

The complaint

Mr and Mrs L complain that ERGO Reiseversicherung AG has turned down a cancellation claim they made on a travel insurance policy.

What happened

In May 2019, Mr and Mrs L took out an annual travel insurance policy through a broker. The policy provided cover between 8 June 2019 and 7 June 2020. Mr and Mrs L declared their pre-existing medical conditions to ERGO, which it agreed to cover. One of those conditions was Crohn's Disease, which Mr L had suffered with since 2012.

On 11 March 2020, Mr and Mrs L booked a UK-based holiday. They were due to travel between 19 and 26 March 2020. However, Mr L began to suffer a flare-up of symptoms of Crohn's Disease and didn't feel well enough to undertake a long car journey. So Mr and Mrs L cancelled their booking and made a claim for the costs associated with the cancellation of their trip.

ERGO turned down the claim. It said that Mr L hadn't seen a doctor before deciding to cancel the holiday and so there wasn't enough evidence to show that it'd been medically necessary for the trip to be cancelled.

Mr and Mrs L were unhappy with ERGO's decision. They provided a letter from their GP which said that had Mr L consulted them with the relevant symptoms at the time, it would've been reasonable to consider him unfit to travel. They asked us to look into their complaint.

Our investigator recommended that Mr and Mrs L's complaint should be upheld. She felt that given the impact of Covid-19 on the NHS in March 2020, it'd been reasonable for Mr L not to seek medical advice before cancelling the trip. She also noted Mr L had previously suffered from flare-ups of his condition and that he was aware that the GP couldn't provide any treatment. She accepted the policy terms required a medical certificate which stated that the cancellation of a trip was medically necessary. And she noted that the GP hadn't advised cancellation because they hadn't been consulted ahead of travel. She thought though that given the prevailing circumstances and the GP's letter, it would be fair for ERGO to accept and pay the claim, together with interest, based on the existing evidence.

ERGO disagreed. It said that as Mr and Mrs L had known they'd need to make an insurance claim, it would've been reasonable for them to have sought medical attention. And it said the policy terms made it clear that a medical certificate must be provided specifying the details of the illness preventing travel.

The complaint's been passed to me to 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.

Having done so, I don't think it was fair for ERGO to turn down Mr and Mrs L's claim and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr and Mrs L's claim and the available evidence, to decide whether ERGO treated them fairly.

I've first considered the policy terms and conditions, as these form the basis of Mr and Mrs L's contract with ERGO. The cancellation section of the policy provides cover if a policyholder has to cancel their trip because of a policyholder's unforeseen illness. But this section of the policy also sets out 'Special Conditions' which apply to cancellation claims. One of these says:

'You must obtain a Medical Certificate specifying the unforeseen illness or injury from the doctor in attendance to confirm the necessity to cancel your trip.'

It's common ground that Mr L didn't see or speak to a doctor before deciding to cancel the trip as a result of his symptoms. Indeed, on a medical certificate completed by the GP, they stated that they hadn't advised Mr L to cancel the trip because they hadn't been consulted. So I appreciate that there's no contemporaneous medical evidence which shows that Mr L wasn't fit to travel or that there'd been a doctor 'in attendance'. And in some cases, I may find that it's reasonable for an insurer to decline a claim in the absence of medical evidence demonstrating the medical necessity to cancel a holiday.

But I can depart from a strict interpretation of the policy terms if I feel their application produces an unfair result. And that's the case here for reasons I'll go on to explore.

First, I need to bear in mind the timing of Mr L's Crohn's Disease flare-up. On 11 March 2020, Covid-19 had been declared a pandemic. And on 16 March 2020, the day before the trip was cancelled, the UK Prime Minister gave a statement. He stated that people should only use the NHS when they really needed to. Appointments were being moved online or being held over the phone and cases of Covid-19 were rising. Against this background, I can entirely understand why Mr L, who was seemingly well aware of how a flare-up would manifest and that there was little treatment that could be given for the symptoms, decided against trying to consult his GP. It's also clear too that given the nature of Mr L's symptoms, a long car journey was likely to have been quite challenging.

And while the GP wasn't consulted ahead of cancellation, they did provide a letter in support of Mr and Mrs L's claim. They stated that:

'If Mr L had consulted (him) at the time with symptoms..., it would have been reasonable to consider him unfit for travel on a long car journey and cancel his holiday.'

On this basis then, it seems to me that Mr L's GP would've considered him unfit to travel given the nature of the symptoms he was suffering. And in my view, the evidence suggests that if Mr L *had* spoken to the GP ahead of cancelling the trip, it's more likely than not that the GP would've thought cancellation was medically necessary. Against this background, I think Mr L has provided enough medical evidence to prove his claim.

I appreciate that Mr and Mrs L feel that ERGO should cover the costs of obtaining the medical evidence. However, the policy includes the following term:

'All information, evidence, details of household insurance and Medical Certificates as required by us must be sent at your own expense.'

As such, I think the policy terms make it clear that a policyholder is responsible for any expenses they incur in providing claims evidence. And so I don't think I could fairly direct ERGO to meet the costs Mr and Mrs L paid to obtain medical evidence from their GP.

In these circumstances and on the facts of this case, I currently don't think that ERGO acted fairly when it turned down a claim for a flare-up of a condition it had already agreed to cover. So I find that the fair and reasonable outcome is for ERGO to now accept and settle this claim in line with the remaining terms and conditions of the policy.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct ERGO Reiseversicherung AG to accept and settle Mr and Mrs L's claim in line with the remaining terms and conditions of the policy. It must also add interest to the settlement at an annual rate of 8% simple, from the date of claim until the date of settlement.

If ERGO considers that it's required by HM Revenue & Customs to deduct income tax from any interest paid, it should tell Mr and Mrs L how much it's taken off. If requested, ERGO should also give Mr and Mrs L a certificate showing the amount deducted, so they can reclaim it from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Mrs L to accept or reject my decision before 16 August 2022.

Lisa Barham
Ombudsman