

The complaint

Mr C and Ms C complain that Inter Partner Assistance SA ('IPA') unfairly voided their policy and declined a claim.

All reference to IPA includes any agents acting on its behalf.

What happened

Mr C took out a travel insurance policy underwritten by IPA through a price comparison website which covered him, his partner and their young child. They went on holiday abroad and made a claim for medical treatment that their child needed.

IPA declined the claim and said Mr C had answered the question it asked about pre-existing medical conditions incorrectly. And it considered this to be a careless qualifying misrepresentation, which entitled it to decline the claim, avoid the policy and return the premiums.

Mr and Ms C brought their complaint to the Financial Ombudsman Service. Our investigator didn't think it should be upheld because the questions during the sales journey were clear and Mr C had failed to answer a question correctly.

Mr C doesn't agree with the investigator and has asked for an Ombudsman's decision. In summary, he has made the following comments:

- IPA changed its reasons for declining the claim.
- The viral infection their child had wasn't linked to the bacterial infection their child was subsequently treated for.
- They do not agree that a viral infection is a medical condition - it was just a common cold.
- The legislation hasn't been applied properly as their child's diagnosis doesn't fall under the definition of a pre-existing condition. And so their failure to disclose a viral infection isn't a misrepresentation.
- There was no reason for Mr C to click through to the 'important information' as he didn't think his child had a pre-existing medical condition.
- Even if he had clicked through to the 'important information' section, their child was not prescribed any medication by the GP and didn't receive any treatment other than an examination by the GP and so this isn't something which needed to be disclosed. Their child was taken to the doctor for something minor as a precaution and it isn't unusual for parents of young children to do this.
- The sales journey was misleading and the information about pre-existing medical conditions was hidden and unclear.

- If the above isn't accepted, Mr C and Ms C don't think voiding the policy was reasonable. IPA should only have excluded anything relating to the undisclosed condition and should have covered the treatment needed.

And so the case has been passed to me for a final 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.

Having done so, I don't think this complaint should be upheld. I'll explain why.

Mr C has provided detailed comments in response to our investigator's opinion. I will only address what I consider to be key to my decision although I assure Mr and Ms C that I have carefully considered everything Mr C has said.

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.

IPA thinks Mr C failed to take reasonable care not to make a misrepresentation when he didn't disclose that Mr and Ms C's child had been seen by the GP 3 times for an infection.

I've looked at the question and the online sales process and I don't think Mr C took care. He says the information was hidden in the small print and he didn't read the declaration about health properly as it was contained in the link to 'important information'. As this was specifically called 'important' information, I don't think it's reasonable to say the information was unclear or hidden. And he had to tick a box to say he had read it before proceeding to buy the policy.

Had Mr C read the box as asked to do during the sales journey, he would have seen that he needed to declare all conditions including any visits to the GP as this would come under treatment including investigations. It wasn't necessary for medication to be prescribed. And an infection or common cold are medical conditions. I think the term 'any medical condition' is quite broad so it isn't misleading or unclear. The sale was online and not advised so it was up to Mr and Ms C to decide whether it was suitable for their needs based on the information provided, which I think was clear.

IPA has shown that had Mr C answered the question correctly, the policy wouldn't have been sold and he would have been directed to a different policy.

This means I'm satisfied that Mr C's misrepresentation was a qualifying one.

IPA has treated Mr C's misrepresentation as careless and this offers the most favourable outcome for Mr and Ms C. I've looked at the actions IPA can take in accordance with CIDRA.

IPA has voided the policy and returned the premiums. This is in line with the remedies detailed in CIDRA. I think this is a fair and reasonable outcome so I won't be asking IPA to do anything further.

Mr C says the policy shouldn't have been voided. But IPA has acted in line with CIDRA in relation to the remedies available. That is not unreasonable.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C and Ms C to accept or reject my decision before 3 November 2023.

Shamaila Hussain
Ombudsman