

## The complaint

Mr and Mrs R complain that Society of Lloyd's has turned down a cancellation claim they made on an annual travel insurance policy.

## What happened

Mr and Mrs R renewed their annual travel insurance policy. On 9 November 2022, Mrs R was put on a waiting list for a hip replacement. She says she was told there'd be a wait of around six to nine months for the surgery. On 15 November 2022, she booked flights abroad. She was due to travel between 19 April and 25 May 2023. Mrs R contacted Lloyd's on 16 November 2022 to check whether she'd be covered by the insurance policy.

In February 2023, Mrs R learned that her surgery would take place in April 2023. And her consultant said she wouldn't be fit to fly after the surgery for three months. So Mr and Mrs R cancelled their flights. As they weren't able to recover their costs from the airline, they made a claim on the policy.

Lloyd's turned down Mr and Mrs R's claim. It said the policy specifically excluded cover if a policyholder wasn't fit to travel on the day of departure. As Mrs R's treatment plan had changed between the date of booking the trip and the day of departure, Lloyd's concluded she hadn't been fit to travel.

Mr and Mrs R were unhappy with Lloyd's decision and they asked us to look into their complaint.

Lloyd's got in touch with us to make an offer of £250 compensation. It maintained its decision to decline Mr and Mrs R's claim. But it said that when Mrs R had called on 16 November 2022 to check cover, the day after booking the trip, its call handlers could have been clearer about the impact of her planned hip replacement surgery on cover.

Our investigator thought Mr and Mrs R's complaint should be upheld. She didn't think the 'fitness to travel' eligibility term was clearly drafted and so she thought it should be interpreted in Mr and Mrs R's favour. And she didn't think it had been fair to say that Mr and Mrs R could have reasonably anticipated that the planned surgery could lead to a cancellation or curtailment claim. She recommended that Lloyd's should pay Mr and Mrs R's claim, together with interest and along with the compensation it had offered.

I issued a provisional decision on 9 January 2024 which explained the reasons why I thought the fair outcome to this complaint would be for Lloyd's to pay Mr and Mrs R £250 compensation. 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 policy terms and the available evidence, to decide whether I think Lloyd's treated Mr and Mrs R fairly.'*

*I've first considered the policy terms and conditions, as these form the basis of the contract*

between Mr and Mrs R and Society of Lloyd's. Pages 16 and 17 of the contract set out Eligibility Criteria. This includes the following term:

*'1.11 Fitness to travel*

*You must be medically fit to travel on the date of departure on your trip in order to be eligible for cover under this insurance. This means any and all existing medical conditions you have must be stable and controlled by any treatment you are receiving and/or medication you have been prescribed, and there must be no known likelihood of any medical tests, investigations or major variation of treatment or medication for the condition(s) between booking your trip and the date of departure, or whilst travelling...*

*There is no cover under this insurance under Section 1 - Medical benefits nor Section 4 - Loss of deposits, cancellation or curtailment, if you are not fit to travel as described above, and we will not pay any claims directly or indirectly resulting from any medical condition you have with which a medical practitioner has advised you not to travel, or would have done so had you sought his/her advice, and despite this you still travel.'*

*Pages 33, 34 and 35 of the policy set out cancellation and loss of deposit cover. This section includes a list of the specific things Lloyd's has chosen to exclude from cancellation cover. This list includes a term excluding cover if a policyholder isn't fit to travel on the day of departure and mirrors the eligibility clause I've set out above.*

*Lloyd's turned down Mr and Mrs R's claim because it said Mrs R wasn't fit to travel on the day of departure. It considered there'd been a major variation of treatment for her hip condition. I agree with our investigator that this clause isn't drafted at all clearly and would appear to suggest that anyone who wasn't medically unfit to travel at all on the day of their holiday departure would never be covered for a cancellation claim. While this clearly wasn't Lloyds' intention when drafting this clause, I think it's so ambiguous that it should be interpreted in Mr and Mrs R's favour. And so I don't think it was fair for Lloyd's to rely on this particular exclusion when it turned down this claim.*

*However, I don't think that necessarily means that Lloyd's must pay Mr and Mrs R's claim. The list of specific exclusions which apply to cancellation claims includes the following term:*

*'What we will not pay for*

- *Circumstances known to you before this insurance was purchased or at the time of booking any trip, which could reasonably have been expected to lead to cancellation or curtailment of the trip.'*

*I can also see that the Insurance Product Information Document (IPID) which sets out an at-a-glance summary of the main policy features, benefits and exclusions includes the following term on page one, in a table called 'What is not Insured?'*

- *Any claim for cancellation or curtailment of your trip arising from circumstances known to you when the insurance was purchased, or at the time of booking any trip, which could reasonably have been expected to lead to cancellation or curtailment of the trip.'*

*In my view, the policy documentation as a whole makes it clear that Lloyd's won't cover cancellation or curtailment claims if either of those events was reasonably foreseeable when the trip was booked.*

*The investigator didn't think it would be fair for Lloyd's to rely on this exclusion either. That's*

*because she noted on the medical certificate completed by Mrs R's GP that the operation had been planned for 'autumn 2023.' I've considered this carefully. On the other hand, Mr and Mrs R have consistently told us that Mrs R was told the waiting time would be six to nine months. And I note from a transcript of her call to Lloyd's on 16 November 2022 – only 7 days after being placed on the waiting list - that she specifically stated:*

*'I spoke to the consultant the other day and he said...that you'll be on the waiting list at least 6 months.'*

*On that basis, I think it's more likely than not that Mrs R was told that the wait time for the surgery was around six to nine months, rather than being told it would take place in the autumn. I don't think Mrs R could have reasonably foreseen that she'd definitely be called for the surgery earlier than that. But given Mrs R was placed on the waiting list on 9 November 2022, by my calculations, the six month period would end on 9 May 2023. So I think Mrs R ought to have been aware of the reasonable possibility that her surgery could potentially take place at any point between then and the end of September 2023 – if not before.*

*However, Mrs R booked a trip which spanned much of the month of May 2023 and her return was planned for 25 May 2023. So it seems to me that Mrs R ought to have been reasonably aware that if her surgery did fall within that period, she and Mr R would likely need to return to the UK early and incur additional costs in doing so, as well as the potential costs of cancelling the original inbound flight. I also think they ought to have been aware that the surgery could happen sooner than May 2023, even if they didn't think it was likely. And as such, I think Mr and Mrs R ought to have been aware that the planned surgery could have reasonably been expected to lead to a claim.*

*So while I sympathise with Mr and Mrs R's position, I currently don't think it was unfair or unreasonable for Lloyd's to conclude that their claim wasn't covered.*

*Nonetheless, Lloyd's accepts that when Mrs R called, its call handlers ought to have drawn her attention to the potential impact of her planned surgery on cover. It's offered £250 compensation to reflect the trouble and upset this caused her. I currently find this to be a fair, reasonable and proportionate offer to reflect the distress and inconvenience Mr and Mrs R were caused when they realised that Lloyd's hadn't highlighted the potential impact on cover of the hip replacement. I say that because I'm mindful that at the point Mrs R spoke with Lloyd's, she'd already booked her holiday. So I don't think I could fairly find that Mrs R relied on any failure by Lloyd's to highlight relevant information when booking her trip. And so I don't think I could fairly direct Lloyd's to pay the claim on this basis. Nor have I seen persuasive evidence that had Lloyds' call handler highlighted the potential impact of the planned surgery on cover, Mrs R could have mitigated her losses. Therefore, I plan to direct Lloyd's to pay £250 compensation in line with its offer.'*

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

Lloyd's didn't respond by the deadline I gave.

Mr and Mrs R disagreed with my provisional findings and I've summarised their response:

- They noted that I'd agreed with the investigator's conclusions with regard to the clarity of the policy wording;
- They said that I'd referred to Mrs R being on the waiting list for *at least* six to nine months, but I'd then referred to the surgery wait time being *around* six to nine months. They felt there was a clear difference here, which I may not have been

aware of;

- There was a period of 16 days when Mrs R would have been unavailable for surgery at the start of the waiting list 'slot'. They had considered this when they made the booking. The hospital had advised them that if Mrs R received an invitation for the surgery while she was away, the operation could have been delayed by a few days. But she'd been operated on two months earlier than the earliest possible date which could have been offered;
- They felt I'd erred towards Lloyds' position, despite the investigator's view, and based on a flawed interpretation of Mrs R's position - that she wouldn't have been able to go on holiday anyway. In reality, she'd chosen to book the holiday, living her life as normal, knowing that at worst, there'd be a two-week delay for the surgery;
- They had made representations to Lloyd's in respect of its terms and conditions, which it had ignored. Lloyd's hadn't made them aware of its compensation offer. They felt its position was untenable and that throughout this process, their position had been entirely reasonable and logical. They considered their decisions had been well-planned and should be respected.

### **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, whilst I'm very sorry to disappoint Mr and Mrs R, my final decision is the same as my provisional decision and I'll explain why.

It's important I explain that an ombudsman's review of a complaint is entirely independent of an investigator's assessment of a complaint. Neither party is bound to accept an investigator's view. One or both parties may request an ombudsman's decision. And I'm required to undertake an independent and impartial review of all of the available evidence to decide what I think is fair and reasonable in all the circumstances of a particular complaint. I'm not bound to agree with an investigator's assessment and in this case, as I've set out above, I disagree with our investigator that this claim should be paid.

I appreciate that Mrs R was told that the surgical waiting list would be at least six to nine months. It's clear that no definite date for surgery was given and it's possible that Mrs R's surgery could have been scheduled *after* a nine month period.

However, it remains the case that Mrs R booked a holiday which spanned much of the month of May 2023 – which fell squarely into a wait time of six months. It seems, based on what they've said, that Mr and Mrs R were aware of the possibility that the surgery could take place while they were away and discussed this with the hospital, even if this appeared to be unlikely.

Mr and Mrs R feel strongly that I've wrongly assumed that she wouldn't have taken the holiday had the surgery been arranged sooner than they expected. They say that the hospital told them in that case, the operation would only be delayed by a few days. It's *possible* that the hospital may have delayed surgery for only a very short period. But it's equally likely that Mrs R's surgery couldn't have been rebooked for some months. If that was the case, I still think it's most likely that she'd have opted to cancel or curtail the trip to ensure she underwent the operation as soon as possible. I say that because Mrs R chose to undergo the surgery in February 2023, likely knowing that this would mean she wouldn't be fit to fly in April 2023 and that the trip would need to be cancelled. I've borne in mind too the

surgical recovery time and the impact upon Mrs R's fitness to fly. And I think she ought to have been reasonably aware that if the surgery was scheduled before her planned departure, she'd need to cancel the trip.

As such, while I sympathise with Mr and Mrs R's position, I still don't find Lloyd's acted unfairly or unreasonably when it concluded that Mr and Mrs R's claim wasn't covered by the policy terms.

I acknowledge that Lloyd's set out its compensation offer directly to our service, rather than to Mr and Mrs R. It isn't unusual for an offer to be communicated directly to us once a complaint has already been referred to this service. I understand Mr and Mrs R feel that Lloyd's failed to respond to their representations relating to the clarity of the policy wording. It isn't our role to punish or fine the businesses we cover. And while Mr and Mrs R may feel that Lloyd's didn't engage with their submissions, it did provide them with a final response to their complaint and referral rights to us. I'm satisfied Mr and Mrs R's representations were reviewed by my colleague and then by me.

As I've explained, I think Lloyd's has now made a fair offer of compensation to reflect the material distress and inconvenience I think Mr and Mrs R were caused by its failure to explain the potential impact of Mrs R's planned surgery on cover. And I find it fairly reflects the disappointment I think they were caused when they learned their claim wouldn't be paid. Therefore, I now direct Lloyd's to pay Mr and Mrs R £250 compensation in line with its offer.

### **My final decision**

For the reasons I've given above and my provisional decision, my final decision is that I think it was fair for Lloyd's to turn down this claim.

But I direct Society of Lloyd's to pay Mr and Mrs R £250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 21 February 2024.

Lisa Barham  
**Ombudsman**