DRN-4878696

The complaint

Mr and Mrs A are unhappy that Great Lakes Insurance SE hasn't paid, in full, a claim made on a single trip travel insurance policy taken out for the benefit of Mr A but with Mrs A named as the policyholder ('the policy').

What happened

Whilst on a cruise in 2023, Mr A required medical treatment. He and Mrs A ended up leaving the cruise ship so he could have treatment in a hospital. Once Mr A was discharged from hospital, he and Mrs A cut short their trip, returning to the UK much earlier than they'd planned.

Great Lakes concluded that it could've declined the claim in full. That's because it said Mr A had failed to declare certain medical conditions when taking out the policy and if he'd declared his medical history in full, Great Lakes says it would never have offered him the policy.

However, despite this, it agreed to pay half the claimed amount (taking into account the financial limits of the policy).

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

Our investigator considered what had happened and didn't uphold the complaint. Mr and Mrs A disagreed. So, this complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision earlier in June 2024 explaining why I didn't intend upholding this complaint. I said:

……

I have a lot of empathy for Mr and Mrs A's situation, and I know they'll be very disappointed, particularly given the value of their claim – which was significant - but I'm satisfied Great Lakes has acted fairly and reasonably here by paying them around £32,000 towards the claim.

That's because, ultimately, had Mr and Mrs A declared all of Mr A's medical conditions to Great Lakes before going on holiday, I don't think they would've ended up going on holiday and the claim for medical expenses would never have been made under the policy. I'll explain why.

Declaring Mr A's medical conditions when applying for the policy

I'm satisfied The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') is relevant to this case. 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 (in this case Great Lakes) 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.

I've listened to the phone calls during which the policy was sold.

Mrs A is asked:

> In the last 2 years, has anyone travelling on this policy received treatment for any medical or psychological condition?
>
> In the last 2 years, has anyone travelling on this policy been prescribed any medication?
>
> In the last 2 years, has anyone travelling on this policy attended any consultations, investigations or check-ups?

I'm satisfied that these questions are clear and although certain conditions were declared on behalf of Mr A, I think they should've declared that he'd received treatment/been prescribed medication for other medical conditions.

Mr A's medical records reflect that in the two years leading up to applying for the policy he'd seen his GP and been prescribed medication for medical conditions which weren't disclosed when applying for the policy, including high cholesterol, pre-diabetes, and asthma.

I think Mr and Mrs A were careless when answering the medical questions when applying for the policy.

I've gone on to consider whether this amounted to a qualifying misrepresentation under CIDRA. And I think it did.

I'm satisfied that if Mr and Mrs A had disclosed that Mr A had been taking medication for other medical conditions in the two years before applying for the policy, they would've been asked some follow up medical questions.

And as a result, I'm satisfied that Great Lakes' overall risk rating score would've increased and most likely, Mr A would've been charged more for the policy at the time of the application.

I've looked at the actions Great Lake can take in line with CIDRA. Under this legislation it's entitled to do what it would've done if Mr and Mrs A hadn't made a careless qualifying misrepresentation. I think Mr and Mrs A would still have been offered the policy, but they'd have paid a higher price for it at the time. I think that would've been fair and reasonable.

Declaring a change in health after the policy was taken out

After a claim was made on the policy, and when carrying out a retrospective screening of all of Mr A's medical conditions, Great Lakes has included atrial fibrillation which he was diagnosed with in November 2022 and a lower respiratory tract infection which resulted in

his admission to hospital in December 2022.

I don't think it's fair and reasonable of Great Lakes to have expected Mr A to have declared these conditions when the policy was applied for because the policy was applied for months before he was diagnosed with these medical conditions.

However, page 4 of the policy terms set out what should happen if there are "changes to your health after purchasing your policy".

It says:

> If after you purchase your policy, or before booking any new trips, any of the following happens:
>
> • you are diagnosed with a new medical condition
> • your doctor, or consultant changes your prescribed medication
> • you receive inpatient medical treatment
> • you are now awaiting a diagnosis, investigation, test results or medical treatment
>
> then you must contact…Customer Services. A member of the team will ask you specific questions about your medical condition(s).
>
> This may result in an additional premium to allow cover to continue, to add additional Terms and Conditions to your policy or to exclude cover for the newly diagnosed condition or for the condition that has undergone significant change.
>
> If we are unable to continue to provide cover, or if you do not wish to pay the additional premium you will be entitled to make a claim under Section 1 (Cancellation) for costs which cannot be recovered elsewhere for trips booked prior to the change in health.
>
> Alternatively, you will be entitled to cancel your policy, in which case, we will refund a proportionate amount of your premium.
>
> Please note that your doctor, or consultant telling you that you are well enough to travel does not mean that you will be covered for your pre-existing medical condition(s). If you have any concerns regarding whether, or not you will be covered please contact…Customer Services.

Looking at this section of the policy, I'm satisfied that it's fair and reasonable for Mr A to have declared a change in health before the holiday.

I've seen the medical questions he would've been asked by Great Lakes had he done so and how these conditions would've also impacted the questions he would've been asked had he declared the other medical conditions when applying for the policy.

I'm satisfied from the information I've been given by Great Lakes that this would've resulted in Mr A's risk rating score increasing further, and as a result Great Lakes would've most likely said it was unable to continue to provide cover at that stage.

In line with the change in health terms of the policy I'm satisfied that it would've offered Mr A the option of cancelling the holiday (and making a claim under the policy for out-of-pocket costs) or cancelled the policy and offered a proportionate refund of the premium paid for the policy.

I can't know for sure what would've happened. But given the extent of Mr A's medical conditions (and that during the phone call when applying for the policy, Mrs A says she'd had difficulty obtaining affordable travel insurance for Mr A which met their needs for the holiday they booked), I think it's most likely, on the balance of probabilities, that Mr and Mrs A would've cancelled the holiday and made a cancellation claim.

Mrs A's policy has a cancellation limit of £5,000 and the financial limit of the cancellation section contained in Mrs A's separate travel insurance policy is £15,000. The amount Great Lakes has agreed to pay towards the value of the claim made under the policy is more than the combined financial limits of both policies for cancellation claims.

So, I'm satisfied that Great Lakes has acted fairly and reasonably by agreeing to pay half the claimed amount, around £32,000.

……

I invited bother parties to provide any further information in response to my provisional decision. Great Lakes didn't reply. Mr and Mrs A replied. In summary they said:

- Mr A hadn't taken any medication for high cholesterol, pre-diabetes and asthma in the two years prior to the policy being applied for. Although, Mr A does take an inhaler that's for a condition that was declared.
- They accept that they didn't inform Great Lakes of a change in health after Mr A was discharged from hospital a couple of weeks before going on holiday. But he seemed very well after he was discharged, and the medication was working for him.
- Before contacting Great Lakes to apply for the policy, Mr and Mrs A were struggling to get medical insurance for Mr A because of his age and length of time they would be away for.
- Had they declared a change in Mr A's health shortly before the holiday, and been offered the chance to cancel the holiday by Great Lakes and make a claim then, they would've declined and gone ahead with the holiday.
- The reasons for Mr A needing medical treatment abroad weren't to do with his pre-existing medical conditions.

Mr and Mrs A also provided details of other passengers and crew members becoming ill whilst they were on board.

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.

I know Mr and Mrs A will be disappointed but the further points they've raised in response to my provisional decision haven't changed my mind.

For the reasons set out below and set out in my provisional decision (an extract of which is set out above and forms part of this, my final decision), I don't uphold their complaint.

- I don't think Great Lakes has unreasonably relied on Mr A's GP notes when concluding that cholesterol should've been declared as the records show that he was prescribed medication "to lower cholesterol" in the two years prior to applying for the policy. And even if he wasn't prescribed medication for pre-diabetes and asthma during the same period, he had – during that period - attended medical appointments

to discuss pre-diabetes, losing weight and diet. He'd also had an asthma review. So, I still think one of the medical questions should've been answered yes.

- I appreciate that the conditions Mr A needed treatment for abroad were acute conditions. However, had all medical conditions been declared when applying for the policy and again when experiencing a change in health after the policy was taken out (but before the holiday started), I don't think the policy would've been in place at the time the holiday started.
- Given Mr A's age, the length and cost of the holiday (and the extent of Mr A's medical history as at December 2022), based on my experience and given Mr and Mrs A's struggles to get travel insurance for Mr A before contacting Great Lakes at the end of August 2022, I think it's unlikely on the balance of probabilities that they would've been able to have secured alternative travel insurance in December 2022 for a premium they were willing to pay. So, had a change in health been disclosed by Mr A before the holiday started, I still think it's most likely that Mr and Mrs A would've cancelled the holiday and made a cancellation claim on the policy. Even if that would've been disappointing and not their preferred choice, I think that's the more likely option rather than travelling without insurance for Mr A or paying a very high premium.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 26 July 2024.

David Curtis-Johnson
Ombudsman