

complaint

Mr M complains that Society of Lloyd's ('Lloyd's') turned down his cancellation claim under his travel insurance policy.

background

In May 2012 Mr M renewed his annual travel insurance policy, which is underwritten by Lloyd's. It was a specialist policy that allowed him to take part in a particular sporting activity while on holiday. Just before Christmas 2012 he says his wife booked a holiday for early Spring 2013 as a surprise for an anniversary. She paid the balance in early January 2013.

In mid-January 2013, Mr M was told he needed surgery to remove a large bladder stone which he had shortly after. The day after the operation he was told he shouldn't travel for at least six weeks (which would be after the expected departure date). Mr M cancelled the holiday and made a claim to Lloyd's.

Lloyd's turned down the claim. It said Mr M should have told it when he first took out the travel policy in 2009 that he had an enlarged prostate ('benign prostate hyperplasia'). This had been diagnosed in 2007. Bladder stones were linked to this condition. And Mr M had had a bladder stone removed before, in 2008. If he'd told it about the prostate condition, then it wouldn't have covered him for it (or any linked conditions).

Lloyd's also said Mr M should have told it he'd seen a consultant about a '*significant urological event*' in November 2012. This was before the holiday was booked. Its policy required him to tell it about any health changes. If he had then Lloyd's wouldn't have agreed to cover him at all. He should have realised he might not be able to travel before booking his holiday. Mr M said he'd had some difficulty passing water, but the stone hadn't been discovered before the holiday was booked. He complained to us.

Our adjudicator thought Mr M had correctly answered the questions Lloyd's had asked at renewal. And she didn't think Lloyd's had made it clear enough, at renewal, that Mr M should declare any change in health during the policy year. She couldn't see he'd had a significant change in health that he'd have realised his travel insurer would want to know about. So she thought it was fair that Lloyd's should pay Mr M's claim.

Lloyd's didn't agree. It made some detailed points, which I've only briefly summarised here. It said:

- The doctor who signed off the annual certificates (to confirm Mr M was fit to take part in the sporting activity) didn't mention the prostate condition. The underwriters weren't told about the condition.
- Mr M was under ongoing care from a consultant, which is significant and he should have declared.
- Mr M was fit to travel but couldn't take part in the sporting activity – so he decided not to go on holiday.
- The adjudicator didn't appreciate that the duty of 'disclosure' is an ongoing one, and not just at renewal. She didn't mention its 'fitness to travel requirements', which explains about declaring any change in health. And this section says Lloyd's will not pay for any pre-existing condition that has been diagnosed.
- Mr M had had a '*significant urological event*' in November 2012, one month before the holiday was booked. So he could have anticipated he might need to claim before

booking his holiday a month later. No reasonable person would book a holiday until he'd got a diagnosis.

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 consider it's fair for Lloyd's to pay Mr M's cancellation claim under his travel insurance policy. I'll explain why.

should Mr M have told Lloyd's about the pre-existing medical condition when he renewed his policy?

Lloyd's is saying that Mr M should have told it about (or '*disclosed*') a medical condition in 2009. But this is an annual policy. Mr M renewed it in May 2012 for one year. So I'm only going to consider what he should have declared at the time he renewed the policy.

For Lloyd's successfully to argue that Mr M should have told it about a pre-existing medical condition it needs to show that Mr M gave incorrect information in response to a clear question. I don't think it has done that.

The relevant question it is relying on was: '*Are you...currently taking any medication or receiving medical treatment*'.

Mr M answered 'no' to that question. The medical evidence doesn't suggest he was '*on medication or receiving medical treatment*' for the 2007 medical condition at the time he renewed his policy. He had routine annual check ups with a consultant, but I can't see he was asked to declare this. It would be for the doctor who signed the specialist sport certificates to mention any condition that was relevant.

So I don't think there was any failure on Mr M's part to '*disclose*' the medical condition to Lloyd's when he renewed the policy.

should Mr M have told Lloyd's about his medical condition after he took the policy but before the holiday booking?

I've looked at the renewal 'screens' which Mr M would have seen when he renewed his policy online. There was no clear warning that he would need to tell Lloyd's about any 'change in health' after he took out the policy.

The policy includes this wording, on page 2, under 'Important Notes about your Policy', and (in bold, larger type) the title 'fitness to travel requirements':

This Travel insurance policy is designed to cover unforeseen illnesses and accidents that first occur during the Travel period. This policy will not cover any claims made as a result of an undisclosed pre-existing medical condition that you are aware of and that has been diagnosed or is awaiting diagnosis. It is therefore your responsibility to disclose any medical conditions that may affect our decision to insure you, and if your health changes after you have taken out this insurance policy then you must contact us without delay. Underwriters reserve the right to alter the terms of this insurance based on the changed medical circumstances.

The policy doesn't define what is meant by a pre-existing medical condition or '*...health changes...*'.

The 'fitness to travel requirements' condition is a highly significant policy term. So I would expect Lloyd's to have brought it to Mr M's attention very clearly at the time he renewed his policy. I'm not satisfied that Lloyd's did this. I've looked at the key facts document. It doesn't mention the 'fitness to travel requirements' section above. I accept the policy did mention this. But I don't think Mr M would have realised he'd needed to tell Lloyd's about a difficulty passing water.

Should Mr M have told Lloyd's about a change in health anyway?

I think a consumer would reasonably realise their travel insurer would want to know about a significant change in their health. I'd consider cancer and some heart conditions to be 'significant'.

But here I don't accept Mr M thought he'd had a significant change in health. At the end of November 2012 his consultant said he had a '*significant urological event*' that needed investigation. The consultant hasn't elaborated on this.

Mr M says this event was a difficulty in passing water. But his consultant has confirmed that it wasn't until mid-January 2013 that a large stone was picked up in a diagnostic test. This was just under four weeks after the holiday was booked. Even at that point, Mr M didn't think he'd had a significant change in his health. His doctor confirmed it was only in February 2013 that it first became clear the holiday should be cancelled. This was after his surgery, and Mr M was told he shouldn't travel for at least six weeks after surgery. So he cancelled the holiday straight away, given they were due to go in early March. So I don't accept the only reason he didn't travel was that he couldn't take part in the sporting activity.

I don't think Mr M could reasonably have foreseen or anticipated that he might need to make a claim, at the time the holiday was booked (whether or not he knew about the booking at the time). He'd not had a bladder stone diagnosed at that point.

could Lloyd's exclude the claim because it was linked to a pre-existing medical condition?

The exclusion under the cancellation section sets out what isn't covered. It says that it won't cover any medical condition which, at the time the policy is taken out, the policy holder is already receiving medical treatment for or is on a waiting list for medical treatment.

There's no medical evidence to say that, when the policy was renewed in May 2012, Mr M was receiving medical treatment for the medical condition he claimed for, or was on a waiting list for treatment. So I don't think Lloyd's can rely on this exclusion. And there's nothing in the general exclusions that covers his situation either.

For these reasons, I think the fair and reasonable outcome is for Lloyd's to pay Mr M's cancellation claim, in line with the remaining policy terms and deducting any policy excess. It should add interest to the payment as set out below.

my final decision

My decision is that I uphold this complaint. I require Society of Lloyd's to pay Mr M's cancellation claim, in line with the remaining policy terms and excess. It should add simple interest to the payment at the gross annual rate of 8% (less tax if properly deductible) from the date of claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 January 2016.

Amanda Maycock
ombudsman