DRN-4455240

The complaint

Mrs G is unhappy with the way in which Great Lakes Insurance SE handled a claim made on her travel insurance policy ('the policy').

What happened

Mrs G dislocated her hip whilst abroad in late 2022. She made a claim on the policy to cover certain expenses including medical expenses and return flight.

Unhappy with the time taken to assess her claim, Mrs G complained to Great Lakes.

In its final response letter dated June 2023, Great Lakes accepted that it should've provided better customer service to Mrs G. It apologised for the delays.

It also said it would consider paying 71% of the parts of the claim covered under the policy. That's because Great Lakes says Mrs G failed to declare certain medical conditions when applying for the policy.

By that stage, Mrs G had already brought a complaint to the Financial Ombudsman Service. Our investigator requested information from Great Lakes to enable him to consider whether it had acted fairly and reasonably. When he didn't receive what he requested from Great Lakes, he recommended Mrs G's complaint be upheld.

He recommended Great Lakes pay Mrs G £250 compensation for distress and inconvenience - and to reassess the claim on basis that it wasn't fair and reasonable to apply a 29% deduction to the parts of the claim it said were covered under the policy.

Mrs G accepted our investigator's opinion. Great Lakes responded with some of the information requested but despite our investigator again asking it to provide particular information he needed to investigate the complaint, this wasn't provided.

Our investigator notified both parties that the complaint will be passed to an Ombudsman to decide.

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.

Great Lakes has an obligation to handle insurance claims fairly and promptly. It mustn't unreasonably decline a claim.

Great Lakes' decision to proportionately settle the claim

Despite several detailed requests for particular evidence, Great Lakes has provided the Financial Ombudsman Service with only limited information. For example, it hasn't been able

to provide a copy of the relevant terms and conditions of the policy or evidence of the questions Mrs G was asked when applying for the policy.

Great Lakes has said in its final response letter that it would only consider paying 71% of the parts of the claim which are covered under the policy. That's because it says Mrs G failed to disclose information about her medical conditions and medical history when applying for the policy.

It has provided internal emails from the end of 2022 that had certain medical conditions been disclosed when applying for the policy, Mrs G would've been charged around £39 more for her travel insurance. As such, it says Mrs G only paid 71% of the premium she ought to have been charged for the policy. However, again, despite repeated requests, Great Lakes hasn't provided its underwriting guidance to support this.

The law potentially relevant to this complaint 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 (like in this case). The standard of care is that of a reasonable consumer.

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 (in this case Great Lakes) 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.

On more than one occasion (including on 11 and 26 September and 3 November 2023) our investigator asked Great Lakes to provide the recording of the call from when the policy was originally taken out to understand what questions Mrs G was asked when applying for the policy, and what medical conditions she was asked to disclose. However, Great Lakes hasn't provided this evidence. So, importantly in this case, I don't know what questions Mrs G was asked.

In her complaint form to the Financial Ombudsman Service, Mrs G says she recalls telling Great Lakes when applying for the policy that she'd dislocated her hip over six years ago.

And she was told she only needed to declare medical issues within the last five years.
On the balance of probabilities, and in the absence of a recording of the call or confirmation of the questions asked of Mrs G, I'm not persuaded that she failed to correctly answer questions about her medical history or medical conditions when taking out the policy.

As such, I don't think Mrs G could've made a qualifying misrepresentation in accordance with CIDRA. And I'm satisfied Great Lakes hasn't acted fairly and reasonably by saying it will only proportionately settle 71% of the parts of the claim covered under the policy.

Customer service and delays

In its final response letter dated June 2023, Great Lakes accepts that its customer service fell below the accepted standards in this case and there were delays in assessing the claim.

I don't think an apology is enough to put things right in this case. For example, from its internal system notes, I'm satisfied Mrs G submitted her claim in January 2023 and there

were many months where her claim wasn't progressed. From the limited information available to me, I'm not persuaded there are good reasons for the delay in assessing - or providing Mrs G with a decision on - her claim.

I'm satisfied that this would've caused Mrs G unnecessary upset, frustration and inconvenience at an already difficult time for her.

I think £250 fairly reflects the distress and inconvenience experienced.

Putting things right

Within 28 days from the date on which the Financial Ombudsman Service informs Great Lakes that Mrs G accepts this final decision, I direct Great Lakes to:

- reassess (and, subject to Mrs G providing any evidence required by Great Lakes to support her claim, pay) the claim Mrs G made on the policy on the basis that she didn't make a qualifying misrepresentation when applying for the policy – and it wouldn't be fair and reasonable apply a 29% proportionate settlement to the parts of the claim it has accepted as being covered under the policy.
- pay Mrs G £250 compensation for distress and inconvenience.

Other issues

Once the claim has been reassessed, if Great Lakes declines to pay any aspects of the claim and Mrs G is unhappy about that, she's free to raise those concerns directly with Great Lakes in the first instance.

My final decision

I uphold this complaint and direct Great Lakes Insurance SE to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 2 January 2024.

David Curtis-Johnson
Ombudsman