

The complaint

Mrs L is unhappy AWP P&C SA turned down a claim she made on her travel insurance policy.

What happened

Mrs L took out a travel insurance policy over the telephone to cover her trip abroad in 2020. The policy was underwritten by AWP P&C SA (AWP). The policy didn't provide protection for pre-existing medical conditions, unless AWP had agreed to cover them.

Mrs L said when the policy was taken out, she went through medical screening. She disclosed she suffered from an autoimmune disease which makes her more susceptible to infections. This condition was accepted by AWP's medical screening team and the policy was set up.

Whilst abroad, Mrs L suffered swelling and a rash on her leg. She was taken to the local hospital where she was diagnosed with a skin infection and prescribed antibiotics. She stayed in overnight and was taken by helicopter to the nearest main hospital the next day. Mrs L said her doctors contacted AWP the night before the transfer and AWP said the hospital and transportation costs would be covered.

At the second hospital Mrs L was prescribed further antibiotics and kept in overnight. The doctors concluded she had been bitten by an insect which had caused the skin infection. Mrs L was discharged the following day.

Mrs L paid for the air transfer and the hospital invoice before she returned home. She sent all her paperwork over to AWP and submitted a claim to cover the costs she'd incurred.

AWP declined the claim. It said Mrs L hadn't disclosed when she took the policy out that she'd suffered from the same skin infection (cellulitis) before and received treatment for it in the past. AWP said Mrs L's policy didn't cover claims which were linked to a policyholder's pre-existing medical conditions, unless it had agreed to cover them. As AWP hadn't agreed cover for this specific skin condition, it said Mrs L's claim was excluded under the policy terms for pre-existing conditions.

Mrs L said being prone to skin infections was part of the autoimmune disease she had already disclosed, so she thought it was unfair for AWP to exclude it as a separate pre-existing condition.

Mrs L referred the matter to our service. Despite our requests, AWP didn't send us a copy of its complaint file. Mrs L was able to provide us with a copy of the policy document and the documents she'd provided to AWP as part of her claim.

Our investigator said Mrs L's complaint should be upheld because AWP hadn't provided any information about the questions that were put to Mrs L when the policy was purchased. And it hadn't provided any evidence to refute Mrs L's testimony about the skin infection not being

a separate condition. So he didn't think it was fair AWP had relied on the exclusion for pre-existing conditions.

He recommended AWP should pay the claim with interest. AWP didn't respond to our assessment.

The complaint has now 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.

In the absence of any information from AWP, I'm unable to say AWP have acted fairly 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.

Exclusion in the policy terms for pre-existing conditions

Mrs L's policy had an exclusion for any pre-existing conditions, unless AWP had agreed to cover them. This exclusion is prominent throughout the policy documentation.

Although AWP had agreed to cover Mrs L's autoimmune disease, it says it hadn't agreed any cover for cellulitis because it wasn't aware she'd previously suffered from it. So AWP said, under the terms of the policy, Mrs L's claim for cellulitis when she was abroad wasn't covered.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. In this case, I'm satisfied Mrs L did incur medical expenses due to an illness while she was abroad. If AWP then relies on an exclusion to turn down the claim, the burden of proof shifts and it's for AWP to show the exclusion applies.

However, in this case I don't think it was right for AWP to rely on an exclusion on the policy when Mrs L had been through medical screening.

Medical screening and misrepresentation

Mrs L went through medical screening with AWP before taking the policy out. She disclosed her pre-existing autoimmune disease and AWP agreed to cover her for it. But AWP said she should've also disclosed the treatment she'd received previously for cellulitis.

As medical screening took place, it's important I make clear that I think the provisions of the Consumer Insurance (Disclosures and Representations) Act (CIDRA) apply to this case. That means my role is to decide if Mrs L took reasonable care not to make a misrepresentation when the policy was sold.

It's for AWP to prove it asked Mrs L a clear question and she didn't take reasonable care to answer. AWP would then also need to show it would have offered the policy on different terms (or not at all) if Mrs L had disclosed her previous cellulitis treatment. But in this case, AWP have been unable to show this, because they haven't provided any information in this regard.

So I'm unable to say AWP has treated Mrs L fairly by just turning down her claim.

Summary

Based on the above, I don't think AWP have correctly applied the exclusion for pre-existing conditions, so it was unfair to turn down Mrs L's claim on that basis. And AWP haven't provided any information to show Mrs L made a qualifying misrepresentation under CIDRA when she disclosed her health conditions.

So, in the circumstances it's not fair for AWP to decline cover on the basis it wasn't aware Mrs L had previous treatment for a skin infection on her leg.

Putting things right

Mrs L has provided evidence of the hospital and transportation costs she is claiming for. So I think AWP P&C SA needs to put things right by:

- Paying Mrs L's claim in line with the remaining policy terms and conditions
- Adding 8% from the date the claim was first raised to the date of settlement

My final decision

I'm upholding this complaint against AWP P&C SA and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 23 June 2022.

Georgina Gill
Ombudsman