

## **The complaint**

Mr and Mrs J complain that Admiral Insurance (Gibraltar) Limited wouldn't pay their travel insurance claim. My references to Admiral include its agents.

## **What happened**

In August 2021 Mr and Mrs J took out annual travel insurance with Admiral which they renewed in August 2022. They didn't declare any medical conditions.

While on a trip abroad in September 2022 Mr J became unwell. He was admitted to hospital and due to the illness he and Mrs J were unable to continue with their planned trip. They claimed for medical expenses, additional costs and the lost costs of part of their planned trip.

Admiral declined the claim. It said the medical information it received when assessing the claim showed that the claim condition was a diverticulitis abscess and when Mr and Mrs J took out and renewed the policy Mr J already had diverticulitis. Medical evidence also showed Mr J had been admitted to a UK hospital with the condition in November 2021 and was on medication to help symptoms of the condition. Also, just after policy renewal Mr J had abdominal pain and on 2 September 2022 he went to his GP and A&E to get the pains checked before he went on the trip.

Initially Admiral declined the claim because the policy terms said it wouldn't pay any claim that was linked to a pre-existing medical condition Mr and Mrs J hadn't told it about.

Mr and Mrs J complained to us that Admiral's decision was unfair. Mr J said he hadn't been trying to hide anything but he hadn't had diverticulitis in the last two years so he didn't even think about that when Admiral asked him about medical conditions. He also said when he'd gone to A&E with stomach pains the hospital gave him an all clear. And his GP had written to Admiral to say he wasn't expected to be so unwell while he was away.

Our investigator said as Admiral had asked Mr and Mrs J specific medical questions when they renewed the travel insurance policy the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) applied.

Our investigator considered Mr J had made a careless - as opposed to a reckless or deliberate - qualifying misrepresentation when answering the medical questions. As part of our investigation Admiral had provided evidence that it would have charged a higher premium if Mr J had answered the questions correctly. So our investigator recommended Admiral should settle the claim proportionately.

Admiral disagreed and wanted an ombudsman's decision. It said:

- The medical questions asked were clear about what Mr and Mrs J needed to declare. Mr J hadn't made any disclosure about his medical conditions which it considered enough proof of reckless mis-representation.

- As well as the policy not covering pre-existing conditions the policy was also clear that once the policy had renewed Mr and Mrs J needed to tell it about a change in health and Mr J hadn't done so.

### **What I provisionally decided – and why**

I made a provisional decision explaining why I was minded to not uphold the complaint. I 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 take reasonable care, 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.

Admiral thinks Mr and Mrs J failed to take reasonable care not to make a misrepresentation when they answered 'no' to the following question for Mr J when they bought and renewed the policy:

*'Have you or anyone in your party been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past 2 years?'*

I think the question Admiral asked was clear and specific and I'm satisfied that the potential implications of answering incorrectly were made clear.

Based on what I've seen I don't think Mr and Mrs J took reasonable care in answering the question as they did, so I think they did make a misrepresentation.

I've gone on to consider whether Mr and Mrs J's misrepresentation was a qualifying misrepresentation. In other words, whether the incorrect information they provided would have made any difference to the insurance terms Admiral would have offered them.

Admiral has shown that if Mr and Mrs J had told it the correct information about Mr J's diverticulitis medical history it would have charged a higher premium, so there was a qualifying misrepresentation.

Our investigator thought Mr and Mrs J had made a careless misrepresentation. So she said Admiral should pay a proportionate amount of the claim in line with the percentage of premium Mr and Mrs J had paid, which is a remedy set out in CIDRA for careless misrepresentation. But Admiral says Mr and Mrs J's misrepresentation was deliberate or reckless which means it could avoid the policy, not pay the claim and keep the premiums.

I've thought about how Admiral classified the misrepresentation. Admiral considering Mr and Mrs J's misrepresentation as deliberate or reckless means Admiral thought Mr and Mrs J knew the information they provided was untrue or misleading or didn't care whether it was

untrue or misleading. And they knew that the matter to which the misrepresentation related was relevant to the insurer, or didn't care whether or not it was relevant to the insurer.

In all the circumstances, I don't think it was unreasonable for Admiral to have classed the misrepresentation as deliberate or reckless. I say that having reviewed the medical information and Mr and Mrs J's comments.

On Mr J's GP's medical certificate dated 16 September 2022 the GP answered 'yes' for the question whether Mr J had been '*prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past two years*', which was the question Mr J had been asked. In that medical certificate the GP said:

- Mr J had diverticulitis in August 2021 and had been admitted to hospital with diverticulitis in November 2021.
- Mr J had been to see the GP and went to A&E on 2 September 2022 with abdominal pain which the GP thought might be irritable bowel or diverticulitis.
- Mr J had been on several medications in the last two years which included medication for symptoms of diverticulitis and medication in case Mr J had a flare up of diverticulitis.

Mr J's GP's medical certificate dated 10 October 2022 said:

- The claim on holiday was caused by a diverticular abscess.
- Mr J has diverticulitis and had a diverticular abscess in 1999.
- When Mr J was seen by the GP on 2 September 2022 there was no signs of an abscess and there were '*no signs or symptom at the (2 September 2022 ) consultation to suggest Mr J would go on to become as unwell as he did while on (the holiday where the claim was made) with a diverticulitis abscess*'.

I've considered Mr and Mrs J's explanations as to why he didn't disclose his symptoms. They say Mr J didn't have diverticulitis in the last two years so he didn't think about it when he answered the question. But the information from the GP says at the policy renewal in August 2022 he'd had treatment and hospital admission for diverticulitis within the last year, well within the two year time period. And he'd been on medication to help with the symptoms of the condition. So I don't think Mr and Mrs J's explanation is persuasive given the timeframe and key dates.

On the basis of the medical information Admiral had I'm satisfied it could treat Mr and Mrs J's misrepresentation as deliberate or reckless. I've looked at the actions Admiral could take in accordance with CIDRA. If the qualifying misrepresentation was deliberate or reckless, the insurer can avoid the policy, refuse all claims, as effectively the policy never existed, and need not return the premiums.

I'm satisfied Admiral could avoid Mr and Mrs J's policy in accordance with CIDRA. And, as that means in effect the policy never existed, Admiral doesn't have to deal with their claim. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing Admiral to rely on it to avoid Mr and Mrs J's policy produces the fair and reasonable outcome in this complaint.

I've also taken into account that Mr and Mrs J had further opportunity to declare Mr J's change of health in September 2022 when he went to see his GP and attended A&E about pain in his abdomen, but they didn't do so. The policy is clear that Mr and Mrs J must tell Admiral about any changes in health after the policy was taken out or renewed. But that doesn't change the overall outcome of the case as given the finding of deliberate or reckless

misrepresentation Admiral is entitled to avoid the policy from the outset and refuse all claims’.

### **Further developments since my provisional decision**

Mr and Mrs J didn’t agree with my provisional decision. In summary they said:

- The initial policy they took out in August 2021 was for ‘cruising’ and didn’t include the ‘Americas or Canada’. At the end of August 2022 they removed ‘cruising’ and changed the policy to include ‘The Americas and Canada’. At that point Mr J was fit and well and had been for the previous 23 months. That was a new policy as far as they were concerned.
- Mr J had been admitted to hospital with the condition in October 2020, not November 2021 as I’d put in my provisional decision.
- Two weeks before they were due to go on holiday Mr J had a small pain in his stomach and he went to A&E to get it checked. He was told it was probably an infection and not to worry. As he wasn’t happy with the diagnosis he went to his GP who thought it was a urine infection and she gave him antibiotics. The hospital and doctors assured him there was nothing to worry about.
- A few days into the holiday Mr J’s pain got worse and he developed new symptoms. He went to A&E abroad and after lots of tests the hospital said he had e-coli which had caused osteomyelitis in the spine.
- When Mr J returned to the UK he went to see a consultant specialising in infectious diseases due to the hospital abroad finding e-coli in his stomach. This turned out to be the cause of his osteomyelitis and initial pain, it had formed a ‘collection’ which had attached to his spine.
- He eventually had an operation on his stomach to remove the e-coli ‘collection’ which had caused all his problems.
- Before they went on holiday they never knew about the e-coli or osteomyelitis and they wouldn’t have gone away if they thought there was any chance Mr J would be ill. They didn’t mean to mislead Admiral.

I considered the new information Mr and Mrs J had provided and told them that the information about Mr J’s conditions and dates were from the medical evidence we’d previously received. As Mr and Mrs J were saying the dates and conditions were wrong they would need to get Mr J’s GP to provide corrected information and explain the reason the previous information and dates were wrong. And Mr and Mrs J should also provide medical evidence to support their other new evidence about the cause of the claim.

Mr and Mrs J sent in new medical evidence which they said supported their claim. They added that most people have diverticular disease but aren’t aware as it only becomes a problem when the colon becomes infected. They also emphasised that they had been on a ‘holiday of a lifetime’ which cost a lot of money so they wouldn’t have gone if they had any idea Mr J had an illness.

We sent the new evidence to Admiral and asked for its comments. Admiral said it still didn’t need to pay the claim. The letter from Mr J’s consultant in 2021 said Mr J had diverticular disease present at the time which meant the condition fell within the relevant two year period and should have been declared.

## 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 very sorry to disappoint Mr and Mrs J, I know the claim is for a large amount of money. I understand that they didn't know Mr J would be so unwell on holiday. But I still think Admiral reasonably declined the claim.

The new medical evidence Mr and Mrs J have provided is a recent letter from Mr J's GP, Mr J's discharge summary from hospital in November 2020 and two letters from Mr J's consultant about investigative procedures at the end of 2020/beginning of 2021. I'll set out the key points from those documents.

Mr J's GP letter of 28 November 2023 says she's written to clarify points about his medical history. She says:

- Mr J was a hospital inpatient in November 2020.
- In January 2021 Mr J had a flexible sigmoidoscopy as an outpatient which '*showed diverticular disease*'. She provided a letter from the consultant on the procedure, the key points of which I've detailed below.
- '*Mr J has diverticular disease*' and she saw him on a given date in September 2022 where he had mild abdominal pain which she considered was irritable bowel, anxiety or a flare up of the diverticular. She gave him some standby antibiotics. Mr J had been to A&E the day before where a urinary tract infection was the presumed diagnosis.
- Mr J had been unwell abroad with '*vertebral osteomyelitis with an abscess at L5-S1 level/perforated diverticulitis and an e-coli infection*'.

The November 2020 discharge summary shows Mr J was admitted to hospital in the UK for three days in November 2020 due to diverticulitis. The summary says the CT scan Mr J had before discharge showed '*improvement*' and detailed the follow up test and consultation.

The letter from Mr J's consultant at the UK hospital dated 23 December 2020 to Mr J's GP practice says the CT scan shows that he '*still has this collection outside his sigmoid colon*'. The consultant recommended Mr J have a flexible sigmoidoscopy to check there was no detected malignancy.

The letter from the same consultant dated 28 January 2021 to Mr J says the flexible sigmoidoscopy '*just showed some diverticular disease which is what we hoped and expected it to show. There were no signs of any cancer... We are still left with the problem of the collection around your colon*'. The letter outlines a follow up plan.

The GP's letter clarifies that Mr J had been admitted to hospital in November 2020, rather than 2021 as the medical certificate states. But I think the new medical evidence Mr and Mrs J have provided still shows that when they took out the policy in August 2021 and renewed in 2022 he should have answered yes to the question:

*'Have you or anyone in your party been prescribed medication, received treatment or had a consultation with a doctor or hospital specialist for any medical condition in the past 2 years?'*

As at August 2021 Mr J's hospital admission for diverticulitis in November 2020 and follow up tests and consultations in January 2021 were within the past two years.

Even if Mr and Mrs J considered that the August 2022 policy renewal was a new policy then the November 2020 hospital admission and follow up tests and consultations in January 2021 were still within the past two years. And the GP's medical certificate dated 16 September 2022 showed Mr J had been on several medications in the last two years which included medication for symptoms of diverticulitis.

The GP's 28 November 2023 letter says '*Mr J has diverticular disease*'. His consultant's letter dated 28 January 2021 says Mr J's test showed diverticular disease as expected. Even if Mr J felt well as at August 2021 and August 2022 it's clear from the medical evidence that he knew at those times that he had diverticular disease, that he'd been admitted to hospital because of the condition and had follow-up treatment related to the condition within the relevant two year period.

Given the timeframe and key dates I still don't think Mr and Mrs J have given a persuasive explanation as to why he didn't answer yes to the above question he was asked when they took out and renewed the policy which would have led him to declare his diverticulitis.

On the basis of the previous and new medical information and all the circumstances, I don't think it was unreasonable for Admiral to consider Mr and Mrs J's misrepresentation as deliberate or reckless.

As I explained in my provisional decision under CIDRA if the qualifying misrepresentation was deliberate or reckless, the insurer can avoid the policy, refuse all claims, as effectively the policy never existed, and need not return the premiums.

I'm satisfied Admiral could avoid Mr and Mrs J's policy in accordance with CIDRA. And, as that means in effect the policy never existed, Admiral doesn't have to deal with their claim.

Even if I thought that CIDRA didn't apply then the policy terms say Admiral won't pay any claim that was linked to a pre-existing medical condition Mr and Mrs J hadn't told it about. They hadn't told Admiral about Mr J's diverticulitis, which was a pre-existing medical condition, and the previous medical evidence and the new medical evidence from Mr J's GP says that the treatment abroad which caused the claim was related to Mr J's diverticulitis.

I said in my provisional decision that the policy is clear that Mr and Mrs J must tell Admiral about any changes in health after the policy was taken out or renewed. And I'd also taken into account that Mr and Mrs J had further opportunity to declare his change of health in September 2022 when he went to see his GP and attended A&E about pain in his abdomen, but they didn't do so. I note Mr and Mrs J say that the hospital and his GP told him there was nothing to worry about on that occasion. But that still doesn't change the overall outcome of the case as given the finding of deliberate or reckless misrepresentation Admiral is entitled to avoid the policy from the outset and refuse all claims.

For the reasons I've given in my provisional findings and these findings I'm satisfied Admiral fairly and reasonably didn't pay the claim.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs J to accept or reject my decision before 7 February 2024.

Nicola Sisk

**Ombudsman**