

The complaint

Miss A and Mr S are unhappy Inter Partner Assistance SA (IPA) declined a claim on their travel insurance policy.

What happened

Miss A and Mr S had a travel insurance policy underwritten by IPA. They were on holiday abroad with their child when Mr S jumped into the hotel swimming pool and unfortunately fractured his neck.

Mr S was taken to hospital so Miss A contacted IPA straight away to let them know what had happened and make a claim on their policy for his medical costs.

Miss A explained to IPA that Mr S had spent the day playing with his son in and out of the pool. In the afternoon, he decided to get back in the pool but noticed there were quite a few people in the area he usually enters. So on this one occasion he moved over a short distance to not disturb them and jumped in the pool and hurt himself.

IPA contacted the hotel and spoke to the reception manager who confirmed the pool has several signs saying no diving and jumping. The manager also said Mr S told the Lifeguard he had been injured by doing a pirouette in the air and landing in the pool. The manager said the Lifeguard had provided a written statement so IPA requested a copy.

IPA then told Miss A the claim was declined. They said jumping into the pool performing a pirouette or somersault is considered reckless behaviour so the claim wasn't covered. And they confirmed this version of events was supported by the lifeguard.

IPA also said the hotel had told them there were clear signs around the pool area saying not to jump, so they didn't think Mr S had taken reasonable precautions to avoid injury, as per the conditions of the policy. Miss A disagreed and said she hadn't seen any signs saying not to jump in the pool area.

Mr S contacted IPA two days later to provide witness statements from two independent third parties who were also staying at the hotel and saw what had happened. The statements said the Lifeguard wasn't there at the time he jumped in, so Mr S didn't think it was for IPA to rely on his testimony that he'd done a somersault or pirouette.

Mr S also pointed out to IPA that there wasn't any clear signs to inform him that he was jumping into a shallow part of the swimming pool.

IPA reviewed the new witness statements and maintained their decision to decline cover. They said even without the Lifeguards testimony, Mr S and all the witness' agree that he jumped into the pool. And as there were multiple signs prohibiting jumping/diving into the pool and Mr S did it anyway, they didn't think he had taken reasonable precautions to avoid injury.

Miss A and Mr S strongly disagreed. They told IPA that everyone was jumping in the pool and the Lifeguard's encouraged it and didn't say it wasn't allowed. They reiterated that all the witnesses had watched him jump in the different part of the pool to avoid hitting a child in his usual entry point. So it was unfair to say he didn't take due care and attention at the time.

Our investigator looked into things and he didn't think IPA had acted fairly. Even though Mr S had jumped into the pool, he didn't think there was sufficient evidence to conclude his actions were reckless enough to be in breach of the policy. He didn't think IPA had reasonably assessed the claim so he recommended they settled the claim in line with remaining policy terms with 8% interest and pay £200 compensation for the distress and inconvenience.

IPA didn't agree. At this stage they went back to the hotel and asked them to provide photos of the signs around the pool. IPA forwarded us three close up images of signs prohibiting jumping or diving. They said the pictures showed there was sufficient warnings and rules in place against jumping or diving into the pool which Mr S has ignored. So he hasn't taken reasonable care to avoid his injury.

They also said it was reasonable to assume the hotel would've made Miss A and Mr S aware of any rules around the premises at the time of arrival. But they didn't provide any evidence to support this.

The case has now been passed to me to make a 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.

The rules say IPA must handle claims promptly and fairly. And they shouldn't unreasonably reject a claim.

The relevant policy terms say:

"At all times you must take all reasonable precautions to avoid injury"

The onus was on IPA to provide sufficient evidence to show Mr S didn't meet this policy condition.

Was Mr S acting in a reckless manner?

IPA initially told Miss A that the claim had been declined because Mr S had jumped into the pool performing a pirouette or somersault. They said this version of events was supported by the Lifeguard and they deemed it to be reckless behaviour.

But from what I can see, at that stage IPA had only contacted the hotel manager and hadn't spoken to the Lifeguard or actually seen his statement. So I don't think it was reasonable for IPA to conclude at that stage Mr S' actions had been reckless and tell Miss A this. I'm mindful that she was already going through a difficult time abroad whilst pregnant, so I understand why that would've caused her further distress.

The warning signs prohibiting jumping into the pool

IPA said the main basis for the claim decline was because Mr S jumped into the pool and ignored clear signs telling him not to do that. However, at the time IPA declined the claim I don't think they had sufficient evidence to fairly reach that conclusion.

As part of their investigation into the claim IPA spoke to the reception manager at the hotel who told them the pool has several signs saying not to dive or jump. But from what I can see, IPA just relied solely on this account and never actually checked what signs were in place and where they were situated. I don't think that was reasonable.

Miss A and Mr S (both separately and together) consistently disagreed they saw any signs round the pool that prohibited jumping. They provided two wide images of the pool that both show a significant section of one half of the pool, and there aren't any visible signs in place round any of that part of the pool. But I don't think IPA fairly considered this supporting evidence against what the hotel had told them.

Miss A also provided a video of someone jumping into the pool right next to Lifeguard who doesn't react in any way or say this isn't allowed. I think this supports Mr S's argument that he didn't think jumping was dangerous. And the video also shows no visible warning signs round the. But again, I don't think IPA took this evidence into account.

As both parties strongly objected, I think it would've been reasonable for IPA to explore this further and ask the hotel to provide evidence of the safety signs in place, before just continuing to decline cover on that basis.

However, IPA didn't ask for any evidence of the signs round the pool until after the matter had been referred to this service and we'd issued an uphold outcome – which was months after the claim had been continually declined.

I've thought carefully about the photo's the hotel did eventually provide in April 2024 and if they are enough to show Mr S didn't take reasonable care. But I don't find the images helpful or persuasive because they are too close up. They don't show the pool area as a whole. They are just three individual close up shots of signs that could be situated absolutely anywhere.

One sign sets out the rules of the pool (which includes no diving), one sign says no jumping and the other sign says no diving.

But as I'm unable to establish where any of the signs are actually located round the pool, I still don't think IPA could fairly conclude the pool had sufficiently clear signs up prohibiting jumping. And that Mr S had seen any of these warnings before he entered the pool.

I've also considered Miss A's images of the pool against the close up images of the signs provided by the hotel. But I can't identify any correlation between the images.

So even after receiving these images from the hotel, I still don't think it's reasonable for IPA to apply an exclusion and decline cover.

Depth of the pool

Mr S has been consistent in his submissions that he jumped into a different part of the pool than his usual entry point because he wanted to avoid other people. And he ended up jumping into a shallower part of the pool.

I think this is an important part of what happened. But IPA don't appear to have taken this into account and investigated if there was any warnings about the change in depth to the pool.

From the images of the pool provided by Miss A I can't see any markings on the pool or surrounding area to identify the depth. In the circumstances I think this is something IPA should have looked into in order to establish if Mr S had taken reasonable care when he jumped into a nee area of the pool.

Summary

It's not in dispute that Mr S's injury was caused when he jumped into the hotel pool, but I don't think IPA assessed the claim fairly. I'm not persuaded they had enough evidence to fairly conclude Mr S hadn't taken reasonable care to avoid injury.

Without clear evidence of the warning signs in place at the time and taking into account the other evidence provided by Mr S, I don't think it was reasonable for IPA to decline cover in this particular case.

Putting things right

Inter Partner Assistance SA need to put things right by:

- settle this claim for medical expenses in line with the remaining terms of their policy and add 8% simple interest, or any interest incurred in paying the medical bills (whichever is higher), calculated from 22 September 2023 to the date the settlement is paid.
- paying £200 total compensation for the distress and inconvenience caused by not assessing the evidence fairly.

My final decision

For the reasons set out above I uphold this complaint against Inter Partner Assistance SA and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mr S to accept or reject my decision before 11 October 2024.

Georgina Gill
Ombudsman