

The complaint

Mrs and Mr M complain about AWP P&C SA's settlement of their travel insurance claim. My references to AWP include its agents.

What happened

Mrs and Mr M had travel insurance, insured by AWP, through a bank account.

On 7 May 2022 Mrs and Mr M travelled abroad for a holiday at a private villa on a hotel complex and planned to stay ten days. On 13 May 2022 a doctor went to see Mr M as he was unwell and he was tested for, and diagnosed with, covid-19. Mrs M became infected a few days later. They said they had to stay an additional nine days, mostly in quarantine, and they claimed for the additional costs incurred.

AWP accepted the claim. It paid most of the costs claimed but wouldn't pay the cost of the PCR tests to check for covid-19 or the doctor's fees for providing the tests. Ultimately it said the tests were required to confirm the diagnosis of covid-19, to provide the medical evidence to support Mrs and Mr M's claim and to confirm they were fit to fly home. AWP said as the costs weren't for emergency medical treatment there was no cover under the policy terms.

Mrs and Mr M complained to us. In summary they said:

- When Mr M felt very unwell the hotel arranged for the doctor to attend who gave Mr M a diagnostic test to check for covid-19 and told them not to leave the villa as there was mandatory quarantine if he had covid-19. There was no alternative to calling out a doctor and the test was medically necessary for the diagnosis. Before they took a flight home the doctor needed to attend again and do another covid-19 test to see if they were still infectious, if so they couldn't take the flight home. They were still infectious when tested before the first re-booked return flight so they had to re-book again.
- The policy covered the cost of a doctor attending if they fell ill and the cost of tests to confirm a diagnosis.
- There was no legal requirement at the time to take a pre-flight PCR test or provide medical certification before flying. So the covid-19 tests weren't screening tests to detect a potential infection before travelling, they were carried out solely as a result of them falling ill.
- The 'proximate cause' of their loss was their illness which was an 'insured peril'. AWP couldn't say it wasn't liable for that loss unless the loss was specifically excluded in the policy terms. AWP hadn't told them which specific policy term it relied on to decline these costs.
- They want AWP to pay for the costs of the doctor's attendances and for the covid-19 tests, about £600 in total.

Our investigator said AWP fairly declined the costs of the doctor's attendances and covid-19 tests so fairly settled the claim.

Mrs and Mr M disagreed and wanted an ombudsman's decision. They added that they'd seen an ombudsman's decision about policyholders in the same circumstances and the ombudsman had said the insurer had to pay the covid-19 test costs.

What I've provisionally decided – and why

I made a provisional decision that I was intending to partly uphold the complaint. I said:

'The relevant rules and industry guidelines say insurers have a responsibility to handle claims promptly and fairly and they shouldn't reject a claim unreasonably.

I've considered all the points Mrs and Mr M have made but I'm not going to respond to them all as I'll focus on why I've made my decision. Mrs and Mr M have referred to another decision made by my ombudsman colleague but our decisions don't generally set precedents and each complaint is decided on their own individual circumstances and the relevant policy wording.

I'm intending to partly uphold this complaint as I think AWP unfairly declined all the costs for the doctor's attendances and PCR tests, but it only needs to pay some of those costs. I'll explain why.

The policy says:

'Medical and emergency expenses

This is not Private Medical Insurance.

Part One: Emergency Medical Expenses Abroad

If, during the period of the trip, you fall ill (including being diagnosed with...COVID-19 as well as being subject to compulsory quarantine on the orders of the attending GP)...the insurer will pay the value of reasonable and necessary costs in respect of:

- a) i) emergency treatment (treatment that is required immediately and which cannot reasonably wait until you return to your country of residence): dental, medical, surgical or hospital treatment (including rescue service to take you to hospital) incurred outside your country of residence'.*

So the policy covers reasonable and necessary costs for emergency treatment if Mrs and/or Mr M fall ill.

Mr M says he felt very unwell while on holiday. So I think it was reasonable for the doctor to attend and as the cause of Mr M's illness wasn't known it was reasonable for the doctor to do a diagnostic test to try to determine what illness Mr M had.

Even if the doctor suspected Mr M had covid-19 before he had the diagnostic test, which appears to be the case as he was given the test, I think it was important for Mr M to have the test immediately to know if his illness was covid-19. If so he and Mrs M would need to quarantine, which AWP hasn't disputed. If he didn't have covid-19 the illness could be treated accordingly. The policy says 'emergency treatment' is *'treatment that is required immediately and which cannot reasonably wait until you return to your country of residence'*.

I think the initial diagnostic test to determine what illness Mr M had was required immediately and couldn't reasonably wait until he returned to the UK.

I think the cost of the doctor's first attendance on Mr M and the cost of his first diagnostic test was emergency medical treatment as set out in the policy terms. Under the policy terms and on a fair and reasonable basis AWP should pay those costs plus interest as I've set out below.

Once Mr M's initial covid-19 test had been done the cause of his illness was known and there was no medical need for further diagnostic tests. From what Mrs and Mr M first said the purpose of the doctor's subsequent attendance/s and subsequent covid-19 tests were to check if they could take the return flight. I don't think the doctor's subsequent attendance/s and tests can reasonably be said to be necessary emergency medical treatment and I don't think it would be fair for me to say AWP should pay those subsequent costs.

Mrs and Mr M have also said the covid-19 tests weren't screening tests to detect if they still had covid-19 before travelling as at the time there was no legal requirement to take a pre-flight covid-19 test or provide medical certification before flying. That comment appears to be contrary to what they previously said, as I've detailed above. But even if the doctor's subsequent attendance/s and covid-19 tests weren't to check if Mrs and Mr M could take their return flight there's no medical evidence to show why the subsequent attendance/s and subsequent covid-19 tests were emergency medical treatment.

It's not clear whether one of the doctor's subsequent attendances was just to do a covid-19 test on Mrs M. If so I don't think those costs were for necessary emergency treatment under the policy terms or on a fair and reasonable basis. There's no medical evidence that Mrs M's symptoms required a doctor's attendance. A diagnostic test for Mrs M wasn't required immediately as in the circumstances it was highly probable her symptoms were also due to covid-19 and Mrs and Mr M were already having to quarantine due to his diagnosis.

I don't think the policy terms have to specifically exclude the claimed costs for AWP to be able to decline the claim, as Mrs and Mr M suggest. The 'Emergency Medical Expenses Abroad' policy terms set out what AWP will pay for if they become ill. I've explained why I think AWP was unfair to say all of the costs Mrs and Mr M claimed weren't covered by the policy'.

Responses to my provisional decision and further developments

Mrs and Mr M didn't accept my provisional decision, they still want all the costs of the covid-19 PCR tests paid. They made several points but the most relevant were:

- They clarified the relevant country's requirement to take a pre-flight covid-19 test or provide medical certification before flying. They said under the country's covid-19 regulations if they had covid-19 they had to quarantine for 10 days from the start of symptoms, and if symptoms continued for a further three days after symptoms ended. Following the mandatory quarantine no pre-flight covid-19 PCR tests, or a fit to fly certificate, was required. If they wanted to return home earlier they needed to take a PCR test and a negative result meant they didn't need to quarantine and would get a fit to travel certificate which meant they could travel immediately.
- They had a duty to minimise loss to AWP. They gave details which they said showed if they hadn't had the tests and just waited for the quarantine period to end AWP would have had to pay more in additional accommodation costs than they were claiming for all the costs of the covid-19 tests, which wasn't fair to them.

We sent AWP the new evidence Mrs and Mr M had provided about the relevant country's covid-19 regulations and covid-19 certification requirements for travel from there to the UK at the time. And we summarised to AWP the evidence from Mrs and Mr M that:

- Their payments for the covid-19 PCR tests, £604.70 in total, enabled them to fly home on 26 May 2022 with a certificate confirming they were negative for covid-19. If they had just followed the relevant country's covid-19 regulations, and not got PCR tests to book return flights as soon as they could, they wouldn't have incurred costs for the tests but they could only have made arrangements to fly home sometime after 27 May - 10 full days (as required by the regulations) after Mrs M was diagnosed with covid on 16 May.
- Them paying for the covid-19 PCR tests, enabling them to make arrangements to travel home as soon as possible, mitigated the potential loss to AWP. They paid £604.70 for the tests to save AWP £664.82 per day in accommodation (a reduced accommodation rate that Mr M had negotiated with the hotel). It couldn't be known when the next available flights would have been on or after 27 May 2022 but it's possible that there would have been more than one day's additional accommodation costs, at a cost of £664.82 per day.

We told AWP that from the new evidence provided it did seem to me that Mrs and Mr M paying for the covid-19 PCR tests, at a total cost of £604.70, did save AWP accommodation costs of at least one day at £664.82 per day. As they had the tests they flew home on 26 May 2022. Without the tests under the regulations they would have flown home on 27 May 2022 at the very earliest.

We told AWP that in these circumstances I considered it would be fair and reasonable for AWP to pay all the costs of the covid-19 PCR tests, plus interest, as the test costs Mrs and Mr M incurred saved it at least one day's accommodation cost, which was more than the cost of the tests, so Mrs and Mr M mitigated AWP's loss.

We asked AWP for its comments which I would take into account before making my decision. AWP said it had reviewed the provisional decision and my additional information and it had no further comments to add and awaited my 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.

I made a provisional decision that under the policy terms and on a fair and reasonable basis AWP should pay the cost, plus interest, of the doctor's first attendance on Mr M and the cost of his first diagnostic test as it was emergency medical treatment as set out in the policy terms.

In response to my provisional decision Mrs and Mr M provided new evidence. We've sent the new evidence to AWP and told them that I was now intending to uphold the complaint so that it pays the claim for all the costs of the covid-19 PCR tests and why I was making that decision. We asked for AWP's comments before I made my final decision and it's told us it has no further comments. AWP's given no evidence that would make me change my mind.

For the reasons I've given to AWP after my provisional decision, set out above, I find that it would be fair and reasonable for AWP to pay Mrs and Mr M's claim for all the costs of the covid-19 PCR tests, £604.70 in total, plus interest. The cost of the tests Mrs and Mr M incurred saved AWP at least one day's accommodation costs. The accommodation costs for

one day was £664.82 so more than the total cost of the tests, which meant Mrs and Mr M's payment of the tests' costs mitigated AWP's loss.

Putting things right

AWP must pay Mrs and Mr M's claim for the full costs of the covid-19 PCR tests, plus interest as I've detailed below.

My final decision

I uphold this complaint and require AWP P&C SA to pay Mrs and Mr M's claim for the full costs of the covid-19 PCR tests. Interest* should be added at 8% simple a year from the date of claim to the date of settlement.

*If AWP P&C SA considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mrs and Mr M how much it's taken off. It should also give Mrs and Mr M a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 7 June 2023.

Nicola Sisk
Ombudsman