DRN-5141990

The complaint

Mr W is unhappy that Great Lakes Insurance SE hasn't paid, in full, a claim made on a travel insurance policy ('the policy') (including declining a claim for curtailment). He's also unhappy with the assistance he received whilst abroad and that his claim for curtailment was declined.

All references to Great Lakes include its medical assistance team.

What happened

Whilst on a cruise in early 2023, Mr W required medical treatment. He ended up leaving the cruise ship so he could have treatment in a hospital, where he remained for almost three months before he was repatriated to the UK by air ambulance and admitted to a UK hospital.

Great Lakes initially said that it would only cover around two thirds of Mr W's medical and repatriation costs because he hadn't disclosed certain medical conditions when applying for the policy. Had he done so, it said the policy would've cost more and so agreed to pay the costs in proportion to the premium he'd paid for the policy (compared with what he should've paid).

However, on receipt of further information from Mr W's GP, it accepted that Mr W hadn't needed to disclose ischemic heart disease. However, given the other conditions it says he didn't (but should've) disclosed, it concluded that the cost of the policy still would've been higher and agreed to pay 88% of the costs claimed.

Mr W is also unhappy with the assistance provided by Great Lakes whilst he was abroad in hospital, including delays and communication issues. And that it declined a claim for curtailment as he says he was hospitalised towards the start of cruise, and he missed out on around two months of his trip.

Great Lakes looked into Mr W's concerns and didn't think the assistance he received whilst abroad and in hospital was unsatisfactory. It also concluded that it had fairly offered to pay 88% of his medical and repatriation costs.

Although Great Lakes found that the claim for curtailment had been fairly declined, it did accept that it could've reached a decision on this claim sooner. It apologised for this and offered Mr W £150 compensation for distress and inconvenience.

Unhappy, Mr W brought a complaint to the Financial Ombudsman Service.

Our investigator considered what had happened and partially upheld the complaint. He agreed that the complaint for curtailment had been fairly declined. However, he concluded that Great Lakes should've provided better assistance to Mr W whilst he was abroad, and he didn't think Great Lakes had fairly and reasonably concluded that Mr W had failed to disclose several of the medical conditions when taking out the policy. He concluded that there was only one medical condition he didn't disclose.

So, he recommended Great Lakes increase its percentage towards repatriation and medical costs and increase compensation to £750 to reflect the distress and inconvenience experienced by Mr W.

He also concluded that Great Lakes had incorrectly charged Mr W an excess on his claim when he'd bought an excess waiver. So, he recommended Great Lakes reimburse the excess it had deducted.

Great Lakes disagreed. So, this complaint was passed to me to consider afresh and decide.

I issued my provisional decision earlier in November 2024 explaining in more detail why I was intending to uphold this complaint. An extract of my provisional decision is set out below.

…….

Declaring Mr W'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.

Mr W is asked:

> (apart from the conditions) I just spoke about, do you have any other conditions?
> Mr W answers: "no".

Later in the call, Mr W is asked:

> Have you any other conditions or symptoms not covered on this call?

Mr W again answers: "no".

I'm satisfied that these questions are clear. And, although Mr W had declared (and answered questions about) some medical conditions during the call, looking at the medical records Great Lakes received, I'm satisfied that it's fairly and reasonably concluded that Mr W should've also disclosed that he had the following other conditions when applying for the policy:

- Varicose veins
- Inflammatory arthritis (referred to in medical documents from 2018 and for which the NHS website reflects that there's no cure for).

- Prostate cancer (referred to in medical documents from late 2021 which was being monitored).

I'm satisfied that the answers to these questions mattered to Great Lakes and by not answering the above questions correctly Mr W made a qualifying misrepresentation under CIDRA.

I'm satisfied that if Mr W had disclosed having these other medical conditions, he 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 he would've been charged more for the policy at the time of the application.

Great Lakes has concluded that Mr W was careless when answering the above questions when applying for the policy. I think that's a fair conclusion for it to make and I don't think he deliberately or recklessly failed to answer the questions correctly.

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 W hadn't made a careless qualifying misrepresentation. From what I've seen, I'm satisfied Mr W would've still been offered the policy, but he'd have paid a higher price for it at the time.

However, I'm satisfied that the increase in premium would've been less than Great Lakes has said. I'm satisfied that Mr W paid 95% of the premium he would've been charged if he'd declared all conditions and answered the follow up questions correctly. That's because I'm not satisfied that the medical evidence supports that Mr W ever had a skin graft for his leg ulcer as Great Lakes has said when undertaking a retrospective medical screening of his declared conditions. And had this question been answered differently, the evidence provided by Great Lakes reflects that the increase to the premium he would've been charged is lower than it concluded.

So, I think it's fair and reasonable for Great Lakes to be pay 95% of the claim, rather than 88% of the claim.

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 W's medical conditions, Great Lakes has included varicose eczema as a condition he should've declared. There's an entry in his GP records dated November 2022.

I don't think it's fair and reasonable of Great Lakes to have expected Mr W to have declared this condition when the policy was applied for because he applied for the policy around a month before the date of the GP entry.

I've considered whether Mr W should've declared this as a change in health.
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.

From the information I've been provided, it's not clear how the diagnosis of varicose eczema was made by the GP. For example, whether Mr W specifically made an appointment for this at the time or whether it was mentioned during an appointment about something else.

The NHS website describes varicose eczema as a skin condition that affects the lower legs and is common in people with varicose veins. As this is so closely connected to varicose veins and if this condition had this condition been declared by Mr W when taking out the policy, I don't think a reasonable person would've considered this a substantial change in health worthy of notifying their insurer. And so, although this may have been a new diagnosis, in the circumstances of this case, I don't think it would be fair and reasonable for Great Lakes to conclude that this condition should've been declared after the policy had been taken out.

It follows that I'm not persuaded that it would be fair and reasonable to include in the retrospective health medical screening.

However, in any event, from the various retro-screenings I have requested Great Lakes, I'm satisfied that the inclusion of varicose eczema didn't make a difference to the overall premium.

And as I know that it's an issue that Mr W was concerned about, I'm also satisfied that the inclusion of a leg ulcer being included twice (as a declared standalone condition and as a separate question if he'd declared varicose veins) also didn't impact the premium.

The claim for curtailment

The reason Mr W initially became unwell – and which led to him leaving the cruise ship to be taken to hospital – was due to Covid-19.

The policy terms have a section on Covid-19 (section 14). I've looked at the circumstances in which cutting short a trip is covered and I'm satisfied that Great Lakes has fairly and reasonably concluded that there's no cover for circumstances which led to Mr W ending his cruise trip early.

Section 2 of the policy terms also provides cover for cutting short a trip (up to a financial limit). It says:

> Cover applies if you are forced to cut short a trip you have commenced, and return to your home country, because of one of the following, which are beyond your control… An unforeseen illness…of you

However, that's subject to the remaining terms of the policy and that includes what isn't covered under section 2. Clause 19 of the 'what is not covered' section says anything mentioned in the policy's general exclusions isn't covered. And there's a general exclusion (number 29) saying the policy doesn't cover:

> Claims arising from or related to any coronavirus including but not limited to COVID-19, or any related/mutated form of the virus unless specifically listed as covered by this policy.

I make no finding on whether Great Lakes has acted fairly and reasonably in the circumstances of this complaint by relying on this general exclusion to decline a claim for curtailment under section 2 of the policy.

Under a strict interpretation, for section 2 to apply Mr W would have needed to cut short his trip and return to the UK. However, his trip wasn't cut short to return home. He ended up being repatriated to the UK a few weeks after his intended return date. So, his curtailment costs aren't covered under the terms of the policy.

I've considered whether it would be fair and reasonable in the circumstances of this complaint for Great Lakes to depart from a strict interpretation of the policy terms by treating Mr W's hospitalisation as if his trip had been effectively curtailed his trip was effectively cut short at the end of January 2023.

There may be circumstances when I would consider that to be fair and reasonable.

However, in this case - even leaving aside the Covid-19 exclusion referred to above - Great Lakes has made a significant contribution to medical and repatriation costs (including the cost of an air ambulance) which were substantial and far more than the value of the curtailment claim. So, although I know Mr W will be very disappointed, I don't think it would be fair and reasonable for Great Lakes to pay the claim for curtailment outside the terms of the policy even though his trip was effectively cut short.

The assistance Mr W received whilst abroad and when arranging repatriation to the UK

Looking at the correspondence and Great Lakes' internal notes, it doesn't look like it was always proactive in trying to support Mr W whilst away. I'm satisfied that there were some unnecessary delays. There were times when, I intend to find, it should've been more proactive in updating Mr W / his family, which Great Lakes has accepted in response to our investigator's view.
As Mr W's family members – who were chasing Great Lakes for updates – aren't named beneficiaries on the insurance schedule and are not part of the contract of insurance between Great Lakes and Mr W, I'm satisfied that they aren't eligible complainants. So, I don't have any power to award any compensation to them individually for the distress and inconvenience they experienced because of Great Lakes' errors in this case.

However, I accept that this would've still impacted Mr W, as I'm satisfied that he would've

been distressed to know that his family members' worry about the circumstances he found himself in was made worse by Great Lakes' not providing proactive updates.

Mr W says that staff at the hospital he was admitted to in the UK on his return wasn't given any medical reports in English so they didn't have a clear idea about what had happened to Mr W whilst in hospital abroad. Great Lakes has confirmed that medical reports containing history of his condition and treatment received hadn't been translated into English. However, it says that a doctor at the UK hospital had spoken to the treating doctor abroad before he was repatriated to the UK and the air ambulance team were made aware of his current condition.

Given the circumstances of this case, where Mr W had been so unwell abroad for almost three months, I think it would've been fair and reasonable for Great Lakes to have provided a more comprehensive handover of the medical history and treatment whilst he'd been abroad. I can understand why Mr W would've been upset and worried to discover this hadn't been done, fearing this may compromise his care.

I'm also satisfied that Mr W would've been worried and upset to discover that he (it turns out unfairly) was responsible for a higher proportion of costs than he reasonably ought to have been.

I'm currently satisfied that £750 compensation fairly reflects the distress and inconvenience experienced by Mr W by Great Lakes' errors in this case.

Other issues

- Mr W bought an excess waiver when taking out the policy, as confirmed on the insurance schedule. In response to the view, Great Lakes accepts that Mr W didn't need to pay an excess, and so, I'm satisfied this should be paid back to him.

- Mr W says that his children paid around £9,900 to the hospital he received treatment in whilst abroad and there remains an outstanding balance of around £9,000 owed to the hospital. Mr W says he has yet to pay back his children for the money they paid to the hospital although there is an expectation, that he will do so in due course and once this complaint has been resolved. I find that plausible and I accept what he says about that.

Given that I've provisionally directed Great Lakes to pay a higher contribution to the claim (from 88% to 95%), this will settle some, if not all, of the outstanding fees owed to the hospital. And although Mr W's children have been without the money they paid to the hospital whilst he was abroad, as I'm satisfied Great Lakes has fairly concluded it's not responsible for the totality of the claimed costs, some, if not all, of the amounts his children have paid won't be reimbursed.

For this reason, I also don't think it would be fair and reasonable for Great Lakes to pay any interest on the amounts paid by Mr W's children to date. And besides they're not named beneficiaries under the policy, so I don't have any power to direct Great Lakes to pay them compensation for any financial loss they've personally experienced (including interest).

……

I invited both parties to provide any further information in response to my provisional decision.

Great Lakes said it accepted the proposed outcome. It said if Mr W had any further hospital costs paid at the time, which hadn't yet been submitted to Great Lakes as part of the claim, these should be provided to Great Lakes so that the correct amount is settled with the medical provider and Mr W.

Mr W replied, also accepting my proposed findings. He asked that I confirm the figure Great Lakes is now requested to pay.

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.

As both parties agreed to my provisional findings, I'm satisfied that there's no compelling reason to depart from my provisional decision.

So, for this reason and for reasons set out in my provisional decision (an extract of which appears above and forms part of this final decision), I uphold Mr W's complaint.

If Mr W incurred any other expenses which form part of his claim and haven't yet been submitted to Great Lakes, he should promptly submit these to Great Lakes to consider together with documentary evidence in support.

Mr W has also asked me to provide him with a monetary figure Great Lakes will be paying towards his claim. I'm unable to confirm that based on the available information.

However, I think it would be reasonable for Great Lakes to provide Mr W with a written breakdown of the contributions made towards his claim once finalised and paid.

Putting things right

I direct Great Lakes to:

- increase its proportionate settlement of the claim from 88% to 95%.
- reimburse the policy excess paid by Mr W which I understand was £65.
- pay Mr W £750 compensation for distress and inconvenience (from this amount, it can deduct the offer of £150 compensation if this has already been paid to Mr W).
- promptly provide Mr W with a breakdown of the payment made towards his claim once the final calculations have been done and further payments have been made.

My final decision

I uphold this complaint and direct Great Lakes Insurance SE to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 December 2024.

David Curtis-Johnson
Ombudsman