

## **complaint**

Mr and Mrs O complain that UK Insurance Limited ("UKI") acted unfairly and unreasonably in rejecting their claim for medical expenses under a travel insurance policy. They want their claim paid.

## **background**

Mr and Mrs O had an annual travel insurance policy with UKI, which was renewed. Mr O fell ill while away on holiday in December 2018, and needed treatment for the pre-existing condition of chronic obstructive pulmonary disease ("COPD"). Mr and Mrs O's claim for medical expenses was rejected by UKI; it said that they didn't declare that Mr O had COPD and the policy didn't cover pre-existing medical conditions. UKI denied that Mr and Mrs O had told it about the COPD in June or July 2018.

Mr and Mrs O complained to us. The investigator's view was that the complaint shouldn't be upheld. She noted that there was no evidence of a call with UKI in 2018 where Mr O disclosed his COPD, and that Mr O admitted in a call in January 2019 that they'd forgotten to call UKI about the condition. The investigator said that there was no evidence the COPD had been declared to UKI before the policy was taken out and the policy did exclude it; she pointed out that UKI in its renewal letter asked to be updated about medical conditions, particularly before travel was undertaken.

Mr and Mrs O disagreed. They said that Mr O did declare his COPD to UKI, but he called from work so couldn't provide evidence. They also said that COPD was similar to asthma, and UKI knew Mr O had that condition. The investigator didn't change her view, and said she had considered how the Consumer Insurance Disclosure and Representations Act 2012 ("CIDRA") dealt with misrepresentations by consumers. The investigator thought the failure to declare Mr O's COPD was reckless as he was told in the policy and renewal letters to tell UKI about any medical conditions, and noted Mr O's asthma wasn't declared either. Mr and Mrs O still disagreed and sent various reviews and reports about UKI for this service to read.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules and industry guidelines say that UKI has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I looked at all the evidence available to me, and asked for further information from UKI before coming to a decision. In particular, I asked for more information about what UKI knew about Mr O's medical conditions and when, and whether Mr O could've got cover if he had fully disclosed his medical conditions when taking out the policy. UKI confirmed that it hadn't been told about Mr O's COPD or asthma, and Mr O had admitted in a call that he hadn't declared the COPD. This is confirmed by the evidence before me. UKI also said Mr O could've got cover, but only after paying a higher premium, but pointed out that he hadn't declared the COPD and he knew that he should've. UKI said as Mr O didn't contact it, there couldn't be a misrepresentation of his medical condition.

I disagree with UKI's position about misrepresentation and I think the investigator's view is right. While the policy clearly excludes undeclared pre-existing medical conditions, a misrepresentation was made by omission – Mr O was told in the policy and renewal letters to tell UKI about any medical conditions, and he didn't declare the COPD. There's no dispute that Mr O suffered from COPD and should've declared it, and Mr O has admitted that he had not done so. COPD isn't the same as asthma, and I can't find that asthma was declared as Mr O says on the basis of the evidence available. It's reasonable and fair for UKI to say that the COPD was an undeclared pre-existing medical condition.

Under the terms and conditions of the policy, such conditions aren't covered under contract law (which means UKI can refuse the claim) but I also do need to think about the law about misrepresentations by consumers. I am satisfied that Mr and Mrs O were asked to declare any pre-existing medical conditions at renewal, failed to do so and knew that they should've as it was relevant information. A reasonable consumer would've mentioned the COPD earlier, and I don't think Mr and Mrs O took reasonable care. Under CIDRA, if the failure to declare the pre-existing medical condition was reckless or deliberate, the insurer can refuse the claim and not return the premium. I think the failure to declare in this case was reckless, if not deliberate - it was made clear that a pre-existing medical condition needed to be declared, even at renewal and prior to travel, Mr O knew that it hadn't been declared and that the information was relevant to UKI.

### **my final decision**

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs O to accept or reject my decision before 23 February 2020.

Claire Sharp  
**ombudsman**