

The complaint

Mr T and Ms L complain about how Aviva Insurance Limited dealt with a claim against their travel insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr T and Ms L have travel insurance underwritten by Aviva as a benefit of a bank account. Mr T and Ms L planned a trip with intended departure and return dates of 1 October 2022 and 14 October 2022 respectively.

During the trip, on 5 October 2022, Ms L became unwell with bacterial gastroenteritis (food poisoning). They say that they continued to travel to reach the next hotel on their itinerary so that Ms L could recover but didn't take part in the planned activities. Ms L's condition got worse, so on 8 October 2022, Mr T contacted Ms L's family doctor in a third country (not the UK). Ms L says that her family doctor advised her to return to the UK as soon as possible.

On 9 October 2022, Mr T and Ms L contacted Aviva to notify them of a claim. Aviva arranged for a medical assessor to assist Ms L. When the medical assessor contacted Ms L on 10 October 2022, Mr T and Ms L were already on their way to the airport for a flight to a third country. The assessor prescribed medication and gave advice. Mr T and Ms L returned to the UK on 15 October 2022.

After their return to the UK, Ms L provided Aviva with a letter dated 14 October 2022 from her family doctor in the third country. Mr T and Ms L made a claim for pre-paid, unused trip and flight costs. They say that their medical costs were covered by another insurer. Mr T and Ms L didn't make a claim for additional flight costs.

Aviva declined the claim. It gave various reasons for doing so but ultimately said that there's no cover for returning home early unless costs have been preauthorised and there was no medical reason for curtailing the trip. Mr T and Ms L didn't think that was fair and pursued their complaint.

One of our investigators looked at what had happened. She didn't think that Aviva had acted unfairly or unreasonably in declining the claim. The investigator said that she wasn't persuaded that there was a medical reason for Mr T and Ms L to go to the third country. She said that Aviva didn't handle the claim well which caused Mr T and Ms L distress and inconvenience. The investigator thought fair compensation for that is £75.

Aviva accepted the investigator's recommendation, but Mr T and Ms L didn't. They said, in summary:

- Compensation of £75 wasn't sufficient as Aviva lied in order to avoid paying their claim.

- They went to the third country instead of the UK as the flights to the UK were unaffordable.
- It was impossible to remain on their itinerant tour, so Aviva would have had to pay for a different hotel for the remainder of their trip in any event.
- Ms L's family doctor in the third country visited her on 14 October 2022 and signed the letter. The doctor referred to returning to the third country, rather than the UK, as Ms L was in the third country at that time.
- Ms L's illness affected her mental health and going to the third country where she could stay with family and see her family doctor helped her enormously.

The investigator considered what Mr T and Ms L said but didn't change her view. There were further exchanges, which I won't set out here. As there was no agreement between the parties, the complaint was passed to me to decide.

My provisional decision

On 28 July 2023 I sent both parties my provisional decision in this case in which I indicated that I'd come to the same outcome as our investigator but for different reasons. I said:

'the relevant terms and conditions

The starting point is the terms and conditions of the policy, the relevant parts of which say as follows:

'B. Cancelling or coming home early

What we'll cover

We'll pay the costs shown below if an insured person unavoidably has to cancel their trip or come home early if one of these events happens

i. illness [...] of an insured person

[...]

We'll pay the following:

- *Unrecoverable costs that each insured person has paid or legally has to pay for their own unused personal travel and accommodation, as well as unused pre-paid costs associated with the trip (e.g. pre-paid excursions, green fees, or kennel or cattery fees): and/or*
- *Additional travel and accommodation costs to allow the insured person to return home early if they cannot use their return ticket.*

[...]

We won't cover

- [...]
- Any claim for coming home early after the insured person has chosen to move to alternative accommodation'

The policy defines 'trip' as '... a journey that begins and ends in England, Scotland, Wales, and Northern Ireland ('UK'), where the return journey has been booked before leaving the UK, for the purposes of [...] A holiday [...]

has Aviva acted unfairly or unreasonably?

I uphold Mr T and Ms L's complaint in part. I think that Aviva made errors in its handling of Mr T and Ms L's claim, but I don't think that its decision to decline their claim was unfair or unreasonable. I say that because:

- Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The onus is on the consumer to show that the claim falls under one of the agreed areas of cover within the policy. If the event is covered in principle but is declined on the basis of an exclusion set out in the policy the onus shifts to the insurer to show how that exclusion applies.
- Subject to the policy terms, Mr T and Ms L have cover for curtailment of a trip in certain circumstances. A trip is defined as one which starts and ends in the UK and where the return journey has been booked before leaving the UK. In the circumstances here, Mr T and Ms L's trip wasn't curtailed. Their intended return date was 14 October 2022. They returned to the UK on 15 October 2022. Mr T and Ms L didn't return home early, they went to a third country and returned to the UK later than they had originally planned.
- Mr T and Ms L chose to move to accommodation in a third country. Even if Mr T and Ms L had returned to the UK earlier than originally planned, there's an exclusion in the policy in relation to any claim for curtailment after the insured has chosen to move to alternative accommodation.
- I've noted what Mr T and Ms L say about why they travelled to the third country rather than return early to the UK – the flight costs to the UK were prohibitive and Ms L wanted to recover with her family and with access to her family doctor. I quite understand why Ms L wanted to go to the third country, but that's not something that's covered by the policy.
- I don't think it would be fair and reasonable to direct Aviva to pay a claim where the trip was extended, not curtailed. Even if Mr T and Ms L's trip had been curtailed, I think it's reasonable for Aviva to rely on the exclusion I've referred to above.
- Mr T and Ms L say that if they had stayed in the country of their trip destination, Aviva would have had to pay for alternative accommodation costs, as Ms L was too unwell to continue to travel in accordance with their planned itinerary. I'm looking at the claim Mr T and Ms L actually made, not a claim they may have made in different circumstances.

- *It doesn't alter the outcome here, but I think that Aviva was entitled to rely on the advice of the doctor it arranged to call Ms L and its in-house medical team and come to the view that there was no medical reason to curtail the trip. Aviva would not have advised Ms L to fly whilst she had food poisoning and would generally require an individual to wait 24-48 hours after the last episode of illness before flying. There's nothing in the report by Ms L's family doctor that would lead me to the conclusion that Aviva's approach was unfair or unreasonable.*
- *I think that Aviva made errors in handling Mr T and Ms L's claim. It referred to abandonment provisions that aren't relevant here, raised questions about the provider of Ms L's medical evidence and misunderstood the elements of their claim. I think that led to Mr T and Ms L suffering distress and inconvenience as they were engaged in the process of the claim much longer than was necessary. I think fair compensation for that is £75.'*

Responses to my provisional decision

Aviva accepted my provisional decision. Mr T and Ms L didn't make any substantive comment.

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.

Neither Mr T and Ms L nor Aviva have provided any fresh information or evidence in response to my provisional decision. I therefore find no basis on which to depart from my earlier conclusions. For the reasons I've explained, I don't think that Aviva's decision to decline Mr T and Ms L's claim was unfair or unreasonable. But I think that Aviva made errors in its handling of the claim which caused Mr T and Ms L distress and inconvenience.

Putting things right

In order to put things right, Aviva should pay Mr T and Ms L compensation of £75 in relation to their distress and inconvenience.

My final decision

My final decision is that I uphold this complaint in part. Aviva Insurance Limited should pay Mr T and Ms L the compensation I've referred to above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr T to accept or reject my decision before 22 September 2023.

Louise Povey
Ombudsman