DRN-4502740

The complaint

Mr C, Mrs C, Mrs C2 and Mr P complain that Inter Partner Assistance SA have declined a claim Mrs C made on their travel insurance policy.

Although Mrs C is represented I'll refer to all submissions as being made by her.

What happened

Mrs C was on holiday with her family when she was admitted to hospital with suspected heatstroke. She contacted IPA to claim on the policy. Many months later she received a bill for her treatment, via a debt collector, for around $42 000. Mrs C hadn't been told by IPA that her claim had been declined. She made a complaint to IPA.

IPA acknowledged Mrs C hadn't been told for around 8 months that the claim had been declined despite her chasing for updates. They awarded £150 compensation for this. However, they said that the decision to decline the claim was fair as Mrs C hadn't disclosed relevant medical information during the application process. They said this entitled them to decline the claim, cancel the policy and refund the premiums. Unhappy, Mrs C complained to the Financial Ombudsman Service.

Initially our investigator upheld Mrs C's complaint. However, IPA didn't agree and made further representations. In his most recent opinion, our investigator recommended increasing the compensation to £300 but didn't think that IPA had acted unfairly in relation to the claim. He thought that Mrs C should have disclosed laser treatment on her eye and that if she had done so IPA wouldn't have offered her this policy.

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.

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 says Mrs C failed to take reasonable care not to make a misrepresentation when she answered questions during the application process. She was asked:

> Within the past 5 years have you or anyone you wish to insure on the policy suffered any medical condition that has required prescribed medication and/or treatment including surgery or test /investigations?

Mrs C answered 'no' to this question.

I've looked at the medical evidence that is available. Mrs C's medical records indicate that she had a procedure in 2022 on her eye which is described as 'YAG laser post capsulotomy'. This was within the relevant time frame set out in the question and so it ought to have been disclosed. I appreciate that the procedure may well have been preventative but I think the question is clear that any medical condition which has required prescribed medication or treatment needed to be disclosed. I think this procedure can reasonably be described as treatment, even if it was preventative.

IPA has provided evidence that if Mrs C had disclosed this she wouldn't have been offered this policy and would have been directed to different policy options. So, Mrs C wouldn't have been able to select this policy if the question had been answered correctly. This means I'm satisfied Mrs C's misrepresentation was a qualifying one.

IPA accepted our investigator's findings that Mrs C's misrepresentation was careless. I agree it was as I think it's most likely this was an oversight by Mrs C, rather than a deliberate or reckless attempt to mislead IPA. As I'm satisfied that Mrs C's misrepresentation was careless I've looked at the actions IPA can take in accordance with CIDRA. It says that where IPA wouldn't have offered cover they can avoid the policy and not deal with any claim. They should also return any unused premiums the consumer paid. IPA has agreed to do this and so I don't think they need to do anything further to put things right. I think what they've agreed to do is therefore fair and reasonable in the circumstances.

Mrs C did experience distress and inconvenience as a result of excessive delays in handling the claim. It's also disappointing that the outcome of the claim review wasn't communicated to her which led to her receiving a very large bill from the debt collector unexpectedly. I think that caused her a lot of worry and she also had to chase IPA for updates. I think £300 compensation more fairly reflects the impact of the avoidable distress and inconvenience caused.

Putting things right

IPA needs to put things right by:

- Refunding the premiums paid
- Paying £300 compensation for the distress and inconvenience caused by delays in handling the claim and not communicating the outcome to Mrs C.

My final decision

I'm partly upholding this complaint and direct Inter Partner Assistance SA to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C, Mrs C, Mrs C2 and Mr P to accept or reject my decision before 9 January 2024.

Anna Wilshaw
Ombudsman