

## The complaint

Miss N and Mr P are unhappy that Aviva Insurance Limited declined a claim made on their travel insurance policy.

## What happened

Miss N and Mr P were due to travel abroad with their daughter on 12 March 2020, returning 16 March 2020. They were due to stay at a theme park resort and their daughter was due to attend a dance camp. Miss N, Mr P and their daughter had the benefit of a travel insurance policy which was paid for as part of a packaged bank account ('the policy'). The policy is underwritten by Aviva.

They didn't end up travelling on 12 March 2020 and made a claim on the policy in September 2020 for the cost of the return flights they'd paid for ('the claim'). This was after they'd tried, and failed, to get their money back from the airline and credit card provider. Aviva declined the claim on 15 October 2020. From the information provided, it concluded that Miss N and Mr P cancelled the trip because the dance club was cancelled, and this wasn't an insured event under the cancellation section of the policy. It also said:

- the trip was cancelled before the Foreign Commonwealth and Development Office advised against all but essential travel to the country they were visiting for reasons relating to the Covid-19 global pandemic;
- point 2(b) of the Activities section of the policy's terms and conditions say there's no cover if the leisure activity is cancelled by the organiser;
- the main purpose of the trip (to participate in a dance club, dance workshops and competitions) isn't listed as an accepted activity under the policy terms, so there's no cover in place for the trip.

Unhappy, Miss N and Mr P brought a complaint to our service. Our investigator didn't uphold their complaint. Miss N and Mr P didn't agree so their complaint was passed to me to determine. I issued my provisional decision in April 2023 explaining why I was intending to uphold the complaint. An extract of my provisional decision is set out below:

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Aviva has an obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline a claim. I'm intending to uphold this complaint as I'm not currently satisfied that Aviva has fairly and reasonably declined Miss N and Mr P's claim. I'll explain why.

### The reason for the trip being cancelled

Subject to the remaining terms of the policy's terms and conditions, the cancellation section of the policy (starting from page 23 of the policy's terms and conditions) does provide cover if a trip needs to be cancelled.

Section 10 says cover is provided if one of the following events occurs or prevents the policyholder from travelling within 31 days of their scheduled departure date:

*... a Foreign and Commonwealth Office advisory notice is in place advising against all travel or all but essential travel to your destination is still in place...*

I'm satisfied that at the time when Miss N and Mr P decided not to go on the trip, there was no such advice in place in respect of the country they'd planned to travel to (and it hadn't been in place within 31 days of their scheduled departure date). That advice didn't come into effect until a few days after their intended departure.

However, there's another reason in section 10 which I do think is applicable here. That's if:

*...you choose not to travel because...  
... your accommodation is directly affected by a food poisoning outbreak, or **an area in which you are staying is affected by a pandemic or epidemic influenza (my emphasis)**.*

The policy doesn't define 'area'.

The World Health Organisation declared Covid-19 as a global pandemic on 11 March 2020 – one day before Miss N and Mr P were due to travel.

Although the theme park resort was still open for business around the time they were due to depart the UK, on 12 March 2020, it announced later that evening that it would be closing after 14 March 2020 for reasons relating to the pandemic – at least until the end of the month.

Further, before this on 8 March 2020, it looks like the country Miss N and Mr P were due to visit prohibited gatherings of more than 1,000 people including the area they were due to visit in an attempt to limit the spread of Covid-19. By 11 March 2020, the theme park had some restrictions in place due to the pandemic and three members of staff at the theme park had contracted Covid-19. Before they were due to travel, it was also being reported that the country Miss N and Mr P were visiting was going to be the next epicentre of the pandemic.

So, overall, in the circumstances of this particular case, I'm satisfied that it would be fair and reasonable to conclude that the trip was cancelled because the area in which they were due to travel to was affected by a pandemic. And I think that was the main reason they cancelled their holiday, based on the evidence that's available to me.

Aviva concluded that the main reason for the trip being cancelled was due to the dance camp being cancelled. It's said that this isn't a stipulated insured event under the cancellation section of the policy, which is correct. I think the main reason Miss N and Mr P cancelled their trip was due to the area they were staying in being affected by a pandemic. But I've still considered Aviva's comments on this point.

Aviva has also relied on the section of the policy entitled: your activities, where it says there's no cover under the cancellation section of the policy for:

*...cancellation of a pre-paid leisure activity or any activity-based holiday by the organiser of that activity...*

However, from what I've seen, it looks like dance camp was cancelled after 12 March 2020 – when they were due to fly. That was in response to the announcement that the theme park

resort – where the dance club was due to take place – would be closing because of the pandemic. So, I don't think this can reasonably be said to be the reason for cancelling the trip. As such, I don't think it's fair and reasonable for Aviva to rely on that as the reason for Miss N and Mr P (and their daughter) not going on their trip – or this particular exclusion.

#### Leisure activity

The policy's terms and conditions say on page 22:

##### *Leisure activities and activity based holidays*

*You are automatically covered for claims arising from your participation in a number of leisure activities on an incidental and recreational basis; or if you have booked an acceptable activity based holiday – see the Leisure activities, Activity based holidays and Winter sports activities section for full details.*

Under the 'leisure activity' section of the policy (on page 45 of the policy's terms and conditions) it says:

*There is no cover at all where the main purpose of your trip is to take part in a leisure activity (unless shown as an Activity Based Holiday below).*

The policy doesn't define 'main purpose.' But, using the ordinary meaning of the word, I think a reasonable person would interpret this to mean the key reason for travelling. So, if the key reason for travelling was to take part in a leisure activity not listed as an activity-based holiday, the entire trip wasn't covered.

Aviva has concluded the key reason for travelling was for Miss N and Mr P's daughter to take part in the dance club and dancing isn't listed as an activity-based holiday. Even if that's right, the information provided to a policyholder in its terms and conditions needs to be brought to their attention in a prominent and transparent way. Because the effect of the exclusion is to exclude an entire trip abroad, I'm satisfied Aviva needed to clearly bring this term to the policyholder's attention. I don't think it has.

The exclusion is listed under the section relating to leisure activity in the policy booklet. So, I think it isn't in a place where a policyholder would reasonably expect to look to understand what's excluded under the policy. For example, under the cancellation section of the policy or within the general exclusions. They would've had to navigate around different sections of the policy – onto page 45 – to understand this significant exclusion.

So, I don't think it was made reasonably clear or obvious to a reasonable policyholder that they'd have no cover in place if the key part of the trip was to take part in activities not mentioned – which are limited in number.

I think this created a significant imbalance in the rights and interests of Miss N and Mr P and Aviva which is unfair in this case. So, I don't think it's fair and reasonable for Aviva to rely on this exclusion to decline the claim. Had this term been brought to Miss N and Mr P's attention in a clearer and fairer way, they would've been able to find travel insurance which did offer them cover for trips abroad which included an activity such as dancing.

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I explained that I intended to direct Aviva to pay the value of the claim less the excess, and simple interest at a rate of 8% from the date on which the claim was declined to the date on which the claim is paid.

## Response to provisional decision

I invited both parties to provide any further information for me to consider. Aviva didn't reply. Miss N and Mr P agreed with my provisional 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.

As neither party has provided any further substantive information for me to consider, I see no reason to depart from my provisional findings. For this reason, and for reasons already set out in my provisional decision (an extract of which is set out above and forms part of my final decision), I uphold Miss N and Mr P's complaint.

### **Putting things right**

I direct Aviva to pay:

- the value of the claim less the excess payable under the cancellation section of the policy; and
- simple interest on the claim amount at a rate of 8% per annum from the date on which the claim was declined (15 October 2020) to the date on which the claim is paid.

If Aviva considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Miss N and Mr P how much it's taken off. It should also give them a certificate showing this if asked for one. That way tax from HM Revenue & Customs, can be reclaimed if appropriate.

### **My final decision**

I uphold this complaint and direct Aviva Insurance Limited to put things right as set above.

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

David Curtis-Johnson  
**Ombudsman**