

## The complaint

Mr and Mrs K complain that AWP P&C SA has turned down a cancellation claim they made on their travel insurance policy.

## What happened

Mr and Mrs K hold travel insurance as a benefit of their packaged bank account.

Mr and Mrs K were due to go on a holiday with friends in October 2022. They booked and paid for flights and accommodation separately. Unfortunately, before they were due to travel, their airline cancelled their flight. And so Mr and Mrs K say they weren't able to travel. Their airline refunded the cost of their flights, so they got in touch with AWP to make a claim for their share of the accommodation costs.

Ultimately, AWP turned down their claim. It said the claim wasn't covered under the travel disruption section of the policy. Mr and Mrs K were unhappy with AWP's position and they complained. They said when they'd initially contacted AWP, on 20 October 2022, they'd been told their claim would be covered. AWP wasn't able to find the call but said it would give them the benefit of the doubt. It therefore offered them £40 compensation for poor service.

Mr and Mrs K remained unhappy with AWP's position and they asked us to look into their complaint. They didn't agree that their claim should be considered under the travel disruption section of the policy. They felt it was covered under the cancellation section of the contract.

Our investigator didn't think Mr and Mrs K's complaint should be upheld. She didn't think the claim was covered under either the cancellation or trip disruption sections of the policy. So she thought it had been fair for AWP to turn down Mr and Mrs K's claim.

I issued a provisional decision on 27 June 2023, which explained the reasons why I didn't think it had been fair for AWP to turn down Mr and Mrs K's claim. I said:

*'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 K's policy and the circumstances of their claim, to decide whether I think AWP treated them fairly.'*

*I've first considered the policy terms and conditions, as these form the basis of their contract with AWP. Mr and Mrs K feel that AWP should've considered their claim under Section 1 – Cancellation or curtailment. This says:*

*'What is covered*

*We will pay you up to £5,000 (inclusive of any valid claim payable under Section 3 – Travel disruption cover and Section 11 – Winter sports (Ski pack) for any irrecoverable unused travel and accommodation costs (including excursions and other pre-paid charges) which you have paid or are contracted to pay together with any reasonable additional travel*

expenses, due to any of the following necessary and unavoidable events:

- Cancellation of the trip; or
- You fully curtail (cut short) your trip before completion or partially curtail (interrupt) your trip for more than 48 hours; or
- You have to make an early return home as a result of any of the following events occurring...(Numbered list of insured events immediately follows, including illness, injury, redundancy etc).'

*It seems to me that it's most likely AWP intended to limit cancellation cover to cancellation which happens because of one of a list of specific, defined events, such as illness, redundancy, serious damage at a policyholder's home etc. I say that because most travel insurance policies available on the market generally require cancellation to be down to one of a specific list of insured events in order for claims to be covered.*

*But that isn't what this policy says. On a plain and ordinary interpretation of the policy as it's drafted, AWP says that it will pay a policyholder's irrecoverable unused accommodation costs due to one of the listed necessary and unavoidable events: cancellation or full or partial curtailment or early return home. Mr and Mrs K's trip was cancelled. The contract terms as drafted imply that the numbered list of defined, insured events only apply to claims where a policyholder has had to make an early return home. So the policy suggests that cancellation in and of itself is covered for any eventuality, so long as it's unavoidable and necessary. There's no indication that cancellation is only covered if it happens for one of the listed reasons underneath the early return clause.*

*Accordingly then, on such a reading of the terms, it seems to me that Mr and Mrs K's claim falls squarely within the scope of policy cover. Even if AWP did intend to limit cancellation cover to cancellation which was down to one the numbered list of insured events though, I don't think the policy is at all clear in this regard. Where a policy term is unclear or ambiguous, it's a legal principle that it should be interpreted in favour of the party which didn't draft it. In this case, that's Mr and Mrs K.*

*So overall, I currently don't think it was fair or reasonable for AWP to conclude that Mr and Mrs K's claim wasn't covered by the policy terms. And therefore, I currently intend to direct it to reconsider Mr and Mrs K's claim, in line with remaining terms and conditions of the policy.'*

I asked both parties to send me any additional evidence or comments they wanted me to consider.

Mr and Mrs K accepted my provisional findings.

AWP did not. It said that the only further point it could add was in reference to the policy wording, which states: 'any of the following necessary and unavoidable events'. AWP considered that the wording '**any of the following**' clearly relates to the list of events which follow. And it pointed out that the policy also specifically excludes any claim arising from a reason not listed in the 'what is covered' section.

### **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 still don't think it was fair for AWP to turn down Mr and Mrs K's claim and

I'll explain why.

As I explained in my provisional decision, I consider the way the policy terms have been drafted lead to a conclusion that Mr and Mrs K's claim falls squarely within the scope of cancellation cover. It's clear that AWP doesn't agree with my conclusions though and so I've carefully considered its further submission.

For completeness, I'll set out the relevant terms again. The policy says:

*'We will pay you up to £5,000 (inclusive of any valid claim payable under Section 3 – Travel disruption cover and Section 11 – Winter sports (Ski pack) for any irrecoverable unused travel and accommodation costs (including excursions and other pre-paid charges) which you have paid or are contracted to pay together with any reasonable additional travel expenses, due to any of the following necessary and unavoidable events:*

- *Cancellation of the trip; or*
- *You fully curtail (cut short) your trip before completion or partially curtail (interrupt) your trip for more than 48 hours; or*
- *You have to make an early return home as a result of any of the following events occurring:...(Numbered list of insured events immediately follows, including illness, injury, redundancy etc).'*

AWP contends that the phrase 'due to any of the following necessary and unavoidable events' clearly relates to the list of insured events, such as illness, redundancy etc. But I don't agree. The phrase appears immediately prior to three 'events' – cancellation, curtailment or early return home. So in my view, the phrase applies to necessary and unavoidable cancellation and curtailment in and of themselves with no further qualification or reason necessary. And I still think the drafting of the policy leads to an interpretation that it's only the early return home heading which is limited to cover for claims which arise because of the one of the listed events immediately following that particular bullet-point.

While I accept that the policy excludes claims which aren't caused by a listed event, I don't find that this exclusion can be fairly applied to the circumstances of this claim. That's because I'm satisfied that on a plain and ordinary reading of the policy terms, necessary and unavoidable cancellation *is* a listed, insured event. I accept AWP didn't intend to provide such wide cancellation cover within the contract. But I'm satisfied that the policy is so unclear and ambiguous in this regard as to mean it should be interpreted in Mr and Mrs K's favour, in line with legal principles, and bearing in mind what I think is fair and reasonable in all the circumstances of this complaint.

Overall then, I remain persuaded that AWP didn't act fairly when it turned down this claim. And I still find that the fair and reasonable outcome to this complaint is for AWP to reconsider Mr and Mrs K's claim, in line with remaining terms and conditions of the policy.

### **My final decision**

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

I direct AWP P&C SA to reconsider Mr and Mrs K's claim, in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to

accept or reject my decision before 11 August 2023.

Lisa Barham  
**Ombudsman**