

The complaint

Mr T complains that Aviva Insurance Limited hasn't settled a cancellation claim he made on a travel insurance policy.

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 main events.

Mr T holds travel insurance as a benefit of his credit card. In July 2023, Mr T booked a UK-based trip and was due to travel on 16 October 2023.

However, after booking the trip, Mr T was seen by neurology, who recommended that he undergo spinal decompression surgery to treat lumbar stenosis. Surgery took place on 4 October 2023. Mr T required catheterisation following the surgery. However, the fitting process was difficult and Mr T says he was injured as a result. Due to the symptoms he says he suffered following the fitting of the catheter, Mr T decided to cancel the trip. He made a cancellation claim on the policy.

Initially, one of Aviva's claims advisors told Mr T that the claim would be covered and settled. However, Aviva subsequently let Mr T know that it would need a medical certificate to be completed by his GP before it could further consider the claim. That's because it noted that on Mr T's hospital discharge summary, it had been recorded that Mr T had a long-standing history of neurogenic claudication symptoms and progressively worsening mobility. Therefore, Aviva wanted to establish whether or not Mr T's condition had been pre-existing. It acknowledged that its claim adviser had led Mr T to believe his claim would be covered though and so it offered him £50 compensation.

Mr T was very unhappy with Aviva's position and he asked us to look into his complaint. In brief, he considered that he'd entered into a binding verbal contract with Aviva's claims advisor that his claim would be paid. And he also didn't agree that his condition had been pre-existing. Instead, he felt the cancellation had been due to an injury he'd suffered while the catheter was being fitted post-surgery. Therefore, he didn't agree it was reasonable for Aviva to require him to obtain a medical certificate.

Our investigator didn't think it would be fair or reasonable to direct Aviva to pay Mr T's claim based on its claim adviser's error as she didn't think it would be fair for Mr T to profit from a mistake. And she didn't think it was unreasonable for Aviva to require more evidence from Mr T to allow it to assess whether or not his condition was pre-existing in nature. But she didn't think Aviva's offer of compensation fairly reflected the trouble and inconvenience Mr T had been put to as a result of its error and also because of delays in the assessment of his claim. So she recommended that Aviva should pay Mr T total compensation of £150.

Aviva agreed but Mr T didn't. I've summarised his responses to our investigator:

- His previous symptoms of neurogenic claudication didn't represent a diagnosis of a medical condition;

- Given the information stated on the hospital discharge summary, there was no reason for Aviva to request a medical report and Mr T questioned the legality of such a request;
- The cancellation of the trip had been due to an injury, not due to a pre-existing medical condition;
- He maintained that he'd entered into a verbal contract with Aviva that his claim would be made and that agreement fulfilled contract law obligations. As our service takes into account the law, he felt we would be in a position to decide whether or not there'd been a breach of contract.

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 sorry to disappoint Mr T, I think the fair outcome to this complaint is for Aviva to pay him £150 compensation and I'll explain why.

First, I'd like to reassure Mr T that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

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 considerations, such as regulatory principles, the policy terms, the law, and the available evidence, to decide whether I think Aviva has treated Mr T fairly.

The policy terms

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr T and Aviva. The cancellation section of the policy says that Aviva provides cover if a policyholder cancels their journey because of reasons beyond their control and which happened after they'd booked their journey.

The contract also includes a list of 'General Conditions'. The policy says that Aviva will only pay a claim if a policyholder meets the listed conditions. I've set out below the conditions I believe to be relevant to Mr T's claim:

- *You get a medical certificate from the doctor who treated you when a claim is made for medical reasons...*
- *You give us all the information, documents, evidence, vouchers, receipts and bills we need...*
- *If you have a medical condition, you must tell us about any changes in your medical condition before each journey. We can stop providing cover before you travel if your health or the health of anyone on whom the journey depends, changes after the date your journey was booked...*
- *If you make a claim, you would need to get your doctor to confirm in writing that, at the date your journey was booked, your condition was stable and that you were fit to travel and there was no sign that your condition would get worse.'*

In my view then, the policy terms make it sufficiently clear that Aviva will only pay claims if the applicable general conditions are met.

Is it fair for Aviva to request further information from Mr T?

Mr T feels strongly that Aviva has enough evidence to show that he has a valid claim on the policy. But Aviva considers it requires more medical evidence before it can further consider Mr T's claim. So I've next considered whether I think that was a fair conclusion for Aviva to draw.

The hospital discharge summary Mr T sent Aviva shows that he underwent spinal decompression surgery on 4 October 2023. The summary says that Mr T made a good recovery post-operatively, but it states: *'however, he required intervention from the urology team due to difficult catheterisation whilst in retention.'* And the report states that Mr T had *'presented with a long standing history of neurogenic claudication symptoms and progressively worse mobility.'*

In my view, the available medical evidence indicates that Mr T did potentially have an existing medical condition which required decompression surgery. It isn't clear when these symptoms began or how stable those symptoms were when Mr T booked the trip. Nor is it clear whether Mr T's GP would've considered him fit to travel. Therefore, I don't think it's unreasonable for Aviva to request more medical evidence from Mr T's GP in the form of a standard medical certificate (or relevant GP records) in order to assess whether Mr T's claim meets the policy general conditions. I'd add that this isn't an unusual request in the assessment of cancellation claims for medical reasons and I don't find Aviva's request to be disproportionate or contrary to the policy terms.

I appreciate Mr T believes that the cause of the cancellation was injury caused by the difficult catheterisation referred to in the discharge summary rather than the underlying symptoms which had led to the surgery. I've thought about this carefully. But I don't think it was unreasonable for Aviva to conclude that but for Mr T's underlying condition, he wouldn't have required surgery shortly before he was due to travel. And in any event, I don't think the discharge summary makes it sufficiently clear that the difficult catheterisation was the reason for the holiday cancellation, rather than recovery from the surgery itself.

Overall then, I don't think it was unfair or unreasonable for Aviva to require more medical evidence from Mr T before it reconsiders the claim. It's open to Mr T to ask his GP to complete the medical certificate and to send this on to Aviva for its review. I'd remind Aviva of its regulatory obligations when it assesses any new medical evidence Mr T may provide.

Is Aviva bound to pay Mr T's claim?

There's no dispute that one of Aviva's claims advisors wrongly told Mr T that his claim would be paid. This was a clear error on Aviva's part and I accept that this led to Mr T's expectations about both the claims process and overall claim outcome not being effectively managed.

Mr T believes that Aviva is legally bound to pay the claim. My role is to decide cases based on what I think is fair and reasonable in all of the circumstances, although the law is a relevant consideration I have taken into account. In my view, the relevant contract for me to consider is the contract of insurance which sets out the cover Aviva provides and the terms on which it does so. I've explained above why I'm satisfied Aviva has acted in line with the policy terms. Nor do I agree that the claims advisor's mistake represented a binding contract between Mr T and Aviva. That's because I don't think that the advisor incorrectly stating that the claim would be paid is an offer which is capable of acceptance.

Even if I'm wrong on this point though, it wouldn't be fair, reasonable or proportionate for me to direct Aviva to pay Mr T's claim based on the fact one of its claims advisors made an error

during the claim process. I've borne in mind the fact that at the time of the error, Mr T's trip had already been cancelled and he'd already incurred full cancellation charges. So it doesn't appear that Mr T suffered any financial loss as a result of Aviva's mistake, although I accept he suffered a clear loss of expectation. In the circumstances though, I don't think it would be reasonable for me to find that Aviva is bound to make its mistake true or that Mr T should profit from that mistake.

Nonetheless, it's clear that Aviva's mistake did cause Mr T a level of upset and frustration, especially when he learned that Aviva didn't have enough information to pay his claim. So I think it's fair and appropriate that Aviva should pay Mr T a modest amount of compensation to reflect the inconvenience he was put to as a result of its error. In the circumstances, I'm satisfied that the £150 compensation Aviva's now agreed to pay Mr T is a fair, reasonable and proportionate award to reflect what I believe to be the likely impact of Aviva's mistake on him.

Putting things right

I direct Aviva Insurance Limited to pay Mr T £150 total compensation.

Aviva must pay the compensation within 28 days of the date on which we tell it Mr T accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per year.

My final decision

For the reasons I've given above, my final decision is that Aviva is reasonably entitled to require further evidence from Mr T before it reconsiders his claim. But it must pay Mr T total compensation of £150 to reflect the trouble and upset its error caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 28 May 2025.

Lisa Barham
Ombudsman