DRN-4795580

The complaint

Mr and Mrs S are unhappy that CIGNA Life Insurance Company of Europe SA-NV (CIGNA) declined their private medical insurance policy claim and that an exclusion was applied to the contract.

Any reference to CIGNA includes all its agents.

What happened

Mr and Mrs S renewed a private medical insurance policy in July 2022. The policy started on 10 July 2022 and expired on 9 July 2023. The policy was underwritten by CIGNA.

CIGNA offered the policy based on a series of questions that were asked and medical underwriting that was carried out.

In January 2023, Mr S was experiencing tightness in his chest, and he complained about shortness of breath. He went to see a cardiologist and had consultations. CIGNA issued '*guarantee of payment'* letters to the treatment provider. Following some blood tests and a CT scan in February 2023, Mr S was diagnosed with a hiatal hernia.

Mr and Mrs S submitted a claim to CIGNA. It requested medical records for Mr S and assessed the claim. The claim was declined. CIGNA thought information about Mr S's health has been mis-represented when they took the policy out and had it been provided with the correct information, it wouldn't have provided cover.

Mr and Mrs S brought their complaint to this service. Our investigator didn't uphold it. He didn't think that Mr and Mrs S had sought to mislead CIGNA about Mr S's health deliberately. But he thought Mr S had answered clear questions incorrectly. So he thought Mr S made a careless misrepresentation to CIGNA about his health. And he was satisfied, based on the evidence CIGNA had provided, that if Mr S had told it about his previous heart condition, it would've applied an exclusion to Mr and Mrs S's policy. He concluded that CIGNA had correctly declined the claim and applied the exclusion in line with the remedies available to it under the Consumer and Insurance (Disclosures and Representations) Act 2012 (CIDRA).

Mr and Mrs S disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

They say they answered the question CIGNA asked honestly and clearly and this is shown in the application form they completed.

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 S failed to take reasonable care not to make a misrepresentation when they didn't disclose Mr S's heart condition. So, I've looked at the evidence provided.

I've considered the health questionnaire within the application form that Mr and Mrs S completed. This says:

> '*Please read the following questions very carefully. Please take reasonable care to answer all questions honestly and fully. Careless misrepresentation could result in Cigna reducing the amount of any claims proportionately, whereas deliberate or reckless misrepresentation could result in Cigna rejecting claims, and/or cancelling cover. If you need help completing your application, please contact us.*
>
> *If you are unsure about the answer to any question you should make the enquiries necessary to allow you to provide an accurate answer.'*

The question that was asked and that's relevant to this complaint said:

> *'Has any applicant received treatment, tests or investigations for, or been diagnosed with, or had any signs or symptoms of:*
>
> *[…]*
>
> *2. Heart or circulatory disorders e.g., chest pain, heart attack, high blood pressure, vascular disease, coronary artery disease, angina, irregular heartbeat, aneurysm or hear murmur.*
>
> *[…]'*

Mr S and Mrs S both respectively are shown to have answered '*No*' to this question.

And question 13, further down on the questionnaire asked '*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.'*

Based on the above, I'm satisfied that the question about Mr S's health on the application form was answered incorrectly. The evidence provided shows that Mr S had heart surgery in 2016 and this information should have been disclosed to CIGNA when taking out the policy. The hospital discharge report confirms this and there's been no dispute that the surgery did take place.

I've also looked at the policy terms and conditions and under the '*General Exclusions'* section, it states:

‘*Treatment for:*

a) A pre-existing condition; or

b) Any condition or symptom which resulted from, or are related to, a pre-existing condition.

We will not pay for treatment for a pre-existing condition of which the policyholder was (or should reasonably have been) aware at the date cover commenced, and in respect of which we have not expressly agreed cover.’

The discharge report from 2023 states that Mr S was admitted at that point with an atypical chest pain, he had a coronary angiogram because of a suspicion on coronary artery and bypass obstruction. His treatment was focused on his heart and chest pains. Additionally, there were no further investigation, treatment or follow-ups recommended for the hernia.

While I appreciate that Mr S had a hiatal hernia, there is no medical evidence to show his admission wasn’t cardiovascular related. So, I’m satisfied that there would be no cover for this treatment under their policy and, placing an exclusion isn’t unfair, in the circumstances.

Mr and Mrs S say that if Mr S was on heart medication and not as fit as he was at the time, his heart surgery would have been disclosed at the time of completing the application. They answered ‘*No*’ because none of the symptoms were present at the time of application. If CIGNA had asked about any past or recent surgery, they would have declared it without hesitation. I acknowledge their comments. However, I don’t think the question asked on the health questionnaire was unclear, and I can’t see that they answered it correctly. In any case, Mr and Mrs S were given the option to ask CIGNA if they weren’t sure how to answer the questions at the time.

Mr and Mrs S also say they had no control over the hospital’s decision to only treat Mr S for a heart condition. I acknowledge this too. But the point is that Mr S was admitted due to chest pain and the evidence from the hospital shows that he was indeed treated for his chest pain and had an angiogram. So, I can’t reasonably say that declining the claim for this treatment is unfair or that an exclusion ought not to be added to their policy for this condition.

I’ve gone on to think about whether failing to take reasonable care makes a difference in this case.

CIGNA has classified the qualifying misrepresentation as a careless one (as opposed to deliberate or reckless).

CIGNA has provided evidence which shows what would have happened if the correct information was entered at the time of taking out the policy. It’s shown that had Mr S completed the question about his heart surgery in 2016 correctly, CIGNA would have excluded this condition under their policy. This means, I’m satisfied Mr S’s misrepresentation was a qualifying one and it was careless.

CIDRA sets out the remedies available to an insurer in the case of careless misrepresentation. CIDRA is concerned with disclosure and representations made by a consumer to an insurer before a consumer contract is entered into or varied.

I do understand that Mr and Mrs S will be disappointed. But CIGNA has followed the law as set out in CIDRA and applied an exclusion for Mr S’s medical condition and declined his claim for the treatment he received in 2023. Overall, therefore, I’m satisfied this is fair and reasonable, taking everything into account. It follows therefore that I don’t require CIGNA to

do anything further.

My final decision

For the reasons given above, I don't uphold Mr and Mrs S's complaint about CIGNA Life Insurance Company of Europe SA-NV trading as Cigna Healthcare.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 31 July 2024.

Nimisha Radia
Ombudsman