DRN-5958915

The complaint

Mr and Mrs A are unhappy that CIGNA Europe Insurance Company SA-NV have declined a claim they made and cancelled their private medical insurance policy.

What happened

Mr and Mrs A took out a private medical insurance policy. They claimed on the policy as Mrs A was diagnosed with breast cancer.

During the claims process CIGNA said Mr and Mrs A had answered questions about Mrs A's medical history incorrectly. They considered this to be a deliberate or reckless misrepresentation which meant they were entitled to decline the claim and cancel the policy.

Mr and Mrs A made a complaint to the Financial Ombudsman Service and our investigator didn't think it should be upheld. She thought CIGNA had reasonably concluded there had been a misrepresentation and the actions they'd taken were in line with the relevant legislation.

Mr and Mrs A didn't agree with the investigator and asked an ombudsman to review their complaint. They highlighted it was CIGNA to demonstrate that the misrepresentation had made a deliberate or reckless misrepresentation. They said Mrs A had been given a clean bill of health and advised that the sensitivity she was experiencing was a normal indication of hormone levels fluctuating. They said the routine checks that followed were therefore not arranged because of any medical condition or problem. So, the complaint was referred 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.

I'm sorry to read of the circumstances which caused Mrs A to claim. I'm sure it's been a worrying and difficult time for Mr and Mrs A. I have a lot of empathy with their circumstances.

At the outset I acknowledge that I've summarised this complaint in far less detail than Mr and Mrs A have, and in my own words. I won't respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

The rules that govern our 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 individual point to be able to fulfil my statutory remit.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a

misrepresentation when taking out a consumer insurance contract (a policy). 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.

CIGNA says Mr and Mrs A failed to take reasonable care not to make a misrepresentation when they answered questions about Mrs A's medical history.

They answered 'no' to the following questions:

> Are any applicants awaiting any test results, treatment or investigations or expect to have a review or follow up for any current or past medical problem not already mentioned?
>
> 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?

CIGNA says Mr and Mrs A ought to have answered 'yes'. I'm very sorry to disappoint Mr and Mrs A but I agree they ought to have answered 'yes'. I'll explain why.

The policy underwriting information is dated in late December 2022 with a planned policy start date of 1 February 2023. Between 2020 and the time the policy was taken out there is evidence that Mrs A was experiencing sensitivity in her right arm pit. She had blood tests relating to her HRT, an ultrasound and mammograms in that period of time. In September 2022 she experienced hot flushes, low energy and was due for a review and mammogram in three months time. In late November 2022 there is further reference to the HRT and sensitive breasts in a letter from Mrs A's consultant. Whilst she says Mrs A's symptoms have settled a mammogram was arranged and a further review was planned. In view of this history, I think it would have been reasonable to disclose this information in response to the questions asked.

I have thought about Mr and Mrs A's comments in relation to why they didn't disclose the information. I appreciate that the cancer was located in the left breast but there was a relevant and very recent history of ongoing consultations relating to HRT and breast sensitivity. Mrs A had also had a number of mammograms and other tests on a fairly regular basis during recent years. Some of the tests, including the mammogram, were still outstanding at the point of application and further reviews were planned. Ultimately, this led to Mrs A's diagnosis of cancer in the left breast shortly after the policy was incepted.

I fully appreciate Mrs A's position that what she was experiencing wasn't uncommon given her age and that the symptoms she was experiencing were potentially related to hormones and/or menopause. However, I think the recent history indicated an ongoing pattern of symptoms and issues which remained under review. In view of that I don't think I can fairly conclude Mrs A had been given a clean bill of health.

CIGNA has provided evidence that if they'd been aware that Mrs A had ongoing investigations and/or tests they'd have declined the application or postponed it (which

ultimately would have also led to a declined application on diagnosis). This means I'm satisfied Mrs A's misrepresentation was a qualifying one.

CIGNA classified the misrepresentation as deliberate or reckless. I don't think that was unreasonable in the circumstances, particularly bearing in mind the proximity of the application and inception of the policy to the various medical events I've outlined above. I appreciate Mr and Mrs have a different perspective on this point, as they felt Mrs A was given reassurance and the issues had resolved. But I think CIGNA reasonably concluded that isn't fully reflective of the available medical evidence and that the misrepresentation was deliberate or reckless.

As I'm satisfied CIGNA reasonably treated the misrepresentation as deliberate or reckless I've looked at the actions they can take in accordance with CIDRA. In such circumstances they can avoid the policy, decline the claim and retain the premiums. In this case they've agreed to refund the premiums, which goes beyond what they are required to do under the legislation.

Taking all of the above into account I think CIGNA has acted fairly and reasonably.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 27 January 2026.

Anna Wilshaw
Ombudsman