

The complaint

Mr J and the estate of Miss B complain about the way AWP P&C SA handled a medical assistance claim made on a travel insurance policy.

Mr J and Miss B's estate are represented by Mr A.

All references to AWP include the actions of its medical assistance company.

What happened

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

Miss B and Mr J held travel insurance as a benefit of Miss B's bank account.

In December 2022, Miss B and Mr J were abroad. Unfortunately, Miss B became very unwell and was admitted to hospital. So, on 31 December 2022, Mr A contacted AWP's medical assistance team to make a claim.

Despite requests to the treating hospital and the appointment of a local agent to visit the hospital, the hospital didn't provide AWP with a medical report. This meant it couldn't establish what course of action would be best for Miss B. And sadly, on 2 January 2023, Miss B passed away due to her illness.

AWP arranged for Miss B to be repatriated to the UK. But Mr J had settled Miss B's medical expenses personally, as well as incurring other expenses. So Mr A claimed for those costs on Mr J's behalf.

Mr A was very unhappy with the level of assistance Miss B and Mr J had received from AWP. He didn't think it had provided enough support to the family and he said he'd had to repeatedly chase updates from the assistance company. He therefore complained to AWP about the service it had provided on Mr J and Miss B's behalf.

AWP told Mr A it couldn't settle any out of pocket expenses or Miss B's medical expenses unless it was provided with a Grant of Probate or Letters of Administration. But it did acknowledge that it could have handled the medical assistance claim better than it did and so it offered Mr A £500 compensation.

Mr J remained unhappy with AWP's position and therefore, Mr A asked us to look into this complaint.

Our investigator didn't think AWP had handled the claim in line with the regulator's rules. He didn't think it had taken appropriate steps to obtain the medical report and he didn't think it had communicated effectively with Miss B's family. So he recommended that AWP should pay Mr J £300 compensation.

Mr J didn't think the compensation was enough to reflect the trouble and upset AWP's actions had caused him. And therefore, 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 J, I think the fair outcome to this complaint is for AWP to pay him £300 compensation and I'll explain why.

First, I'd like to offer my sincere condolences to Mr J, Mr A and to their family for the sad loss of Miss B. This was clearly an extremely distressing and traumatic situation and I was very sorry to hear about the circumstances of this claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they must provide policyholders with reasonable guidance to help them make a claim. I've taken those rules into account, amongst other things, when deciding whether I think AWP handled this claim fairly.

I've first considered the policy terms and conditions, as these formed the basis of the contract between AWP and Miss B. Section two provides cover for 'Emergency medical and associated expenses', which include medical and hospital expenses, repatriation costs and travel and accommodation costs for one person to stay with an ill or injured policyholder and to travel home with them. So I think it was reasonable and appropriate for AWP to deal with the claim under this part of the policy.

Did AWP take reasonable steps to obtain a medical report?

AWP's claims notes show that Miss B's representative got in touch with its assistance team on 31 December 2022 – around two days after Miss B had been admitted to hospital. The representative made it clear that Miss B was in an intensive care unit and therefore, I think it should have been apparent to AWP how serious her condition was. As such, I think AWP should have taken urgent steps to obtain a medical report from the treating hospital so that its clinical team could assess whether Miss B was receiving appropriate care and whether repatriation would be appropriate.

The notes indicate that AWP had tried to call the hospital on the day Miss B's representative notified it of Miss B's hospitalisation, although it isn't clear how soon after the claim notification it tried to do so. It seems the call wouldn't connect – but AWP doesn't appear to have tried to speak to Miss B's representatives (or Mr J) to try and obtain another number for the hospital. I think it would have been reasonable for it to have done so – or to try and get email details.

While it waited for the medical report, AWP asked Miss B's representatives if they could provide a copy of medical information. I think this was a sensible action by AWP to try and progress the claim. They were able to provide a lab report and a copy of a CT scan. AWP's clinical team assessed this information but it didn't appear to show anything of major concern and didn't set out Miss B's actual diagnosis or what treatment she was receiving.

It seems that by 1 January 2023, AWP had appointed a local agent to visit the hospital and obtain a medical report. I think this was a reasonable response from AWP, as it wasn't in a position to assess how best to support Miss B until it had had an opportunity to assess her condition. But, as the investigator said, I don't think AWP gave the agent sufficiently clear instructions or highlighted the seriousness of the situation. It isn't at all clear whether the agent gave the hospital a guarantee of payment, which may have avoided Mr J needing to cover Miss B's medical expenses.

With that said, I can see the agent did visit the hospital on 1 January 2023, spoke with Miss B's treating doctor and was told a medical report would be sent within an hour. Unfortunately, no report was sent. This appears to have been despite Miss B's family chasing up the hospital for a report too. I don't think I can fairly hold AWP responsible for the treating hospital's failure to send a medical report when it had indicated it would do so.

Nonetheless, I do think AWP could have continued to take more regular, proactive steps to try and chase the hospital once it became clear that the medical report hadn't been sent after an hour. This could have included instructing the agent to visit the hospital again to chase things up. I do appreciate though that it appears AWP tried to call the hospital again at least twice following the agent's visit, without success.

Sadly, Miss B passed away in the early hours of 2 January 2023, before a medical report was sent or before AWP was in a position to obtain an informed clinical opinion.

Having considered everything, I don't think AWP took enough proactive steps to try and obtain the medical report. As I've said though, I don't think it can reasonably be held responsible for the hospital's failure to respond to its and the family's requests for that information.

Claim communication

It's clear from the claims notes that the majority of the communication between Miss B's family and AWP was driven by her representatives. They regularly had to chase for updates and ask AWP what was happening with the claim. In my view, AWP didn't provide Miss B's family (and therefore, Mr J) with enough meaningful information about the claim or what steps it was taking to assist Miss B. And therefore, I think Mr J was caused unnecessary, additional stress, worry and inconvenience because his representatives had to chase up updates which AWP ought to have been regularly providing.

Fair compensation

As I'm satisfied AWP made clear errors in its handling of this claim, I need to decide what I think fair compensation should be. I must make it clear that our awards aren't intended to fine or punish the businesses we cover. And I need to bear in mind the specific circumstances of this case and what material distress and inconvenience I think AWP's actions caused Mr J specifically. Medical expenses claims are often traumatic for policyholders and their families and it wouldn't be fair to hold AWP accountable for the situation.

In this case, I've thought about the impact on Mr J of AWP's failure to chase the medical report as proactively as it could have done. This meant it wasn't in a position to offer a clinical opinion on the best way to assist Miss B as quickly as it could have been. However, I'm also mindful that it had contacted the hospital on the day it learned of the claim and that it appointed an agent a day later to visit the hospital. I can see too that it did try and call the hospital at least twice after the agent's visit. Sadly, Miss B passed away only hours after the agent visited the hospital.

I've also considered the unnecessary additional worry Mr J was caused by AWP's failure to keep him as updated as it ought to have done between 31 December and the early hours of 2 January 2023. I don't doubt how frustrating it must have been for Mr J to have to rely on calls from representatives to AWP to try and find out what was happening with the claim.

In my view, £300 compensation fairly takes into account what I consider to be the likely impact of AWP's actions on Mr J (as a policy beneficiary) during this time. And I think it's

reasonable and proportionate compensation in these particular circumstances. I appreciate AWP paid Mr A a higher level of compensation for his trouble and upset. But I don't think that's sufficient reason for me to award Mr J higher compensation here.

Therefore, I find that the fair outcome is for AWP to pay Mr J £300 compensation.

Delays in claim settlement

It seems Mr J's out of pocket expenses and Miss B's medical expenses haven't been settled. The evidence indicates that at the point AWP issued its final response to this complaint, it hadn't been provided with Letters of Administration which showed Mr J was legally entitled to act for Miss B's estate. I think AWP was entitled to be satisfied that any claim payment it made was paid to the legal administrator of Miss B's estate. That's because, in this case, Mr J didn't hold the policy jointly with Miss B – it was the benefit of a bank account held in her name. Mr J was a beneficiary of that policy. As such, I don't find AWP acted unreasonably by requiring further evidence before it further assessed the claim.

Mr A says that despite the relevant evidence subsequently having been sent to AWP, no payments have yet been made. As the investigator explained, I can only consider complaints AWP has had an opportunity to look into. So this particular point is a new and separate complaint and I can't make any finding on it within this decision. Nonetheless, I would remind AWP of its regulatory obligation to handle claims promptly and fairly when it further assesses this claim. And if Mr J is unhappy with any further claim delays or with any potential claim settlement, he may be able to make a new complaint about those issues alone.

Summary

Overall, I find that the fair and reasonable outcome to this complaint is for AWP to pay Mr J £300 compensation.

I also wanted to clarify that the estate of the late Miss B and/or her personal representatives are unlikely to be able both to accept an award from the Financial Ombudsman Service and then go on to claim damages in the courts in relation to the same or overlapping matters.

Without giving them legal advice, once a matter has been determined or settled, parties are normally prevented from pursuing their claim again, even if they miss out on full compensation. This can apply where a complainant accepts an award from the Financial Ombudsman Service.

I say this because the Financial Ombudsman Service does not look at complaints that an estate, or the relatives or the dependents of a bereaved person, have suffered loss or bereavement because a person has died and should be paid compensation for it. So, any award of redress in this case would not include any element of that kind of compensation.

If such a decision were accepted by Mr J and/or Miss B's personal representatives, or they settled the complaint in any other way, that could stop them from later seeking any further compensation (such as damages for dependent's losses or for bereavement) that they might otherwise have wished to seek in the courts. I cannot advise Mr J and the estate of Miss B what they ought to do. But this is a matter for them to consider, having obtained any legal advice they feel is appropriate.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct AWP P&C SA to pay Mr J £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and the estate of Miss B to accept or reject my decision before 2 July 2024.

Lisa Barham
Ombudsman