

The complaint

Mr B and Miss C complain that Inter Partner Assistance SA declined their claim and cancelled their travel insurance policy. Reference to IPA includes its agents.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, in February 2022, Mr B and Miss C took out an annual travel insurance policy via a price comparison website for themselves and their infant son, who I'll refer to as T. The policy was underwritten by IPA and started on 2 May 2022. In June 2022, whilst on a trip, T caught Covid-19. Mr B and Miss C sought medical treatment for him, as he was struggling to breathe. They made a claim against the policy.

IPA declined the claim, cancelled the policy, and refunded the premium to Mr B and Miss C. It said that T had pre-existing medical conditions and the policy wasn't one they should have had. Mr B and Miss C didn't think that was fair and pursued their complaint. In response to their complaint, IPA maintained its position in relation to the claim but offered compensation of £100 in relation to its handling of their claim.

Mr B and Miss C say that when they took out the policy, they were asked about conditions like diabetes, depression, high blood pressure or asthma. As T doesn't suffer from those conditions, they selected 'No' and went on to purchase the policy. Mr B and Miss C say that they've repeated the sales journey and there's nowhere to declare some of the minor things about which they've sought medical advice for T and after disclosing conjunctivitis and croup the premium only increased slightly. They want IPA to deal with their claim. Mr B and Miss C say that they would have at least expected a proportional settlement.

One of our investigators looked at what had happened. She said that IPA hadn't asked Mr B and Miss C a clear question about pre-existing medical conditions and hadn't shown what it would have done if the conditions had been disclosed. The investigator recommended that IPA reconsider Mr B and Miss C's claim in line with the remaining terms of the policy.

Mr B and Miss C accepted the investigator's recommendation, but IPA didn't. It said, in summary:

- The question it asked explains exactly what conditions Mr B and Miss C needed to declare during the sales process. Miss C ticked the box that indicated that she'd read the important information and proceeded to purchase the policy. In a similar case, this service said that an insurer isn't responsible for whether a customer reads the information.
- If the eligibility questions had been answered correctly, Mr B and Miss C would have been given a different list of policies that suited their needs. The policy purchased doesn't cover anyone with a medical history. This service has supported that position in similar complaints.

The investigator considered what IPA said but didn't change her view. IPA asked that an ombudsman consider the complaint, so it was passed to me to decide.

My provisional decision

On 22 August 2023 I sent both parties my provisional decision in this case in which I indicated that I didn't intend to uphold the complaint. I said:

'The relevant rules and industry guidance say that IPA has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably. I don't intend to uphold Mr B and Miss C's complaint. I'll explain why.'

- *IPA has referred to previous cases with this service. Each case is considered on its own facts, and we don't issue binding precedents. So, I've looked at this complaint on its own facts and merits.*
- *The relevant law in this case is The Consumer Insurance (Disclosure and Misrepresentation) 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. 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 that Mr B and Miss C failed to take reasonable care not to make a misrepresentation when they took out the policy in that they didn't declare T's pre-existing conditions.*
- *It's important to establish what questions IPA asked of Mr B and Miss C in this case. IPA has now provided what it says are historic screenshots which show what Miss C saw when she and Mr B bought the policy. Miss C says that after IPA declined her claim, she asked the price comparison website for a copy of the question she was asked. IPA says that the question Miss C has provided from the price comparison site is the current question, which was changed after Mr B and Miss C took out the policy. I proceed on the basis that IPA has provided screenshots of what Miss C saw when she purchased the policy.*
- *IPA says that it doesn't own or control the price comparison website. The price comparison website's part of the sales journey contained the following:*

'Do any of these travellers have a pre-existing medical condition?'

To ensure you have the right cover for your trip it is important you tell us about your medical history. If you do not declare medical conditions this could invalidate your policy. Examples include diabetes, high blood pressure, depression and respiratory conditions (including asthma). You do not need to declare pregnancy as a medical condition.'

- *Mr B and Miss C ticked the box marked “No” and proceeded to the ‘Policyholder Details’ page. I don’t think that the question I’ve set out above is clear as it doesn’t explain what is meant by a pre-existing condition. And the examples it gives – diabetes, high blood pressure, depression, and respiratory conditions (including asthma) - didn’t relate to T and are serious, long term conditions T didn’t have. But that’s not the end of the matter as Mr B and Miss C continued the sales journey and were asked questions by IPA.*
- *On the ‘Policyholder Details’ page, Mr B and Miss C were asked by IPA to confirm that they had read the ‘Important Information’ which says as follows:*

‘Important Information

[...]

Please note that the policy you have selected will only be suitable if you and anyone you wish to insure can answer “no” to the following questions.

1) Within the last 2 years have you or anyone you wish to insure on this policy suffered any medical condition that has required prescribed medication (including repeat prescriptions) and/or treatment including surgery, tests or investigations?

2) Are you or anyone you wish to insure on this policy:

a) awaiting a diagnosis, surgery, treatment, tests or investigations (or their results) for any medical condition, or suffering symptoms that have not yet been discussed with a doctor? [...]

If you can answer “no” to the questions above, please select “confirm & pay now” to proceed.

If anyone you wish to insure is unable to answer “no” to the questions above, please request a quote for policies that cover pre-existing medical conditions using the link below

Show me policies for people with pre-existing medical conditions’

- *In fact, Mr B and Miss C couldn’t answer “no” to IPA’s question about medical conditions in the last two years as T had several medical conditions in his medical history– including conditions which led to referrals to paediatric endocrinology, orthopaedics and a dietician, and conjunctivitis. And T was waiting for paediatric endocrinology investigations at the time. So, Mr B and Miss C should have asked for a quote for a policy that covers pre-existing conditions.*
- *I think that IPA was entitled to rely on Mr B and Miss C’s indication that they’d read the ‘Important Information’ and therefore that they could answer “no” to the question about medical conditions. But Mr B and Miss C shouldn’t have proceeded with the purchase as T had suffered from medical conditions requiring prescribed medication or treatment, including surgery, tests, or investigation within the relevant period.*

- *I've noted that Mr B and Miss C say that like a lot of new-borns in winter, T developed croup and conjunctivitis and whilst these were minor, they had to seek medical advice and treatment because of his age and the fact that over-the-counter medication wasn't available. I don't think that alters the outcome here. That's because the questions IPA asked were clear and T had a number of medical conditions that should have been disclosed.*
- *Mr B and Miss C have repeated the sales process and say that there isn't an option to disclose some of T's medical conditions. But it remains the case that if Mr B and Miss C had responded correctly to the question about medical conditions within the previous two years, they wouldn't have been able to proceed to purchase the policy.*
- *I don't think that IPA was at fault in concluding that Mr B and Miss C hadn't taken reasonable care in answering the questions it put to them.*
- *IPA says that if Mr B and Miss C had answered the questions accurately, they would have been redirected back to the price comparison website's panel of insurers and wouldn't have been able to proceed with the purchase of the policy. This means I'm satisfied that the misrepresentation was a qualifying one under CIDRA.*
- *Mr B and Miss C have referred to the possibility of a proportional settlement. There are no grounds on which I can fairly direct IPA to settle their claim on that basis. That's because I'm satisfied that if Mr B and Miss C had answered the questions put to them accurately, IPA wouldn't have offered them the policy.*
- *IPA declined the claim, cancelled the policy, and refunded the premium. It was entitled to do that, and I don't think that it acted unfairly or unreasonably in doing so.'*

Responses to my provisional decision

IPA accepted my provisional decision. Miss C responded to say that whilst she didn't agree with the outcome, they accepted the provisional 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.

Neither Mr B, Miss C nor IPA have provided any fresh information or evidence in response to my provisional decision. I therefore find no basis on which to depart from my earlier conclusions. For the reasons I've explained, I don't think that IPA acted unfairly or unreasonably in declining the claim, cancelling the policy and refunding the premium.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss C to accept or reject my decision before 4 October 2023.

Louise Povey
Ombudsman

