

The complaint

Mrs L brings a complaint on behalf of herself and her late husband's estate (Mr L) about Aviva Insurance Limited's decision not to pay its claim.

This complaint was brought by a third-party representative but for simplicity, I'll refer to all submissions as being made by Mrs L personally.

What happened

Mr and Mrs L were on holiday in France, when sadly, Mr L died. Mr L was swimming in the sea when he appeared to get into trouble with the strong rip tide currents. The cause of Mr L's death was described as a heart attack which for the purposes of this claim, was considered a natural cause of death. It's on this basis that Aviva declined the claim. Mr and Mrs L had travel medical insurance with Aviva.

Mrs L would like Aviva to pay the claim, but because Aviva's policy doesn't offer cover for death caused by a natural occurrence, no cover was offered.

Our investigator upheld this complaint and recommended Aviva pay 50% of the benefit amount and £300 compensation for the overall handling of the claim. He said there were unnecessary delays which in turn, caused Mrs L distress. Aviva agreed to pay the compensation but not accept liability for the claim.

Aviva disagreed and said that the medical evidence states Mr L's cause of death was a heart attack and that he had coronary artery disease. And so, it's for me to make a final 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.

Having done so, I've decided to uphold it and for the same reasons explained by our investigator. I'm persuaded that Mr L's cause of death was accidental and whether it was primarily caused by the heart attack, or drowning, doesn't persuade me that Aviva should not pay half the claim. I'll explain why.

Aviva's terms say;

"The policy provides cover for death benefit as follows:-

Accidental death or permanent disability

We will cover you if you suffer a serious accidental bodily injury during your trip which requires immediate and urgent medical attention and leads solely, directly and independently of any other cause to:

- *your death*

What is not covered

1. Anything mentioned in the 'General exclusions' section.

2. Any claim resulting from sickness, disease, nervous shock or degenerative process"

I've highlighted these terms because I'm satisfied that Mr L's death was accidental. Both sides of this complaint know the full background to this case and so I won't detail everything as part of my final decision, but, to summarise, Mr L got into difficulties whilst swimming in the sea. I explained to Aviva that there was enough persuasive evidence that supported the argument that Mr L was swimming alone and that he died during this activity.

Aviva said the official cause of death was a heart attack and I agree that's what was stated on the death certificate. But there were other indications within the report which gave me pause for thought. In particular;

"Trachea and main bronchi contained frothy secretions...On sectioning, both exuded oedema fluid"

I find these comments persuasive that Mr L took on excessive fluid whilst swimming and so I find the argument that this contributed to his death persuasive. Though, I must highlight Aviva's comments from its chief medical officer who challenged this statement and said that oedema fluid is also consistent with a heart attack. Whilst I acknowledge its argument and I agree this is consistent, the pathologist said that he was unable to determine what happened first, whether Mr L had a heart attack, or was drowning which in turn caused the heart attack. And so, it's difficult for me to make a definitive finding on that point. It's because of this I must consider the wider circumstances which has prompted me to invoke our fair and reasonable remit and step outside of the policy terms by agreeing with our investigator's opinion and award a 50% settlement.

Mrs L asked for additional comments from the Coroner's Office about this and the pathologist said that he was unable to determine which occurred first, the heart attack or drowning. He also suggested that the circumstantial evidence supported the likely cause of the heart attack was accidental drowning. I find this persuasive when considered alongside the other contemporaneous evidence, such as witness testimony from the French doctor who recorded Mr L's death as accidental drowning, which was also echoed by the police that attended the scene.

And so, carefully considering these comments, alongside the death certificate and other contemporaneous evidence, I found that, on balance, Mr L's death was accidental and that whether he drowned, or had a heart attack first, difficult to determine. Aviva made additional arguments about Mr L's health prior to the accident. In summary, it said that Mr L had heart disease and I'm satisfied that was the case given the pathologist's comments about that. But I must carefully consider whether this was a contributory factor to Mr L's death. That's to say whether someone without a similar medical history would have been subject to the same outcome. This is very difficult to determine but given the circumstantial evidence from the local newspaper – which identified the area as one synonymous with many swimmers losing their lives because of strong tidal currents and rip tides – I'm persuaded, on balance, that the topography and the overall ferocity of the sea also be a contributory factor to Mr L's death.

I cannot say one way or the other whether Mr L drowned, or had a heart attack first, but I acknowledge there are persuasive arguments for both scenarios. But for the purposes of my final decision I must make a finding. And so, my final decision is that Aviva should pay 50% of the benefit. I think this is fair given the pathologist's comments that he was uncertain which occurred first, the medical evidence and witness testimony which suggested Mr L had drowned. It's fair that Aviva accept half the liability for this claim.

My final decision

I've decided to uphold this complaint for the reasons I've explained and that Aviva Insurance Limited should now pay Mrs L and the estate of the late Mr L 50% of the claim and £300

compensation for the distress and inconvenience caused to Mrs L.

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

Scott Slade
Ombudsman