

## **The complaint**

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

## **What happened**

In September 2019, Mr and Mrs R booked a UK-based holiday. They were due to travel between 17 and 24 July 2020. Alongside their accommodation booking, they took out a travel insurance policy to cover their trip.

On 11 March 2020, the World Health Organisation declared Covid-19 to be a pandemic. On 16 March 2020, the UK government asked everyone in the country to stop non-essential contact with others and to stop all unnecessary travel. This advice was stated to be particularly important for those with serious health conditions. On 21 March 2020, GPs were asked to identify their most vulnerable patients. This was to enable those patients to be sent NHS letters advising them to 'shield' to protect against the risk of contracting Covid-19. Mr R was sent an NHS shielding letter, which provided strict stay-at-home guidance.

Whilst this guidance was initially intended to apply for a three-month period, on 22 June 2020, Mr R was sent a further NHS shielding letter. This said that while some shielding features were to be relaxed from 6 July 2020; all other guidance would remain in place until August 2020.

On this basis, Mr and Mrs R cancelled their trip. They say their accommodation provider didn't offer them a refund of their costs and refused to allow them to change their dates of stay. So they made a claim on their travel insurance policy.

ERGO turned down Mr and Mrs R's claim. It said the policy didn't cover their circumstances. And it said that the cancellation section of the policy specifically excluded claims which were down to government regulations.

Mr and Mrs R were unhappy with ERGO's decision and they asked us to look into their complaint.

Our investigator thought Mr and Mrs R's complaint should be upheld. She noted that the cancellation section of the policy covered cancellation due to a policyholder's quarantine. She considered various dictionary definitions of quarantine and she concluded Mr R's situation could fairly be treated as a period of enforced self-isolation. So she recommended that ERGO should reassess Mr and Mrs R's claim and add annual interest of 8% to the settlement.

ERGO disagreed. It didn't think the claim was covered by the policy terms. It referred to examples of cases where it considered we'd agreed on this point.

I issued a provisional decision on 22 March 2022. In my provisional decision, I explained the reasons why I didn't think it was fair for ERGO turn down Mr and Mrs R's claim. I said:

*'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 R's policy and the available evidence, to decide whether ERGO treated them fairly.*

*I've first considered the terms and conditions of Mr and Mrs R's policy, as these form the basis of their contract with ERGO. The cancellation section provides cover for a policyholder's unused travel and accommodation expenses if they have to cancel their trip due to one of a number of listed, specified events. One of these is:*

*'You or any person who you are travelling or have arranged to travel with being quarantined, called as a witness at a Court of Law or for jury service attendance.'*

*The contract of insurance doesn't define what ERGO means by quarantine. In these circumstances then, I've considered the ordinary, everyday meaning of the word as well as the context in which the word 'quarantine' is used within the policy wording. I've also had regard to the following dictionary definitions of quarantine:*

*'a period of isolation or restrictions on movements intended to prevent the spread of disease'.*

*'a general period of time in which people are not allowed to leave their homes or travel freely, so that they do not catch or spread a disease'.*

*'a state of enforced isolation'.*

*I've looked closely at the shielding letter which was sent to Mr R on 22 June 2020. This outlined that there were some planned changes to shielding advice which would take effect on 6 July 2020. These included clinically extremely vulnerable people being able to meet up to six people outside; an end to social distancing within their own households and being able to form a support bubble. But the letter stated that 'all the other current shielding advice (would) remain unchanged.' The letter also stated that further changes to the advice would take place on 6 August 2020, when people would be able to go outside for shopping or for exercise etc. Although the letter stated that even after this date, guidance would still be to stay at home as much as possible. It's clear though that at the point Mr and Mrs R cancelled their trip, on 1 July 2020, medical advice was to stay at home and only leave home for a very limited number of reasons. I think that this can fairly be treated as a period of enforced isolation. And I think the shielding letter, which was specifically addressed to Mr R, is evidence that he was in such isolation.*

*In my view, the common meaning and understanding of quarantine is wide enough to include Mr R's enforced isolation to avoid the risk of contracting Covid-19. And I think a reasonable person would therefore consider that Mr R was in quarantine and that that was the reason he had to cancel his trip.*

*As I think Mr R was effectively in quarantine, I think his claim falls within the scope of policy cancellation cover. I appreciate ERGO considers that the shielding advice is tantamount to a government regulation. I disagree. The shielding letter clearly states that:*

*'the government's **guidance** to those most at risk of severe illness if they catch Covid-19 has always been **advisory**.'* (Emphasis added).

*Government regulations are passed in Parliament; have legal effect and can be enforced. Advisory guidance is purely advisory and there's no obligation to follow it nor are there any potential legal consequences if a person chooses not to do so. So I don't think this exclusion would apply to the circumstances of Mr and Mrs R's claim.*

*I'd add too that I think there's another reason why it's fair and reasonable for ERGO to reassess Mr and Mrs R's claim. That's because page 1 of the policy sets out a list of 'health conditions', which a policyholder must be able to comply with in order to have full medical cover. This section asks whether a policyholder is travelling against medical advice. And to have full medical cover, a policyholder must be able to answer no to this question.*

*Given Mr R's circumstances and the NHS letter which had been sent specifically to him, advising him to shield, I think he'd have been travelling against medical advice if he'd taken the trip as planned. This means the answer to this question would've been 'yes'. I think it's likely Mr and Mrs R may have understood that ERGO would've refused to cover them if they had travelled and claimed. I think that leaves Mr and Mrs R in the unfair position of not being covered if they cancelled due to Mr R having to isolate on the advice of the NHS but also not being covered if they had travelled because of the medical advice to isolate and not travel because of the shielding advice.*

*ERGO has referred to other cases where we've reached a different outcome. However, each case is considered on its own specific facts. And in the individual circumstances of this complaint, I currently think that the fair and reasonable outcome is for ERGO to reassess this claim in line with the policy terms and conditions.'*

I asked both parties to send me any further evidence or comments they wanted me to consider. However, neither party responded by the deadline I gave.

### **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 neither ERGO nor Mr and Mrs R provided me with any additional evidence or comments, I see no reason to change my provisional findings.

So my final decision is the same as my provisional decision and for the same reasons.

### **My final decision**

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

I direct ERGO Reiseversicherung AG to reassess Mr and Mrs R's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 31 May 2022.

Lisa Barham  
**Ombudsman**