

## **complaint**

Mr H has complained about the settlement offered to him by Europ Assistance S.A. (EA) after he made a claim under his travel insurance policy. He's also not happy with the amount of time EA took to look into his complaint.

## **background**

I issued a provisional decision on this complaint in January this year. An extract from that decision follows:

*In 2010 Mr H fell and hurt his back. He went to see his GP and was given painkillers. A month later he went abroad on a work trip, but had to go into hospital with back pain. It turned out that he had broken his back. He had an operation and was discharged from hospital after about two weeks. He then flew back to the UK.*

*Mr H made a claim under his travel insurance policy but this was initially turned down by EA. EA said that Mr H hadn't declared his pre-existing conditions which included the back injury and diabetes. It said had he declared those conditions his premium would've been higher or he may not even have been offered cover.*

*But in 2014 EA changed its mind. It said it would settle the claim in part because Mr H should've cancelled his trip because he wasn't well enough to drive abroad because of his back. Mr H had travelled by car but couldn't get back to the UK the same way. So EA paid for Mr H's flight back and also his hospital expenses. It also paid for a holiday Mr H was going to go on a few months later which he'd already booked but had to cancel because of his back. But it didn't pay the airport tax for his flight. It said the airport tax could've been claimed back from the airline.*

*Mr H didn't agree. He said he didn't drive abroad, someone else did. He wouldn't have risked his health had he known he had a broken back. He wants EA to pay for the motorhome he'd hired for his business trip, which cost about £2000, and to also pay him hospital benefit. He also wants EA to pay the airport tax he couldn't get refunded to him.*

*Our adjudicator thought that the complaint should be upheld. She asked EA to pay for the motorhome, hospital benefit and the airport tax plus interest. EA insisted that Mr H should've cancelled his trip but offered to pay for the motorhome less the return flight, the hospital expenses and the excess. So it would pay Mr H another £1300 approximately.*

*Mr H didn't accept this offer and EA didn't agree with our adjudicator.*

## **my provisional findings**

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

*EA had initially refused to cover the claim. It said Mr H didn't disclose all his pre-existing conditions as required by his policy. And that his claim resulted from a condition (the back injury) that could give rise to a claim and was therefore excluded under the policy. EA seems to have abandoned these arguments because it's since offered to pay for the cancellation of both Mr H's trips. So I won't consider these arguments further.*

*Mr H's business had already paid the deposit for the motorhome and he'd already booked his other holiday before he fell and injured his back. So he couldn't have told EA about his back injury before he booked those trips because he didn't know about it. EA seems to agree with this. But EA says Mr H should've cancelled his business trip rather than cutting it short. It's agreed to pay for the cancellation of his subsequent holiday apart from the airport taxes.*

*the first trip*

*After his fall Mr H went to his GP who prescribed him painkillers. He went to see the GP a few times before going abroad. Each time he was just given different types of painkillers. His GP said he told him that he saw no reason why he couldn't go abroad if he felt better. Mr H said he couldn't sit in front of a computer for more than ten minutes but he was ok if he was sitting on a recliner. So he got a member of his staff to drive him to their destination.*

*Mr H wasn't diagnosed with a broken back until after he'd been taken to hospital abroad. He said he'd had a scan when he first fell and hurt his back but it was normal. His GP hasn't seen this scan and neither has EA. EA said Mr H should've cancelled his trip because he wasn't well enough to go abroad. I haven't seen any medical evidence to back this up. From what I've seen his GP left it up to Mr H to decide whether he was well enough to go or not. So I don't agree with EA that Mr H should've cancelled his trip. And I think the fair outcome would be for EA to pay for Mr H curtailing his business trip.*

*The motorhome was paid by Mr H's business. The rest of the expenses were paid by him. Mr H had taken out extra business cover so I think he can claim for all those expenses under his policy with EA.*

*The policy says that EA will pay for extra travel expenses such as the return flight which it's already paid. It will also pay for hospital expenses, which it's also done. EA hasn't paid for Mr H's hospital benefit. Mr H is entitled to claim £20 for each day he was in hospital. I think EA should pay this.*

*In terms of the cost of the motorhome I think this is covered by the policy as it's a non-refundable accommodation cost. I understand the motorhome was driven back to the UK by someone else and not Mr H. It was hired for 27 days. Mr H cut his trip short five days later so I think he can claim for his share of the cost of the motorhome for 22 days. Mr H should clarify how many people the motorhome was used by so that his share can be calculated.*

*the second trip*

*The policy doesn't cover airport tax. Mr H says that EA should pay this because it never told him to try to get a refund and by the time he did, his ticket had expired so the tax wasn't refundable. But EA said it wasn't told about Mr H's cancelled holiday until four years after the flight was cancelled. The holiday cancellation wasn't part of Mr H's original claim so I agree with EA. As the policy doesn't cover airport tax I don't think it would be fair to ask EA to pay it.*

*delays*

*I've seen a complaint letter which was sent to EA by Mr H in 2010. EA issued its final response on the same day, rejecting Mr H's claim. EA's file shows that there is a gap of about four years between when the claim was turned down and when Mr H got in touch with it again. EA issued a second final response within 8-9 weeks of when the file was reopened.*

*So from what I've seen I can't say that EA was responsible for any delays. And it abandoned potentially valid arguments that could've prevented it from paying the claim altogether. So I don't think it would be fair or reasonable to ask EA to pay anything to Mr H for this part of his complaint.*

### **my provisional decision**

*For the reasons above, I'm considering partly upholding Mr H's complaint against Europ Assistance S.A.*

*EA should pay:*

- 1. Mr H's share of the cost of hire of the motorhome for 22 days, less the applicable excess under "business cover". Mr H should confirm how many people used the motorhome, if it wasn't just him, so that his share can be calculated.*
- 2. Hospital benefit at £20 per day for the days Mr H spent in hospital.*

*The above is in addition to what EA's already paid; £403 for the return flight for the curtailed trip, £133.33 for the hospital expenses, and £220.54 for the cancelled flight and hotel. I understand EA has already deducted the applicable excesses from these payments.*

*EA must pay Mr H interest on the amount it pays for items 1 and 2 at the simple rate of 8% per year from the date of Mr H's claims to the date it makes the payment. And it should also pay interest at the simple rate of 8% per year on the amounts it's already paid Mr H from the date he made those claims to the date EA paid him back. I understand that the claims for the cancelled holiday and the motorhome were made about four years after the other claims so EA can take this into account when calculating the interest.*

### **developments**

Both Mr H and EA have responded to my provisional decision.

EA said that the cost of the motorhome was a business cost regardless of the number of people using it. So the business would've paid this cost whether Mr H was ill or not. It's a fixed cost for the business. If EA pays a portion of the hire, Mr H will profit from the insurance because his business didn't lose out. He shouldn't be allowed to profit from his insurance policy.

Mr H said that:

- His medical records aren't accurate. He didn't have any appointments in September or October because he was either abroad or at his brother's house recovering.
- His GP didn't examine him before he went abroad. He just gave him morphine patches and said he could increase the dose if he got worse. He didn't advise him to cancel his trip.
- EA refused to send its final response letter in 2010 to his brother's address where he was staying. So he got it months later.
- He made a separate claim for the cancelled holiday in 2010. He completed the claim form by August 2011 because he was waiting for his GP to respond to some queries he'd raised.
- His complaint letter was sent to EA in 2011 which is about four months after he got EA's final decision, rejecting his claim. He wasn't well enough to be able to respond earlier. EA said it would forward his letters to its underwriters but he didn't hear back until he chased EA in 2014.

- He replied to EA's letter of April 2014 but didn't get a response. He wasn't well enough and was busy with work so he didn't chase this for a while.
- He's frustrated EA didn't explain he could claim for curtailment and hospital benefit.
- The timeline in my provisional decision isn't correct. His claim was turned down while he was in hospital.
- He didn't have a scan after his original fall. It was an x-ray and as far as he knew he didn't have a pre-existing condition.

With regards to my provisional decision he said that:

- He hired the motor home just for himself as it wasn't appropriate to share with the rest of the crew who had separate pre-booked accommodation. He only used it for 4 nights.
- He had to pay fuel and ferry costs and for a second driver to drive the motorhome back. He hasn't claimed for these expenses which are about £300.

### **my findings**

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

Mr H asked for EA to send him a copy of his claim form. EA said it was sent to him in September 2010 originally. Mr H didn't think this was the correct date but in his letter to us he said he completed it in September 2010. I think it was probably sent to him not long before he completed it. He has also sent me a copy of a letter he sent to his GP in June 2011 asking him to fill in a form he wanted to send to his insurers. I assume he was referring to the claim form. The letter says that Mr H registered with another GP while he was staying at his brother's house.

I've taken the parties' comments on board. These include Mr H's comments about the timeline and the inaccuracies in his medical records. These don't change any of my findings so I won't consider them further.

In my provisional decision I said I didn't think that EA was responsible for the delays. Mr H said that he wrote to EA in 2011 and in 2014 and didn't hear back. But he accepts that he delayed writing to EA and chasing a response because he was busy or not well enough. So Mr H accepts that some of the delays were also down to him. And for that reason I'm not upholding this part of his complaint.

EA said that the cost of the motorhome was something that would've been incurred by the business in any event. Mr H has said that he was the only one using the motorhome. From what I've seen the original booking was for only one person. He said he only used it for four days and then had to go into hospital. For those reasons I think that EA should pay the cost of the motorhome for 23 days. I asked EA for its comments before I issued this decision but it hasn't made any.

Mr H said he also had to pay for fuel and ferry costs and for a second driver to drive the motorhome back. He hasn't claimed for those additional costs. In any event even if he were to claim for those expenses it wouldn't be something I would award. This is because he would've paid for fuel and the ferry in any event. And I haven't seen any evidence of any payments made to another driver so I wouldn't award that either.

In my provisional decision I said that Mr H made some of his claims four years after his other claims. EA can take this into account when calculating interest. Mr H said he emailed his

claim forms to EA so he should be able to provide copies if EA requires them when calculating the interest.

### **my final decision**

For the reasons above, I'm partly upholding Mr H's complaint against Europ Assistance S.A. EA should pay:

1. The cost of hire of the motorhome for 23 days, less the applicable excess under "business cover".
2. Hospital benefit at £20 per day for the days Mr H spent in hospital.

The above is in addition to what EA's already paid; £403 for the return flight for the curtailed trip, £133.33 for the hospital expenses, and £220.54 for the cancelled flight and hotel. I understand EA has already deducted the applicable excesses from these payments.

EA must pay Mr H interest on the amount it pays for items 1 and 2 at the simple rate of 8% per year from the date of Mr H's claims to the date it makes the payment. And it should also pay interest at the simple rate of 8% per year on the amounts it's already paid Mr H from the date he made those claims to the date EA paid him back<sup>1</sup>. I understand that some of the claims were made later than others so EA can take this into account when calculating the interest.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 April 2016.

Anastasia Serdari  
**ombudsman**

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