

## **The complaint**

Mr and Mrs H have complained that Aviva Insurance Limited declined a claim they made on the travel insurance policy linked to their bank account.

## **What happened**

Mr and Mrs H had booked a self-catering holiday with their children which involved catching a ferry from a UK port. They were due to leave home on 1 August 2023 to drive down to the port location, spend the night close by, ready to catch the ferry on the morning of 2 August 2023.

On 31 July 2023 they were informed by the ferry company that the ferry had been cancelled and rescheduled for 3 August 2023. The rescheduled time was 27 hours after their original ferry was due to depart. They decided to leave home on 1 August 2023 anyway and spend two nights in accommodation by the port rather than one. They then made a claim on the policy for the cost of the extra night's accommodation at the port and the cost of the unused first night of their self-catering accommodation.

Aviva declined the claim on the basis that the circumstances were not covered under the policy terms.

Our investigator thought that it would be fair and reasonable for Aviva to pay the claim. So, she recommended that the complaint should be upheld. Aviva disagrees with the investigator's view and so the complaint 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.

I've carefully considered the obligations placed on Aviva by the Financial Conduct Authority (FCA). Its 'Insurance: Conduct of Business Sourcebook' (ICOBS) includes the requirement for Aviva to handle claims promptly and fairly, and to not unreasonably decline a claim.

Looking at the policy wording, it explains that cancellation cover starts when the trip is booked and ends when the policyholder leaves home to start the trip. Cover under all other sections of the policy begins upon leaving home.

Under the 'Cancellation or coming home early' clause of the policy, it states:

*'We'll pay the costs shown in this section if an insured person unavoidably has to cancel their trip or come home early because:*

*pre-booked travel arrangements on their outward journey from the UK are cancelled or delayed for more than 12 hours or diverted after departure, and the travel provider is unable to provide suitable alternative arrangements within 24 hours of the original departure'.*

Under the 'Unexpected costs' and 'Travel disruption' clause of the policy, it states:

*'We'll cover unexpected additional travel and accommodation costs to allow the insured person to continue their trip or to get home at the end of their trip, if their pre-paid travel plans are disrupted for the following reasons:*

*the insured person's pre-booked travel arrangements are cancelled or delayed for more than 12 hours from the time shown on their ticket or diverted after departure.'*

Mr and Mrs H believe they are entitled to make a claim under the 'Unexpected costs' part of the policy. However, as mentioned above, cover under this section only starts after someone has left home to start their trip. As they were informed of the ferry cancellation prior to leaving home, it is only the 'Cancellation' part of policy that was active at the time.

Aviva declined the claim on the basis that Mr and Mrs H hadn't left home at the time they were informed of the ferry cancellation. Under a strict application of the policy terms, I agree the claim isn't covered under the travel disruption part of the policy. However, as the ferry company weren't able to provide alternative suitable arrangements within 24 hours of the original departure time, Mr and Mrs H could have decided to abandon the trip and then make a cancellation claim for the full cost of the holiday. Therefore, by making their own arrangements rather than cancel, Mr and Mrs H mitigated their losses and are subsequently claiming for much less than they would be if they had cancelled the holiday. As such, I think it would be fair and reasonable for Aviva to pay the claim.

Aviva says the issue is that Mr and Mrs H didn't cancel the trip. Had they done so then it would have considered the cancellation claim. But it wouldn't look at what a customer could have done.

Having said that, Aviva has then gone on to say that any claim for cancellation wouldn't have been covered anyway due to the policy wording stating that cancellation cover only applies if someone has to 'unavoidably' cancel their trip. It says the fact that Mr and Mrs H did travel, albeit arriving at their final destination a day late, shows that cancelling the holiday wasn't unavoidable.

However, in this case, I am looking beyond a strict interpretation of the policy terms. So, I have looked at what Mr and Mrs H could have done, in the interests of deciding what is fair and reasonable in the circumstances.

I've thought very carefully about what Aviva has said. But, overall, I'm not persuaded by its argument about the policy wording relating to 'unavoidable'. The ferry cancellation and the delay of 27 hours was unavoidable – it was not a foreseeable event and was beyond Mr and Mrs H's control.

Given the remainder of the wording in that clause relating to pre-booked travel arrangements being cancelled or delayed for more than 12 hours and the unavailability of a suitable alternative within 24 hours of the original departure, I consider that the scenario encountered by Mr and Mrs H would have likely entitled them to cancel the trip and make a successful claim if they had chosen so to do. This is regardless of what they actually went on to do.

Aviva has made reference to a decision by another ombudsman that it says reinforces its point of view. I don't know all of the details of the other case Aviva has referred to and so can't comment on it. Regardless, my findings are based on the particular facts of this case and what I consider to be fair and reasonable.

**My final decision**

For the reasons set out above, I uphold the claim and require Aviva Insurance Limited to settle the claim.

Aviva Insurance Limited should also add simple interest from the date the claim was made until the date it is settled, at a rate of 8% per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 20 February 2024.

Carole Clark

**Ombudsman**