

The complaint

Mr D and Miss J complain that Inter Partner Assistance SA (IPA) hasn't fully settled a lost baggage claim they made on a travel insurance policy.

As Mr D brought the complaint to us, for ease, I've referred mainly to him.

What happened

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

Mr D has travel insurance as a benefit of his bank account.

In August 2022, Mr D was on holiday with his family. Unfortunately, his luggage was lost by the airline. Mr D got in touch with IPA to make a claim on the policy.

IPA initially told Mr D that he could make a delayed baggage claim, which would attract a total benefit amount of £1000 per person after the luggage had been delayed by more than 48 hours. Another member of IPA's claims team later told Mr D that the maximum amount he could claim in total for delayed baggage was £1000.

Mr D later contacted IPA to let it know that the airline had confirmed his luggage had been lost. Following ongoing progress update requests from Mr D, in November 2022, IPA paid Mr D a total amount of £750. While IPA's correspondence referred to settlement for baggage delay, IPA's settlement was made under the lost baggage section of the policy.

Unhappy with IPA's settlement, Mr D complained. He said he'd been led to believe that the policy baggage limit applied per person, not per claim. IPA issued a final response to Mr D's complaint. The complaints handler stated Mr D's claim had been settled incorrectly, as the policy limit applied per person. Therefore, they said that Mr D's total entitlement was £2250 and that the claim would be passed back for reassessment and settlement. IPA also paid Mr D compensation of £100 to reflect the service he'd received.

However, when IPA reassessed Mr D's claim, it maintained that no further settlement was due. That's because it said that the complaints handler had made a mistake and that a total limit of £750 for lost baggage applied per claim. It did pay Mr D a further £100 compensation in recognition of the error its complaint handler had made.

Mr D remained unhappy with IPA's decision and he asked us to look into his complaint.

Our investigator thought Mr D's complaint should be upheld. He felt that the policy terms were unclear and ambiguous. He noted that members of IPA's claims team had made errors in interpreting the meaning of the contract and he felt that the terms could be read in different ways. So he concluded that the policy terms should be interpreted in Mr D's favour and that Mr D's claim should therefore be settled as if there was a benefit limit of £750 per beneficiary, rather than per claim, together with interest. He felt that the compensation IPA had already paid Mr D was fair to reflect the impact of the errors it had made.

Mr D accepted the investigator's findings. But IPA did not. It maintained that its policy terms and conditions were clear. It said Mr D had initially claimed for baggage delay rather than lost baggage. He'd been told on 28 September 2022 that the total policy limit was £750 and he'd indicated his understanding of this point in a follow-up email.

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 IPA has treated Mr D fairly and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. So I've considered, amongst other things, the terms of Mr D's policy and the available evidence, to decide whether I think IPA treated him fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between IPA and Mr D. While Mr D initially made a claim under the delayed baggage section of the policy, the claim was ultimately settled under section E, which includes cover for lost baggage. This says:

'What is covered...

Up to the amount shown in the Benefit Table per trip for all beneficiaries travelling together, for the accidental loss of, theft of or damage to baggage and valuables.

The amount payable will be the value at the time of purchase less a deduction for wear and tear based on the age of the property as shown in the table below, (or if the item can be repaired economically we will pay the cost of repair only).

The maximum we will pay for all valuables in total is equal to the valuables limit shown in the Benefit Table.'

The Benefit Table, set out on page three of the policy, lists a maximum limit for baggage of £750. This is also reflected on the Insurance Product Information Document (IPID) which says:

'Baggage – Up to the maximum of £750 for the accidental loss of, theft of, or damage to baggage and valuables.'

Mr D has claimed for lost baggage items for three people – himself, Miss J and their child. IPA says that it has already paid Mr J the maximum lost baggage benefit available under the policy terms. So I've gone on to think about whether I'm satisfied that the policy documents are clearly and unambiguously drafted.

And I don't think they are. I accept that IPA may have meant to provide total cover of £750 for a lost baggage *claim*, rather than a limit of £750 per person. But I don't think this is clear from the policy wording. I think the term I've set out above could be reasonably interpreted as meaning that IPA will pay up to the policy limit for all beneficiaries who are travelling together – in other words that all beneficiaries travelling together who have suffered the loss of their baggage will be entitled to a limit of £750 each.

It's clear too that Mr D has been provided with contradictory information about the level of

policy cover by different members of IPA's claims team. He was wrongly told by two members of staff that the policy limits applied per person, rather than per claim. As such, it seems to me that if staff members experienced in insurance contracts also appear to interpret the policy terms incorrectly, it's reasonable to conclude that there is a lack of clarity in the way that those terms have been drafted. I don't think Mr D's email of 28 September 2022 negates the lack of clarity in the policy document and indeed, the final response letter was sent some months later, which did say that the limit was paid per person.

I've noted too that neither the Benefit Table nor the IPID make any reference to the fact that the maximum policy limits apply to claims rather than individual beneficiaries. I can see that such a restriction also applies to cancellation and curtailment claims and baggage delay claims. In my view, this is an unusual restriction on cover, which ought reasonably to have been highlighted in the policy documents.

Where a policy term has been drafted ambiguously, legal principle says that the term must be interpreted in favour of the party which didn't draft the contract. In this case, that's Mr D. So I've concluded that the policy terms should be interpreted in Mr D's favour and that the baggage policy limit should be applied per person, rather than per claim. This means that IPA should now settle Mr D's claim, in line with the remaining terms and conditions of the policy, applying a benefit limit of £750 per person.

IPA accepts that it made errors in the handling of Mr D's claim. It acknowledges that there was delays in the settlement being made and that Mr D was caused frustration and upset when he was given conflicting and incorrect information. It's already paid him £200 compensation to reflect this. In my view, this is a fair award which takes into account the likely material distress and inconvenience I think Mr D was caused by IPA's error. So I think it's already paid a fair amount for Mr D's trouble and upset.

My final decision

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

I direct Inter Partner Assistance SA to settle Mr D and Miss J's claim, in line with the remaining terms and conditions of the policy, applying a maximum limit of £750 per person.

IPA must also add interest to the settlement at an annual rate of 8% simple from the date of claim until the date of settlement.

If IPA considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr D and Miss J how much it has taken off. It should also give Mr D and Miss J 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 D and Miss J to accept or reject my decision before 14 July 2023.

Lisa Barham
Ombudsman