

## **The complaint**

Mr and Mrs T complain that Society of Lloyd's has turned down a cancellation claim they made on a top-up cancellation insurance policy.

## **What happened**

The circumstances of this complaint are well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr and Mrs T were due to travel abroad in October 2022. The trip cost around £16,000. They held an existing annual travel insurance policy, which was due to renew on 1 October 2022 and which was underwritten by an insurer I'll call W. In July 2022, Mr T visited a doctor about a heart problem. On 12 August 2022, Mr T received a formal diagnosis and was told that he'd need surgery. He and Mrs T renewed their travel insurance policy with W, through their broker, which I'll call R.

As cancellation cover under the annual policy with W was limited to a total of £5000, it wasn't enough to cover the cost of Mr and Mrs T's trip. Mr and Mrs T say they spoke to R and that they disclosed Mr T's medical situation to it. They say R had referred them to a section on its website regarding additional cover. So, Mr and Mrs T took out the Top Up My Cover cancellation policy (TUMC) on 15 August 2022. The TUMC policy was underwritten by Lloyd's.

Subsequently, on 24 August 2022, Mr T's GP advised him not to travel due to the surgery he required. After W had paid out up to the policy limit under the annual policy, Mr and Mrs T made a claim on the TUMC for the remaining cancellation balance.

Lloyd's turned down Mr and Mrs T's claim. It said the policy specifically excluded cover if a policyholder was aware of events which could give rise to a claim before the contract was taken out. As Mr T had been diagnosed with a heart condition and knew he'd need surgery before the policy was purchased, Lloyd's concluded the claim wasn't covered by the policy terms.

Mr and Mrs T were unhappy with Lloyds' decision and they asked us to look into this complaint. In brief, they said they had fully disclosed Mr T's medical situation to R. And they said that the TUMC didn't require them to tell Lloyd's about pre-existing medical conditions, as it would only pay out if a successful claim had already been made on a policyholder's main contract.

Our investigator didn't think Lloyd's had treated Mr and Mrs T unfairly. He felt that given Mr and Mrs T had been aware that Mr T would require surgery at the time they took out the policy, it had been fair for Lloyd's to conclude that their situation met the definition of an imminent claim. And he didn't think Lloyd's was responsible for any of R's actions. That's because he concluded that R wasn't responsible for selling the TUMC to Mr and Mrs T. And he didn't think R was an agent or appointed representative of Lloyd's. Overall, he didn't think it had been unreasonable for Lloyd's to turn down this claim.

Mr and Mrs T disagreed. In brief, they felt the complaint was nuanced. They referred to a complaint they'd brought against W, which had been separately considered by one of my colleagues. They said they were approaching the complaint from a purely consumer view, rather than from a technical one which delved into relationships which exist within the insurance industry. R had confirmed that it referred consumers to TUMC – and so Mr and Mrs T felt they'd properly followed the sales process. They said they'd fully declared Mr T's medical condition and paid an additional premium to W – and TUMC's terms said no declaration was needed where a disclosure had been made under a main policy. They said they hadn't intended to cancel the trip – they'd intended to travel. There was nothing further they could have done or anticipated in terms of taking out the TUMC. They felt that to not uphold their complaint because of technical industry relationships wasn't fair.

The complaint's been passed to me to decide.

### **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 T, I don't think it was unfair for Lloyd's to turn down their claim and I'll explain why.

First, I must make clear that this decision will only consider the actions of Lloyd's when it handled Mr and Mrs T's claim on the TUMC. I appreciate one of my colleagues separately decided a complaint about W's handling of a claim Mr and Mrs T made on the 'main' annual policy. But this complaint has been considered on its own facts. In my view, the outcome of the complaint about W isn't material to my consideration of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant industry rules, principles and guidance, to decide whether I think Lloyd's handled this claim fairly.

I've first considered the policy terms and conditions, as these form the basis of Mr and Mrs T's contract with Lloyd's. The policy is clear that the TUMC will only pay out if a successful claim is made on a policyholder's 'main' policy. In this case, W paid up to its own policy limits. But that doesn't mean that every claim on the TUMC will be paid.

Lloyd's has set out a list of specific things it doesn't cover. One of these is:

*'Any claim on your main travel insurance policy which occurred prior to the period of insurance, as shown on your certificate of insurance, that you were aware was an imminent claim.'*

The policy defines what Lloyd's means as an imminent claim as follows:

*'Imminent claim means an incident, occurrence or event that could give rise to a claim under this top up policy that you are or were aware of prior to the inception date of this top up policy that was intended to be or had just been reported under your main travel insurance policy.'*

I think the policy terms make it sufficiently clear that Lloyd's won't cover claims arising from an incident or event that a policyholder knew could give rise to a claim when they took out the policy and which they would also intend to claim for under their 'main' policy. In my experience, most, if not all, travel insurance policies exclude cover for claims if a

policyholder is reasonably aware of a reason why they might need to make a claim at the point they take out a policy. That's because insurance is designed to cover unforeseen events.

In this case, Mr and Mrs T acknowledge that Mr T had seen a doctor in July 2022, with symptoms and that he'd been given a formal diagnosis on 12 August 2022. They also acknowledge that on 12 August 2022, Mr T had been told he'd require heart surgery, although he didn't know when the surgery would be scheduled for. Mr and Mrs T took out the TUMC on 15 August 2022 – three days later. I accept Mr and Mrs T say they planned to travel. However, there was a possibility that the surgery could be scheduled either immediately before or during their trip.

So I find Mr and Mrs T ought to have been reasonably aware that if the surgery was scheduled for while they were due to be away, their trip would likely need to be cancelled. Therefore, I don't think Lloyd's acted unreasonably when it concluded that Mr and Mrs T were aware of a reason why they might need to make a claim before they took out the TUMC, even if they didn't think it was likely. And as such, I don't find it was unfair for Lloyd's to conclude that Mr and Mrs T's claim fell within the definition of an imminent claim and was therefore excluded from cover.

I appreciate Mr and Mrs T told W's screening line about Mr T's diagnosis. And that the TUMC website suggests that Lloyd's doesn't need to be told about pre-existing conditions, although the website says a policyholder should make medical disclosures to their main insurer. But I don't think that's material here. That's because Lloyd's turned down Mr and Mrs T's claim because it felt they knew they had an imminent claim, rather than because it considered Mr T's cardiac condition to be pre-existing. And I'd add that information given on the FAQ section of the TUMC website doesn't form part of the policy terms in any event.

Mr and Mrs T feel strongly that they told R about Mr T's diagnosis and their situation and that R recommended they take out the TUMC. I've considered this carefully. There's no evidence that R contacted Lloyd's to let it know about Mr T's medical situation at the point Mr and Mrs T took out the cover. And, as our investigator explained, R isn't linked to Lloyd's. It isn't Lloyds' agent and neither is it an appointed representative of Lloyd's.

I acknowledge R has said that it 'refers' TUMC policies to its customers. But I have checked the regulator's register and R is neither linked to Lloyd's as being an introducer appointed representative nor as an appointed representative. Neither does it have any regulatory link with it. This means that Lloyd's isn't legally responsible for any of R's actions and it doesn't appear that R was carrying out any regulated activities on Lloyds' behalf. And therefore, we cannot consider any complaint about what happened at the point of sale as part of this complaint about Lloyd's. I appreciate Mr and Mrs T don't think this is fair, but I simply can't make any finding about the appropriateness of R's actions here. As the investigator said, Mr and Mrs T can make a complaint separately to R about its actions should they wish to do so.

Overall, I sympathise with Mr and Mrs T's position because I appreciate they've lost a significant amount of money. But I don't find that Lloyd's acted unfairly or unreasonably when it turned down this claim.

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 18 July 2024.

Lisa Barham  
**Ombudsman**