

## **The complaint**

Mr and Mrs H complain that U K Insurance Limited (“UKI”) rejected a claim for legal expenses cover to pursue personal injury claims.

## **What happened**

Mr and Mrs H went on holiday with their children. During the holiday they all became ill and were diagnosed as having gastroenteritis. They later discovered that many guests at the hotel where they were staying had suffered with the same illness, which they thought was likely caused by food poisoning.

Their travel insurance policy included cover for legal costs to pursue compensation claims for injury and illness, so they made a claim on the policy to cover the costs of a compensation claim against the tour operator.

UKI rejected the claim, saying the circumstances leading to the claim were not instantaneous nor an accident.

Mr and Mrs H made two further claims for cover relating to other illnesses Mrs H suffered during the trip but these were rejected for the same reason.

They also wanted cover for a breach of contract claim for loss of enjoyment, following various other issues at the hotel. UKI initially rejected this claim but later agreed it should be covered. However, Mr and Mrs H were unhappy with the proposed terms of appointment for their solicitors and said it wasn’t possible to pursue that claim and the personal injury claim separately, so the offer of cover was effectively meaningless.

When Mr and Mrs H complained, UKI didn’t change its decision about cover. It did accept there had been some instances of poor service and paid compensation of £200 for that.

Mr and Mrs H referred the complaint to this Service but our investigator didn’t think it should be upheld. He said:

- it wasn’t clear that a sudden or specific cause led to the illness so it was fair for UKI to rely on the exclusion
- the terms of appointment for the solicitors were reasonable
- it was fair for UKI to reject the additional injury claims
- the compensation of £200 was fair.

Mr and Mrs H disagreed and requested an ombudsman’s decision. They said:

- The investigator discussed issues that had been resolved but gave very little reasoning on the key point, which was the rejection of cover for personal injury claims.
- Their chief complaint is that the scope of the exclusion is unfair when set against the wording of the rest of the policy – if effectively excludes all claims for illness.
- The exclusion must be read in a way that’s consistent with the rest of the policy.
- Aspects of the loss of enjoyment claim have been resolved but there are outstanding issues:

- this claim needs to be considered alongside the personal injury claim since it wouldn't be realistic to pursue this on its own, so the offer of cover was meaningless.
- UKI had to be dragged kicking and screaming to accept this was covered.
- The two additional personal injury claims should be covered – they are very different from the illness claim but were rejected on the same grounds.
- They were caused a significant level of distress over a seven month period and the delays have led to them missing out on the first tranche of claims being made against the tour operator. The compensation of £200 doesn't adequately reflect the level of distress and inconvenience caused.

I issued a provisional decision saying I intended to uphold the decision. I set out my reasons for this as follows:

*The relevant industry rules and guidance say insurers must deal with claims promptly and fairly and not unreasonably reject a claim. They should provide helpful and accessible support to their consumers. And they should settle claims promptly once settlement terms are agreed.*

*The policy provides cover for "legal costs to help you claim compensation if you fall ill, are injured or die during your trip".*

*Mr and Mrs H sought cover for claims relating to illness caused while on holiday. On the face of it these claims are covered, subject to any relevant exclusions. If UKI is seeking to rely on an exclusion to reject the claim, the onus is on UKI to show that it applies.*

*UKI agreed to cover the claim for loss of enjoyment but not the claims for personal injury, on the basis that "the circumstances leading to your claim weren't instantaneous nor an accident".*

*The exclusion relied on is for claims relating to "Illness or injury which develops gradually or is not caused by a specific or sudden accident."*

*The policy covers claims for illness. So it needs to be interpreted in that context. If cover is only provided where there's an injury caused by an accident, that would render the cover for illness meaningless.*

*The point of the exclusion is to exclude illnesses that happen gradually This was a travel insurance policy, which included legal expenses cover for certain claims. The aim of the policy is to cover claims for specific things which happen during the holiday. So it makes sense to exclude an illness that happens gradually over a period of time but I think that means something that develops over weeks and months, not hours.*

*Cover is provided where someone falls ill during their trip. In this case, Mr and Mrs H and their children became ill very quickly one evening. It wasn't something that happened gradually. And the two later claims concerned things that happened quickly, during the trip.*

*Reading the policy terms together, I agree that if claims are rejected in these circumstances, it's difficult to see how any illness claim would ever be covered. And since the policy does cover illness claims, that would make the cover effectively meaningless.*

*The effect would be to give cover with one hand (the insuring clause) and then take it away with the other (the exclusion clause). The insuring clause and exclusion clause need to be read together. If either clause is looked at in isolation and the exclusion is interpreted in the way UKI argues, the consumer either would or would not have cover, depending on which of*

*the clauses one considers.*

*It would not be a fair outcome to say the cover given by the insuring clause is taken away by the exclusion.*

*I've also taken into account general principles that the words of the policy must be given their ordinary meaning and a literal construction that leads to an absurd result or one obviously contrary to the parties' intention should be rejected, if an alternative more reasonable construction can be adopted. Where there's ambiguity, the construction which is more favourable to the insured should be adopted.*

*Interpreting the exclusion in the way that UKI has does, in my view, lead to an absurd result since it effectively means Mr and Mrs H can't have cover for claims in relation to an illness even though the policy does provide cover for that. It prevents them making use of the cover provided by the policy.*

*There are circumstances where it may be fair to rely on the exclusion, where the illness genuinely does develop gradually – perhaps, for example, where it develops after the holiday is over or had already started before the policyholder went on holiday – but that isn't the situation here.*

*For these reasons, it wasn't fair for UKI to reject the personal injury claims in reliance on this exclusion. And there doesn't appear to be any other exclusion that would be relevant. So it follows that the claims for personal injury should be covered.*

*Mr and Mrs H raised other concerns about the loss of enjoyment claim but it seems to me that if the personal injury claims are covered alongside the loss of enjoyment claim, those issues fall away. So I don't need to comment further.*

*Although UKI paid some compensation for distress caused by the way the claim was handled, that doesn't reflect the distress caused by the personal injury claims being rejected when they should have been covered. This was very upsetting for Mr and Mrs H and they were also caused unnecessary inconvenience having to pursue these matters. It would be fair to pay a further £250 compensation to acknowledge this.*

I said I intended to direct UKI to accept the personal injury claims and provide cover in line with the policy terms, as well as paying compensation of £250.

### **Replies to the provisional decision**

Mr and Mrs H and UKI have all accepted the 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.

All parties have accepted the provisional decision and there are no further comments for me to consider. On that basis, I'm upholding the complaint for the reasons set out above.

### **My final decision**

I uphold the complaint and direct U K Insurance Limited to

- accept the claims for personal injury and provide cover for these in line with the remaining policy terms and conditions; and
- pay compensation of £250 for the distress and inconvenience caused to Mr and Mrs H.

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 22 May 2024.

Peter Whiteley  
**Ombudsman**