

The complaint

Mr and Mrs D are unhappy with the way in which Euroins AD handled a claim made on their travel insurance policy ('the policy') including delays in repatriating Mr D back to the UK and only covering a proportion of the costs claimed for.

All reference to Euroins AD includes its agents and medical assistance team.

What happened

Mr and Mrs D were on a cruise. Mr D became unwell, was disembarked from the cruise ship and rushed to hospital with breathing difficulties.

A family member called Euroins for assistance at the beginning of June 2023. Mr and Mrs D are unhappy that Euroins delayed repatriating Mr D back to the UK even though the treating doctor abroad explained at various times that he was fit to travel. In the end, after around 25 days in hospital, Mr and Mrs D's family arranged Mr D's repatriation back to the UK on a commercial flight and without medical assistance.

Mr and Mrs D says the impact of the delay has been significant, particularly on Mr D.

They're also unhappy that Euroins has only agreed to cover around 81% of the costs claimed. That's because Euroins says Mr and Mrs D didn't disclose all of Mr D's pre-existing heart conditions when applying for the policy. It says had they'd done so, Mr and Mrs D would've been charged more for the policy. Euroins has therefore agreed to proportionality settle the claim based on the proportion of the policy premium Mr and Mrs D paid.

Euroins investigated Mr and Mrs D's concerns and concluded that it was right to only pay a proportion of the costs claimed by them. And whilst it accepted that there had been some mistakes in the handling of the claim, and it could've dealt with certain aspects of the claim more efficiently – which it apologised for and said it would be providing feedback to those involved – it said this was a complex repatriation with challenging circumstances. And overall, it felt that it had provided adequate emergency assistance.

Unhappy, Mr and Mrs D brought a complaint a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and she partially upheld the complaint. She recommended that Euroins pay Mr and Mrs D:

- 81.07% of Mr D's repatriation costs (plus simple interest at 8% per year from the date the other aspects of the claim were paid to the date of settlement); and
- £200 compensation for distress and inconvenience.

Euroins accepted the recommendations. Mr and Mrs D disagreed. So, this complaint has been passed to me to consider everything afresh and 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.

Paying 81.07% of the claim

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. 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 (in this case Euroins) 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.

Was there a misrepresentation?

I've listened to the recording of the call during which the policy was applied for. Mrs D answers the medical questions asked in respect of Mr D, in his presence. I can hear Mr D's answers in the background which are then relayed by Mrs D to Euroins' representative.

The representative recalls that Mrs D had mentioned that Mr D had a heart condition earlier in the call and he asks what that was. Mrs D responds that he had a small heart attack and has had two stents.

The representative subsequently asks: "has he had any other heart conditions at all?" And the answer given is "no".

Looking at the GP report Euroins obtained whilst Mr D was receiving hospital treatment abroad, I'm satisfied it has fairly and reasonably concluded that this question was answered incorrectly.

The GP report reflects that Mr D had been diagnosed with atrial fibrillation and cardioversion in 2015, around two years before his stent insertion.

So, I'm satisfied that these heart conditions should also have been disclosed in response to the question asked.

I think not disclosing the above conditions when taking out the policy was careless.

Was the misrepresentation a 'qualifying' misrepresentation?

I've gone on to consider whether Euroins has fairly concluded that by answering the question incorrectly, this misrepresentation amounted to a qualifying misrepresentation under CIDRA. And I'm satisfied it has.

Euroins has provided evidence which I think is persuasive, supporting that had this question been answered correctly, further questions would've been asked and based on the likely

answers to those questions, Mr and Mrs D would've been charged around £228 more for the policy.

So, I'm satisfied that Euroins has fairly concluded that Mr and Mrs D only paid 81.07% of the premium they ought to have paid if Mr D had disclosed all his heart conditions when applying for the policy.

Because of this, I'm satisfied it's acted fairly and reasonably by only agreeing to cover 81.07% of the costs claimed by Mr and Mrs D under the policy.

The handling of the claim, medical assistance whilst abroad and delays in repatriation

Euroins accepts that there were times when it could've kept Mr and Mrs D's family more regularly updated about what was going on whilst Mr D was in hospital abroad.

Mr and Mrs D's family members aren't named beneficiaries under the policy and they're not party to the contract of insurance between Mr and Mrs D and Euroins. So, I'm satisfied that they're not eligible complainants and I have no power to award compensation to them for the distress, frustration and inconvenience they personally experienced by not receiving updates and having to contact Euroins. However, I accept that not receiving prompt updates and the steps Euroins was taking to look into repatriation and getting updates on the state of Mr D's health from the treating hospital would've been frustrating and upsetting for Mr and Mrs D.

Euroins also accepts that after submitting their claim – after Mr D returned to the UK – it delayed dealing with documents once received. I also accept this would've been frustrating for Mr and Mrs D.

I'm satisfied that £200 compensation fairly reflects the impact these errors had on Mr and Mrs D.

I know Mr and Mrs D are also very upset about their family having to make their own arrangements to repatriate Mr D back to the UK. They say that the treating doctor had advised on many occasions that Mr D was fit to travel and because of the delays, Mr D spent far longer in the hospital abroad than he needed to, away from Mrs D and this caused his health to deteriorate.

I have a lot of empathy for the situation Mrs D and, particularly, Mr D was in. I appreciate that the situation would've been very worrying and stressful. And whilst I can of course understand why he would want to return to the UK to continue his treatment, I'm also conscious that the evidence from the time supports that Mr D was receiving excellent medical care at the hospital he was in. That's supported by Mr and Mrs D's family sending complimentary correspondence to the treating doctor (although I note what Mr D says about feeling very hot in hospital, having trouble sleeping and the language barrier).

Overall, although I can see that the treating doctor did advise on many occasions that Mr D was ready to be discharged from hospital and fit to travel, I don't think Euroins unreasonably delayed his repatriation in the particular circumstances of this case. I'll explain why.

- Before verifying cover under the policy, Euroins wanted to obtain Mr D's medical history from his GP. That's common industry practice, and in principle, I think it was fair and reasonable for Euroins to request and consider this information before verifying the claim.
- Even if I concluded that Euroins could've requested the information from the GP sooner, on the balance of probabilities, I don't think this would've resulted in Mr D

being repatriated to the UK more quickly in this case.

- Once the GP information was received on 13 June 2023, I'm satisfied that this was promptly considered, and further information was reasonably requested from the GP on the same day – which was promptly received.
- It wasn't until around 15 June 2023 that the treating doctor said that Mr D was ready to be discharged from hospital and I don't think, given Mr D's circumstances and health, that Euroins unreasonably requested an updated medical report for its medical team to consider, which it then chased for.
- On around 16 June 2023, although Mr and Mrs D's daughter was keen for Mr D to be repatriated at the time, reporting to Euroins that Mr D's health was deteriorating, I'm satisfied that the treating hospital said Mr D couldn't be discharged "yet". The updated medical report from the time supports that.
- On around 17 June 2023, the treating hospital said that Mr D could be discharged on 19 June 2023. Again, I don't think Euroins unreasonably requested an updated medical report at that time so that it could consider the best and safest way to repatriate Mr D and determine the assistance needed, if any.
- On around 19 June 2023, the treating doctor advised that Mr D would need to remain in hospital for a couple more days.
- So, overall – at this stage - I'm satisfied that the advice from the treating hospital and doctor was changing. Until Mr D was stable and there was an updated medical report from the treating hospital as to the status of Mr D's health and confirming that he was fit to fly I think it was fair of Euroins to hold off planning for Mr D to travel back to the UK.
- In the meantime, I'm satisfied that Euroins did act fairly and reasonably by agreeing to cover a proportionate share of the costs of a family member to fly out to be with Mr D and their accommodation costs.
- I also think it acted reasonably by explaining to Mr and Mrs D's family that it can take time to arrange repatriation in circumstances where medical escorts are required to travel back with the patient.
- I'm also satisfied that Euroins considered the family's request for Mr D to be transported back to the UK by road ambulance. And I think it was reasonable for it to ultimately following the advice of its medical team that in the circumstances, including the travel time, this wasn't a viable option at that stage. I'm not a medical expert but this seems a reasonable conclusion for the medical team to make in the circumstances of this case.
- The treating hospital subsequently said that Mr D was fit to fly on around 21 June 2023 and Euroins' medical teams advised that this could be via commercial flight with two medical escorts. In the circumstances of this case, given Mr D's health and personal circumstances, I don't think it was unreasonable for Euroins to follow the advice of its medical team.
- When making that finding, I've taken into account that the treating doctor did say around this time that Mr D can travel without a medical escort, and I can see that the treating hospital was keen to discharge Mr D as they needed to free up space in the ward. Although I appreciate why Mr and Mrs D think that Euroins was unreasonably delaying his return to the UK, I'm satisfied that it was trying to act in the best of interests of Mr D. If Mr D's health suddenly deteriorated on the flight back, I can understand why it was felt that medical professionals should be with Mr D to assist, as required. Further, Mr D had lost weight and the treating doctor said that he could "barely walk".

- I'm satisfied that Euroins proactively then tried to book appropriate medical escorts and that there were issues with availability.
- I'm also satisfied that Euroins continued to consider other options during this time to return Mr D to the UK including again looking into the possibility of transporting by road ambulance and obtaining quotes for this. Mr and Mrs D's family also said that their daughter could assist on the flight home and whilst I can understand why they suggested this as an option – and were very keen for Mr D to be back in the UK – I don't think Euroins acted unreasonably by concluding that this wasn't a viable alternative option to a medical professional who was experienced in accompanying patients during a flight.
- Whilst I can understand why Mr and Mrs D were frustrated by the lack of available medical escorts at the time, I don't think I can fairly and reasonably hold Euroins responsible for this. This is outside of its control.
- Once two medical professionals became available, I'm satisfied that Euroins looked into flight options and were in the process of finalising the plan for repatriation when it discovered that Mr and Mrs D's family had arranged Mr D's repatriation by commercial flight without medical assistance and had returned to the UK safely. So, at that stage, I'm satisfied that Euroins didn't need to do anything further.
- Although Mr D has described the difficulties he's faced since returning back to the UK including not driving, still being underweight, having trouble walking and the mental anguish reliving the experience, I don't think I can reasonably hold Euroins responsible for that. Although it accepts there were communication failures and other errors handling the claim, overall, I'm satisfied that it's not unreasonable for it to have delayed repatriating him to the UK for reasons set out above.

Mr D's repatriation costs

Euroins has agreed to cover 81.07% of certain costs claimed including the daily hospital benefit under the policy, medical costs and the costs of a family member travelling to be with Mr D and staying there.

Although the emergency medical and repatriation expenses section of the policy terms says that reasonable and necessary travelling expenses are covered if during a trip "you become ill", that's only if authorised by the emergency assistance company.

Euroins didn't authorise Mr D returning to the UK by commercial flight without medical assistance in this case.

However, as Euroins was looking into flights for Mr D and given that the cost of him being medically escorted on any flight Euroins would've arranged for him is likely to have far outweighed the cost of the flight Mr D took to get home, I think it would be fair and reasonable for Euroins to cover 81.07% of his repatriation costs.

Putting things right

I direct Euroins to pay Mr and Mrs D:

- A. 81.07% of Mr D's repatriation costs;
- B. simple interest at a rate of 8% simple interest per year on the costs set out at A. above from the date on which Euroins paid the parts of the claim it's accepted to the date of settlement.
- C. £200 compensation for distress and inconvenience.

If Euroins considers it's required by HM Revenue & Customs to take off income tax from any interest paid (as set out in B. above), it should tell Mr and Mrs D how much it's taken off. It should also give them a certificate showing this if they ask for one. That way Mr and Mrs D can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold this complaint to the extent set out above and direct Euroins AD to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 2 August 2024.

David Curtis-Johnson
Ombudsman