DRN-4588181

The complaint

Mr and Mrs B complain about their travel insurance policy underwritten by AWP P&C SA. Reference to AWP includes its agents.

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 and Mrs B had travel insurance as a benefit of a bank account. In March 2023, they booked a trip with departure and return dates of 30 October 2023 and 15 November 2023 respectively.

On 21 March 2023, Mr and Mrs B contacted AWP in order to upgrade their cover and complete medical screening. Mrs B declared atrial fibrillation. AWP agreed to cover Mrs B's pre-existing medical condition on payment of an additional premium. AWP's notes show that Mr B declared a brain haemorrhage caused by a burst aneurysm or other blood vessel malformation and asthma. AWP told Mr B that it wouldn't cover his pre-existing conditions. Mr and Mrs B didn't accept that and contacted AWP again.

In a phone call on 23 March 2023, AWP conducted the screening process again with alternative descriptions of Mr B's pre-existing conditions – arteriovenous malformation resulting in a brain haemorrhage, the surgery for which resulted in hemiplegia, and asthma. It declined cover for Mr B's pre-existing conditions again.

Mr B complained about AWP's decision. He says that he has a disability, not an illness and that his brain haemorrhage was treated surgically in 1969, which left him with a limp. AWP didn't change its position.

Essentially, Mr and Mrs B say that it's illogical, unfair and discriminatory for AWP to decline cover for Mr B's pre-existing conditions. Mr B says that he has right side weakness following surgery for a brain haemorrhage in 1969. He says that he has a limp and uses a splint on his right leg and a walking stick. Mr B says he's worked, volunteers and travels extensively and had no reason to suspect that he'd be refused insurance when he booked a trip.

Mr and Mrs B say that in January 2022, they completed medical screening and paid AWP an additional premium for cover for a cruise. They say that they had quotes from different insurers that were willing to offer cover for their trip planned for October 2023, so they don't understand AWP's position. Mr B took out a policy with another insurer and wants reimbursement for that. Mr and Mrs B also complain about how AWP handled their complaint.

One of our investigators looked at what had happened. She didn't think that AWP had acted unfairly in declining cover for Mr B's pre-existing conditions or in its handling of the complaint. The investigator said that insurers are entitled to decide the type of risk they are willing to cover and that AWP isn't obliged to accept cover for all pre-existing conditions.

Mr and Mrs B didn't agree with the investigator. Mr B responded to say that he first complained to AWP in March 2023 and reiterated his concerns about how it dealt with the complaint. He said that AWP refused cover for a brain haemorrhage he doesn't have and that its unreasonable and unfair that AWP have declined cover. Mr B said that AWP should have made a reasonable adjustment in his case.

The investigator considered what Mr B said but didn't change her view. Mr and Mrs B asked that an ombudsman consider their complaint, so it was passed to me to decide.

I accept that Mr B first raised his complaint with AWP in March 2023, but I can't comment on this further. That's because our service can only consider complaints about financial services. So, I can't consider the additional points that Mr and Mrs B have raised about the handling of their complaint because it isn't a regulated activity. I realise that Mr and Mrs B will be disappointed by this, but I can't act outside my legal powers.

My provisional decision

On 12 January 2024, I sent both parties my provisional decision in this case in which I indicated that I intended to uphold the complaint. I said:

'It's clear and quite understandable that Mr and Mrs B have very strong feelings about this matter. They have provided detailed submissions to support the complaint. I've read through all this carefully and taken it all into consideration when making my decision. I trust that Mr and Mrs B won't take as a discourtesy that I concentrate on what I think is the central issue in the case, that is whether AWP acted fairly and reasonably in declining cover for Mr B's pre-existing conditions.

AWP is obliged to act honestly, fairly and professionally in accordance with the best interest of their customers. In general terms, insurers can decide what risks they wish to cover and on what terms, as long as it can demonstrate that it's doing so fairly (i.e. treating policyholders with the same circumstances in the same way).

Mr B says that AWP acted unfairly and unreasonably in declining cover for his pre-existing medical conditions and failed to make a reasonable adjustment. As the investigator said – and Mr B has accepted – only a court can determine whether there's been a breach of the Equality Act 2010. But I'm required to take the provisions of the Act into account if it's relevant law when deciding what's fair and reasonable in the circumstances of a complaint.

The Act sets out that a person has a disability if they have a physical or mental impairment which has a substantial long-term adverse effect on their ability to carry out normal day to day activities. Based on what Mr B has said about his right sided hemiplegia, for the purposes of this decision, I accept that he meets that definition of being disabled. So, the Act is a relevant consideration here. Mr B hasn't suggested that his asthma is a disability. I note that asthma is one of the pre-existing conditions in relation to which AWP doesn't require medical screening.

The Act also makes it clear that a service provider must not discriminate against a person as to the terms on which it provides the service to someone. But there is an exception for insurance in Schedule 3, provided it is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it's reasonable to rely. And provided it is reasonable to do it. In order for an insurer to justify unfavourable treatment arising from disability it must show it has a legitimate aim in mind when taking the action complained of and that the action is a proportionate means of achieving that legitimate aim.

It's not for this service to say whether AWP has acted unlawfully – that's a matter for the courts. My role is to decide what's fair and reasonable in the circumstances of this complaint, taking into account a number of things, including relevant law. So, I've taken the Equality Act 2010 into account when deciding what's fair and reasonable.

I've listened to the lengthy second phone call Mr and Mrs B had with AWP on 23 March 2023. In that phone call, AWP appears to accept that the medical screening on 21 March 2023 may not have been correct as it had screened Mr B's brain haemorrhage, but Mr B hadn't had any treatment or medication in relation to that in the relevant period. AWP repeated the screening process using alternative descriptions of Mr B's pre-existing conditions – arteriovenous malformation resulting in a brain haemorrhage, the surgery for which resulted in hemiplegia, and asthma. But it again declined cover for Mr B's pre-existing conditions.

*I'm not currently satisfied that AWP has demonstrated that it has treated Mr and Mrs B fairly on the evidence it's provided to date. We asked AWP to provide this service with information about what it relied on for the assessment of risk in this case and the source of that information. AWP referred to the '**Health declaration and health exclusions'** part of the policy and its list of pre-existing medical conditions in relation to which it doesn't require medical screening. That doesn't address the question about what it relied on for the assessment of risk in Mr B's case and the source of that information and how this informed its decision to decline cover. Nor does it show that AWP took proportionate steps to achieve a legitimate aim.*

Based on the information currently available, I don't think that AWP has demonstrated that it treated Mr B fairly and reasonably in declining cover for a pre-existing condition that was treated in 1969 and which has been stable since then. Mr B's remaining pre-existing condition – asthma – is one of the pre-existing conditions in relation to which AWP doesn't require medical screening.

Following AWP's refusal to cover Mr B's pre-existing conditions, Mr and Mrs B took out cover with another provider and paid a premium of £412.25. I think that was a reasonable course of action as they required cover for their trip. I currently think that AWP should reimburse Mr and Mrs B for the cost of cover with another provider and pay interest on that amount. If AWP, in response to this provisional decision, provides underwriting evidence showing it wouldn't have offered cover to Mr B (or to anyone else with the same circumstances) based on the medical conditions declared during the telephone call on 23 March 2023 then this evidence may change my decision.

I've proceeded on the basis that Mrs B cancelled her upgrade with AWP in the cooling-off period and received a refund of the additional premium she paid. If that assumption is incorrect, the parties should let me know in response to this provisional decision.

I also think that Mr and Mrs B suffered distress and inconvenience as a result of AWP's handling of their medical screening. Mr B in particular was concerned that a disability he'd managed successfully for many years affected his cover. They were also put to the trouble of a long phone conversation to complete medical screening for a second time, which I think was unnecessary. AWP should pay Mr and Mrs B compensation of £200 in relation to their distress and inconvenience in this case. I note that AWP already offered a payment of £50 compensation to Mr and Mrs B. The total award of £200 compensation includes the £50 already offered.'

Responses to my provisional decision

Mr B responded to say that he thought my proposed resolution was fair. He said that Mrs B's cover with AWP, including the upgrade in relation to her medical conditions, remained in place. Mr B says that on 28 June 2023, he bought alternative cover for himself from another provider. AWP didn't respond to my provisional 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.

Neither Mr and Mrs B nor AWP has 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 AWP has demonstrated that it treated Mr B fairly and reasonably in declining cover in this case. In order to put things right, AWP should reimburse Mr and Mrs B for the cost of Mr B's cover with another provider and pay interest on that amount. It should also pay compensation of £200 in relation to Mr and Mrs B's distress and inconvenience.

Putting things right

I direct AWP to pay Mr and Mrs B:

- reimbursement of £412.25,
- interest on the above amount at the simple rate of 8% a year from the date Mr B made the payment, to the date of settlement and
- compensation of £200 in relation to distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and direct AWP P&C SA to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 27 February 2024.

Louise Povey
Ombudsman