

## **The complaint**

Mr and Mrs C complain about how Aviva Insurance Limited dealt with a claim against their travel insurance policy. Reference to Aviva includes its agents.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr and Mrs C have travel insurance as a benefit of a bank account.

On 5 September 2021, Mr and Mrs C departed for a trip and planned to return on 16 September 2021. Mr C says that on the day of his arrival, he saw a doctor at his destination and was advised to go to emergency care, which he did.

Mr C says that from 7 September 2021, he was ill and confined to his hotel room. I understand that Mr C was admitted to hospital on 9 September 2021. A scan showed kidney and bowel abnormalities. The treating overseas hospital told Mr C that he required urgent surgery.

On 10 September 2021, Mrs C contacted Aviva on Mr C's behalf. Aviva asked Mrs C for a medical report from the treating hospital. There's a dispute about whether Aviva received a medical report from the treating hospital and I'll refer to that in more detail below. Mrs C gave Aviva some information about Mr C's recent medical history. Aviva told Mrs C that it couldn't confirm cover. It said that without a medical report from the treating hospital, it was possible that the claim was linked to a previous medical investigation.

Aviva arranged for a provisional replacement certificate in place of Mr C's expired health insurance card. That meant that the cost of Mr C's hospital treatment was covered. On 13 September 2021, Mr C discharged himself from hospital. On 16 September 2021, Mr and Mrs C flew home on their original return flight.

One of our investigators looked at what had happened. She said that the compensation of £200 Aviva had already offered in relation to incorrectly declining the claim was sufficient. The investigator didn't ask Aviva to do any more.

Mr C didn't agree with the investigator. He wants compensation for the loss of his trip and the anxiety he and his family suffered. Mr C also wants Aviva to be held accountable, so this doesn't happen to anyone else.

The investigator considered what Mr C said but she didn't change her view. Mr C asked that an ombudsman consider the complaint, so it was passed to me to decide.

## **My provisional decision**

On 6 June 2022, I sent both parties my provisional decision in this case. I indicated that I intended to uphold the complaint. I said:

*“The relevant rules and industry guidance say that Aviva has a responsibility to handle claims promptly and fairly and it shouldn’t reject a claim unreasonably. I intend to uphold Mr and Mrs C’s complaint. I’ll explain why:*

- In cases like this one, where there’s a claim for emergency medical and associated expenses, it’s usual for an insurer to seek medical information from the treating hospital before agreeing to cover the claim. The policy requires that Mr C provide Aviva with medical reports from the treating doctor, hospital or medical facility.*
- I appreciate that Mr C feels strongly that Aviva received the medical report from the treating overseas hospital. But, based on what I’ve seen, I don’t think I can fairly conclude that it did. Aviva’s contemporaneous notes show that it asked the treating hospital for the medical report several times and didn’t receive a response. Aviva ultimately came to its decision about Mr C’s claim based on his GP’s report, which it didn’t receive until after Mr and Mrs C had returned home. I don’t think that Aviva was at fault in relation to the delay in deciding whether Mr C’s claim was covered.*
- Aviva arranged for a provisional replacement certificate in place of Mr C’s expired health insurance card, which meant that the cost of Mr C’s hospital treatment was covered. I don’t think that Aviva is responsible for Mr C’s decision to discharge himself from hospital and to return home on his original return flight.*
- Mr C says that Aviva didn’t contact him. I’ve looked carefully at Aviva’s notes of its contact with Mr and Mrs C. On 10 September 2021, Aviva sent Mrs C an e-mail containing the claim reference. On 12 September 2021, it attempted to reach Mrs C by phone and sent an e-mail. Aviva phoned Mrs C again on 15,16,17 and 18 September 2021. When it couldn’t reach Mrs C on 18 September 2021, it followed up with a text to Mr C. It appears that Aviva attempted to contact Mr and Mrs C. I quite understand that, as events were unfolding, it wouldn’t always have been easy for Mr or Mrs C to take calls or deal with e-mails. But, based on what I’ve seen, I don’t think I can fairly conclude that Aviva didn’t attempt to contact Mr or Mrs C.*
- Aviva has acknowledged that it made an error in declining Mr C’s claim. I think that the compensation of £200 Aviva has already offered in relation to that is sufficient. In reaching that view, I’ve taken into account that when Aviva declined the claim, Mr and Mrs C had already returned to the UK. And Aviva accepted the claim shortly after it had declined the claim in error, so any distress and inconvenience caused by Aviva’s error in declining the claim was over a relatively short period.*
- Mr and Mrs C say that they lost out on their holiday because of what happened. The policy terms provide cover for coming home early in certain circumstances, including illness. Mr and Mrs C didn’t return home early but it’s this service’s long established approach that where a policyholder is in hospital, or in some circumstances, confined to accommodation, we say it’s fair and reasonable to treat the holiday as having been effectively curtailed. In these particular circumstances, we don’t consider this to be loss of enjoyment, which isn’t covered by the policy.*
- It’s not disputed that Mr C was confined to hospital from 9 September 2001 to 13 September 2001. Mr and Mrs C’s evidence is that Mr C first started to feel ill and was confined to his hotel room on 7 September 2001. They say that Mr C was also largely confined to his hotel room after he discharged himself from the hospital on*

13 September 2001 and only left the room to sit outside when staff came to clean the room. Mr and Mrs C say that, except for mealtimes, Mrs C stayed with Mr C when he was confined to his hotel room. They say that when Mr C was in hospital, Mrs C spent most of the day with him until asked to leave by hospital staff. Given the seriousness of Mr C's condition, I accept what Mr and Mrs C say about how this affected their holiday.

- *I'm satisfied that in the particular circumstances of this case it's fair and reasonable for Mr and Mrs C's holiday to be treated as having been effectively curtailed from 7 September 2001 onwards. Aviva should pay Mr and Mrs C's claim for curtailment from that date. As Mr and Mrs C have been kept out of the use of this money, Aviva should also pay interest on this sum.*
- *In relation to Mr C's claim for medical inconvenience under the policy, I'm satisfied that he was either in hospital receiving in-patient treatment or confined to his hotel room from 7 September 2001 onwards. The policy says that confinement to the accommodation should be on the advice of the treating doctor. That's not available here but in the particular circumstances of this case, given the lack of communication from the treating overseas hospital and the severity of Mr C's condition, I think it's fair and reasonable for Aviva to pay Mr C for his medical inconvenience for each consecutive 24 hours from 7 September 2021 onwards. In calculating this amount, Aviva can deduct £150 if it has already paid that amount under this head to Mr C. Aviva should also pay interest on this sum."*

## **Responses to my provisional decision**

Both Mr and Mrs C and Aviva agreed with my provisional decision. I understand that there's been correspondence between Mr and Mrs C and Aviva about settlement of the matter in accordance with my provisional decision.

## **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.

Neither Mr and Mrs C nor Aviva have provided any fresh information or evidence in response to my provisional decision. I see no reason to depart from my earlier conclusions. I find that, in the particular circumstances of this case, it's fair and reasonable for Mr and Mrs C's holiday to be treated as having been effectively curtailed from 7 September 2001 onwards. Aviva should pay Mr and Mrs C's claim for curtailment from that date. As Mr and Mrs C have been kept out of the use of this money, Aviva should also pay interest on this sum.

In relation to Mr C's claim for medical inconvenience under the policy, I'm satisfied that he was either in hospital receiving in-patient treatment or confined to his hotel room from 7 September 2001 onwards. I think it's fair and reasonable for Aviva to pay Mr C for his medical inconvenience for each consecutive 24 hours from 7 September 2021 onwards. In calculating this amount, Aviva can deduct £150 if it has already paid that amount under this head to Mr C. Aviva should also pay interest on this sum.

## **Putting things right**

For the reasons set out above and in my provisional decision, I uphold Mr and Mrs C's complaint. I now require Aviva to take the following steps if it has not already done so:

- Treat Mr and Mrs C's holiday as having been effectively curtailed from 7 September 2021 onwards, subject to the remaining terms of the policy.
- Pay Mr C under the medical inconvenience provisions of the policy from 7 September 2021, as set out above.
- Pay interest on the sums calculated above, at the simple rate of 8% per year, from the date of the claim to the date it makes the payment.

HM Revenue & Customs requires Aviva to take off tax from this interest. Aviva must give Mr and Mrs C a certificate showing how much tax it's taken off if they ask for one.

### **My final decision**

My final decision is that I uphold Mr and Mrs C's complaint. In order to put things right, Aviva Insurance Limited should take the steps I've set out above, if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C and Mr C to accept or reject my decision before 5 August 2022.

Louise Povey  
**Ombudsman**