

The complaint

Mr and Mrs S complain that Zurich Insurance PLC has turned down a cancellation claim they made on a travel insurance policy.

What happened

Mr and Mrs S held an annual travel insurance policy, which was underwritten by Zurich. They were due to go abroad on holiday in September 2022. Their trip had previously been rescheduled due to the Covid-19 pandemic.

Unfortunately, prior to their planned departure, Mrs S tested positive for Covid-19 on a lateral flow test (LFT) which she had purchased. Therefore, Mr and Mrs S were unable to travel as planned and they had to cancel their trip. They made a cancellation claim on their policy.

However, Zurich turned down the claim. That's because it didn't think Mr and Mrs S had provided sufficient evidence to support their claim. Mrs S hadn't registered the positive LFT result on the NHS' website (or with another private provider) and neither had she obtained a medical certificate from her GP stating that it had been medically necessary for her to cancel the trip.

Mr and Mrs S were unhappy with Zurich's decision and they complained. They said that due to a change in the government's rules after the policy had been taken out, positive results from LFTs which weren't issued by the NHS couldn't be registered on the NHS' website. They said that they weren't eligible for NHS-issued tests. And they also said that their GP wouldn't see patients with Covid-19.

However, Zurich maintained its decision, although it did pay Mr and Mrs S £100 compensation to reflect delays in it responding to their complaint. Remaining unhappy with Zurich's position, Mr and Mrs S asked us to look into their complaint.

Our investigator thought Mr and Mrs S' complaint should be upheld. He accepted that they hadn't provided proof of claim in line with the policy terms. However, he noted that there was no way for Mr and Mrs S to have registered Mrs S' positive result with the NHS. And he was persuaded that Mrs S hadn't been able to see her GP to obtain a medical certificate. So he felt Mr and Mrs S had provided reasonable substantiation of their claim. Therefore, he recommended that the claim should be settled in line with the policy terms and conditions.

Zurich disagreed. It maintained that Mr and Mrs S hadn't provided sufficient substantiation of their claim. It referred to another case which had been investigated by our service.

The complaint's been passed to me to decide.

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 it was fair for Zurich to turn down Mr and Mrs S' claim and I'll

explain why.

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 Mr and Mrs S' policy and the available evidence, to decide whether I think Zurich treated them fairly.

I've first considered the policy terms and conditions, as these form the basis of Mr and Mrs S' contract with Zurich. The policy does provide cover for cancellation in the event of a policyholder's illness. However, the cancellation section of the policy sets out a list of defined events which are specifically excluded from cover. One of these is:

'Claims where a medical certificate has not been obtained from a medical practitioner, confirming that cancellation of the trip is medically necessary.'

Page five of the policy also sets out 'Important Information about Covid-19'. This states:

'This policy only provides cover for Coronavirus related claims (meaning Covid-19 or SARS-COV-2 or any mutation or variation of these) if:

- *You need to cancel or cut short your trip because you or a member of your family or travelling party are medically diagnosed with Coronavirus; or personally instructed to isolate by an NHS service or medical professional.'*

It's common ground that Mrs S hasn't provided a medical certificate which indicates that she was medically diagnosed with Covid-19. Neither did she register a positive LFT result with the NHS website. On a strict interpretation of the policy terms then, Mrs S' claim isn't covered. However, I can depart from a strict interpretation of the policy terms if I feel their application produces an unfair result. And that's the case here, for reasons I'll explore further.

Mr and Mrs S have provided a photo of three positive LFTs, which were taken alongside the photo page of Mrs S' passport. As such then, I find this persuasive evidence that Mrs S did have symptoms of Covid-19 and tested positive for the virus.

During earlier stages of the Covid-19 pandemic, LFT kits were issued as standard for free to most households by the NHS and results could be registered on the NHS website. However, by the time Mrs S developed Covid-19 symptoms, LFT kits were no longer available as standard and were only free to certain, eligible groups of people – including those who worked in health or social care, or who would be entitled to treatment for Covid-19. Mrs S says she didn't fall within these groups and therefore, she wasn't eligible for free, NHS-issued tests. Instead, she had to purchase tests privately. Privately-bought LFTs couldn't – and indeed, still can't – be registered on the NHS website. This meant that Mrs S was unable to notify the NHS of a positive result or provide Zurich of evidence of such a registration.

And Mr and Mrs S have provided clear and consistent testimony that their GP wouldn't see patients suspected of having or who'd tested positive for Covid-19. This is in line with NHS guidance for patients who'd tested positive to remain at home unless they needed urgent medical care. I also find it entirely plausible that Mrs S' GP was unlikely to have agreed to see her to provide a medical certificate which certified a definite diagnosis of Covid-19, when three LFTs had already shown a positive result and when such a consultation may have posed risks to the GP and other patients. It seems to me then that there was little Mrs S could do to provide evidence a 'medical diagnosis' of Covid-19 to Zurich.

In the circumstances, I find Mr and Mrs S' version of events and their evidence persuasive and credible. I think the photographic evidence, together with Mr and Mrs S' testimony, alongside records of the NHS LFT eligibility and reporting processes at the time, is sufficient evidence to fairly and reasonably substantiate this claim. Given the NHS still advises patients with Covid-19 to remain at home for five days after a positive test, I think there is enough evidence to show that Mrs S was suffering from an illness and that it was medically necessary for her and Mr S to cancel their trip. On that basis then, I don't think it was fair or reasonable for Zurich to turn down their claim.

Zurich has referred to an outcome we've issued on another case. However, we're not bound by precedent and my role is to consider what's fair and reasonable in the individual and specific circumstances of a complaint. Each case turns on its own specific facts. And as I've explained, I find that in the circumstances of this complaint, it was unfair for Zurich to turn down Mr and Mrs S' claim. Therefore, it follows that I'm satisfied that the fair outcome to this complaint is for Zurich to now settle Mr and Mrs S' claim, in line with the policy terms, together with interest.

My final decision

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

I direct Zurich Insurance PLC to settle Mr and Mrs S' claim, in line with the remaining terms and conditions of the policy. I also direct Zurich to add interest to the settlement at an annual rate of 8% simple from the date of claim until the date of settlement.

If Zurich considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr and Mrs S how much it has taken off. It should also give Mr and Mrs S 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 Mr S and Mrs S to accept or reject my decision before 19 July 2023.

Lisa Barham
Ombudsman