

The complaint

Mr F, Miss M and Mr and Mrs S are unhappy because they say Aviva Insurance Limited hasn't offered a fair refund of the premium paid for a single trip travel insurance policy when they were unable to travel abroad to their intended destination. That was due to travel restrictions being in place due to the Covid-19 pandemic.

What happened

Mr F, Miss M and Mr and Mrs S had the benefit of a single trip travel insurance policy, underwritten by Aviva. The policy was purchased on 23 July 2021 and covered a holiday from 15 to 30 October 2021.

£528.41 was originally paid for the policy. This took into account Miss M and Mr S's declared medical conditions. Mr F's pre-existing medical condition was excluded from cover.

The premium paid for the policy was broken down into a base premium of £469.10 and Mr F, Miss M and Mr and Mrs S also paid additional premiums of £16.09 and £43.22 for optional 'add-ons' to the policy; namely baggage cover and travel disruption. All amounts included insurance premium tax (IPT).

The holiday was cancelled on 4 October 2021. On or around 16 October 2021, Mr F contacted Aviva to tell it about the holiday not going ahead. At that stage, he didn't know whether he'd need to make a claim on the policy for the cancelled holiday or, for example, he'd be able to claim the cost of the holiday back from a third party. Aviva said if a refund of the premium was due, it explained the amount it would be based on a proportion of the premium already paid. It calculated this to be £80.94 based on Aviva being originally on risk of a claim being made for around 100 days.

Unhappy, Mr F, Miss M and Mr and Mrs S complained to Aviva and then brought their complaint to the Financial Ombudsman Service when Aviva repeated its offer to refund £80.94 of the premium paid for the policy.

Our investigator looked into what happened and ultimately concluded that the offer made by Aviva wasn't fair and reasonable. She recommended the total refund should amount to £128.98 and asked Aviva to pay this together with simple interest at a rate of 8% per year from 16 October 2021 to the date the refund is made.

Aviva didn't reply. Mr F, Miss M and Mr and Mrs S didn't agree with the outcome. They think that at least half of the premium paid for the policy should be refunded to them and they've explained why.

I issued my provisional decision in January 2024 explaining why I intended to direct Aviva to refund a larger proportion of the premium paid for the policy. An extract of my provisional decision is set out below.

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Industry rules and guidance

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance about a consumer's right to cancel an insurance contract. These are contained in the 'Insurance: Conduct of Business Sourcebook' (ICOBS').

ICOBS says insurance contracts like the one in this case have a cooling off period of up to 14 days for a consumer to cancel without penalty and without giving any reason. This is called the 'right to cancel'.

Under ICOBS, a firm may provide longer or additional cancellation rights voluntarily, as long as these are on terms which are at least as favourable to the consumer, unless the differences are clearly explained.

ICOBS 7.2.2 addresses payment for the service provided before cancellation in the event that a consumer has the 'right to cancel'. This rule says, if a consumer exercises the 'right to cancel', they may only be required to pay for the service actually provided in accordance with the contract. This 'may include an amount for cover provided (i.e. a proportion of the policy's exposure that relates to the time on risk)'.

Guidance set out under ICOBS 7.2.4 says:

In most cases, the FCA would expect the proportion of a policy's exposure that relates to the time on risk to be a pro rata apportionment. However, where there is material unevenness in the incidence of risk, an insurer could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.

The policy wasn't cancelled within 14 days. And, under industry rules, even if Mr F, Miss M and Mr and Mrs S had cancelled the policy within 14 days, they wouldn't be entitled to a full refund of the premium paid. This is because Aviva covered the risk of them cancelling the upcoming trip for reasons that were covered under the policy during that time.

The policy terms and conditions

The terms and conditions of the policy outline the cancellation rights under the contract. These say:

Following the expiry of your 14-day statutory cooling off period you continue to have the right to cancel your policy at any time during its term by contacting us, but no refund of premium will be available.

But the policy was purchased in July 2021 and Mr F told Aviva of the potential cancellation in October 2021. That's more than 14 days after the policy was bought.

So, I don't think Mr F, Miss M and Mr and Mrs S are entitled to any refund of premium under the terms and conditions of the contract with Aviva.

What is fair and reasonable in all the circumstances?

I've also considered what I think is fair and reasonable in all the circumstances of the complaint.

I'm satisfied Mr F, Miss M and Mr and Mrs S's planned trip – and therefore the need for the policy – changed due to circumstances outside of their control. So, I've thought about

whether it would be fair and reasonable to ask Aviva to do anything further, taking into account the exceptional and extraordinary circumstances surrounding Covid-19.

I'm conscious that Covid-19 didn't make it impossible for the contract with Aviva to be performed. Trip cancellation cover under the policy started on 23 July 2023.

Mr F, Miss M and Mr and Mrs S weren't just insured for the dates of travel. The price set by Aviva also covered them for cancellation cover from the policy start date. So, the premium they paid covered the risk of them having to cancel their holiday due to any of a number of listed events insured under the policy.

Aviva was covering the risk of Mr F, Miss M and/or Mr and Mrs S making a successful claim on the policy from the policy start date until their holiday was cancelled by the booking provider on 4 October 2021. It's a fundamental principle of insurance law that, if the insurer had commenced to bear the risk concerned – for however short a time – the premium paid is not returnable. So, regardless of what the cancellation rights were, it isn't unfair for Aviva to retain any premiums relating to the risk it covered during that time.

However, after the date the holiday was cancelled due to Covid-19, Aviva didn't bear any further risk that a claim would be under the policy. The holiday had already been cancelled and I understand Aviva hasn't paid a claim in relation to this.

Aviva was therefore no longer carrying the risk of the holiday being cancelled for any other insured reason. And, as the holiday wasn't going ahead, Aviva was also no longer carrying the risk of any claim being made while Mr F, Miss M and Mrs and Mrs S were travelling abroad.

Aviva has said the premium paid by Mr F, Miss M and Mr and Mrs S was split equally across the policy. I've seen no reason to doubt that, and I accept what it says on this point.

An insurer is entitled to decide the way in which it calculates the premiums it charges taking into account factors such as its previous claims experience, its assessment of the likelihood of claims arising and its own commercial interests – as long as it treats its customers fairly.

I'm satisfied that Aviva hasn't treated Mr F, Miss M and Mr and Mrs S unfairly or any differently to other customers in similar circumstances. So, in principle, I think it would be fair and reasonable for premium refund to be calculated based on unused period of standard travel insurance cover.

The premium paid for this policy was for a period of approximately 100 days from the policy start date to the original policy end date. So, any pro-rata refund should take into account the base premium and the 26 unused days of cover from 4 October 2021 (the date the holiday was cancelled) to the original end date of the insurance policy on 30 October 2021.

I don't think Aviva has done that here as it hasn't used the date when the holiday was cancelled to calculate the proportionate premium refund. It's used the date Mr F contacted it to let them know about the holiday not going ahead. I don't think that's fair as the policy was a single-trip policy.

The calculations

The base cost of the policy was £469.10. So, I'm satisfied the proportionate refund of the base cost should be £122.04, calculated as:

- £469.10 divided by 100 days = £4.69 per day

- Days from the policy start date (23 July 2021) to the date the holiday was cancelled (4 October 2021): 74 days
- 74 days x £4.69 per day = £347.06
- £469.10 less £347.06 = £122.04

I'm also satisfied that it would be fair and reasonable in the circumstances of this case for Aviva to reimburse Mr F, Miss M and Mr and Mrs S the additional premiums paid for the optional cover, namely baggage and travel disruption. That totals £59.31.

I'm satisfied, looking at the policy terms, that under these sections of the policy cover can only come into effect once the trip has started. So as the trip was never started, I don't think Aviva was on risk for a claim being made under these sections of the policy.

Further, Mr F, Miss M and Mr and Mrs S declared an additional medical condition on 4 August 2021 and paid an additional premium of £11.21 for cover.

The premium paid for this policy was for a period of approximately 88 days taking into account when the policy was amended (and the additional premium paid) to the original policy end date.

So, I'm satisfied any pro-rata refund should also include this additional premium equivalent to 26 unused days of cover from 4 October 2021 (the date the holiday was cancelled) until the original end date of the insurance policy on 30 October 2021.

I'm satisfied the proportionate refund of the additional premium paid when amended on 4 August 2021 should be £3.31, calculated as:

- £11.21 divided by 88 days = £0.1274 per day
- Days from the date the additional premium was paid (4 August 2021) to the date the holiday was cancelled (4 October 2021): 62 days
- 62 days x £0.1274 per day = £7.90
- £11.21 less £7.90 = £3.31

I'm therefore satisfied that the total proportionate refund of the premium due equates to £184.66, not £80.94 as offered by Aviva.

When deciding this case, I've taken into account that Mr F says another insurer under a different travel insurance policy refunded him just over half the premium paid because it wasn't used due to the Covid-19 pandemic. That may be the case, but different insurers split the risk differently once the travel insurance policy is live. Aviva says it splits the risk equally and doesn't put more weight on once the holiday starts. For reasons set out above, I'm satisfied that's the case.

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Aviva didn't disagree with my provisional decision and provided an updated refund calculation.

Mr F replied to say he doesn't think Aviva does split the premium equally across the policy and explained why.

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'm satisfied that there's no compelling reason for me to depart from the findings in my provisional decision.

I appreciate Mr F's thoughts about the way the premium is split across the policy. However, from my experience, I'm satisfied what Aviva says about the premium being split equally across the policy is accurate.

So, for this reason and for reasons set out in my provisional decision (an extract of which appears above and forms part of this, my final decision), I partially uphold this complaint.

Putting things right

On the basis that Mr F, Miss M nor Mr and Mrs S have made a claim on the policy, within 21 days from the date on which the Financial Ombudsman Service tells Aviva that they accept any final decision, I direct Aviva to pay Mr F, Miss M and Mr and Mrs S:

- A. £184.66 by way of a proportionate refund for the premium paid for the policy.
- B. an amount representing simple interest on the sum of £184.66 at a rate of 8% per annum from 16 October 2021 to the date on which the payment is made.

If Aviva considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr F, Miss M, Mr and Mrs S how much it's taken off. It should also give them a certificate showing this if they ask for one. That way they can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold this complaint and direct Aviva Insurance Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F, Miss M, Mr S and Mrs S to accept or reject my decision before 8 March 2024.

David Curtis-Johnson
Ombudsman