

The complaint

Mrs and Mr B complain about the way Aviva Insurance Limited handled a medical expenses claim they 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 key events.

Mrs and Mr B hold travel insurance as a benefit of their packaged bank account.

During September 2023, Mrs and Mr B were on holiday with their children. The family were due to fly back to the UK on 12 September 2023. Unfortunately, Mrs B suffered a fracture to her foot and sought medical treatment. So Mr B got in touch with Aviva's medical emergency assistance company to make a claim on the policy.

The medical assistance company asked Mr B to provide medical reports so it could assess Mrs B's claim. On 17 September 2023, Mr B sent Aviva a copy of a medical report, which was assessed by clinical members of the medical assistance company. They concluded that whilst Mrs B's foot had been immobilised, she wasn't immobilised herself and would have been fit to return to the UK with her leg elevated.

Mr B didn't agree with the medical assistance company's conclusions. He maintained that Mrs B's treating doctor had told her that she needed to be immobilised for a four-week period, followed by a further two-week period of recovery and that she wasn't fit to travel.

The medical assistance company got in touch with Mrs B's treating hospital to look into Mrs B's condition. The hospital responded with an email from Mrs B's doctor which stated that Mrs B was fit to fly from an orthopaedic point of view, with leg elevation and wheelchair assistance.

Mr B consistently maintained that the treating doctor had told him that Mrs B would need to be immobilised and would need further time to heal. He also stated that the doctor had indicated the email regarding Mrs B's fitness to fly had been sent by a clerk.

On 16 October 2023, Aviva let Mrs and Mr B know that as Mrs B was now considered to be medically fit to fly, it would need to arrange her repatriation. It agreed to pay £1625, which was the cost of it of arranging a business class upgrade for Mrs B had she flown home as planned on 12 September 2023. And it also offered to pay for the cost of economy flights for Mr B and one of Mr and Mrs B's children. It didn't agree to pay for a return flight for Mr and Mrs B's adult child, as it said they could have returned to the UK on their pre-booked flight.

Mrs and Mr B were unhappy with Aviva's position and the way it had handled the claim. They turned down the medical assistance company's offer to help them arrange return flights, although Mr B later let it know that he was having difficulty in doing so. Ultimately, they were able to book return economy flights which departed on 1 November 2023. The assistance company had arranged a taxi to take the family to the airport and to pick them up

after they landed back in the UK. But unfortunately, the taxi booked for the return journey wasn't able to wait until Mrs and Mr B had disembarked their flight. So the medical assistance company told Mr B to book his own taxi and to submit the claim costs.

Aviva maintained that its total liability under the policy terms was £1625. But it acknowledged that it hadn't handled the claim as well as it should've done and so it offered to pay Mrs and Mr B £250 compensation. It also offered to reimburse Mrs and Mr B for the cost of the taxi fare upon proof of payment.

Remaining unhappy with Aviva's stance, Mrs and Mr B asked us to look into their complaint. In brief, they were unhappy with the way it had handled the medical assistance claim and they didn't think it had fairly relied on the medical evidence.

Our investigator didn't think it had been unfair for Aviva to rely on the medical evidence to conclude that Mrs B had been fit to fly after it received the email from the treating doctor. But she noted that in addition to offering to pay £1625 for the likely cost of upgrading Mrs B's flight, it had also offered to cover the cost of paying for Mr B and one child. So the investigator thought that if the total return flight cost for Mrs B and return economy flights for Mr B and one child exceeded the £1625 Aviva had already offered, it should also settle the balance of those costs, together with interest. She felt too that Aviva should add interest to any settlement it paid for the taxi fare. And she also recommended that Aviva should pay an additional £200 compensation (a total of £450) to reflect the impact of its claims handling on Mrs and Mr B.

Aviva accepted the investigator's recommendations but Mrs and Mr B did not. So 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 Mrs and Mr B, I agree with the conclusions our investigator reached and I'll explain why.

First, I'd like to reassure Mrs and Mr B that while I've summarised the background to this complaint and their detailed submissions to us, I've carefully considered all that's been said and sent. I appreciate Mrs B suffered a painful injury abroad and I understand this must have been a very worrying time for Mrs and Mr B and their family. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. That reflects the nature of our service as an informal alternative to the courts.

I must also make the parameters of this decision clear. While I understand Mrs and Mr B are unhappy with the way Aviva handled claims made by other family members during this trip, this decision will only consider the way Aviva handled Mrs B's claim. If Mrs and Mr B are unhappy with the way Aviva handled other claims they made on the policy, they'll need to complain to Aviva about those issues before we can potentially look into them.

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 available evidence and the policy terms, to decide whether I think Aviva treated Mrs and Mr B fairly.

Did Aviva settle the claim fairly?

I've first considered the policy terms and conditions, as these form the basis of the insurance contract. The policy provides cover for '*Emergency medical and associated expenses*'. Given Mrs B claimed for emergency medical and associated expenses, I think it was reasonable and appropriate for Aviva to consider the claim under this section of the policy. This part of the contract includes cover for emergency medical treatment, the costs of medical repatriation if it's necessary and the cost of travel expenses for another person if it's necessary for them to stay with the ill or injured insured person.

However, Aviva has also set out a list of things it won't pay for. This includes the following:

'Extra costs following the insured person's decision not to move hospital or return home after the date it was deemed safe for them to travel by us and in consultation with their treating doctor.'

In my view, Aviva has made it sufficiently clear that it won't cover any costs a policyholder incurs if they choose not to return home after their doctor and Aviva have decided it's safe for them to do so. Aviva considers that Mrs B was likely fit to return home in a business class seat on 12 September 2023 and that her doctor confirmed her fitness to travel on 11 October 2023, with wheelchair assistance and leg elevation. So I've carefully considered the available medical evidence to decide whether I think this was a fair conclusion for Aviva to draw.

Aviva's notes show that it took some days for Mr B to provide it with a medical report – and it wasn't sent to Aviva until after Mrs and Mr B's pre-booked return flight had already departed. The medical report Mr B sent Aviva stated: '*4 weeks immobilisation*'. Under advice, the doctor stated: '*ice, pillow elevation, NWB (non-weight bearing) walk with walker.*'

The medical assistance company's clinical staff assessed the medical evidence, as I'd reasonably expect it to do. Based on the report, they concluded that there was no reason for Mrs B to have extended her stay abroad and that she'd need leg elevation when she returned to the UK. Another clinical member of the team stated that Mrs B '*has fx (foot) immobilised for 4 weeks with an Aircast but the patient herself is clearly not immobile as it clearly states...walk with walker.*'

Based on the medical report Mr B sent Aviva, I don't think its conclusions were unreasonable and appear to have been based on what Mrs B's treating doctor had recorded about her condition. The doctor doesn't appear to have suggested that Mrs B was bed-bound or that she needed bed rest for a four-week period.

Following on from the report, the medical assistance company contacted the hospital to obtain more information about Mrs B's condition. On 11 October 2023, the treating hospital forwarded a copy of an email sent from Mrs B's treating doctor's email address which said:

'She is fit to fly from an orthopaedic point of view. She might need wheelchair assistance at airport just to avoid the discomfort and limb elevation during the flight.'

I think it was reasonable and appropriate for Aviva to rely on the email which appeared to have been sent by Mrs B's treating doctor and which didn't suggest she needed to remain abroad to recover. Instead, I think it strongly indicated that Mrs B was fit to return to the UK with some specialist arrangements made. As such then, I think it was fair for Aviva to find that Mrs B was safe to travel at that point and that it'd undertaken reasonable consultation with her doctor.

It's clear that Mrs and Mr B didn't agree that Mrs B was fit to travel. They have consistently maintained that Mrs B's treating doctor had told them she'd need to be immobile for four

weeks, followed by two weeks of recovery before she could fly home. I accept it's possible that the doctor did provide Mrs B with this advice. But this advice wasn't included either on the original medical report or the email which the hospital sent to Aviva. Nor does it appear that the doctor spoke directly to the medical assistance company to indicate that Mrs B wasn't fit to travel. So I don't think it was unreasonable for Aviva to place more evidential weight on the written communications from the hospital when it assessed this claim.

I'd add too that Mrs and Mr B have sent us an email from the hospital dated December 2023. This states that 'strict immobilisation' meant the immobilisation of Mrs B's ankle within the Aircast, '*not the whole body immobilisation*'. I think this evidence further supports the medical assistance company's conclusions.

Based on the evidence Aviva had then, I think it was fair and reasonable for it to have concluded that Mrs B was fit to have flown home on 11 October 2023 at the latest (and likely on 12 September 2023) and for it to have communicated this to Mrs B on 16 October 2023. At that point, it calculated its liability would have been for the cost of a business class upgrade for Mrs B only (as the injured patient) and for the economy flight costs of Mr B and one child. It calculated the upgrade would have cost £1625.

However, Mrs and Mr B didn't agree to Aviva arranging their repatriation at this point as they didn't think it was in line with the doctor's recommendations. I can appreciate the reasons for this decision. But I don't think it was unfair for Aviva to rely on its policy terms and inform Mrs and Mr B that its liability would be limited to the above costs and that it wouldn't provide cover for anything that happened after they'd decided not to return to the UK.

Mrs and Mr B and their children ultimately took a return flight on 1 November 2023 – over two weeks after Aviva had told them that its liability would be limited. I understand Mrs B flew in economy with the family, but I don't think I can fairly hold Aviva responsible for this, as it had offered to cover the costs of Mrs B flying in business class at the date she could have returned to the UK. Nor do I think Aviva was obliged to pay for Mr B and one child to fly in business class, even if Mrs B had done so. That's because there's no medical evidence to suggest that a business class escort for Mrs B was necessary.

And I don't think it was unreasonable for Aviva to conclude that Mrs and Mr B's adult child's return flight costs weren't covered. That's because the policy provides cover for one person to stay with an insured – here, that's Mr B, although Aviva has also now agreed to pay for one child. In this case, I haven't seen any persuasive evidence that Mrs and Mr B's adult child couldn't have returned home as planned on 12 September 2023, even though I can understand why they may have preferred to travel with the family. If Mrs and Mr B have any medical evidence which indicates why it was necessary for their adult child to extend their stay, it's open to them to send this to Aviva for it to consider.

In summary then, I find that the fair and reasonable outcome to this part of the complaint is for Aviva to pay Mrs and Mr B £1625 to represent the liability it would have incurred for Mrs B to upgrade to business class, even though Mrs B ultimately flew in economy. And I also find that if the total cost of Mrs B's, Mr B's and one child's flights exceeded £1625, Aviva must settle the difference. It must also add interest to the settlement at a rate of 8% simple from one month after the flight costs were incurred until the date of settlement.

I'm mindful that Aviva has also offered to reimburse Mrs and Mr B's return taxi fare - after they had to book a new taxi - subject to evidence of payment. I think this is a reasonable offer from Aviva. But I agree with the investigator that subject to Mrs and Mr B providing evidence of the taxi fare they incurred, it would be fair for Aviva to add interest to the settlement of 8% simple from one month after the cost was incurred until the date of settlement.

Did Aviva handle the claim fairly?

Aviva accepts it didn't handle the claim as well as it could have done. It acknowledges that it asked Mrs and Mr B to provide evidence it already had. And it also accepts that although Mr B told the assistance company that he'd arrange the family's return flights, it could have done more to assist Mrs and Mr B after Mr B subsequently let it know that he was having difficulty doing so.

In my view, these errors and customer service issues would likely have caused Mrs and Mr B additional, avoidable trouble and upset at an already stressful time for them both and when Mrs B was already in pain. So I agree that with our investigator that it would be fair and reasonable for Aviva to pay Mrs and Mr B compensation to reflect the trouble and upset these service failings likely caused them. Aviva has now agreed to pay Mrs and Mr B total compensation of £450. And I find this award to be fair, reasonable and proportionate in all the circumstances.

Putting things right

I direct Aviva Insurance Limited to:

- Pay Mrs and Mr B £1625 if it hasn't already done so;
- Calculate the total cost of Mrs B's, Mr B's and one child's economy return flights to the UK. If that cost exceeds £1625, Aviva must pay Mrs and Mr B the difference between those costs, together with interest of 8% simple per year from one month after the flight costs were incurred until the date of settlement*;
- Pay Mrs and Mr B's taxi costs, subject to proof of payment, together with interest of 8% simple per annum from one month after the costs were incurred until the date of settlement*;
- Pay Mrs and Mr B total compensation of £450 (less any compensation it's already paid)+.

* If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs and Mr B how much it's taken off. It should also give Mrs and Mr B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

+ Aviva must pay the compensation within 28 days of the date on which we tell it Mrs and Mr B accept 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% a year.

My final decision

For the reasons I've given above, my final decision is that I partly uphold this complaint and I direct Aviva Insurance Limited to put things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 29 May 2025.

Lisa Barham
Ombudsman