

complaint

Mr R complains that Europäische Reiseversicherung AG ('ERV') turned down his travel insurance claim for his medical expenses, after he fell ill abroad.

background

In September 2017 Mr R took out single trip travel insurance with ERV, to cover a European trip. Unfortunately while abroad he felt unwell after eating and was admitted to hospital overnight. The doctor diagnosed a condition called asthenia, which shows signs of chronic weakness and lack of energy. He asked ERV to pay his medical expenses.

ERV turned down Mr R's claim. It said Mr R should have told it about his trips to the doctor for dyspepsia (indigestion) in 2016 and stress in 2017. It said the asthenia was directly related to the conditions he'd visited the doctor for. This meant they were pre-existing medical conditions and weren't covered because he'd not told ERV about them and it hadn't agreed to cover those conditions.

Mr R said the 2017 tests had been inconclusive, and so he didn't think he had anything to tell ERV about. He came to us.

Our investigator looked into the complaint. She found out that ERV would have covered Mr R for the conditions if he'd told it about them, for an additional premium. She recommended that ERV pay Mr R a proportion of the medical costs, based on the proportion of the premium he'd paid compared to the premium he would have paid if he'd told ERV about his conditions. This meant it should pay 42% of his claim (less any applicable excess).

ERV didn't agree. It said Mr R had deliberately opted not to tell it about his medical conditions, and in doing so he had decided not to cover them. The conditions were directly related to the illness he'd suffered abroad, and so the claim wasn't covered. It referred to the duty of 'utmost good faith' that underpinned insurance contracts.

Mr R has sent us evidence that he's paid 50% of the hospital expenses because it was demanding payment, and we've sent evidence of that payment to ERV.

my findings

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, I uphold this complaint. I'll explain why.

I've noted ERV's comments about utmost good faith. But as our adjudicator explained there is legislation which sets out what an insurer can do if a consumer hasn't answered its questions properly before taking out an insurance contract. The law is called the Consumer Insurance (Disclosures and Representations) Act 2012 or 'CIDRA' and it applies here.

CIDRA says that it's the consumer's duty to take reasonable care not to make a 'misrepresentation' to the insurer in response to its questions, which need to be clear and specific.

If the insurer thinks there has been a 'misrepresentation' by the consumer, and it can show it wouldn't have entered into the insurance contract at all or on different terms, then CIDRA sets out the 'remedies' available to the insurer.

CIDRA says that if a consumer recklessly or deliberately answers the insurer's questions incorrectly then it can 'avoid' the policy, refuse to pay the claim and usually won't have to return the premium. If a consumer doesn't take reasonable care in answering the insurer's questions the insurer can refuse to pay the claim or it can pay it proportionately.

In the online sales process before Mr R bought the policy ERV asked him whether, in the last two years, he'd suffered from any medical or psychological conditions for which he'd received treatment, been prescribed medication, or attended any consultations, investigations or check-ups. ERV warned him that claims relating to pre-existing medical conditions would not be covered unless all conditions had been declared to it before commencement of the trip, and accepted by it in writing. I think ERV's question was reasonably clear.

It's not in dispute that Mr R didn't tell ERV about his visits to the doctor in 2016 and 2017. ERV says this was deliberate, and showed that he didn't intend to cover his medical conditions.

I've thought about ERV's comments but I don't agree. I think Mr R accepts he didn't take reasonable care in answering ERV's question, but I don't think this was deliberate or an active choice not to cover his medical conditions.

Mr R has explained that in 2016 he thought his indigestion might have been related to a visit to the gym, where he lifts weights and wears a belt. In 2017 he'd had some tests because he'd been feeling tired but the tests were inconclusive. He'd discussed with his doctor that the tiredness might be due to stress: he was working in a demanding job while renovating his house, and he was supporting his wife through bereavement. I think Mr R's explanation is borne out by his GP's notes. Mr R says that as he wasn't prescribed any medication and didn't need further tests he didn't thought he'd answered ERV's question honestly.

That said, I do think Mr R failed to take reasonable care in answering ERV's questions, because he did have medical consultations and investigations – and that's what ERV had asked him about. ERV has told us that it would have covered him for the conditions he'd discussed with his doctor of dyspepsia and stress, but for an additional premium. He'd paid £10.58 for his travel insurance, and if he'd told it about these conditions he'd have paid an additional £14.65 (so £25.23 in total). This means that he'd paid 42% of the premium he should have paid.

Under CIDRA the remedy available to ERV is to pay Mr R's claim in the proportion of the premium Mr R paid as compared to the premium he should have paid. So I find it must pay 42% of his claim, subject to the policy limit and less any applicable policy excess.

For the avoidance of any doubt ERV is not entitled to rely on the pre-existing medical condition exclusion to reject Mr R's claim. Its remedy under CIDRA is the proportionate settlement. It is not entitled to 'contract out' of CIDRA using any other term in its policy, which would put Mr R, the consumer, in a worse position than under CIDRA.

my final decision

For the reasons I've explained I uphold this complaint. Within 28 days of the date we tell it Mr R has accepted my final decision I order Europäische Reiseversicherung AG to pay 42% of Mr R's claim, subject to the policy limit and any applicable excess.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 10 January 2019.

Amanda Maycock
ombudsman