DRN-4378294

The complaint

Mr and Mrs D complain about CIGNA Life Insurance Company of Europe SA-NV voiding their private medical insurance and only paying part of their claim.

What happened

On 7 January 2023 Mr D took out a non-advised Global Individual Private Medical Insurance policy online, underwritten by CIGNA. The policy covered Mr and Mrs D.

On 24 January 2023 Mrs D attended a GP appointment which Mr and Mrs D say was booked as a routine cervical smear appointment. They then travelled abroad.

On 31 January 2023, while abroad, Mrs D called CIGNA for pre-authorisation for a private consultation as on 24 January 2023 her GP had identified a cervical polyp that needed investigation. Mrs D sent CIGNA her GP's referral letter dated 24 January 2023 which said Mrs D had persistent bleeding for six weeks and had been on HRT for three years. Mr and Mrs D say CIGNA pre-authorised the consultation. CIGNA say it hadn't been pre-authorised and the claim was being reviewed.

On 1 February 2023 Mrs D had the private consultation which confirmed a polyp and possible womb thickening.

On 3 February 2023 Mrs D called CIGNA for pre-authorisation for a surgical procedure to remove the polyp. CIGNA says in error it pre-authorised that procedure without a review. The procedure to remove the polyp for investigation took place that day,

On 4 February Mr and Mrs D received an email from CIGNA saying the polyp was a pre-existing medical condition and it had cancelled the policy.

In its final response letter CIGNA said when Mr and Mrs D were asked medical questions when they took out the policy they hadn't disclosed Mrs D's symptoms of persistent bleeding or that she took HRT, so they had answered the questions incorrectly. CIGNA considered Mr and Mrs D had made a reckless or deliberate qualifying misrepresentation. And CIGNA said if it had known the correct situation about Mrs D's symptoms it wouldn't have offered the policy which enabled it to cancel the policy and decline the claims.

However, CIGNA said it would pay for Mrs D's surgery, which it had pre-authorised in error. It wouldn't cover the treatment she had on 1 February 2023, which it said it hadn't pre-authorised or Mrs D's private post-surgery consultation 9 February 2023 which was after it had told Mr and Mrs D the policy had been cancelled. CIGNA also said it would reconsider its decision if it received a new medical report by Mrs D's GP giving different evidence, acknowledging errors in her letter of 24 January 2023 and providing an explanation for the errors.

Mr and Mrs D complained to us. In summary they said:

- Mr D first contacted CIGNA around 3 January 2023 to discuss getting a quote and at that time Mrs D would have been bleeding about one and a half weeks. That was her usual monthly bleed, so wouldn't have been an ongoing symptom she was concerned about.

- She couldn't have had a cervical smear if she'd been bleeding. So the fact she had a smear shows she wasn't bleeding on 24 January 2023 and her bleeding wasn't continuous. Her regular light monthly bleed started on the 21 December 2022 and lasted for around two and half weeks with spotting in-between.

- Mrs D's GP could confirm the 24 January 2023 appointment had been booked just for a routine cervical smear and repeat HRT prescription, not because she had any medical symptoms.

- They accepted they hadn't told CIGNA about Mrs D's HRT medication, which was an oversight.

- CIGNA had given Mrs D a pre-authorisation code for the consultation on 1 February 2023.

- CIGNA's decision had caused them a lot of upset and inconvenience. They'd been left abroad without any health insurance and had a frustrating experience trying to complain to CIGNA. That was during the very stressful time of waiting to find out if there was any abnormal cell growth around the polyp.

- They want CIGNA to also pay the cost of the initial consultation on 1 February 2023, the cost of the post-surgery consultation on 9 February 2023 and compensation for their distress and inconvenience. Initially they wanted CIGNA to reinstate the policy but they've now got alternative cover.

Our investigator said CIGNA had acted reasonably in considering that Mr and Mrs D had made a deliberate or reckless misrepresentation, voiding the policy but paying the claim it had pre-authorised.

Mr and Mrs D disagree and want an ombudsman's decision. They added:

- Mrs D's GP would be able to confirm she hadn't been bleeding continuously for six weeks when she saw the GP. Mrs D went to her GP or a clinic every six months for the past three years and no medical professional had been concerned about her usual monthly bleed or told her it was a medical condition.

- The polyp was only found on Mrs D's smear test on 24 January 2023. So CIGNA was wrong to say it was a pre-existing medical condition when they took out the policy.

- The emails between them and CIGNA showed the start of their process to get a pre-authorisation code over the phone for the consultation on 1 February 2023. CIGNA must have the authorisation code on record.

- If CIGNA had said from the start Mrs D wasn't eligible for cover they would have accepted that response.

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 must 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.

CIGNA thinks Mr and Mrs D failed to take reasonable care not to make a misrepresentation when they answered 'no' to the following questions for Mrs D when they bought the policy:

> *'Q3 Apart from what you have already told us, is any applicant taking any medication or receiving any treatment for a medical condition?'*

CIGNA says from the medical information it had seen Mrs D had been on HRT for three years which she should have told it about in response to the question.

> *'Q5 Does anyone have any illness, condition or symptom not already mentioned? Please include details of any known or suspected issues whether or not medical advice has been sought or a diagnosis reached'.*

CIGNA says from the medical information it had seen Mrs D's persistent pelvic bleeding for six weeks mentioned in the GP's letter of 24 January 2023 would have started in mid-December 2022 so should have been disclosed.

I think the questions CIGNA asked were clear and specific and I'm satisfied that the potential implications of answering incorrectly were made clear to Mr and Mrs D at the time of the sale.

Based on what I've seen I don't think Mr and Mrs D took reasonable care in answering the questions as they did, so I think they did make a misrepresentation.

I've gone on to consider whether Mr and Mrs D's misrepresentation was a qualifying misrepresentation. In other words, whether the incorrect information they provided would have made any difference to the insurance terms CIGNA would have offered them.

CIGNA provided a copy of its underwriting criteria which shows that if it had been provided with the correct information that Mrs D had ongoing symptoms not yet investigated it would have declined cover. So I'm satisfied Mr and Mrs D's misrepresentation was a qualifying one.

CIGNA also cancelled the policy in line with the policy terms:

> *'3. The information you give us*
>
> *In deciding whether to accept this policy and in setting the terms and premium, we have relied on the information that you have given to us. You must take care when*

answering any questions that we ask by ensuring that all information is accurate and complete.

If we determine on reasonable grounds that you deliberately or recklessly provided us with false or misleading information, it could adversely affect this policy and any claim. For example, we may:

- *treat this policy as if it had never existed, refuse to pay all claims and return the premium paid. We will only do this if we provided you with insurance cover which we would not otherwise have offered;*
- *amend the terms of your insurance. We may apply these amended terms as if they were already in place if a claim has been adversely impacted by your carelessness; or*
- *terminate in accordance with 6.2.*

We will notify you in writing if any of the above circumstances occur. If you become aware that information you have given us is inaccurate, you must inform us as soon as possible using one of the options in the 'How to contact us' section on page 3 of these Policy Rules.'
…
6.2 Subject to clause 3, we will terminate this policy with immediate effect if, we, at our sole discretion determine, on reasonable grounds, that you have, in the course of applying for the policy or when making any claim under it, withheld information or knowingly or recklessly provided information which you know or believe to be untrue or inaccurate or failed to provide information which we have asked for, including medical information'.

I've thought about how CIGNA classified the misrepresentation. CIGNA said that given the medical information it considers Mr and Mrs D's misrepresentation was deliberate or reckless. That means CIGNA thought Mr and Mrs D knew the information they provided was untrue or misleading or didn't care whether it was untrue or misleading, and they 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.

In all the circumstances I don't think it was unreasonable for CIGNA to have classed the misrepresentation as deliberate or reckless. I say that having reviewed the medical information and Mr and Mrs D's comments.

Mrs D's GP's referral letter of 24 January 2023 says:

'I would be grateful for your assessment of (Mrs D) presenting to me as of 24/1/2023 with the following:

Has had more or less persistent pv bleeding x 6 weeks and has eased off x 2 weeks, initially had clots and no associated abdominal pain…

On HRT x 3 years and has always had a light monthly withdrawal bleed up until 6 weeks ago.
Speculum exam- bright red polyp… visible and extending from the cervical os - ?cause of the pv bleeding

2. cervical smear sent
Plan-refer to gynaecologist = requires further assessment of pv bleeding incl? polyp removal…..'

From the evidence in Mrs D's GP's letter of 24 January 2023 I think CIGNA reasonably considered that:

- There's no evidence Mrs D was booked to see the GP just for a routine cervical smear.
- As at 24 January 2023 Mrs D had *'more or less persistent pelvic bleeding for six weeks'*, initially with clots, but the bleeding had eased off over the last two weeks. That means Mrs D's bleeding would have started around 13 December 2022 so at the time Mr and Mrs D answered the questions to take out the policy Mrs D's bleeding would have been ongoing for three weeks. And that would have been during the time of bleeding being *'initially with clots'.*
- That pattern of bleeding was unusual for Mrs D as the GP's letter says she *'always had a light monthly withdrawal (from HRT) bleed up until 6 weeks ago'.*

The medical report from the gynaecologist dated 11 February 2023 says that when they saw Mrs D on 1 February 2023:

> '*she consulted me for abnormal bleeding pv for 1 week. In the month of January 2023, she had spotting per vagina off and on throughout the month'.*

The gynaecologist's report does give different from the evidence in the GP's letter. But that doesn't alter that there is medical evidence from the GP making the referral that Mrs D's unusual bleeding symptoms began before the policy started.

I've considered Mr and Mrs D's explanations as to why they didn't disclose her symptoms. CIGNA isn't saying they knew Mrs D had a polyp or she was diagnosed with a related medical condition before they took out the policy. CIGNA is saying that in response to the above questions Mr and Mrs D were asked when they took out the policy they should have told it about Mrs D's unusual bleed symptoms.

I think the questions Mr and Mrs D were asked were clear that CIGNA wanted to know about any symptoms whether or not medical advice has been sought or a diagnosis reached. Even if Mrs D wasn't bleeding on 24 January 2023 there is still the evidence from the GP that she had said she'd been bleeding *'more or less persistently'* for the past six weeks, and that was unusual for her. Mrs D's evidence that her regular light monthly bleed started on the 21 December 2022 and lasted for around two and a half weeks with spotting in-between isn't supported by the evidence the GP gave in the 24 January 2023 letter.

Mrs D says her GP can provide another report supporting that she hadn't been persistently bleeding for six weeks when she went to see the GP on 24 January 2023. CIGNA's final response letter to Mr and Mrs D of 4 April 2023 acknowledged that health care providers can make errors and said it would reconsider its decision if Mrs D's GP provided a new report. It set out what the GP should cover in the new report, in brief that her letter of 24 January 2023 was wrong, what she should have said, and to provide an explanation on how the errors were made in the letter of 24 January 2023. I've seen no new report from the GP and it's for Mr and Mrs D to contact the GP to get the new report to support their claim. I think the issues CIGNA asked the GP to address in any new report she provides are reasonable. If Mrs D can obtain a report from her GP addressing those issues she should send the new report to CIGNA to reconsider.

On the basis of the medical information CIGNA currently has I'm satisfied CIGNA could treat Mr and Mrs D's misrepresentation as reckless or deliberate. I've looked at the actions CIGNA could take in accordance with CIDRA. If the qualifying misrepresentation was

deliberate or reckless the insurer can avoid the policy, refuse all claims as effectively the policy never existed and need not return the premiums.

So I'm satisfied CIGNA was entitled to avoid Mr and Mrs D's policy in accordance with CIDRA. And, as that means in effect the policy never existed, CIGNA didn't have to deal with their claims. As CIDRA reflects our long-established approach to misrepresentation cases, I think allowing CIGNA to rely on it to avoid Mr and Mrs D's policy gives a fair and reasonable outcome in this complaint. However, CIGNA is willing to pay for Mrs D's surgery that it had pre-authorised in error, which I think is fair and reasonable in the circumstances.

Mr and Mrs D say if CIGNA had refused cover immediately they would have accepted its decision and CIGNA's pre-authorisation for Mrs D's consultation on 1 February 2023 led them to incur that cost when it cancelled the policy a few days later. I haven't seen any evidence that CIGNA pre-authorised the consultation Mrs D had on 1 February 2023. CIGNA said the pre-authorisation request was under review, which was its correct process. The emails Mr and Mrs D have provided don't show that CIGNA had pre-authorised the 1 February consultation. By the time Mrs D had the post-surgery consultation on the 9 February 2023 she knew CIGNA had cancelled the policy and there was no cover. I've explained above why I think CIGNA acted fairly and reasonably in voiding the policy. So on the evidence I have CIGNA acted reasonably in not covering the consultations on 1 and 9 February 2023.

I understand it was upsetting and stressful for Mr and Mrs D to receive CIGNA's letter cancelling the policy at an already very worrying time while Mrs D was waiting for the investigation results. But as I think CIGNA acted fairly and reasonably on the medical evidence it had there's no basis on which I can award compensation for any distress and inconvenience its decision caused.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms D to accept or reject my decision before 8 November 2023.

Nicola Sisk
Ombudsman