such as eating disorders, drug or alcohol abuse or mental illness for which you have been treated or diagnosed.'

I'm satisfied this question is clear and specific and there was a duty on Mr and Mrs N to take reasonable care to accurately answer the questions Red Sands asked.

I've reviewed the information which I've been provided with about Mrs N's medical history. I accept there were medical issues which Mrs N ought reasonably to have told Red Sands about in response to the question which I've set out above. And this doesn't seem to be in dispute. So, I think it's clear that Mr and Mrs N didn't take reasonable care not to make a

misrepresentation in this case.

However, Red Sands only has a remedy under CIDRA (whether for deliberate/reckless or careless misrepresentation) if it can demonstrate that it would have acted differently were it not for the misrepresentation. This means Red Sands must demonstrate that it wouldn't have offered Mr and Mrs N cover at all or that it would only have offered cover on different terms.

I appreciate Red Sands doesn't agree with this approach, but I must reach an independent and impartial outcome which is fair and reasonable to both parties. CIDRA is designed to protect consumers as well as businesses and the legislation doesn't provide an insurer with a remedy for all misrepresentations, only for qualifying ones. Red Sands, based on the evidence it has provided to our Service, would still have offered cover to Mr and Mrs N on the same terms even without Mrs N's misrepresentation.

This means there is no qualifying misrepresentation so Red Sands can't reasonably rely on any of the CIDRA remedies to turn down Mr and Mrs N's claim. And I've already explained why I don't think it's fair or reasonable for Red Sands to rely on the policy exclusion relating to pre-existing medical conditions to decline Mr and Mrs N's claim either.

So, I'm satisfied that it would be fair and reasonable in the circumstances for Red Sands to now reassess Mr and Mrs N's claim under the cancellation section of their policy without relying on the pre-existing medical condition exclusion. If there is any subsequent dispute about the length of time taken to reassess the claim, or about the amount of any claim settlement, then this would need to be the subject of a new complaint to Red Sands in the first instance before our Service would have the power to consider the matter.

I understand what Mr and Mrs N have said about the subsequent change in Mrs N's diagnosis, but this has no bearing on the outcome of their complaint.

Putting things right

Red Sands Insurance Company (Europe) Limited needs to put things right by reassessing Mr and Mrs N's claim without reference to the policy exclusion relating to pre-existing medical conditions but subject to the remaining terms and conditions of the policy.

My final decision

I'm upholding Mr and Mrs N's complaint and I direct Red Sands Insurance Company (Europe) Limited to put things right in the way I've outlined above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 24 October 2025.

Leah Nagle
Ombudsman