DRN-5982504

Financial Ombudsman Service

The complaint

Ms P has complained that Admiral Insurance (Gibraltar) Limited hasn't fully settled a claim she made on an annual travel insurance policy.

Ms P is being represented in making this complaint. However, for ease, I will just be referring to Ms P in this decision.

What happened

Ms P took out the policy in October 2022 and renewed it in October 2023. She then cancelled a trip she was due to take in April 2024, due to illness. Admiral agreed the cancellation claim but settled it proportionately on the basis that she hadn't declared her pre-existing medical conditions (PEMCs) at the point of renewing the policy. The medical certificate from her GP showed that she had a hiatus hernia and allergies. Had she declared these, she would have been charged a more expensive premium. As a result of not declaring them, she was only charged 80.93% of what she should have paid. Admiral therefore settled 80.93% of the claim. Ms P accepted this and this claim does not form part of her current complaint.

Ms P was then travelling abroad in July 2024 when she had an accident and needed medical treatment. Upon making a claim for medical costs, Admiral has again made settlement of 80.93% of the value of the claim, on the basis that the PEMCs had again not been declared.

In response to the complaint, Admiral maintained its decision on the claim. However, it paid her £150 as a gesture of goodwill for the inconvenience caused.

Our investigator thought that Admiral had acted reasonably in the way it settled the claim. Ms P disagrees and so the complaint has been passed to me for a decision.

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.

The ombudsman was established to be a quick and informal service. This doesn't mean we apply any less rigour or care in reaching our decisions. But it does mean that we might not respond to each and every point that has been raised. Ms P has made detailed submissions in support of her complaint. Although I will not be addressing them all, I would like to assure her that I have read and considered everything she has provided.

I've carefully considered the obligations placed on Admiral by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Admiral to handle claims promptly and fairly, and to not unreasonably decline a claim.

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.

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.

CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to apply cover as if it had all of the information it wanted to know at the outset. If it would still have offered cover, but charged a higher premium, then it may settle the claim proportionately, in line with the premium it would have charged.

It's not in dispute that Ms P didn't disclose her pre-existing medical conditions at the time of renewing the policy in 2023. However, Ms P's position is that Admiral had become fully aware of her PEMCs during the earlier claim that it had settled in May 2024, so, as far as she was concerned, her policy information was up to date prior to her then travelling abroad in June 2024. Her expectation was that it should have updated the policy and advised her of any additional premium due as a result.

I can understand her point of view. However, whilst Ms P says she correctly updated her two original medical conditions at the point that Admiral received the first medical certificate in April 2024, that is not the case. There is a distinction between a consumer contacting an insurer to update the policy and the insurer's claims team becoming aware of PEMCs as a result of a claim. We wouldn't normally expect an insurer to use claims information to update medical declarations on a consumer's behalf. It wouldn't be appropriate for them to do so when they might not have full knowledge of all the details. As the claims team and the sales/medical screening team are usually separate departments, we wouldn't expect them to pass information to each other. This is underlined in the legal article provided by Ms P which sets out the Law Commissions' position that an insurer should not be deemed to know information held by other departments, which is not available to the staff at the time. The Insurance Act 2015 also reiterates this point under paragraph 5, Knowledge of insurer, where it says that an insurer knows something only if it is known to one or more individuals who participate on behalf of the insurer in the decision whether to take the risk. Although the claims team knew of Ms P's PEMCs as a result of her first claim, it has no role in assessing risk.

Admiral's final response letter of 2 October 2024 says that it should have made a greater effort to ensure the policy had been updated. Therefore, as Ms P sees it, as it has basically admitted it was at fault in not updating the policy, it should settle the claim in full.

I've thought very carefully about this point. However, overall, I'm not persuaded that Admiral's acknowledgement that it could have better processes in place, means that the principles of CIDRA should be departed from in this case.

CIDRA places the onus on the consumer to ensure that no misrepresentation has occurred. It should have been apparent to Ms P from the available documentation that the medical details had not been added. And she had not been contacted by Admiral offering to update the policy. She told Admiral that she'd tried to contact it many times since mid-June 2024 to update her policy, without success. This demonstrates she was aware that the PEMCs had

not been added to the policy at the time of starting her trip on 29 June 2024. She says she was receiving a message when trying to update via the portal that said it had been unable to make the requested change and to contact it to make the change and keep the policy up to date. However, Admiral has no record of her making any further contact, prior to registering the second claim.

When assessing the second claim, a medical certificate was again requested from the GP. This time, as well as the two conditions of hiatus hernia and allergies, it also stated that she had sought treatment for fibromyalgia in October 2022.

Admiral has explained that, had the hernia and allergies been added to the policy, the further addition of fibromyalgia wouldn't have made a difference to the premiums. Ms P therefore feels that, as there would have been no premium increase, it needs to fully settle the claim as set out in CIDRA, as Admiral hasn't shown that it would have done anything different. However, that is a scenario where the two original conditions had been added and the appropriate premium charged. Looking at the base cost of the policy with no PEMCs, we know that the hernia and allergies resulted in a shortfall of premiums amounting to 80.93%. Admiral has also said that, even if it disregarded the hernia and allergies, the addition of fibromyalgia on its own would have resulted in exactly the same level of shortfall to the premium. Therefore, on that basis, it was fair for it to proportionately settle the claim due to the non-disclosure of fibromyalgia alone.

Ms P says she didn't need to disclose the fibromyalgia as it is a syndrome and not a medical condition. She says that's also the reason why the doctor who completed the medical certificate for the first claim didn't record it on the certificate. However, the doctor has since confirmed that they didn't include fibromyalgia as they had misunderstood the requirement of the form and had simply focused on the acute condition that had necessitated the cancellation of the trip in April 2024, which led to the first claim. Ms P has herself said that her GP practice's definition of fibromyalgia seems to differ from her understanding.

She has cited definitions from the NHS and the British Medical Journal (BMJ) as evidence that fibromyalgia is not a medical condition, as the term 'medical' is omitted. It is simply described as a 'long-term condition' and as a 'chronic condition'. As I understand it, a syndrome is a collection of symptoms and health problems, presenting at the same time. The fact that the condition warrants mention by the NHS and BMJ suggests that it has a medical basis. And Fibromyalgia Action UK describes the condition as a 'common illness'. Therefore, I can understand why Admiral would conclude that it was a medical condition.

However, I don't need to make a finding on whether it was reasonable for Admiral to come to that conclusion. That's because it doesn't make a difference to the overall outcome. The proportionate settlement was fundamentally made on the basis that Ms P had made a careless misrepresentation in not disclosing the PEMCs of hiatus hernia and allergies. The fibromyalgia wouldn't have made a difference to the premium had the other two conditions been disclosed, so the significance of whether or not it should have been disclosed as a medical condition falls away.

Overall, I'm not persuaded that Ms P took reasonable care to disclose her medical conditions prior to her trip in June 2024, as she hadn't ensured that the hiatus hernia and allergies had been recorded on the policy. Any dealings she had with the claims team during the first claim were insufficient in avoiding that misrepresentation.

As already mentioned, CIDRA says, in cases of careless misrepresentation, if an insurer would still have offered cover, but charged a higher premium, then it may settle the claim proportionately, in line with the premium it would have charged.

In this case, that means that it has settled 80.93% of the value of the claim. In the circumstances, I consider that Admiral has acted fairly, in line with the relevant legislation.

I have a great deal of sympathy for the situation Ms P finds herself in, being responsible for the shortfall from the claim. However, I'm unable to conclude that Admiral has done anything significantly wrong. It follows that I do not uphold the complaint.

My final decision

For the reasons set out above, I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 3 March 2026.

Carole Clark
Ombudsman