

## The complaint

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

## What happened

In December 2019, Mr and Mrs N booked a holiday abroad online and took out a travel insurance policy alongside their booking. The policy was underwritten by ERGO. They were due to travel between 8 and 22 August 2020. They paid a holiday deposit of £250.

However, on 11 March 2020, the World Health Organisation declared Covid-19 to be a pandemic. And in mid-March 2020, Mrs N was signed-off work because she was suffering from anxiety caused by the pandemic.

The balance of Mr and Mrs N's holiday was due to be paid on 27 June 2020. They paid the balance and cancelled the trip on the same day. They made a claim on their travel insurance policy for the full cost of their booking.

ERGO turned down Mr and Mrs N's claim. It noted that Mrs N's GP hadn't suggested that it had been medically necessary to cancel the trip. It also noted that Mrs N had a history of mental illness and had been prescribed medication, so it thought she ought to have provided a letter from a treating doctor saying that she was fit to travel, in line with the policy terms and conditions. And it had concerns that Mr and Mrs N had cancelled the trip on the same day they'd paid the balance. That's because the policy said that trips should be cancelled at the earliest opportunity. It added too that the policy excluded claims which were caused by the government of any country.

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

Our investigator thought Mr and Mrs N's complaint should be partly upheld. He noted that the policy term ERGO had relied upon in regard to a policyholder's mental health only applied to trips in the UK. But Mr and Mrs N weren't travelling in the UK – they were travelling abroad. The policy said that if a policyholder was travelling abroad, they needed to tell ERGO's medical screening line if they were prescribed medication. As Mrs N had been prescribed medication for her condition for some years, he thought she ought to have declared this to ERGO. So he asked ERGO what it would've done had Mrs N declared her medication. ERGO said it thought it was likely it would've charged an additional premium. But despite requests, it didn't tell us how much it would've charged or how the policy would've been affected. So the investigator didn't think it would be fair for ERGO to accordingly reduce any claim settlement or decline cover.

But the investigator didn't think ERGO needed to settle Mr and Mrs N's full claim. The policy terms stated that if a policyholder didn't cancel a trip as soon as they found it was necessary to do so, then ERGO's liability would be limited to the cancellation charges which would've applied at the point a trip ought to have been cancelled. In this case, Mrs N had been signed-off work in March 2020 due to anxiety. So he thought it would've been reasonable for

Mr and Mrs N to have cancelled the trip ahead of paying the balance on 27 June 2020 – the date of cancellation. If they'd done so, they'd only have incurred the loss of their deposit. Therefore, he thought ERGO's liability should be limited to the £250 deposit, together with interest. And he recommended that ERGO should settle the claim on that basis.

ERGO accepted our investigator's recommendations.

Mr and Mrs N didn't accept the investigator's findings and I've summarised their responses to him:

- They'd hoped to still be able to travel, but as the time grew closer, they realised this would be impossible due to the escalation of the pandemic and Mrs N's anxiety;
- They'd followed guidance on national news to pay the full balance of a trip;
- They felt ERGO's claims handlers had acted dishonestly and had tried to deter them from pursuing their claim;
- They didn't think ERGO had a specific policy which was designed for travel to their destination;
- ERGO had made assumptions about Mrs N's mental health and the medical certificate doesn't include fields large enough to accurately capture information.

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, whilst I'm sorry to disappoint Mr and Mrs N, I think that ERGO has now agreed to settle their claim 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. So I've considered, amongst other things, the terms of Mr and Mrs N's policy and the available evidence, to decide whether ERGO treated them fairly.

#### *Was the claim covered by the cancellation section of the policy?*

I've first looked carefully at the terms and conditions of Mr and Mrs N's policy. This says that ERGO provides cover in the event of a policyholder's illness. In this case, the certificate from Mrs N's GP shows that she was suffering from anxiety due to the pandemic. So I think she provided enough evidence to show she was claiming for something the policy covered.

It's clear that ERGO considered parts of the policy which didn't apply when it assessed the claim. I say that because Mr and Mrs N weren't cancelling their trip because of government restrictions – they were cancelling it because of Mrs N's health condition. And it's also clear that ERGO incorrectly relied on the policy 'health conditions' which applied to UK-only travel. I understand this must've been frustrating for Mr and Mrs N. But I haven't seen any evidence to suggest that ERGO was trying to put them off pursuing their claim, or deliberately turning down their claim in error. It seems to me that these were genuine mistakes made by the claims handler during the life of the claim.

As the investigator explained, if a policyholder is travelling outside the UK, then different policy conditions apply. One of those states that if a policyholder has been prescribed medication, then they need to call ERGO's medical screening line. It's common ground that Mrs N had been prescribed medication on an ongoing basis, so strictly, she ought to have

called ERGO to let it know about this. But ERGO wasn't able to tell us exactly how such a declaration would've affected Mrs N's cover and what, if any, additional premium would've been applied. So the investigator didn't think ERGO had demonstrated that it was entitled to reduce the policy cover or settle the claim proportionately. I was pleased to note that ERGO agreed with the investigator's conclusions on this point and so I don't think I need to make any further finding here.

### *Should ERGO pay the full claim?*

The cancellation section of the policy sets out a special condition relating to claims. This says:

*'If you fail to notify the travel agent, tour operator or provider of accommodation and/or transport as soon as you find it necessary to cancel the trip, our liability will be restricted to the cancellation charges that would have applied if a delay had not occurred.'*

There's no dispute that Mrs N was signed-off from work with anxiety on 19 March 2020. By her own account, her anxiety grew as the pandemic escalated and while I appreciate she and Mr N hoped to travel, they say it became evident that they wouldn't be able to do so. Given the trip was some five months in advance of Mrs N's initial sign-off from work and given the unprecedented situation surrounding Covid-19, I wouldn't necessarily have expected Mr and Mrs N to have realised in March 2020 that the trip would need to be cancelled.

But I do need to bear in mind that the evidence shows they paid the trip balance on 27 June 2020 and they told ERGO that they cancelled the trip on the same day. So it seems to me that it's most likely that Mr and Mrs N knew, when they paid the balance, that they wouldn't be able to travel and would be cancelling a short while later. Had they not paid the balance; their loss would've been limited to the cost of the holiday deposit - £250. This would've represented ERGO's liability under the policy had they cancelled when I think they knew they couldn't travel. While I appreciate Mr and Mrs N say they were following media guidance in paying the balance, I think they had a responsibility to mitigate their own (and ERGO's) losses. By choosing to pay the balance despite knowing they'd need to cancel, I think they prejudiced ERGO's position. And so I think it's fair and reasonable for ERGO's liability to be limited to what Mr and Mrs N's losses would've been had they cancelled ahead of paying the balance. This means I think ERGO is only required to pay Mr and Mrs N's deposit cost, together with interest.

I'm sorry to disappoint Mr and Mrs N, as I appreciate they've been left out of pocket. But I find that ERGO has now agreed to settle their claim fairly. I'd add too that while I understand Mr and Mrs N feel the medical certificate isn't as well drafted as it might be, I have no power to tell a business to change its operations or procedures. So I'm not able to tell ERGO to change its medical certificate or the questions it asks.

### **My final decision**

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

I direct ERGO Reiseversicherung AG to settle Mr and Mrs N's claim for the costs of their deposit – £250. I also direct ERGO to pay interest on the settlement at an annual rate of 8% simple, from the date of claim until the date of settlement.

If ERGO considers it's required by HMRC to take off income tax from the interest it has paid, it should tell Mr and Mrs N how much it's taken off. It should also give Mr and Mrs N a certificate showing this if they ask for one, so they can reclaim the tax from HMRC if

appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr N to accept or reject my decision before 7 September 2022.

Lisa Barham  
**Ombudsman**