

The complaint

Mr and Mrs S have complained that TICORP Ltd (trading as Avanti) mis-sold a travel insurance policy to them.

What happened

Mr and Mrs S bought an annual multi trip travel insurance policy through Avanti. They are unhappy that Avanti made a mistake when the policy was bought which meant Mr S lost out financially.

Avanti looked into the complaint and apologised for its error but didn't accept it was responsible for Mr S's loss. It offered compensation and a refund of premiums. Unhappy, Mr and Mrs S referred their complaint to the Financial Ombudsman Service.

Our investigator looked into the complaint and didn't think Avanti had acted fairly. He recommended that Avanti pay for Mr S's loss.

Avanti disagreed and said Mr S should not have transferred the trip without its permission and he should have followed the correct process. It also says it's unlikely he would have transferred the trip to his friend if he had found cover elsewhere and his wife and friend would always have gone.

So the case has been passed to me for a final 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.

Having done so, I agree that this complaint should be upheld. I'll explain why.

I issued my provisional decision on 8 January 2024 which Mr S has accepted. Avanti hasn't replied and so I see no reason to depart from my provisional conclusions which I adopt as my final decision. I have set my provisional decision out in full:

- When selling an insurance policy in a non-advised sale a seller must ensure it provides clear, fair and not misleading information.
- The background is well known to both parties and has been set out by our investigator clearly. So in my decision, I will focus on what I consider to be key to my decision.
- Avanti accepts that it made an error when Mr S bought the policy in October 2022. Mr S declared all of his health conditions correctly and Avanti confirmed all conditions were accepted.
- Mr S then booked a holiday in February 2023 and called Avanti to add cruise cover.

He was provided with a new validation certificate showing his declared medical conditions. The cruise was booked for August 2023.

- In May 2023, Mr S called Avanti to inform them he was due to have a procedure related to what he had declared at the point of sale. Avanti said Mr S's pre-existing conditions should have been excluded at the point of sale as he was awaiting surgery. Mr S asked Avanti to listen to the sales call.
- Mr S called again in July 2023 as he hadn't heard from Avanti. There had been complications with his procedure and so he was unfit to travel. Avanti said that all of Mr S's conditions should have been excluded at the point of sale because he was waiting for surgery. Mr S was given the option of continuing with the policy and excluding all conditions or cancelling the policy and obtaining a premium refund. Mr S couldn't travel and so he accepted the refund and lodged a complaint.
- Mr S transferred his place to his friend so that Mrs S could continue with her travels with a companion. Mr S says he did not receive any money for the trip he transferred to his friend, as it was a favour to Mr and Mrs S at short notice so that Mrs S wouldn't lose out on the trip.
- Avanti says it cannot be sure that Mr S hasn't received money from his friend. And it says he should not have transferred the trip to his friend without Avanti's permission. Instead, it says Mr S should have made a cancellation claim and if that was declined due to the error made by Avanti during the sales process, it would have considered covering his loss.
- Avanti has refunded the premium and offered £175 compensation for trouble and upset plus £25 for the cost of transferring the trip into the friend's name.
- Having considered all of the above, I don't think Avanti's offer is fair or reasonable. Avanti says Mr S should not have transferred the trip to his friend without permission and instead should have made a cancellation claim. However, when Mr S called in July, Avanti only gave him two options – to continue with the policy and exclude all conditions or a refund of premiums. So Mr S took the only viable option as he couldn't travel due to his medical condition.
- I don't think it's fair or reasonable for Avanti to now say that Mr S should have made a cancellation claim when it hadn't given him this option. And once the policy was cancelled and the premium was refunded, Mr S did what he could to mitigate his losses. He transferred his trip to a friend so that Mrs S could still go on the trip rather than them both losing out.
- Had Avanti not made the error in October 2022, Mr S would have been told that all pre-existing conditions would be excluded and I don't think he would have purchased insurance or booked a trip, if he wasn't able to get cover elsewhere. It's unlikely Mr S would have been able to obtain alternative travel insurance in any event. So ultimately, he has lost out on the premium he paid for a policy (which was of no use to him as his conditions weren't covered) as well as the trip he booked thinking he was covered.
- I also don't think it's reasonable for Avanti to disbelieve Mr S when he says he hasn't received any payment for transferring his trip. Avanti can ask Mr S to provide a statement from his friend confirming no payment was made for the trip. I can't see why this is insufficient.

- Avanti says Mr S shouldn't have transferred the trip and that his friend would always have gone in his place even if Avanti hadn't made the error. I don't agree. Mr S offered the place to his friend as a direct result of Avanti telling him that he had no cover for his conditions and the only options he had were to continue with the policy and exclude conditions or have a refund. If Mr S was clearly told by Avanti that he could make a cancellation claim, I can't see why he wouldn't have done so.
- Furthermore, if Avanti says Mr S should have made the cancellation claim, it would be liable for his loss in any event. The only difference is that Mrs S still got to go on the holiday and so Avanti would only need to pay Mr S's costs as opposed to both Mr and Mrs S's costs had Mr S done what Avanti is now suggesting (i.e. not transfer the trip).
- I am satisfied that Mr S followed Avanti's advice and guidance and took one of the options provided to him. Once the policy was cancelled, he did what he could to mitigate his losses. This was not unreasonable. I can't see why Avanti is taking exception to this as ultimately, it has meant it hasn't had to pay for the full costs of the trip which would have been cancelled for both Mr and Mrs S.
- As a direct result of Avanti's error, Mr S thought he was insured for his trip if he became unfit to travel. So Avanti should pay compensation equal to Mr S' losses, which are the costs of the policy premium (which I note has already been refunded) and his proportion of the trip costs, on production of the trip booking confirmation from Mr S.
- Avanti has confirmed it would have likely paid Mr S's loss had he submitted a cancellation claim – it says the claim would have been unsuccessful due to its error – and so it would be responsible for the loss as a result of mis-selling. As Avanti has refunded the policy premium, it should now pay Mr S's proportion of costs for the trip.
- Our investigator had said the premium could be deducted as it would need to be paid to make a claim. But as set out above, I don't think Mr S would have bought the policy if he had been given the correct information. And so I don't think the premium amount needs to be deducted as Mr S wouldn't have bought the policy or booked the trip without insurance. So Avanti should be responsible for both of these costs.

My final decision

For the reasons set out above, I direct TICORP Ltd to pay Mr S's proportion of costs for the trip he wasn't able to go on.

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

Shamaila Hussain
Ombudsman