

## **complaint**

Mr and Mrs O have complained that Aviva Insurance Limited has declined a travel insurance claim for Mr O's illness.

## **background**

Mr and Mrs O had travel insurance as part of a packaged bank account. They booked a holiday abroad. A few days before they were due to leave, Mr O went to see his doctor about leg pains. His doctor spoke to a neurologist on the phone, who advised that Mr O go to the Accident and Emergency (A&E) department at his local hospital. The registrar there diagnosed sciatica, and recommended that Mr O had an urgent MRI scan. Mr O says that he asked his doctor whether he should travel, and was not given any reason why he shouldn't carry on with his holiday.

Mr and Mrs O set off on their holiday before Mr O had had an MRI scan. Two days later, Mr O's condition had worsened to the extent that he was admitted to a local hospital. He was diagnosed as having a very severe herniated disc, and underwent surgery. Mr and Mrs O claimed for the cost of their holiday from the date of Mr O's hospitalisation.

Aviva declined to pay Mr and Mrs O's claim. It said that the condition for which Mr O was hospitalised and underwent surgery was linked to the sciatica that had been diagnosed before he travelled. Aviva said that it was a condition of the policy that Mr O needed to tell it about a referral to a consultant or specialist between booking a trip and the departure date. And in these circumstances there's cover if the holiday has to be cancelled. But if the policyholder wishes to continue their trip, they must contact Aviva's Medical Assessment Helpline who will advise if they will be covered for the medical condition. Mr O hadn't told Aviva about his diagnosis of sciatica.

Our adjudicator upheld Mr and Mrs O's complaint. She considered that Mr O hadn't been formally referred to a consultant or a specialist, and hadn't been hospitalised, so he wasn't required to disclose anything to Aviva. She also considered that Mr O's diagnosis of sciatica wasn't a sufficiently significant change of risk, and that Mr O wouldn't have appreciated that it was something that should've been declared to Aviva.

Aviva doesn't agree with the adjudicator, so the matter has been referred to me to make a decision.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've decided to uphold Mr and Mrs O's complaint for the following reasons.

I note what Mr and Mrs O's policy says about declaring medical conditions that arise after the booking of a holiday and before travel. I've also considered Mr O's medical notes and what his doctor has said about the initial investigation of his medical condition. Mr O wasn't hospitalised - he went to A&E and an MRI scan was recommended urgently. And I don't think it can be said that a telephone conversation between Mr O's doctor and a neurologist, and referral for a scan, can be regarded as being a referral to a specialist or a consultant either. So I don't think that under the terms of the policy he was obliged to inform Aviva.

When Mr and Mrs O booked their holiday, Mr O hadn't yet seen his doctor and so didn't know he had sciatica. Aviva says that when he was diagnosed with sciatica, he should've told it this then. Aviva says that as Mr O's policy was a continuing one, he had an ongoing duty to tell it of any change in health. But a strict interpretation of this would allow Aviva to vary the terms of such policies during the policy period regardless of how significant any change in Mr O's medical condition might be. Mr O's sciatica was being treated with painkillers, and his doctor hadn't advised him against going on holiday. So I don't think that Mr O would've considered that his medical condition was so significant that he should've declared it to Aviva because it changed their risk.

In the circumstances I don't think that Aviva has acted fairly or reasonably in declining to cover Mr and Mrs O's claim.

### **my decision**

For the reasons I've given above, I uphold Mr and Mrs O's complaint.

I require Aviva Insurance Limited to pay Mr and Mrs O's claim subject to any policy limits and to any excess together with interest on this at 8% simple a year (less tax if properly deductible) from the date the claim was made to the date of payment.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs O to accept or reject my decision before 13 November 2015.

Nigel Bremner  
**ombudsman**