

The complaint

Mr and Mrs C are unhappy with the service they received from Aviva Insurance Limited and their decision to decline their claim.

Mr and Mrs C did deal with agents of Aviva but I'll only refer to Aviva in my decision as they are ultimately responsible for the complaint.

What happened

Mr and Mrs C were on holiday in a relatively remote location in Spain. They travelled to their destination by car and were intending to stay the maximum duration they could remain in the EU, which is 90 days. They planned to return via car at the end of their holiday.

On 7 November 2022 Mr C experienced a 'black out' whilst driving which caused the car to swerve into the oncoming carriageway. There was no accident, but the following day Mr C attended a local urgent care clinic which was located approximately half an hour's drive away. He says that he was given a diagnosis of possible epilepsy and advised to visit his neurologist on his return home. Given what had happened Mr C didn't want to drive back to the UK until he'd been further assessed.

On 9 November Mr C contacted Aviva to explain the situation and to seek assistance. He explained his wife had no experience of driving abroad and told Aviva that they needed to leave the EU before the 29 November due to the time limit.

There were issues with getting information from the urgent care centre and with sorting out a follow up assessment of Mr C's condition to ensure he was 'fit to fly'. In the end no further medical appointment took place. Mr C booked his own bus, accommodation and flights to ensure he was home by 29 November. He provided a medical report to Aviva following his return home which confirmed his attendance at the urgent care centre. He also said he'd seen his GP who advised him not to drive until he'd seen the neurologist. Mr C was later diagnosed with having had a fainting episode after a follow up with a specialist in the UK.

Mr and Mrs C complained about the service they received. Aviva offered £400 for failings in the customer service offered but maintained their decision in relation to the claim. Aviva said there was not enough medical evidence to support Mr C returning home early. Unhappy, Mr and Mrs C referred their complaint to the Financial Ombudsman Service.

Our investigator looked into what had happened. She thought that Aviva had acted fairly based on the medical evidence and noted that Mr C chose not to attend a pre-arranged medical review. She was also satisfied that there was no cover under the policy for the

repatriation of Mr C's vehicle.

Mr C didn't agree and asked an ombudsman to review the complaint. Mr C said there was a delay of 9 days between him agreeing to have a doctor visit him and the claim being reported. He also pointed out that no one came back to him for a further five days. Mr C said it must have been obvious that he'd need to fly home which was why Aviva were looking into

a 'fit to fly' certificate. He referred to correspondence from Aviva which confirmed that they'd not adequately explained that the follow up appointment would try and confirm the diagnosis.

Mr C said that had Aviva arranged a follow up he may have been able to drive home and avoid the other expenses he's incurred. Their original plan was to leave their accommodation on 24 November with a view to leaving the EU, via France, on the morning of the 29 November.

In September 2023 I issued a provisional decision. I said:

The relevant rules and industry guidelines say that Aviva has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions

The policy covers emergency medical treatment and associated expenses. Those expenses include, but are not limited to, additional travel costs if the insured party can't use their return ticket and bringing the insured person home if it is medically necessary.

The policy also covers unrecoverable unused costs for coming home early due to illness. And it covers additional travel and accommodation costs to allow the insured person to come home early if they can't use their return ticket.

Customer service

I don't think Mr and Mrs C received an adequate level of customer service. Aviva has acknowledged this in their final response letter. I won't comment on all of the points that Mr C has raised but, in my view, there were a number of failings which include the following.

Mr C made it clear from the outset that he would be subject to the 90-day limit in the EU. This doesn't seem to have been something that Aviva engaged with or considered when thinking about his repatriation plans. It's clear that this was something which was uppermost in Mr C's mind when trying to make arrangements to return home. Aviva repeatedly misunderstood Mr C's point about this, believing him to be returning to the UK on this date.

Mr C gave Aviva the details of the urgent care centre he visited on the 9 November. Aviva couldn't identify it. The reasons for this are unclear as it I think it was identifiable from the information he provided on the 9 November. A period of around five days was lost because of this.

I can't see that Mr C was advised about needing a 'fit to fly' until 18 November. He made Aviva aware on that date that he'd booked a flight on 26 November in order to ensure he was home before the 90-day limit. Between the 18 and 23 November Aviva were trying to arrange a medical appointment but no one updated Mr C. They received a response on 22 November saying that it was best for Mr C to attend in person. Mr C wasn't updated until 23 November (three days before his flight) that they were looking to get him an appointment on 24 November at an Emergency Room. Mr C was worried about waiting for a long time and the presence of an interpreter. He also explained he was due to start his journey home on 25 November as he planned to stay overnight in a hotel before continuing to the airport. His car repatriation had also been brought forward to the 24 November, from the 25 November.

Mr C says he barely slept that night and no one had explained why a doctor couldn't visit him, which had been the original plan. I can see that Aviva looked into this but couldn't locate a doctor who was able to visit the area he was in. Aviva should've explained this to Mr C. Mr C says he decided to cancel 'the appointment' as his car was due for collection.

There was no actual 'appointment' booked. Aviva's notes say that there wasn't a specific appointment available and that Mr C would've had to go to the 'emergency room door' after 1pm where he would be seen. I note that the medical provider identified was around an hour's drive away from where Mr C planned to stay the night before his flight and in the opposite direction to the airport. From the notes that I've seen no taxi had been booked or looked into when Mr C was contacted on the evening of the 23 or on 24 November.

In my view Aviva ought to have identified the clinic Mr C was treated in on 9 November. They had enough information to do so and were aware of Mr C's need to leave the EU before the 90-day time limit expired. They were also aware of the flight which was booked from at least the 18 November. Bearing in mind that the flight was booked for the 26 November, and Aviva was aware of this, I don't think the medical appointment was sorted out with sufficient urgency.

This left Mr C in a position where he was stressed and worried about trying to get to the medical appointment, where it would take place and that he may have to wait for a long time. I think his concerns are supported by what I can see in the notes. I don't think it's fair to say that Mr C chose simply not to attend because he wanted to enjoy the last day of his holiday. He was juggling a number of things, on his own, in an area that was difficult to access without a car and with sporadic contact from Aviva. He's also explained he was trying to calm himself before the flight home, due to the stress he felt under.

I accept that Aviva wanted a follow up appointment to take place and ensure Mr C was fit to fly. That's what I'd expect in the absence of a medical report. But I don't think this was attempted soon enough - the initial delays in identifying the clinic and misunderstanding about Mr C's return date also meant that Aviva weren't working to the right timescales. I've taken this into account when weighing up the available medical evidence. And, in any event, I don't think Aviva has been prejudiced by the absence of the 'fit to fly' report when assessing the claim for the reasons I'll go onto explain.

Was Mr C's claim unreasonably rejected?

Mr C's medical expenses were covered under the reciprocal health agreement. Mr C claimed for:

- A pre-booked and unused crossing on the channel tunnel
- Additional costs for two flights from Spain to the UK (booked on 10 November 2022)
- One night's additional total accommodation prior to the return flight
- Bus tickets to the airport (booked on 14 November)
- Repatriation of the car from Spain to the UK

- Repatriation of belongings and bicycles to the UK.

I don't think Aviva has reasonably rejected Mr C's claim for the reasons I'll go onto explain.

The available medical evidence, which Aviva was sent in December 2022, confirms that Mr C was seen at the urgent care centre for dizziness. The report confirms he was seen as an emergency on 8 November and says:

The patient mentions that yesterday he had an absent episode whilst he was driving his vehicle which lasted for seconds... Normal neurological examination, I give recommendations that he should go to Neurology ward if this happens again. Currently he does not have any doctor given that he is on holiday.

The report doesn't specifically mention epilepsy, but Mr C has given consistent testimony that this is what the doctor told him and that he was referred to a neurologist. That's exactly what Mr C did on his return to the UK. So, on balance, I'm persuaded it is most likely Mr C was told that it could have been an epileptic incident. He immediately reported this to Aviva when he got in touch with them to first report the claim and has been consistent in his testimony on this point.

It's well established in the UK that a person should tell the DVLA if they've had an epileptic seizure. The guidance says that if you've had your first ever seizure whilst awake and lost consciousness your licence will be taken away. Mr C was planning to drive back to the UK, via France, over the course of approximately four or five days. So, I think he was reasonably concerned about the impact of the medical incident on his ability to drive, particularly as he'd lost consciousness whilst driving on 7 November. I can also understand his concerns that if there was a further incident, which caused an accident, then he could be in difficulty as he'd recently had a suspected seizure. Mr C also highlighted to Aviva at an early stage that his wife hadn't driven abroad before and was of what he described as 'a nervous disposition'.

I think Aviva could have taken a much more pragmatic view of the circumstances of Mr C's claim. I think it's reasonable to conclude that he couldn't be expected to return to the UK by car in the specific circumstances of this case. Whilst both Aviva and Mr C were struggling to get medical information from the urgent care clinic I think it would have been reasonable for Aviva to consider the overall circumstances of the case, particularly given that they'd been in close contact with Mr C throughout. I also bear in mind that they were subsequently provided with medical evidence that supported Mr C's account of what happened.

I've also thought about whether Aviva was prejudiced by the absence of the fit to fly report. I don't think they were. Following his return home Mr C provided the medical report I've referred to above, and based on the available evidence, I think it is unlikely that he'd have been fully assessed by a neurological specialist at a walk in appointment in an emergency room. Mr C has seen his GP and provided evidence he saw a neurologist on his return. So, I think he's provided adequate medical evidence in support of his claim in addition to persuasive testimony about what happened.

I'm also not persuaded by Aviva's arguments about Mr C not needing to cut short his trip. I don't think this reflects the reality of the situation Mr C was in. He was originally due to leave his accommodation on the 24 November and spend a few days travelling back through Spain and France to ensure he didn't breach the 90-day limit.

As he couldn't drive, he booked a flight for the 26 November, which was two days after he'd originally planned to start his journey home.

I don't think it's fair and reasonable, in the circumstances of this case, to conclude Mr C's holiday was cut short for reasons that weren't medically necessary. Mr C had to take a different mode of transport home because he couldn't drive. That was inevitably quicker and he also had to factor in the time limit I've mentioned. And, in staying abroad Mr C also hasn't claimed for unused accommodation expenses, which he may have been entitled to if he'd returned earlier. So, overall, I think he acted reasonably.

Taking all of the above into account I think Aviva needs to settle Mr C's claim. So, I'll go on to consider what costs I think it's reasonable for Aviva to pay.

What costs should Aviva pay?

The policy covers additional and unused travel and accommodation expenses. I think the expenses for the unused crossing, airline tickets for Mr and Mrs C, accommodation for the night before the flight and Mr C's bus ticket are all reasonable expenses incurred because Mr C wasn't well and couldn't drive home. I think that Mr C has claimed for modest costs and I'm satisfied they are reasonable costs he incurred as a result of his illness.

Mrs C had to return from Spain earlier, on 17 November due to her father's ill health. I'm sorry to see that he's since passed away. Unfortunately, this left Mr C on his own to return home and had a further impact on their travel plans.

I can see that Mr and Mrs C booked Mrs C's flight for the 26 November but that due to her father's illness she returned home earlier than that. It's unclear whether Aviva has already considered those costs under a separate claim, or not. But, if those costs haven't been settled under a separate claim, I think it's reasonable for Aviva to cover the costs of the return flights. They were booked on the 10 November, the day after the claim was notified.

Based on the available evidence I don't think Mr and Mrs C expected that Mrs C would need to return earlier than Mr C at that point in time. By the time that the bus tickets were booked on the 14 November it appears Mrs C was planning to travel home on the 17 November as Mr C referred to this in the claim form. So, I don't think this is something that should be covered as part of this claim as I don't think it's an expense that arises directly from Mr C's illness. Mrs C may wish to pursue a separate claim if she has other out of pocket expenses relating to her claim due to her father's illness.

I also think it's fair and reasonable for Aviva to cover the cost of Mr and Mrs C's belongings and car being repatriated. I bear in mind that Mr and Mrs C had travelled by car and were staying for three months. They weren't aware they'd have to fly home and, as I'm satisfied that these costs were ultimately related to Mr C's illness, I think they can reasonably be considered additional travel expenses which are typically covered when a person has to be repatriated. I don't think Mr or Mrs C could have reasonably travelled alone with their collective belongings, including cycles, on a flight home.

Distress and inconvenience

I'm persuaded that Mr and Mrs C were caused distress and inconvenience by the

overall experience they had – this took place at a time where Mr C was worried about his health and he was having to make lots of arrangements to get home.

Aviva has made an offer of £400 compensation and accepts there were failings in the overall customer service Mr and Mrs C experience. I think that fairly reflects the impact of the worry and upset caused by poor communication and the other failings I've outlined above.

Putting things right

Aviva needs to put things right by settling the cost of Mr and Mrs C's unused crossing on the channel tunnel, their additional flights home, Mr C's bus ticket, the cost of the overnight accommodation Mr C booked before his flight and the cost of returning the belongings and car home. They should pay 8% simple interest per annum on these expenses from the date the claim was declined until the date of settlement.

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

Aviva should also pay Mr and Mrs C £400 compensation for the distress and inconvenience caused by the poor service they received.

Mr and Mrs C accepted my provisional decision. Aviva responded to say that they agreed with my findings, except for the cost of the Eurotunnel. They said that this would place Mr and Mrs C in a position of betterment as he'd have travelled home at no expense. So, they didn't think they should pay this cost.

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.

I think Aviva should cover the cost of the Eurotunnel crossing in the circumstances of this case.

As I outlined in my provisional decision the policy covers unrecoverable unused costs and additional expenses. Aviva didn't dispute this. Mr C incurred additional costs to return home via plane. And, as a result he couldn't use his Eurotunnel crossing.

I don't think this places Mr C in a position of betterment. I haven't found Aviva's arguments on this point persuasive. I think this was an unused and unrecoverable cost associated with his illness. So, I think Aviva should settle this part of the claim as well as it is fair and reasonable to do so.

Putting things right

Aviva needs to put things right by settling the cost of Mr and Mrs C's unused crossing on the channel tunnel, their additional flights home, Mr C's bus ticket, the cost of the overnight accommodation Mr C booked before his flight and the cost of returning the belongings and car home. They should pay 8% simple interest per annum on these expenses from the date the claim was declined until the date of settlement.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from

that interest, it should tell Mr and Mrs C how much they've taken off. They should also give Mr and Mrs C a tax certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Aviva should also pay Mr and Mrs C £400 compensation for the distress and inconvenience caused by the poor service they received.

My final decision

I'm upholding Mr and Mrs C's complaint about Aviva Insurance Limited and direct them 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 C and Mrs C to accept or reject my decision before 30 October 2023.

Anna Wilshaw
Ombudsman