

## **The complaint**

Mr and Mrs W complain about the decision by Astrenska Insurance Limited to turn down their travel insurance claim.

## **What happened**

Mr and Mrs W hold travel insurance with Astrenska. Whilst abroad, their young son ran into a glass door which then cracked. Mr and Mrs W attempted to contact Astrenska to make a claim under the personal liability section of cover, but couldn't get through. They made the decision to pay for the damage.

After Mr and Mrs W made a claim, Astrenska turned this down. It didn't think Mr and Mrs W had been negligent, and also said they had an agreement with the property owner to be charged for any damage. Unhappy with Astrenska's decision, Mr and Mrs W brought a complaint to this Service.

Our investigator recommended the complaint be upheld on a fair and reasonable basis. He thought Mr and Mrs W had acted reasonably by paying for the damage given the circumstances of the claim. He recommended Astrenska pay the claim plus interest.

Astrenska didn't agree with our investigator's recommendations, and so the matter has been passed to me for 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 personal liability section of the policy says:

*'YOU ARE COVERED...for your legal expenses and legal liability for damages caused by an accident that happened during the trip, which leads to a claim made against you for:*

...

- 2 damage to your temporary holiday accommodation that does not belong to you, or any member of your family, household, employee or travelling companion.'*

A claim was not actually made against Mr and Mrs W by the property owner, as they accepted liability and paid for the damage. However, if they had not done so, I think it's most likely that a claim would have been made against them.

The policy says *'You must not make any payment, admit liability, offer or promise to make any payment without written consent from us.'*

This is a general condition and is separate to the personal liability section of cover.

Mr and Mrs W apparently made a number of attempts to contact Astrenska about the matter, but were unable to get through. I understand they were told by an automated message that wait times were long and they should claim online. Astrenska hasn't disputed this.

I can understand why Mr and Mrs W paid for the damage. There was a large crack in the window for which their son was responsible, and they were concerned about the window shattering and causing injury to them and their young children. They were also worried about potential consequential losses if they refused to pay for the damage and the property owner could not rent out the property after they'd left and suffered loss of earnings. In paying for the damage when they did, I think they were mitigating their losses.

If Mr and Mrs W had got through to Astrenska, it seems they would have been told not to pay. That's because Astrenska doesn't think Mr and Mrs W had legal liability for the damage. It says that is because the door was made of glass and therefore inherently transparent and could not be avoided.

Whilst it's for a court to make a decision on legal liability, I think Astrenska's argument here is quite weak. Mr and Mrs W make a good point that glass doors are commonplace, and that people do not walk into them because glass can be detected. There are also other signs of a door, such as the frame and handles. Mr and Mrs W have also accepted their son was at fault for causing the accidental damage and so do not dispute liability.

Finally, the policy says the following isn't covered:

*'3. For anything caused directly or indirectly by:*

- a. liability which you are responsible for, because of an agreement that was made...'*

Mr and Mrs W signed an agreement with the property owner which set out the terms of the rental. One of the terms said that they would be charged for any damage, breakage and loss to the property caused by them. Astrenska believes this means the claim can't be payable.

I interpret the above policy term to mean that Astrenska doesn't wish to cover situations where someone has accepted liability for something over and above what they would ordinarily be liable for (by signing an agreement to that effect). That isn't the case here. It seems to me that entering into the agreement with the property owner is no different to what the situation would have been if the agreement hadn't been entered into at all. Ultimately, Mr and Mrs W's son caused damage to their temporary holiday accommodation, and I think they were likely liable for that damage as a result. That is covered by the policy.

For the reasons I've explained, I find that the claim should be paid on a fair and reasonable basis.

Astrenska recognised there had been delays in responding to Mr and Mrs W's claim, and it paid them £100 compensation for this. I find this was reasonable in the circumstances.

### **My final decision**

My final decision is that I uphold this complaint. I require Astrenska Insurance Limited to pay the claim in line with the remaining policy terms. Interest\* at the rate of 8% simple per annum should be added from the date the invoice was paid to the date of settlement.

\*If Astrenska considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs W how much it's taken off. It should also give Mr

and Mrs W 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 W and Mrs W to accept or reject my decision before 24 August 2023.

Chantelle Hurn-Ryan  
**Ombudsman**