

The complaint

Mr and Mrs C complain about the way that Red Sands Insurance Company (Europe) Limited has settled a cancellation claim they made on a travel insurance policy.

As Mr C brought the complaint to us, I've referred mainly to him.

What happened

In July 2022, Mr C took out a single trip travel insurance policy through a broker to cover a cruise holiday. During the sale, Mr C went through medical screening and answered questions about his health. He told the broker that he suffered from asthma, diabetes, high cholesterol and high blood pressure. Red Sands agreed to cover Mr C and the medical conditions he'd declared. It charged Mr C a premium of £495.03 for the policy. Mr and Mrs C were due to travel in February 2023.

Unfortunately, in November 2022, Mr C was diagnosed with congestive cardiac failure and he was advised not to travel. So Mr C cancelled the trip and made a claim on the policy for his irrecoverable cruise costs.

Red Sands considered the available medical evidence. And it concluded that Mr C hadn't fully answered the questions he'd been asked during medical screening. It noted that Mr C suffered from water retention; that he'd been prescribed antibiotics for a chest infection and that he suffered from obesity. So Red Sands calculated the premium it would have charged Mr C for cover if he'd made a full medical declaration. It concluded that Mr C had paid 47.91% of the price it would have charged him if he'd correctly answered its questions. So it paid 47.91% of the value of the cancellation claim.

Mr C wasn't happy with the settlement he'd been paid and so he asked us to look into his complaint. He felt he'd answered Red Sands' questions correctly.

Our investigator carefully considered all of the available evidence. He didn't think Mr C had been asked a clear question about obesity and so he didn't think it had been fair for Red Sands to take this into account when it assessed Mr C's claim. However, while the complaint was with us, Red Sands went on to carry out a further retrospective screening with Mr C (which excluded obesity). And based on the answers Mr C gave Red Sands during that call, Red Sands calculated that in fact, Mr C had only paid 36.05% of the premium it would have charged had it been aware of his full medical history at the outset. So the investigator concluded that Red Sands had already paid a higher proportion of his claim than it was required to under the relevant law. Therefore, he didn't think it needed to pay anything more.

Mr C disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 18 December 2023, which explained the reasons why I didn't plan to uphold Mr and Mrs C's complaint. I said:

'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 Red Sands handled Mr and Mrs C'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 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 C took out the policy by phone, he was asked information about himself and Mrs C and any medical conditions they'd had in the last two years. Red Sands used this information to decide whether or not to insure Mr and Mrs C and if so, on what terms.

Red Sands says that Mr C didn't correctly answer all of the questions he was asked during the screening 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 C's claim.

Red Sands thinks Mr C failed to take reasonable care not to make a misrepresentation when he took out the policy. So I've considered whether I think this was a fair conclusion for Red Sands to reach.

First, when considering whether a consumer has taken reasonable care, I need to consider how clear and specific the questions they were asked by the insurer (or, in this case, the broker) were. Red Sands has provided a copy of Mr C's screening call and a copy of this call has also been sent to Mr C. Questions one and two asked the following:

'Have you or anyone in your party:

- 1) Taken any prescription medication or received medical treatment in the last two years?*
- 2) Attended a medical practitioner's surgery, hospital or clinic (out-patient or in-patient) in the last two years?'*

As Mr C answered yes to both questions, he was taken through a more detailed medical screening. During the call, he declared that he suffered from asthma, high blood pressure, high cholesterol and diabetes. In relation to asthma, Mr C was asked:

'In the last year, have you had a chest infection or episode of pneumonia.' Mr C answered 'no'.

In my view, these questions were asked in a clear and understandable way and ought generally to have prompted a reasonable consumer to realise that Red Sands wanted to know information about their medical conditions. Nonetheless though, I agree with our investigator that I don't think these questions were clear enough to prompt Mr C to disclose obesity. I don't think he'd have appreciated that this was a medical condition in and of itself which Red Sands wanted to know about. Red Sands hasn't challenged our investigator's conclusions on that point.

But Red Sands still concluded that Mr C had failed to declare a number of other medical conditions. I'm aware that while the complaint was with us, it carried out a retro-screening call with Mr C. The answers Mr C gave Red Sands during that call indicated that the proportionate settlement Red Sands had already paid him appeared higher than Mr C was reasonably entitled to. But it isn't clear to me that the answers Mr C gave during that call related to his health at the time he took out the policy. Instead, I think he gave answers with the benefit of hindsight, taking into account his November 2022 cardiac diagnosis. So I'm not persuaded that the later call Red Sands carried out with Mr C should form the basis of its premium calculations.

Instead, I emailed Red Sands to explain that I thought it would be fair and reasonable for Red Sands to base its screening on the medical information Mr C's GP gave on the claim form – and bearing in mind Mr C's understanding of those particular conditions. The undeclared conditions falling into the relevant two-year period were as follows:

- Swelling of ankles (September 2020 and November 2021)*
- Chest infection (December 2021, with a prescription of antibiotics);*
- ECG (September 2020) – inconclusive due to obesity.*

The investigator asked Mr C for more information about these conditions and how they'd affected him at the time the policy was taken out. Mr C explained that he'd retained water in his legs; his heart hadn't been pumping properly and so he'd been prescribed tablets for this. And he told the investigator that he'd had an ECG as part of a diabetic review, but it had been inconclusive, as the doctors hadn't been able to get a clear view of his heart.

I think that given the conditions I've mentioned – and in particular, the medications Mr C was prescribed and the ECG which took place during the two-year period prior to the claim, it was fair for Red Sands to conclude that these additional medical conditions fell within the scope of its questions.

Red Sands calculated that adding water retention and the chest infection to Mr C's existing declared conditions would have added an additional premium of £394.84. However, it also told us that generally, the declaration of an inconclusive ECG would lead to it declining to offer a policy at all.

In my view then, the available evidence suggests that Mr C did make a qualifying misrepresentation under CIDRA. So I think Red Sands is reasonably entitled to apply the relevant remedy available to it under the Act. Given Red Sands has settled Mr C's claim proportionately, it seems it concluded that the misrepresentation was careless. I don't think this was an unreasonable conclusion for Red Sands to draw. Based on what I've seen, I don't think Mr C intended to mislead Red Sands – but it seems he didn't take enough care to ensure he answered its questions correctly.

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. If it would still have offered cover, but charged a higher premium, then it may settle the claim proportionately, in line with the premium it would have charged. And if it would never have offered cover at all, it's entitled to cancel the policy from the start and refund the premium.

In this case, as I've explained, it appears that if Red Sands had known about Mr C's inconclusive ECG, it wouldn't have offered him any cover and he wouldn't have been able to take out this policy. That means it would have been entitled to decline the full claim and cancel the policy. But in this case, it's settled 47.91% of the value of Mr C's claim. In my view, this is a very fair settlement which is substantially more than a refund of premium would be. As such, I don't think it would be fair for me to also direct Red Sands to refund Mr and Mrs C's premium.

So whilst I sympathise with Mr C's position, I currently think Red Sands has already settled this claim more than fairly. So it follows that I don't plan to direct Red Sands to do anything more.'

I asked both parties to send me any further information they wanted me to consider.

Both Mr and Mrs C and Red Sands confirmed they had nothing more to add.

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, as neither party has provided any further evidence or comments, I see no reason to change my provisional findings.

So my final decision is the same as my provisional decision and for the same reasons.

My final decision

For the reasons I've given above and in my provisional 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 C and Mrs C to accept or reject my decision before 8 February 2024.

Lisa Barham
Ombudsman