

The complaint

Mr M has complained about the way Astrenska Insurance Limited dealt with a claim he made under his travel insurance policy.

What happened

The background to this complaint isn't disputed so it serves no purpose for me to detail it here. In summary whilst on holiday in South East Asia Mr M suffered an injury and required surgery to his wrist.

Astrenska arranged his repatriation to the UK. Mr M's treating doctor recommended that Mr M return to the UK by business class. Astrenska carried out an assessment and decided that Mr M needed an extra seat, it arranged for him to fly home with a connecting flight. A second flight to the UK was fully booked meaning that there was no extra seat available.

Mr M was unhappy about the handling of his repatriation. He was also unhappy about the incorrect advice given regarding the cover available under the legal expenses section of his policy. Astrenska acknowledged that it had raised Mr M's expectation when it implied that it would upgrade his seat. It explained its medical team concluded that an upgrade wasn't medically necessary, but an extra seat was booked for his comfort. It also acknowledged that it had mis-advised Mr M about the cover available under the legal expenses section of the policy and offered £200 compensation by way of apology.

Unhappy, Mr M referred his complaint to our service. Our investigator recommended that it be upheld and that Mr M be awarded a further £550 in compensation.

Mr M didn't feel that harm caused could be estimated. He commented that he had suffered longer term impact on his physical and mental condition from Astrenska's poor planning. But he agreed the proposal for compensation was reasonable.

Astrenska didn't agree to the further award of compensation. It said that its medical team didn't say an extra seat was necessary for the return journey, but it anyway arranged an extra seat. It didn't agree that it was at fault for the fact that the airline sold the extra the agent had booked for Mr M.

Mr M submitted further evidence regarding the airlines processes when an extra seat is booked.

As no agreement was reached the matter was passed to me to determine. I issued a provisional decision, saying as follows:

The issue for me to determine is the sum in compensation due to Mr M. Astrenska recognised that compensation was due but felt that the award recommended by our investigator was too high. Guidance on our website (www.financial-ombudsman.org.uk) explains what we will take into account when deciding how much compensation to award.

Firstly we need to see that the impact of a mistake or omission is more than someone would expect to experience as part of their everyday life. Astrenska accepts that this is the case here and I'm pleased to note that it has already offered compensation. In determining whether an award of compensation is fair, we focus on the impact on the particular consumer.

We recognise that vulnerable consumers could be more severely impacted by a mistake, and if that's the case we're likely to consider a higher award to reflect this. Although awarding compensation is not an exact science, our guidance says (as far as relevant here):

An award of over £300 and up to around £750 might be fair where the impact of a mistake has caused considerable distress, upset and worry – and/or significant inconvenience and disruption that needs a lot of extra effort to sort out. Typically, the impact lasts over many weeks or months, but it could also be fair to award in this range if a mistake has a serious short-term impact.

In the present circumstances, I find that Astrenska made two mistakes. Firstly it gave Mr M incorrect advice regarding cover available under the legal expenses section of his policy and secondly is the issue regarding the repatriation back to the UK.

Like our investigator I'm satisfied Astrenska fairly attempted to arrange an extra seat for Mr M – I think that accorded with the treating doctor's recommendation that he should be flown home on a comfortable seat. The issue here is that he didn't receive an extra seat on the second leg of his journey.

I can see that Astrenska, though its agent, did book the extra seat and paid for it (although it subsequently received a refund). So Astrenska doesn't feel that it is at fault for the fact that the airline gave the booked seat away. It says that there is no clear reason why the airline didn't honour the extra seat it had booked for Mr M on the second leg of his journey. And if it had done all it could, I would agree with Astrenska that it wouldn't be liable for the distress and discomfort caused to Mr M on his journey home.

However Mr M provided further information which Astrenska has seen – it suggests that the booking wasn't made correctly for the extra seat. It seems a booking can only be made for the travelling passengers, then a bid can be made for an extra seat within 72 hours of the flight if available. As this process wasn't followed, Mr M believes this led the airline to give the seat away when there was demand. Astrenska's agent has said that it did book the seat correctly – and that the system wouldn't generate seat numbers if this wasn't the case. It has said that the 72 hour bidding is the process for a customer to upgrade their flight to business class.

I can't be sure about the exact process for booking the extra seat. I find that Astrenska's agent did purchase an extra seat, but in all the circumstances I'm not persuaded that it did enough to ensure that Mr M would definitely receive that extra seat and, although it would seem obvious, that extra seat would be next to his seat. I fully appreciate that all airlines may operate differently or that the agent may not have faced this particular issue before. But if extra enquiries and checks had been carried out, I find it may well be that the situation could have been avoided and Mr M would have had the extra seat that he was rightly expecting.

Astrenska was aware of the situation regarding Mr M's wrist, and for the purposes of this repatriation, he was a vulnerable person. I accept that the confusion about the seat caused Mr M distress and disappointment. Instead of having a spare seat to avoid third party contact the seat was taken. So Mr M had to endure the eight hour flight without the comfort and protection of the extra seat. Mr M has explained that he needed further surgery just over a week from returning home – which is rare for the type of injury he suffered.

In all the circumstances, including the incorrect legal expenses advice initially given, I'm satisfied that compensation is due to Mr M. I'm sorry to note that Mr M needed further surgery on his return home, but there is nothing to suggest (and in fairness Mr M doesn't suggest) that this was due to any failing on the part of Astrenska. For the confusion, distress and inconvenience he suffered I find total compensation in the sum of £550 is merited.

I said that I'd look at any more comments and evidence that I received, but unless that information changed my mind my final decision would be along the lines of my provisional decision.

Both parties responded. Mr M said that he was extremely disappointed that Astrenska had subjected him to such an unnecessary and protracted process. He felt that it was poor for Astrenska not to offer the money it had been refunded from the airline for the seat to him as a good will gesture. He felt that it had benefitted from its mistake.

Astrenska also remained unhappy with the provisional findings. In summary it said that the seat was clearly booked and Mr M had the extra seat on the first leg of his journey.

Astrenska didn't agree that it made a mistake with repatriation and said it was unclear from my provisional decision what extra could have been done with the booking of the seat. It felt that if it had made a mistake with the booking, the airline wouldn't have refunded the cost in full, bearing in mind that the insured did have the benefit of the extra seat for the first leg. It felt that all the evidence pointed to airline error, and it seemed that giving away the extra seat on the second leg was likely to be the simplest way of resolving an overbooking scenario.

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.

I've carefully considered the comments both parties have made in response to my provisional decision. But having done so I'm not persuaded to change my provisional findings, which I adopt here.

It isn't in dispute that a seat was booked for Mr M, but it isn't clear why the seat was re-sold. Astrenska rhetorically asks what more it could have done. I provisionally found, and remain of the opinion, that the situation may have been avoided if further checks and enquiries had been carried out. It isn't clear to me that the airline was aware why the extra seat was being booked and why it was imperative that it was kept for Mr M as he was travelling with a medical injury and needed to avoid any accidental contact with his arm. It may be that Astrenska's agent did advise the airline of this, but that evidence hasn't been submitted.

Additionally Mr M submitted a conversation it had with the airline's chat bot. He asked about booking an extra seat – with questions replicating his own situation. As indicated in my provisional decision, the airline said the extra seat needed to be bid for 72 hours before the flight. Mr M provided Astrenska with a copy of the transcript – but its agent said that procedure was for business class. This isn't so according to the chat bot. As I said, I can't be sure about the process for booking the extra seat. It is clear that the seat was paid for, but that didn't prevent the airline from re-selling the seat. So in all the circumstances, and in the unique situation here, I'm not persuaded that Astrenska did enough to ensure that Mr M would definitely receive the extra seat.

I'm satisfied that compensation is due to Mr M. In deciding compensation we consider the impact on the consumer. It follows that I don't find that the amount of refund received by

Astrenska is a relevant consideration. But for the reasons given above I find that £550 is merited.

My final decision

My final decision is that I require Astrenska Insurance Limited to pay Mr M £550 in compensation. It may deduct any sums in compensation already paid in relation to this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 December 2024.

Lindsey Woloski
Ombudsman