

The complaint

Miss T complains that AWP P&C SA hasn't settled a claim she made on a travel insurance policy.

Miss T's represented by Mr T. But for ease of reading, I'll refer to Miss T throughout.

What happened

The circumstances of this complaint are well-known to both parties, so I haven't set these out in detail here. Instead, I've focused on what I think are the key events.

In January 2022, Miss T was skiing abroad. Unfortunately, she suffered a knee injury. She says she initially underwent an x-ray and was referred for physiotherapy treatment. Miss says she contacted AWP's medical assistance company to make a claim.

As the physiotherapy hadn't worked, Miss T sought further medical advice. And at this point, she was diagnosed with significant knee injuries. The treating hospital recommended that Miss T should undergo urgent surgery.

AWP's medical assistance company didn't agree that Miss T needed urgent surgery. It said its doctors considered that Miss T could be repatriated back to the UK for surgery on the NHS.

Miss T disagreed. Her treating doctors said that the chances of the surgery being successful reduced in line with delays in it being carried out. The treating doctor also said that Miss T wasn't fit to fly, as there was a risk of developing a deep vein thrombosis (DVT). Miss T underwent surgery abroad and Mr T covered the costs she incurred. Miss T complained about the way AWP had handled her claim.

Ultimately, some months later, AWP offered to pay half of Miss T's claim. While it maintained its claims decision had been correct, it's offer was made in acknowledgement of the poor service Miss T had received.

Miss T made suggested revisions to AWP's offer but had no further response.

Our investigator asked AWP to provide us with its file of evidence. However, despite repeated requests, it didn't do so. On the basis of the evidence we did have, the investigator concluded that AWP should pay Miss T's claim, together with interest, along with £150 compensation for poor service. She felt that Miss T had followed the treating doctor's advice. She was satisfied that Miss T hadn't been fit to return to the UK. She didn't think there was any evidence to show why AWP had disregarded the treating doctor's advice, nor any evidence that its decision had been given by someone medically qualified.

AWP didn't respond to our investigator's assessment, despite being chased-up. So the complaint's been passed to me to decide. I must make it clear that in the absence of any evidence from AWP, I've necessarily had to make a decision based on the information Miss T has sent us.

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 don't think AWP has treated Miss T fairly and I'll explain why.

I'm aware that AWP did make an offer to settle this complaint and as I've explained, Miss T made suggested revisions to this offer. In my view, this doesn't constitute a binding acceptance of a settlement agreement, as Miss T's revisions are more akin to a counteroffer. Nor is there any evidence that AWP has taken any further action since its offer was made some months ago. On this basis, I'm satisfied it's appropriate for me to consider the merits of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Miss T's policy and the available medical evidence, to decide whether AWP treated her fairly.

I've first considered the policy terms and conditions, as these form the basis of Miss T's contract with AWP. As Miss T made a medical expenses claim, I think it was appropriate for AWP to consider the claim under Section A – emergency medical expenses. This says that, alongside other costs, AWP will pay for normal and receipted expenses of emergency medical or surgical treatment incurred outside of a policyholder's home country.

The policy says:

'Please tell us immediately about any serious illness or accident abroad where you have to go into hospital or you may have to return home early or extend your stay because of any illness or injury.'

Section A says: *'The insurer reserves the right to repatriate you to your home country when in the opinion of the medical emergency assistance service you are fit to travel.'*

This section of the policy also specifically excludes the following:

'Any form of treatment or surgery which in the opinion of the doctor in attendance and the medical emergency assistance service can be reasonably delayed until you return to your home country.'

Any medical treatment and associated costs you have to pay following your refusal of curtailment, or your decision not to move hospital or return to your home country after the date when, in the opinion of the medical emergency assistance service, you should have done so.'

AWP suggested, in its final response, that Miss T didn't contact its emergency assistance team immediately following her injury. Miss T says that she did contact AWP to open a case. In the absence of any medical assistance team notes or call recordings, I can't be certain what happened. I find Miss T's testimony on this point persuasive though. And even if I accept that Miss T didn't contact AWP immediately, this wouldn't necessarily mean that it would be fair or reasonable for AWP to decline cover for this reason alone.

What is clear is that once the treating doctor had confirmed Miss T had suffered more serious injuries and would require surgery, Miss T did contact AWP. It declined to cover the cost of surgery abroad, because it said Miss T could safely be repatriated for surgery on the

NHS. As I've set out above, there is very little evidence from AWP as to how it arrived at this conclusion: what information it reviewed; how much weight it gave to the medical reports sent by Miss T's treating doctor; or what, if any, medical professionals were involved in its decision-making.

On the other hand, Miss T has provided us with a copy of the medical report, dated 1 February 2022, from her treating doctor. This says:

*'Proposed Surgery: **urgent** left ACL reconstruction with left hamstring autograft (meniscal repair, possible meniscal root repair)*

Ideally this surgery will be done within 7-10 days.

The chance of successful repair decreases with increased delay between injury and surgery.' (My emphasis added).

On 3 February 2022, the treating doctor added:

'It is recommended that (Miss T) proceed with surgery within 7-10 days from February 1st. The risk of flying is the risk of developing deep vein thrombosis (DVT).

It is recommended that (Miss T) proceeds with surgery here.'

In my view then, the available medical evidence, provided by an orthopaedic specialist expert in their field, who was responsible for Miss T's care and who'd had the chance to examine her, shows that Miss T required urgent surgery, within a reasonably short-time frame. And that there was a risk of flying, due to the risk of developing DVT. The evidence also demonstrates that the longer the delay between the date of injury and the surgery, the less likely it was that the surgery would be successful.

There's simply no medical evidence to support how AWP concluded that Miss T's surgery could be delayed until she returned to the UK (where it would have no control over NHS scheduling for the surgery). Given well-publicised NHS waiting times, it isn't at all clear that Miss T would've been able to undergo surgery on the NHS within 7-10 days of her first appointment with the specialist abroad. There's also no evidence of the reasons why AWP discounted Miss T's treating doctor's opinion, nor why it concluded she was fit to fly when the treating doctor expressly referred to the risk of her doing so.

As such then, I think that Miss T took a reasonable and understandable course of action when she relied on the advice from her treating doctor and proceeded with the surgery. I don't think that AWP has shown it was fair or reasonable for it to decline to cover Miss T's medical costs at the outset, or that it's limited to only partially settling them now. And I don't think it's shown that it was entitled to rely on the policy exclusions it referred to when it initially turned down Miss T's claim.

Given the above, I find that the fair and reasonable outcome to Miss T's complaint is for AWP to now accept and settle her medical expenses claim in full, in line with the policy terms and conditions. It must also add interest to the settlement at an annual rate of 8% simple, from the date of claim until the date of settlement.

It's clear too that AWP hasn't handled the claim as well as it should've done. There were long delays in responding to Miss T's questions and correspondence, which I don't think have been reasonably explained. I think these delays added to Miss T's trouble and upset at a time when she was already undergoing, and subsequently recovering from, painful surgery. So I agree that AWP must also pay Miss T compensation of £150 to reflect the

distress and inconvenience its handling of the claim has caused her.

My final decision

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

I direct AWP P&C SA to accept and settle Miss T's medical expenses claim in full, in line with the remaining terms and conditions of the policy. It must add interest to the settlement at an annual rate of 8% simple, from the date of claim until the date of settlement.*

I also direct AWP to pay Miss T £150 compensation.

*If AWP considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Miss T how much it has taken off. It should also give Miss T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 23 February 2023.

Lisa Barham
Ombudsman