

The complaint

Mr and Mrs P complained because AWP P&C SA (AWP) hasn't refunded the premiums they paid for a single trip travel insurance policy.

My decision is about a business with a slightly different name than the business our investigator referred to (which was the administrator of the policy). AWP is the insurer of the policy and the correct business for my decision to be about.

What happened

Mr and Mrs P booked a trip abroad and were due to travel from 23 March 2020 to 8 April 2020. They bought single trip travel insurance with their trip from a travel agent. AWP was the insurer.

The trip was cancelled following UK Government advice and the country abroad closing its borders to UK travellers due to the Covid-19 pandemic. Mr and Mrs P received a full refund of the cost of the trip from the travel provider. Mr P asked the travel agent to cancel the travel insurance as he and Mrs P didn't need it but they were told to wait as they might be able to use the policy for another trip later in the year. That wasn't possible so in April 2021 Mr P again asked the travel agent to refund the cost of the policy. Mr P told us the request for refund was refused and a final response letter was issued quoting from the policy that no refund was due if the policy was cancelled outside of the 14 day cooling off period.

Mr and Mrs P complained to us. They wanted the policy premium refunded. Sadly during our investigation Mr P passed away.

We asked AWP for its business file and the policy documents. AWP told us it hadn't been able to look at the complaint and it would be in touch. But we, nor Mrs P, haven't heard from AWP with any substantive response despite us chasing it several times for the information.

Our investigator explained that as we hadn't received the information from AWP his investigation was based on the information and testimony from Mr P before he passed away and Mrs P. As Mr P dealt with the insurance and complaint Mrs P had very little information.

Based on the information he had our investigator thought AWP acted unfairly in not refunding any of the policy premium. He recommended it would be fair for AWP to provide Mrs P and the estate of Mr P with a pro-rata refund of the premium they paid for their single trip travel insurance policy from the date the holiday was cancelled. Our investigator said AWP could contact the travel agent and/or the broker to confirm the dates and information it needed to calculate the refund if AWP didn't have the information.

AWP didn't respond to our investigator's recommendation so the complaint has been referred to me to make a 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.

AWP hasn't sent us its file, despite our requests, and Mrs P doesn't have the documents to send to us. I'm satisfied that we've given AWP enough time to send the information to us and that it's reasonable for me to now make a decision on the information I have.

Recently one of AWP's agents sent us the relevant policy which says:

'(name of travel agent) and (name of insurance broker) act as agents for AWP P&C SA... for the receipt of customer money and handling premium refunds'.

So while Mr P spoke to the travel agent about the return of the policy premium the travel agent was acting as AWP's agent and AWP is the correct business for my decision.

Industry rules and guidance

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance about a consumer's right to cancel an insurance contract. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS).

ICOBS says insurance contracts like the one Mr and Mrs P held have a cooling off period of 14 days for a consumer to cancel without penalty and without giving any reason. This is called the 'right to cancel'.

Under ICOBS, a firm may provide longer or additional cancellation rights voluntarily, as long as these are on terms which are at least as favourable to the consumer, unless the differences are clearly explained.

ICOBS 7.2.2 addresses payment for the service provided before cancellation in the event that a consumer has the 'right to cancel'. This rule says, if a consumer exercises the '*right to cancel*', *they may only be required to pay for the service actually provided in accordance with the contract. This 'may include an amount for cover provided (i.e. a proportion of the policy's exposure that relates to the time on risk)'.*

Guidance set out under ICOBS 7.2.4 says:

'In most cases, the FCA would expect the proportion of a policy's exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an insurer could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred'.

Mr and Mrs P didn't cancel their travel insurance policy within 14 days. And, under industry rules, even if they had cancelled the policy within 14 days, they wouldn't be entitled to a full refund of the premium paid. This is because AWP covered the risk of them cancelling the upcoming trip for reasons that were covered under the policy during that time.

The policy terms and conditions

The terms and conditions of the policy recently sent to us say AWP will:

'Only refund or transfer your premium if you decide that the policy does not meet your needs and you have contacted us within 14 days from the date you receive your policy and insurance confirmation'.

So I don't think Mr and Mrs P were entitled to any refund of premiums under the terms and conditions of the contract with AWP.

What is fair and reasonable in all the circumstances

But I've also considered what I think is fair and reasonable in all the circumstances of the complaint.

I understand Mr and Mrs P's planned trip – and therefore the need for this single trip insurance policy – changed due to circumstances outside of their control. So, I've thought about whether it would be fair and reasonable to ask AWP to depart from industry rules and the terms and conditions of Mr and Mrs P's contract because of the exceptional and extraordinary circumstances surrounding Covid-19.

Covid-19 was an unanticipated and unforeseen event, outside of the control of both parties to the insurance contract.

Mr and Mrs P weren't just insured for the dates of travel. The price set by AWP also covered Mr and Mrs P for cancellation cover from the policy start date. So, the premium Mr and Mrs P paid covered the risk of them having to cancel their holiday due to any of a number of listed events insured under the policy.

AWP was covering the risk of Mr and Mrs P making a successful claim on the policy from the policy start date until their holiday was cancelled. It's a fundamental principle of insurance law that, if the insurer had commenced to bear the risk concerned – for however short a time – the premium paid is not returnable. So, regardless of what Mr and Mrs P's cancellation rights were, it isn't unfair for AWP to retain any premiums relating to the risk it covered during that time.

However, after the date the holiday was cancelled due to Covid-19, AWP didn't bear any risk under Mr and Mrs P's insurance policy. The holiday had already been cancelled due to Covid-19 and AWP hasn't paid a claim in relation to this. AWP was therefore no longer carrying the risk of the holiday being cancelled for any other insured reason. And, as the holiday was no longer going ahead, AWP was also no longer carrying the risk of any claim being made while Mr and Mrs P were travelling abroad.

Putting things right

Based on the unique and unprecedented circumstances surrounding the Covid-19 pandemic, I think it would be fair and reasonable for AWP to provide Mrs P and the estate of Mr P with a pro-rata refund of the premium they paid for their single trip travel insurance policy from the date the holiday was cancelled.

My final decision

I uphold this complaint and require AWP P&C SA to pay the pro-rata refund of the premium they paid for their single trip travel insurance policy from the date the holiday was cancelled.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and the estate of Mr P to accept or reject my decision before 2 December 2022.

Nicola Sisk
Ombudsman