

## **complaint**

Mrs T and Mrs W complain that Amtrust Europe Limited turned down their travel insurance claim for the costs of cancelling their holiday. They are represented by Mrs H, who is Mrs T's daughter.

## **background**

At the end of July 2014 Mrs T and Mrs W booked a holiday to Europe, for early November 2014.

In August 2014 Mrs T went to her doctor with a cough, and was given antibiotics for it.

On 12 September 2014 Mrs T went back to her doctor as the cough hadn't cleared up. Her doctor gave her another course of antibiotics, to treat the chest infection, and asked her to go for a routine chest x-ray. Later that day Mrs T and Mrs W took out travel insurance with Amtrust. Mrs H did this for them online as they didn't have access to a computer.

On 15 September 2014 Mrs T had the chest x-ray. Later that month she was unfortunately told she had lung cancer. Her doctor advised her to cancel the holiday on 13 October 2014, which she did on 15 October 2014.

Amtrust turned down Mrs T and Mrs W's claim for the cost of cancelling their holiday. It said its policy excluded any pre-existing medical condition. This included where the consumer was on a '*waiting list for treatment or investigation*'. Mrs T and Mrs W asked us to look at this.

Our adjudicator thought Amtrust had been entitled to exclude the claim. Mrs H didn't agree. She said, in summary: the word 'investigation' wasn't clear. Mrs T had been sent for a routine x-ray. Her own doctor had been astonished at the diagnosis. The policy wording was so broad that any routine visit to the doctor would be excluded from cover. And she referred to a case study on our website which she thought had similar features to Mrs T's situation.

Before the case was referred to me we asked Amtrust what questions it had asked Mrs T and Mrs W before they bought the policy. It said they hadn't been asked any questions during the online process. They'd just been given this notice:

*"Please do not purchase travel insurance on our website if you have a pre-existing medical condition":*

## **my provisional decision**

I sent a provisional decision to both Mrs T and Mrs W and Amtrust because I'd reached the same conclusion as the adjudicator but for different reasons. In summary, I concluded Amtrust didn't need to pay the claim because:

- Amtrust didn't ask Mrs T and Mrs W any questions, so it couldn't argue they'd failed to tell it about any medical condition. And Mrs T wouldn't have thought she'd had a 'medical condition' which meant she shouldn't buy the policy online.
- I thought the policy exclusion was set out reasonably prominently in the policy document. It's on page 3 of the policy. It explains that Amtrust wouldn't cover any

person who had a pre-existing medical condition, including if they'd been prescribed medication or received medical treatment in the previous 12 months, or been put on a waiting list for treatment or investigation.

In my view Mrs T had a pre-existing medical condition as defined in the policy. She'd been prescribed medication and received medical treatment in the previous 12 months before buying the policy.

- I saw Mrs H's point about the word 'investigation'. But I thought being sent for a chest x-ray was an 'investigation' into Mrs T's chest infection. In any event, it was clear Mrs T had been prescribed medication and received medical treatment for the cough. So I thought Amtrust could rely on the policy exclusion and not pay the claim.
- I thought about whether there'd been any 'prejudice' to Mrs T and Mrs W because Amtrust didn't ask the questions it said it had when they applied for the policy.
- If Mrs T and Mrs W had been asked the questions about medical conditions, I thought it was likely they'd still have bought the insurance. This is because Mrs T didn't know at that point that she had a serious illness, or she'd need to claim. Mrs H has explained it was entirely coincidental that they bought the insurance on the same day that Mrs T went back to the doctor and was referred for a chest x-ray. She thought the x-ray was just routine.
- I looked at the case study Mrs H had mentioned. But I thought the circumstances were different. In that case the consumer was asked about any medical condition which might have affected his health during the policy's term. He didn't think his mild cough would affect his health, so didn't tell the insurer about it.

I accepted Mrs T didn't know she'd need to claim when she bought the insurance. But her claim was excluded for a different reason from the one in the case study. It was excluded because she had a medical condition that she'd received medication for and was being investigated.

- In any event, I didn't think Mrs T could have got travel insurance cover for a condition which was being investigated at the time she bought the insurance, as the insurer wouldn't have known the risk it was being asked to cover.

### **responses to my provisional decision**

Amtrust didn't have any further comments.

Mrs H rejected my provisional conclusions, on behalf of Mrs T and Mrs W. She said, in summary:

- It is unacceptable for a layman to understand a policy document in total. The burden on clarity and transparency has to be on the insurance company. She doesn't believe this is the case because there wasn't any definition of 'pre-existing medical condition' in the sales process and one single sentence notice was all that was highlighted during the sales process. And she questions what 'reasonably prominent' means.
- She disagrees I'd arrived at my decision using the fair rule. And whether or not I believe they'd have bought the insurance is pure opinion. I've no evidence to support

this. And if the definitions were highlighted they'd have been in a better position to make an informed decision as any query would have prompted them to call on the telephone.

- She disagrees that any insurer would have refused to cover Mrs T for a condition which was under investigation. She has gone through a travel insurance website to declare a cough. The questions she was asked didn't include whether she was waiting for tests and she was offered insurance for an extra premium of £25.
- The holiday website where they bought the insurance has changed. It now prompts them to call a medical screening service on a given number if the traveller wants cover for a medical condition; to confirm that all travellers under the policy are healthy and fit to travel; and that no travellers have any undiagnosed symptoms that require attention or investigation in the future.
- The above information is much more suitable to be given at point of sale. Her point is that to be denied such clarity in the sale process has cost them dearly. This wording wasn't even in the insurance policy.

### **my findings**

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

Mrs H is concerned I've said what I think is fair in my opinion, and what I think might have happened had they been given more information about the policy in the sales process.

Our rules require me to reach a decision which, in my opinion, is fair and reasonable in all the circumstances. This includes weighing the evidence and, where appropriate, saying what I think is likely to have happened, on balance. I need to give reasons for my decision as I've done here.

I still don't think I can fairly say Amtrust must pay this claim. I'll also respond to the points Mrs H has made.

The policy document was available via a link on the holiday company's website. I think the exclusion for pre-existing medical conditions was reasonably prominent in the policy document because it was on page 3, under a bold heading in capitals 'Health and Pre-Existing Medical Conditions'. The policy gave Mrs T and Mrs W 14 days to cancel if it wasn't suitable for them.

I see Mrs H thinks Mrs T could have got cover, after she'd visited the doctor for a second time and been referred for a chest x-ray. This is because she applied on a travel insurance website, and could get cover after answering some questions. I don't know what website she used. But one of the questions she's quoted asked whether she'd had a chest infection in the last 12 months, and she'd answered 'no' to this. I don't think this was a correct answer, as Mrs T had a chest infection at the time she applied for her insurance. She knew about this, and said so in their letter to the insurer of 9 January 2015.

I take Mrs H's point that the holiday website's changed now, and is clearer with a list of questions which would have prompted them to telephone the insurer. But I still don't think Mrs T could have got cover at that point even if she had telephoned. She'd had a chest

infection, was on a second course of antibiotics to treat it and had been referred for a chest x-ray. In my experience a travel insurer wouldn't insure her until the outcome of that x-ray was known. This is because it wouldn't know the risk it was being asked to cover at that point.

I'm sorry to give Mrs T and Mrs W a disappointing answer. But for the reasons given above and in my provisional decision I don't think I can fairly make Amtrust pay Mrs T and Mrs W's claim.

**my final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mrs W to accept or reject my decision before 4 March 2016.

Amanda Maycock  
**ombudsman**