DRN-4349897

The complaint

Mr and Mrs G complain that Great Lakes Insurance SE has turned down a claim they made on a travel insurance policy.

What happened

In January 2022, Mr and Mrs G took out an annual travel insurance policy online, through a broker. The policy was underwritten by Great Lakes. During the sale, Mr G declared that he suffered from high blood pressure, which Great Lakes agreed to cover. Mr and Mrs G were due to travel abroad in August 2022.

Unfortunately, a few weeks before they were due to travel, Mr G was admitted to hospital. He was diagnosed with diverticulitis and a blood clot. Due to the medication he was prescribed, Mr G wasn't fit to fly and therefore, the trip had to be cancelled. Mr and Mrs G cancelled their trip and made a claim on the policy.

Great Lakes looked into Mr and Mrs G's claim and obtained further medical evidence. It noted that in addition to high blood pressure, Mr G had also been diagnosed with other medical conditions which he hadn't told it about. So Great Lakes concluded that Mr G had deliberately or recklessly answered medical screening questions he'd been asked at the point of sale. On that basis, it turned down Mr and Mrs G's claim. However, it did acknowledge there'd been delays in the way it had handled the claim and so it paid Mr and Mrs G £100 compensation.

Mr and Mrs G were unhappy with Great Lakes' decision and they asked us to look into their complaint.

Our investigator thought Mr and Mrs G's complaint should be upheld in part. She felt that Mr G hadn't taken reasonable care to answer the medical questions he'd been asked at the point of policy sale. However, she didn't think Mr G had deliberately sought to mislead Great Lakes about his health and she didn't think Great Lakes had shown he'd answered the medical questions recklessly. Instead, she thought Mr G had made a careless misrepresentation.

Great Lakes had provided evidence which showed that if Mr G had fully declared his medical conditions, it would have charged him 54.1% more for the policy than he'd actually paid. So the investigator recommended that Great Lakes should pay 54.1% of Mr G's claim. She also felt that the compensation Great Lakes had already paid Mr and Mrs G was fair to acknowledge its delays in the handling of the claim.

Neither Great Lakes nor Mr and Mrs G agreed with our investigator and I've summarised their responses:

Mr and Mrs G didn't agree that Mr G had misrepresented his health. They said that Mr G was prescribed medication which he didn't take for one condition and that another condition was mild and had been well-controlled by medication for years. They said they'd thought another condition had been resolved by surgery many years ago and that his high blood

pressure had been linked to it. They considered that Great Lakes hadn't shown that Mr G had failed to take reasonable care not to make a misrepresentation and they referred to both legislation and case law which they felt supported their position. They felt that even if it could be said that there'd been careless misrepresentation, it wasn't proportionate to reduce the claim settlement by 54.1%. They thought a proportionate remedy would be to instead deduct the additional premium they would have been charged from the settlement. They maintained that the handling of the claim was unreasonable and unacceptable and that therefore, the compensation they'd been paid was insulting.

Great Lakes maintained that Mr G had deliberately or recklessly misrepresented his health to it. In brief, it said that Mr G was taking daily medication for conditions which he didn't disclose. And it didn't think it could put any failure to disclose those conditions down to an oversight on Mr G's part. It was satisfied Mr G had understood what was being asked of him at the point of sale, given he'd declared high blood pressure. It stated that some of the misrepresentations were of quite serious medical conditions, which amplified why it was inexplicable that Mr G hadn't declared them. It said it didn't accept that a consumer who failed to declare a number of medical conditions had acted fairly or reasonably. It restated that the proximity and severity of the omissions are such that they were deliberate misrepresentations.

The complaint's been passed to me 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.

Having done so, I've decided to partly uphold this complaint and to direct Great Lakes to pay Mr and Mrs G's claim on a proportionate basis. I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the law; the terms of the insurance contract; and the available medical evidence, to decide whether I think Great Lakes handled Mr and Mrs G's claim fairly.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies available to it, 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.

When Mr and Mrs G took out the policy by online, they were asked information about themselves and any medical conditions they'd had in the last two years. Great Lakes used this information to decide whether or not to insure Mr and Mrs G and if so, on what terms.

Great Lakes says that Mr and Mrs G didn't correctly answer the questions they were asked during the online sales process. This means the principles set out in CIDRA are relevant. So

I think it's fair and reasonable to apply these principles to the circumstances of Mr and Mrs G's claim. I've taken into account the caselaw Mr and Mrs G have referred to when considering this complaint. But I've placed more weight on the relevant legislation - CIDRA.

Great Lakes thinks Mr and Mrs G failed to take reasonable care not to make a misrepresentation when they took out the policy online. So I've considered whether I think this was a fair conclusion for Great Lakes to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions asked by the insurer were. I've seen a copy of the medical screening questions Mr and Mrs G were asked when they purchased the policy. I've set out those questions below:

'*Do any travellers on the policy have any medical conditions?*

IF YOU ANSWER YES TO ANY OF THE QUESTIONS BELOW, PLEASE SELECT "YES"

- *Have you been prescribed medication in the last 2 year; whether you are taking it or not? This includes tablets (including Morphine based pain killers), inhalers or injections*
- *Do you currently routinely visit a GP. hospital or clinic for check ups, consultations or treatments? This includes annual reviews or reviews once every 2 years for a condition.*
- *Are you visited by a doctor or nurse or carer for check-ups or treatment (including dressings being changed)*
- *Have you been admitted into hospital or undergone surgery in the last 2 years?*
- *Have you received treatment for heart, stroke, or respiratory related illness in the last 2 years?'*

In my view, these questions were asked in a clear and understandable way and ought to have prompted a reasonable consumer to realise what information Great Lakes wanted to know. Great Lakes thinks that Mr G ought to have disclosed further existing medical conditions, including asthma; oesophageal reflux, renal impairment and renal artery stenosis, in addition to the high blood pressure he did declare. It's told us that had it known Mr G's full medical history from the start, it would have offered cover on different terms. So I've looked carefully at the medical records provided by Mr G's GP to decide whether I think he took reasonable care to answer Great Lakes' questions.

Mr G's medical records show that he was diagnosed with asthma over 25 years before he took out the policy. He'd been prescribed an inhaler. He'd also been diagnosed with renal artery stenosis around 20 years before buying the policy; and renal impairment, along with gastro-oesophageal reflux disease around 19 years earlier. The notes indicate that Mr G was under the care of a nephrology department for renal impairment. And reference was also made to chronic kidney disease as a co-existing medical condition at the point Mr G was admitted to hospital in August 2022. Mr G appeared to have been prescribed medication for reflux, along with three medications which can be used in the treatment of high blood pressure. And the GP's medical certificate also stated that Mr G was medicated for the ongoing treatment of renal artery stenosis. So it's clear that Mr G had been prescribed medication – in the form of an inhaler and reflux medication, which he didn't declare. Neither did he declare that he suffered from gastro-oesophageal reflux disease,

asthma, renal impairment or renal artery stenosis.

I've thought carefully about the explanation Mr G has given for not disclosing these conditions. He says that his asthma is mild and that he hadn't had to use his inhaler for many years. He hadn't been told he had gastro-oesophageal reflux disease – he'd simply been told he had reflux and this condition had been comfortably controlled by medication. He didn't think he'd needed to declare either condition. And he'd thought the high blood pressure diagnosis was a direct result of the renal artery stenosis and renal impairment which had been found many years before, so it hadn't crossed his mind to declare them.

However, as I've said, I find that Great Lakes' questions were clear and easily understandable. One question specifically refers to medication which is prescribed, even if it isn't taken – so I think Mr G ought to have been prompted to declare his asthma and inhaler medication. Mr G appears to have been aware that he took medication for reflux, even if he wasn't aware of the formal name given to his condition. Again, I find these conditions ought to have been declared. The GP specifically stated that Mr G had been medicated for renal artery stenosis in the two years prior to taking out the policy. So this condition would fall within the scope of Great Lakes' questions. And although it isn't clear when Mr G last saw nephrology for renal impairment, the GP notes indicate that this was a stable condition which remained an active problem. On that basis, I find Mr G ought reasonably have been prompted to declare at least asthma, reflux and renal artery stenosis to Great Lakes and most likely, renal impairment too.

In my view then, the available evidence suggests that Mr G *did* make a qualifying misrepresentation under CIDRA. So I think Great Lakes is reasonably entitled to apply the relevant remedy available to it under the Act. I must make it clear that there's no requirement under the Act for the condition causing a claim to be linked to any misrepresented condition.

Great Lakes strongly believes that Mr G's misrepresentation was deliberate or reckless. If that were the case, under the Act, Great Lakes would be entitled to turn down the claim, cancel Mr and Mrs G's policy from the start and retain the premium Mr and Mrs G had paid.

CIDRA defines what is meant by a deliberate or reckless misrepresentation. It says:

'A qualifying misrepresentation is deliberate or reckless if the consumer—

(a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and

(b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.

…

It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.'

I've carefully considered Great Lakes' submissions on this point. I accept that Mr G took daily medication for at least one of the conditions he didn't declare and that two of the undiagnosed conditions can be serious in nature. On the other hand, while I've explained why I think Mr G ought to have declared at least three additional conditions, I'm not persuaded that Great Lakes has shown me that Mr G deliberately or recklessly sought to mislead it as to his health. I say that because Mr G did declare three medications to Great Lakes and he did make some health disclosures. In my view, it seems less likely that Mr G would've declared *any* conditions to Great Lakes if he'd intended to misrepresent his overall health deliberately or recklessly to it. So I don't find it would be fair or reasonable for Great Lakes to apply the remedy for deliberate or reckless misrepresentation to this claim.

As I've explained, I don't think Mr G *intended* to mislead Great Lakes – but I don't think he took enough care to ensure he answered its questions correctly either. CIDRA says, in cases of careless misrepresentation, that an insurer is entitled to rewrite the policy as if it had all of the information it wanted to know at the outset. That means that if it would have still offered cover, but on different terms, an insurer may treat the contract as if it had been entered into on those terms. And it says:

'In addition, if the insurer would have entered into the consumer insurance contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.

The Act specifically explains how a proportionate settlement is to be calculated. This is by dividing the premium which was *actually* paid by the premium which *should* have been paid and multiplying that figure by 100. In Mr and Mrs G's case, they paid £111.98 for the policy, but they ought to have paid £206.96. Like the investigator, I calculate that Mr and Mrs G paid 54.1% of the premium they ought to have paid. This means that Great Lakes is entitled, by statute law, to only pay 54.1% of the claim value. And I'm satisfied it's fair and reasonable for settlement to be paid in line with the relevant legislation. I appreciate Mr and Mrs G feel it would be fairer to simply the deduct the additional premium they ought to have paid from the total settlement. But I see no fair or reasonable grounds for departing from the law in the circumstances of this complaint.

It's clear too that Mr and Mrs G are unhappy with the way Great Lakes handled their claim. However, from the timeline of events I've seen, it appears that from the point the claim was made, it took Great Lakes around three months to make a claims decision and communicate it to Mr and Mrs G. In the circumstances, while I don't doubt this period of delay caused Mr and Mrs G some additional inconvenience and upset, I find the £100 compensation they've already been paid is a fair award to reflect the likely impact the claims delay had on them.

In summary, despite my natural sympathy with Mr and Mrs G's position, I find that they did make a qualifying, careless misrepresentation under CIDRA. So I'm directing Great Lakes to now settle Mr and Mrs G's claim proportionately, together with interest on that amount.

My final decision

For the reasons I've given above, my final decision is that Great Lakes must settle this claim proportionately and therefore, I partly uphold this complaint.

I direct Great Lakes Insurance SE to pay 54.1% of the value of Mr and Mrs G's claim, in line with the remaining terms and conditions of the policy. It must also add interest to settlement at an annual rate of 8% simple, from the date of claim until the date of settlement.

If Great Lakes considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs G how much it's taken off. It should also give Mr and Mrs G a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 10 November 2023.

Lisa Barham
Ombudsman