DRN-4162563

The complaint

Mr and Mrs R are unhappy that AWP P&C SA declined a claim they made on their travel insurance policy.

What happened

Mr and Mrs R took out a travel insurance policy which was issued on 18 June 2022. The insurance was to cover a holiday taking place in early September 2022, and which was due to last a month. Mrs R wasn't asked to complete a medical screening when she applied for the policy.

A few days later, on 22 June 2022, Mrs R contacted AWP to complete medical screening and declared that she had a pre-existing mental health condition. In August 2022 Mrs R contacted AWP to say that she was looking to cancel her trip. In summary,
Mrs R's daughter had attempted to commit suicide. Her subsequent claim was on the basis that her mental health had deteriorated following her daughter's attempted suicide.

Mr and Mrs R claimed on their travel insurance policy. AWP declined the claim but did offer some compensation for the delays in handling the claim. Mr and Mrs R made a complaint to the Financial Ombudsman Service.

Our investigator looked into what had happened and upheld the complaint. He recommended AWP should reassess the claim because he didn't think they'd fairly declined it. He also noted that AWP had sent two emails to Mr and Mrs R agreeing to settle the claim in full. And he increased the compensation offered to a total of £200. This recommendation was accepted by both AWP and Mr and Mrs R and the further compensation was paid to them.

However, the complaint was re-opened because AWP again declined the claim, but for a different reason. They said that Mrs R had taken out the policy around the same time that her GP had said she'd started to experience symptoms. AWP said Mrs R's symptoms were linked to her daughter's health and her own mental health had deteriorated as a result. AWP concluded that the claim therefore wasn't covered because Mrs R would have been aware of this at the time the policy was issued.

Our investigator reviewed the complaint again and thought that AWP should pay the claim and 8% simple interest. He didn't think AWP could fairly decline the claim as they didn't have any evidence relating to Mrs R's daughter's health. And, he didn't think they'd fairly concluded Mr and Mrs R were aware of the circumstances surrounding their daughter's health during the relevant period. The investigator also highlighted that there had been no explanation about the two emails sent to Mr and Mrs R saying that the claim would be paid.

AWP didn't agree. They said the policy was purchased around seven days before the GP said there was an onset of Mrs R's symptoms and no medical declaration was made until the day before the approximate onset of symptoms. They said that given the policy had only been in force for a short period of time, and Mrs R had been treated for seven years, it was fair and reasonable to conclude that Mrs R was aware of the deterioration in her health at

the time.

AWP said they'd also explored the circumstances surrounding Mrs R's daughter's health as this was the original reason given for cancellation. AWP acknowledged they'd not asked for more information about Mrs R's daughter. But they said, given the timescales involved, it was reasonable to assume that Mrs R was aware of her daughter's medical condition when she purchased the policy a week prior to the approximate onset of symptoms. In relation to the two emails advising the claim would be settled in full they pointed out that these hadn't been received by Mr and Mrs R.

These further points didn't change our investigator's thoughts about the outcome of this complaint. So, the complaint was passed to me to make a 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.

The relevant rules and industry guidelines say that AWP has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably. AWP also has a responsibility to provide reasonable guidance to help a policyholder make a claim.

The policy terms and conditions

On page nine of the policy terms and conditions the policy terms say:

> It is very important that you read the following and declare any existing medical conditions to us.
>
> 1. You will not be covered for any directly or indirectly related claims (see note at the end of this section) arising from the following if in the 12 months before taking out this insurance or booking your trip (whichever is later), you:
>
>   a) Have been prescribed medication;
>   b) Have received treatment or attended a medical practitioner for any medical condition;
>   c) Have attended a hospital or a clinic as an out-patient or in-patient
>   d) Have been referred for tests, investigations, treatment, surgery or are awaiting results;
>   e) Have been diagnosed as having a terminal illness.
>
> Unless you have declared any existing medical conditions to us and we have confirmed cover in writing.

Under the cancellation section of cover the policy terms say there is cover if:

> 1. You or a travelling companion becomes ill or injured, or develops a medical condition disabling enough to make you cancel your trip…
>
> 2. A family member who is not travelling with you becomes ill or injured, or develops a medical condition
>
> The following condition applies:

a) The illness, injury or medical condition must be considered life threatening by a doctor or require hospitalisation.

There are general exclusions which say:

> This policy does not provide cover for any loss that results directly or indirectly from any of the following general exclusions if they affect you, a travelling companion or a family member:
>
> 1. Any loss, condition or event that was known, foreseeable, intended or expected when your trip was booked.
>
> 2. Pre-existing medical conditions, unless they meet the conditions outlined under the 'Health declaration and health exclusions' section.

Was it fair for AWP to decline the claim?

It's not been disputed that Mrs R wasn't asked medical screening questions when she took out the policy. So, there's no suggestion that she failed to declare her own pre-existing condition at the time the policy was issued.

In any event, Mrs R declared her existing condition within a few days of setting up the policy. That seems reasonable as she'd have needed time to look at the policy terms and get in touch with AWP to complete the screening.

AWP haven't suggested Mrs R failed to answer any of the screening questions incorrectly or failed to give them an accurate representation of her own medical history. Mrs R declared her existing medical condition and AWP confirmed cover. So, the condition was accepted in line with the health declaration section of the policy terms. That means, based on the evidence available to me, Mrs R was covered by the policy for the condition she declared. There's no evidence to suggest AWP wouldn't have offered Mrs R cover if they'd known she'd experienced more recent symptoms relating to her mental health. I also note that at that time she still hadn't seen her GP and didn't do so until a few weeks later.

I've taken into account the general exclusions I've referred to above. But general exclusion one refers to, 'Any loss, condition or event that was known, foreseeable, intended or expected when *your trip was booked'*. It doesn't refer to what was foreseeable at the time the policy was taken out. It's accepted that Mrs R didn't expect to cancel when the trip was booked in 2021. General exclusion two refers to the health declaration and health exclusions section. But, as I've outlined above, Mrs R had declared her medical condition. And AWP hasn't pointed to any other sections of the policy in support of their position.

I've taken into account AWP's points around the medical evidence, but they haven't changed my thoughts about the outcome of this complaint for the reasons I'll go on to explain.

Mrs R first contacted AWP on 12 August 2022 to let them she thought she would be unable to go on holiday. She later submitted a claim form which said:

> Our daughter is very mentally unwell and this too had a very, very big impact on mental health (my daughter tried to end her own life). I have become very unwell and cannot be away for a month.

She said that the date she became aware of the need to cancel her trip was 23 August 2022.

The medical form from the GP is dated 25 August 2022. In one section of the form the GP said the date of any serious deterioration was on 13 July 2022. This was also the date of the first consultation with the GP. In that section the GP said the date of serious deterioration was the 23 June 2022 and he also said this was the approximate date symptoms started. Mrs R was also then prescribed anti-psychotic medication on 1 August 2022.

I've listened to a call from Mrs R to AWP on 12 August 2022. She said her daughter was mentally not very well. She queried whether they'd be able to claim under those circumstances as it would be hard for them to be away for a month. She explained her daughter was 18, had tried to end her life and had learning disabilities.

I've also listened to a further call from Mrs R to AWP on 22 August 2022. In this short call Mrs R explained that her daughter was mentally unwell, as was she. She said her daughter's GP was unable to do the form, but her GP could do the form for her. She queried whether she would need to complete a new form and was told she didn't need to.

I'm satisfied that Mrs R had demonstrated that she had, on the face of it, a valid claim under the policy. It's clear from the form and the calls that the root cause of the cancellation was Mrs R's daughter's condition and the subsequent impact on her mental health. I think, on the basis of the information provided, Mrs R had demonstrated she had a valid claim for consideration and provided enough evidence to substantiate it.

I can understand why AWP may have had queries about some aspects of the medical evidence and the date of the medical screening. But I don't think they took reasonable steps to get to grips with the overall circumstances of the claim and or the rationale for declining it. Mrs R explained during the second call that her daughter's GP was unable to do the form. And it's clear from Mrs R's claim that her own health issues were rooted in her daughter's attempted suicide.

Based on the evidence I've been provided with AWP hasn't sought to understand the more detailed background to the claim, including establishing a proper timeline of events or obtaining more medical information to provide a more detailed overview of the circumstances. Instead, AWP has assumed that Mrs R would have known about the need to cancel the holiday when she completed the medical screening or when the policy was issued. I don't think the call of the 23 August suggests that Mrs R was giving a different reason for claiming – rather it seems more likely she was looking at the medical evidence she could reasonably obtain.

There was an opportunity here, and at later points in the claim journey, to ask for more medical information in support of the claim. For example, there's no clear information about the date of the attempted suicide. There's also no detailed medical information about how that linked to Mrs R's GP symptoms around the 23 June 2022, her first GP appointment on 13 July, the prescription for medication on the 1 August and her call to AWP on the 12 August. AWP also haven't explored why the GP thought there was a serious deterioration in Mrs R's health on 13 July 2022.

Given the circumstances surrounding the claim I think AWP should have explored the detail surrounding both Mrs R's health and her daughter's health in more depth before declining the claim. There's no compelling evidence Mrs R was aware she'd need to claim when she completed the screening. Nor is there any persuasive evidence she was expecting to claim due to her daughter's health when she took it out. AWP hasn't taken opportunities to understand more about the circumstances of the claim. And, in this case I think it would have been reasonable to do so. For example, they could have asked for more information from Mrs R's GP, explored whether Mrs R could obtain medical information about her daughter or requested more detailed testimony from Mrs R about the timeline of events.

I've thought about whether it's fair and reasonable to direct AWP to assess the claim, rather than direct them to pay it. I don't think it is in the circumstances of this case. Mrs R declared her medical condition and it was accepted. I think AWP has had ample opportunity to investigate this claim, which is sensitive due to the circumstances. I think the root cause of the cancellation was the situation relating to Mrs R's daughter – AWP hasn't sought to understand the wider context and has, in my view, made assumptions about the chronology in relation to the purchase of the policy. I also bear in mind the length of time since the claim was made and that AWP has had a recent opportunity to review the claim. So, I don't think it's fair and reasonable to give them a further opportunity to assess the claim. I think they should now pay the claim instead.

I think the total payment of £200 fairly reflects the distress and inconvenience caused to Mr and Mrs R by mistakes in handling their claim. They've accepted that compensation and it's been paid to them. So, I won't comment further on that aspect of the complaint.

Putting things right

I think AWP should put things right by:

- Paying the claim taking into account any relevant policy limits and any excess payable

- Paying 8% simple interest from the date the claim was declined until the date of settlement.

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

My final decision

I'm upholding Mr and Mrs R's complaint and direct AWP P&C SA to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 18 July 2023.

Anna Wilshaw
Ombudsman