

The complaint

Mr E and Ms C are unhappy that AWP P&C SA has declined claims made under Mr E's travel insurance policy.

What happened

Mr E has the benefit of a multi-trip travel insurance policy, through his bank account, which covers him, his spouse and dependent children. Mr E's explained that he had two skiing holidays booked – staying in the same chalet for both trips.

The first skiing holiday was from 14 March 2020. Mr E was going on this holiday alone, with his son due to join him during the week. And, following that, friends were coming to join him too.

Mr E had a flight booked to return to the UK on 18 March 2020 – but the chalet he was staying in, was booked for his use until 21 March 2020. Mr E said this was because he was going to look into extending his stay past 18 March 2020 whilst abroad, given friends were planning on joining him.

Mr E flew out on his trip as planned. But shortly after arriving at the chalet, the government in the country he was staying took the decision to close ski resorts in the country, in response to the Coronavirus. So, Mr E said his plans for this holiday weren't able to go ahead. His son, on learning the resorts were closed, didn't book flights and his friends could no longer come and join him.

Mr E said because of the above he sought to return home earlier than planned. But he wasn't able to secure an earlier flight. So, he returned home on his pre-booked flight on 18 March 2020. Mr E said his holiday was effectively curtailed, given the above.

The second skiing holiday was booked from 11 April 2020 to 18 April 2020. Flights were booked for Mr E, Ms C and their dependent children. But they weren't able to travel on this holiday at all, because of government restrictions in relation to coronavirus.

Because of the above, Mr E contacted his insurer to make claims for the cost of the pre-booked accommodation. AWP asked for a range of information from Mr E, and then declined the claims.

AWP declined the claims because it said that Mr E actually owned the chalet he had booked, and whilst he leased this out to a ski company, and rented it back for the weeks abroad, he was experiencing a loss of income, rather than a loss of pre-paid holiday accommodation. And it said the insurance policy didn't cover this.

Mr E didn't agree. He explained that he did own the chalet. But, that for a number of years he had leased the property to a ski company, for a set fee. This set fee was paid to Mr E each year. If Mr E wanted to stay in the chalet, he had to book the accommodation, and pay for it. Mr E explained this was like any other paying customer. And so, he said it wasn't a

loss of rental income he had experienced. Rather, he and Ms C had paid for trips that were impacted, or cancelled, due to the Coronavirus.

Mr E complained to AWP. But it maintained its position. Mr E remained dissatisfied. And so, Mr E and Ms C referred their complaint to this service for an independent review.

Our investigator considered this complaint and felt it part of it should be upheld. In terms of the trip in March 2020, our investigator said AWP hadn't done anything wrong. Mr E had gone on his trip and hadn't curtailed it. His trip was from 14 March to 18 March 2020, based on the flights, and Mr E returned home as planned. In reference to this claim, our investigator also explained there was no insured event under the curtailment part of the policy that would mean the claim was covered. And there was no cover under the policy for piste closure, unless this was due to too much or too little snow.

In reference to the holiday in April 2020, our investigator thought AWP had acted unfairly. They said Mr E and Ms C's holiday was cancelled because of Foreign, Commonwealth and Development Office advice (FCDO), and this was an insured event under the policy. Our investigator said that it wasn't a loss of income that Mr E and Ms C had experienced. But instead, it was costs they had paid for pre-booked accommodation – regardless of the fact Mr E owned the chalet. So, the investigator considered that AWP should settle this claim, in line with the remaining terms of the policy. And pay 8% interest from the date of claim to the date of settlement on this.

Mr E and Ms C didn't agree. They still felt Mr E's trip in March 2020 should be covered by the policy. AWP didn't agree either. It still considered Mr E and Ms C suffered a loss of earnings, not a loss of pre-booked accommodation. And they said there was an exclusion in the policy for accommodation costs paid for using timeshare, holiday property bond, other holiday point schemes, or maintenance and other contractual fees.

Our investigator responded, maintaining her thoughts. And as neither party agreed with the outcome arrived at, this complaint has been referred to me to decide.

I issued a provisional decision to the parties, explaining my thoughts. In this I said:

"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'm intending on upholding this complaint. I've explained why below. When considering complaints such as this, I need to consider the relevant law, rules and industry guidelines. The relevant rules, set up by the Financial Conduct Authority, say that an insurer must deal with a claim promptly, fairly, and not unreasonably decline it. So, I've thought about whether AWP, in declining Mr E and Ms C's claims, acted in line with these requirements.

I don't think AWP acted fairly in declining Mr E and Ms C's claims. I've explained why below.

March 2020 trip

I've reviewed Mr E and Ms C's policy documentation. As is usual with policies of the nature, I can see it doesn't cover every eventuality. Rather, for a claim to be successful, the loss needs to have happened because of an insured event listed within the policy booklet.

I've reviewed the covered events within the policy. And I can see the policy does provide cover for curtailment, in certain situations. This includes for having to curtail a trip due to:

*"The UK Foreign and Commonwealth Office or the equivalent government authority in the **beneficiary's country or residence** advising against 'all travel' or 'all but essential travel' to the **beneficiary's** intended destination..."*

I've looked into the FCDO advice, as well as the advice in the country Mr E was in at the time. From doing so, I'm aware that the FCDO didn't advise against all, or all but essential travel, until after Mr E had left for his trip. And it wasn't until 23 March 2020 that the FCDO told UK residents it should be returning home from abroad. So, I'm aware there was no FCDO guidance between 14 March 2020 and 18 March 2020, that meant Mr E had to curtail his trip.

However, I do think there was advice in the equivalent government authority that effectively advised against all or all but essential travel. And therefore, curtailed Mr E's trip. The government in that country, said that from midnight on 14 March 2020 all non-essential public places, including ski resorts, bar, restaurants and most shops needed to close. And, on 16 March 2020, the government imposed a nationwide lockdown. People leaving their home were required to produce a document, to justify their movement. Given this, I do think that from midnight on 14 March 2020, Mr E's holiday was effectively curtailed. He had come on a ski holiday – and was unable to ski or do any of the other activities that would have been part of the trip – such as eating out. The only facilities open would have been medical or for grocery shopping.

I recognise that as per the curtailment definition in the policy means cutting short the trip and returning home. And that Mr E did still come home on his original flight. But Mr E has said he did try to come home on an earlier flight. But he couldn't secure one. So, he had no choice but to return on his original flight. I'm satisfied this is reasonable and likely – given the abrupt change in government advice, and the number of holidaymakers that wouldn't have been able to continue their trip as planned. So, whilst Mr E couldn't actually return home early, I consider it fair and reasonable to consider Mr E's trip effectively curtailed. The situation was more than a mere lack of enjoyment of the trip, which wouldn't be covered. Mr E wasn't able to carry out the holiday booked, given the closures in the country. Given this, I think it would be a fair and reasonable for AWP to deal with this claim.

AWP has said they don't think Mr E suffered a loss of pre-booked accommodation, which is what the curtailment cover provides for. It's said Mr E has in fact suffered a loss of earnings. I've thought about this. And I don't agree.

It is the case that Mr E owns the chalet he stayed in. But I've seen a contract between him and a ski company. This ski company leases the chalet from Mr E. And, if Mr E wishes to holiday in the chalet, he isn't able to make that decision without approval. He must let the ski company know he wishes to book a holiday in the chalet – and he must pay for the use.

Whilst Mr E received a set amount of money for the chalet being leased each year, and the cost of this trip was deducted from what the ski company owed him in this respect, it doesn't mean this was a loss of earnings. Mr E's set amount of money reduced because he was paying for a holiday. And his trip was effectively curtailed, meaning a loss in terms of pre-booked accommodation he had paid for. Mr E could just as easily have paid for the accommodation through another method – such as a credit card – and would still receive the set amount of money from the ski company.

It's important to note - I'm aware Mr E had booked the chalet for the full week, until 21 March 2020. And was seeking to recover the cost of this whole week from AWP. But Mr E's flight

home was booked for 18 March 2020. And I haven't seen any evidence Mr E's flight was changed to a later one. So, I don't think AWP acted unfairly in noting any claim considered would be for losses from 14 March 2020 to 18 March 2020. And not for the remainder of the week.

AWP has said also said Mr E's costs were recoverable elsewhere. It said as the trip was pre-booked accommodation, and booked with a UK company, the ski company should provide Mr E with a refund. But I don't agree that Mr E's costs were recoverable elsewhere. Mr E has provided documentation from the ski company, showing that he attempted to receive a refund from it, but it refused to do this. This ski company explained why that was the case – this being that the terms and conditions didn't allow for a refund. Which I've seen is the case.

And, I'm aware the trip, and ski company, isn't covered by a scheme such as ABTA, for Mr E to raise a dispute with the ski company for this. And I wouldn't expect Mr E to have to take steps such as taking the ski company to court when he has an insurance policy here. He has shown he's taken steps to recover the money, and it hasn't been possible.

AWP has also said the policy doesn't provide cover for accommodation paid for by timeshare, holiday property bond, or other holiday points scheme. But I can't see this exclusion is relevant here. Mr E didn't pay for this holiday via those methods. So, this doesn't make a difference to the outcome of this complaint.

Given the above, my intended decision is to require AWP to settle Mr E's claim for his chalet accommodation, from 15 March 2020 (when the government guidance effectively curtailed his trip) to 18 March 2020, in line with the remaining terms and conditions of the policy. I'm also intending on requiring AWP to provide Mr E with 8% interest simple per annum on this claim payment, from the date of claim, to the date of settlement, less any tax deductible, to recognise the Mr E had been without the funds he should have been paid, and that he could have used elsewhere.

April 2020 trip

In terms of Mr E and Ms C's trip in April 2020 – Mr E and Ms C have said they had to cancel their holiday, because of government restrictions in relation to Coronavirus.

I've reviewed the government guidance at this time. On 11 April 2020, when Mr E, Ms C and their children were due to travel the FCDO guidance was against all but essential travel abroad. So, I'm satisfied this was the reason they had to cancel their trip.

As above, Mr E and Ms C's policy provides cover for cancellation, as well as curtailment of a trip. And the cancellation cover does provide for cancellation of a trip where the FCDO have advised against all, or all but essential travel. Given this, I'm satisfied there was an insured event, covered by the policy here.

AWP has raised that it also isn't settling this claim, because it was a loss of earnings, rather than pre-booked accommodation. That the loss was recoverable elsewhere, and that the policy doesn't provide cover for holidays booked through timeshare, holiday property bond or another points scheme. But I don't consider that to be the case in relation to this claim either. My reasoning for this is the same as with the March 2020 trip, explained above. So, I don't think AWP has acted fairly in declining this claim, for these reasons, either.

Given the above, my intended decision to require AWP to settle Mr E's claim for his chalet accommodation, from 11 April 2020 to 18 April 2020, in line with the remaining terms and conditions of the policy. I'm also intending on requiring AWP to provide Mr E with 8% interest simple per annum on this claim payment, from the date of claim, to the date of settlement,

less any tax deductible, to recognise the Mr E had been without the funds he should have been paid, and that he could have used elsewhere.

I should highlight, that in relation to both claims, the invoices provided for the trips were based on the full price of the trip booking, this being what the cost of booking the chalet would have been to the general public. But I've seen emails between Mr E and the ski company negotiating on the price of the trips – with a discounted amount being given for four weeks Mr E was booking that year. So, I'm aware Mr E and Ms C didn't pay full retail price for the time claimed for. Given this, Mr E and Mrs C will need to provide evidence of what they actually paid for the periods of time, I've noted should be settled under the policy."

Mr E responded, on behalf of him and Mrs C. He accepted the provisional decision and provided some further documents in relation to his pre-booked trips.

AWP responded and didn't agree. In summary, it maintained that if it was to settle claims, it would be setting a loss of income, rather than the loss of funds for a pre-booked holiday.

AWP said losses of rental income would normally be covered under a landlord policy, rather than a travel one. It said that Mr E had already benefited at the start of the year from rental income for the property. And said his decision to use it during the above times was a loss of rental income.

AWP also said that in settling the claims it would be breaching the principle of indemnity that insurance is based on.

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, my decision remains the same as that in my provisional decision, and for the same reasons. So, I'll not repeat this in detail here.

But I have considered AWP's concerns and addressed these below.

AWP has said that insurance is based on the principle of indemnity. This being, that an insurance policy should put a policyholder back to the position they were in before their loss, and not put them in a worse, or better off position. AWP has said that in settling Mr E's claims in line with my decision, it will be breaching this principle. It says that Mr E would be in a better position than before his claim.

It says this will be because he'll receive the income for his chalet for those weeks. But I don't agree the principle is breached here. AWP wouldn't be putting Mr E in a better or worse off position or settling Mr E's loss of income. Instead, it would be settling the cost he had paid to the ski company for renting the property at the relevant times.

The fact Mr E owns the chalet and receives a rental income for it is separate to his holiday bookings. Mr E was due to receive the rental income for his property, no matter what. He receives a set income each year for the property – no matter whether the ski company manages to rent it out, or not. It is the ski company that takes on that risk – and Mr E relinquishes his right to the property.

If Mr E wants to use the chalet, he has to pay for it. Just like any other customer. So, it isn't a case of him not receiving rental income as agreed for these weeks. But, rather, he has undertaken a separate agreement to rent the property. And this is what Mr E is claiming for

here. Not the cost of the rental income – but the cost he paid to book the accommodation for the relevant time periods.

Mr E pre-booked the accommodation with the ski-company, and for the reasons discussed above, he wasn't able to make use of his bookings. And so, suffered a loss of outgoings spent on his trips.

I understand that Mr E's method of payment was for the cost of his booking to be deducted for the amount the ski company owed to him. But it could just as easily have been paid another way – through a credit or debit card for example. But either way, Mr E rented the property, for his trip, for a fee. And, as explained in my provisional decision he suffered a loss in relation to this, for both his trips in March and April 2020. So, my decision remains the same in terms of settling those losses.

AWP has raised whether the situation would be different if Mr E didn't have a lease agreement with the ski company, with a set, upfront fee. And instead income was provided on the basis of bookings as they came, with the weeks Mr E wanted the property being blocked out. When coming to my decision, I can only consider what happened in the circumstances of the case. And Mr E booked these weeks for a fee. He isn't claiming for funds because the property was empty or unrented. So, this doesn't make a difference to the outcome of this complaint.

It's important to note that in my provisional decision I said that Mr E's invoices provided were based on the full price of a trip booking, this being what the cost of booking the chalet would have been to the general public. But that I'd seen emails between Mr E and the ski company negotiating on the price of the trips – with a discounted amount being given for four weeks Mr E was booking that year. So, I said I was aware Mr E and Mrs C didn't pay full retail price for the time claimed. And that Mr E and Mrs C would need to provide evidence of what they actually paid for the periods of time that I said should be settled under the policy.

Mr E has provided some invoices following this. Mr E and Mrs C will need to send this to AWP, and it will need to consider these, to ensure they evidence the payment Mr E agreed to for the times mentioned above, as part of its settlement of the claims, in line with the remaining terms and conditions of the policy. And, should AWP need further evidence of this, it will need to ask for it.

My final decision

Given the above, I'm upholding this complaint and requiring AWP P&C SA to:

- Settle Mr E's claim for his chalet accommodation, from 15 March 2020 to 18 March 2020, in line with the remaining terms and conditions of the policy.
- Settle Mr E's claim for his chalet accommodation, from 11 April 2020 to 18 April 2020, in line with the remaining terms and conditions of the policy.
- Pay 8% interest, simple per annum, on the above amount, from the date of the claims, to the date of settlement, less any tax properly deductible.
- If HM Revenue & Customs requires AWP P&C SA to deduct tax from this interest, AWP P&C SA should give Mr E and Ms C a certificate showing how much tax its deducted, if they ask for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C and Mr E to accept or reject my decision before 20 October 2022.

Rachel Woods
Ombudsman