

## complaint

Mr P has complained that Aviva Insurance Services UK Limited didn't pay his claim for the cost of his holiday, under the terms of his travel policy, after his family fell ill.

## background

Mr P, his wife and two children, then aged six and four, who I'll refer to as Y and J, went to Egypt for a week's holiday. When they arrived both children fell ill and Y was diagnosed with chickenpox and J with a fever/sore-throat. Soon after, Mrs P also fell ill. The family were treated in the hotel by the local doctor.

Mr P said that his family's illnesses had ruined their holiday. As well as claiming for medical expenses, Mr P claimed for the full costs of his holiday saying that it'd effectively been cancelled or abandoned. Aviva settled the medical expenses but didn't pay the rest of the claim. It said that as the family hadn't been in hospital or needed to fly home their policy didn't cover them. But, it said that it would pay £25 a day for '*holiday disruption*'. It initially proposed paying for three days disruption for Y and an additional three days for Mrs P to look after him. It later added a further six days in recognition of the severity of Mrs P's illness, totalling 12 days which added up to £300.

The adjudicator said the only period when some of the family weren't confined to their room, either because of illness or to care for sick family members, was for one adult and one child for the first three days, or approximately 20% of their holiday time. He said that that the difference between being confined to a room because of ill-health and being in hospital is "*non-existent*". He said that in effect Mr P's family had to cut short their holiday by some 80%. So the adjudicator recommended that Aviva should pay Mr P 80% of the holiday's cost. Aviva didn't agree so the complaint's been passed to me to decide.

## provisional decision

I made a provisional decision that Mr P's complaint should be upheld. I said:

*"In response to the adjudicator's view Aviva made a number of points. It accepted that Y would've been confined to his room and required a parent to care for him. But, it suggested that his holiday and that of the parent caring for him, wasn't effectively cut short because they didn't have to fly home, weren't in hospital and they would've had the benefit of accommodation and food and drinks in the hotel.*

*In terms of cutting short a holiday, I think that there's little difference between being ill and confined to your room and being ill and confined to hospital. I don't believe that having the benefit of some food and drink prepared by the hotel, rather than a hospital, means that the holiday hasn't been cut short. So I'm not persuaded that the fact that Y and his parent having meals and drinks from the hotel is reason not to pay the claim. I'm also not persuaded that having a hotel roof over your head means that you've been able to enjoy the benefits of hotel accommodation.*

*Aviva initially suggested that Y would've been confined to his room for three days. But I've seen information, from Mr P's GP and also from the NHS Choices website, that chickenpox is usually infectious for about a week. That's in line with what Mr P said about Y's illness. So I'm persuaded that Y would've been confined to his room for the duration of his holiday, and would've needed a parent to care for him. So in effect for that period Y and his caring*

*parent's holiday was cut short.*

*J was also unwell and apparently spent most of the time in his room because he had a fever and a sore throat. But, while I understand he might not have felt much like leaving the room, I'm not persuaded that he was so ill that he was confined to his room.*

*Aviva's also said that Mrs P's illness wasn't bad enough to confine her to her room. But it's previously agreed to pay her for six days holiday disruption benefit. The terms of the policy say that Aviva will pay holiday disruption benefit where the person has a claim for emergency medical treatment and is "confined to your accommodation...". So, in saying it would pay Mrs P's holiday disruption benefit, Aviva's effectively agreed that Mrs P was confined to her room because of ill-health. It's not clear if Aviva's since changed its mind about how ill Mrs P was. But, after reading the medical reports, including her GP's description of her illness, I am satisfied that, as her symptoms got worse, she would've been confined to her room.*

*Aviva noted that the GP wrote his letter some months after Mrs P's illness. But Mrs P visited her GP with her children shortly after her holiday. So the GP's evidence was based on the symptoms that Mrs P described then. Those symptoms included vomiting. Aviva's now pointed out that the Egyptian GP's report doesn't refer to her vomiting. While that's the case, the report is extremely brief but it does refer to giving Mrs P anti-sickness medication in a drip. There'd be no need for the doctor to give such medication if she wasn't being sick. Therefore, on balance, I think Mrs P most probably became so unwell that she was confined to her room.*

*But, Mr P said, when he submitted his claim, that Mrs P's illness only progressed to the point where she could no longer look after the children from day five of the holiday. So, I think from that day, for the rest of their holiday, Mr P would've had to take over the caring responsibilities for the rest of his family. Therefore, from day five, the whole family's holiday was effectively cut short.*

*So it seems to me that both Y and Mrs P had seven out of seven days of their holiday effectively cut short, either by illness or because of illness and caring responsibilities. And Mr P and J were confined to their room for three out of seven days each. In other words, as a family, their holiday was cut short by 20 out of 28 days in total.*

*Aviva proposed settling Mr P's claim under the holiday disruption part of the policy. But, I think that from the point at which each family member was confined to their room, their holiday was effectively cut short. So I don't think that the holiday disruption benefit goes far enough to address that and it's not therefore fair and reasonable to rely on that part of the policy when settling Mr P's claim.*

*In order to put things right, I think that Aviva should pay Mr P's claim on a pro-rata basis for the amount of the holiday that was effectively cut short. In other words Aviva should refund Mr P for the cost of 20 out of 28 days' holiday. Mr P's family were able to use their flights so I wouldn't usually expect Aviva to reimburse Mr P for the cost of those. But it was a package holiday, so if it's not possible for Aviva to find out how much the flights cost and then deduct that sum from the total, then it should pay Mr P the pro rata proportion of the full cost of the holiday, less £300 already paid and any excess."*

**responses to my provisional decision**

Mr P accepted my findings but pointed out that he had refused Aviva's offer of £300 settlement pending my final decision.

Aviva also accepted my findings but said that it would need to see copies of Mr P's booking information in order to settle his claim.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Both parties have, for the most part, agreed with my provisional decision. So my findings are the same as in my provisional decision for the reasons I gave except that I think it's reasonable for Aviva to wait until Mr P has sent it copies of his booking information before it pays his claim. But, after Mr P has provided that information, it should meet the claim as I've set it out below and without deducting £300, unless Mr P's accepted that payment in the meantime.

### **my final decision**

I uphold Mr P's complaint.

On receipt of Mr P's booking information showing the total costs of the holiday concerned I require Aviva Insurance Services UK Limited to:

- pay Mr P's claim on a proportionate basis for the amount of the holiday that was effectively cut short (20/28), less the identifiable cost of flights and any applicable excess;
- pay interest on this amount at the simple rate of 8% per year from the date Mr P made his claim to the date it makes the payment<sup>1</sup>.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 February 2016.

Joe Scott  
**ombudsman**

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<sup>1</sup> HM Revenue & Customs requires Aviva to take off tax from this interest. Aviva must give Mr P a certificate showing how much tax it's taken off if he asks for one.