

The complaint

Mr and Mrs B are unhappy that Aviva Insurance Limited declined a claim they made on their travel insurance policy.

What happened

Mr and Mrs B were due to travel abroad with their son and friends in the summer of 2022. Mrs B had also planned to do an endurance activity for no financial gain.

Mr and Mrs B had the benefit of a travel insurance policy through a federation to which Mr B belongs. The policy is underwritten by Aviva.

Shortly before they were due to depart the UK, Mrs B became unwell, leading to the trip being cancelled.

Mr and Mrs B claimed on the policy for the pre-paid costs they were unable to recover, including accommodation and car hire expenses, most of the flight costs and costs connected to the endurance activity.

Aviva initially declined the claim, relying on the following exclusion in the policy ('the exclusion'):

The policy doesn't cover:

any loss if the Insured Person has been taking part in any activity or sport not listed in Activities and Sports, including but not limited to steeplechasing, polo, hunting, any professional sport(s), mountaineering (normally requiring ropes or requiring the services of a guide), pot holing, canyoning, quad biking, fighting (except in self-defence), scuba diving below a depth of 30 metres, parachuting, racing, speed or endurance tests or practising for such events or any form of organised team sport.

Unhappy Mr and Mrs B brought a complaint to the Financial Ombudsman Service. After doing so, Aviva said it had mistakenly relied on the exclusion to decline the claim.

However, it maintained that the claim wasn't covered under the policy because the policy covers cancellation of 'an insured journey' which is defined under the policy as:

any trip devoted entirely to pleasure, rest or relaxation or Business Purposes undertaken by the Insured Person only to the business of the Policyholder.

And because the purpose of the trip was for Mrs B to undertake an endurance activity, it didn't meet that definition.

Our investigator agreed so he didn't think Aviva had unfairly declined the claim. However, he did think there had been some service failings and he ultimately recommended Aviva pay Mr and Mrs B £200 in compensation.

Aviva accepted the investigator's recommendation. Mr and Mrs B did not. So, this complaint was passed to me to consider everything afresh and decide. I issued my provisional decision in June 2023 explaining why I was intending to uphold this complaint. An extract of my provisional decision is set out below.

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Aviva has an obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline a claim.

I'm intending to uphold this complaint as I'm not currently satisfied that Aviva has fairly and reasonably declined Mr and Mrs B's claim for the reasons it relied on. I'll explain why.

The insured journey

I don't think Aviva has acted fairly and reasonably by concluding that the trip booked for the summer of 2022, cancelled by Mr and Mrs B, wasn't an insured journey as defined by the policy terms.

The policy doesn't define 'pleasure, rest or relaxation'. And I'm satisfied that the feelings of pleasure and relaxation are subjective, open to different interpretations to different people.

Mr and Mrs B accept their trip did include Mrs B undertaking an endurance activity. She says she would be the only participant and had arranged and paid for someone experienced and authorised to be with her so that it could take place. The activity wasn't for financial gain, and she says she did it for pleasure and relaxation. I'm satisfied Mrs B has given credible testimony that this was something she enjoyed doing and says she has been involved in similar endurance activities around the world. I'm persuaded by what she says about that.

The policy sets out at page 11 the activities and sports covered under the policy. It expressly states that the activity/sport Mrs B was taking part in was covered and it doesn't put further conditions on that unlike some of the other activities/sports mentioned.

Further, this page of the policy also lists other activities which objectively might not be considered to be pleasurable, restful or relaxing including: marathon running, hill/ trekking between 3,000 and 6,000 metres, sailing within 12 miles from land and off piste skiing (with qualified guide or instructor).

I don't think it's fair and reasonable for Aviva to conclude that the endurance activity Mrs B was going to take part in as part of the trip is materially different to other such activities listed as covered on page 11 in this case – and not for pleasure, rest or relaxation. And I don't think it's fairly concluded that the trip isn't covered under the policy for this reason.

The exclusion

Aviva sought to initially rely upon the exclusion to decline the claim but accepted this was a mistake. I agree that it wouldn't be fair and reasonable for it to rely on the exclusion to decline the claim.

It says the policy excludes any loss if the insured person "has been taking part in any activity or sport not listed in the activities and sports section". The term is drafted in the past tense rather than the future tense. It doesn't, for example, say the policy won't cover any loss if the insured person will be taking part in activities not listed as covered. So, as is common in many travel insurance policies, I think the exclusion relates to losses/claims which are a direct result of the insured person taking part in activities not listed on page 11.

And although the exclusion is said to exclude endurance tests that's inconsistent with some of the activities listed at page 11 – including marathon running. Further, the activity Mrs B was going to be taking part in is also specifically included on page 11. So I think the effect of those sections being read together are unclear.

But in any event, the trip was cancelled so I'm satisfied Mr and Mrs B didn't experience any losses because of Mrs B taking part in any activity whilst abroad.

I also think the exclusion further supports my provisional findings above that Mr and Mrs B had booked and cancelled an insured journey. If Aviva didn't intend to provide cancellation cover for trips similar to the one Mr and Mrs B had booked, there would be no need to have the exclusion in the policy.

Applying Aviva's logic, there would be no need to exclude losses if the insured person has been taking part in an activity not covered under the policy for the activities the exclusion goes on to mention such as fighting, professional sports, endurance tests or any form of organised sport. So, on Aviva's case, trips involving those activities wouldn't be covered because such trips wouldn't meet the policy definition of an insured journey in the first place.

Non-disclosure, misrepresentation or misdescription

Aviva has also said to our service that Mr and Mrs B ought to have discussed the purpose of the trip with Aviva before booking the trip for the summer of 2022.

The term in the policy it seeks to rely on relates to the disclosures before the policy was taken out – which was many years ago. Although the policy was renewed annually by the policyholder, I've seen nothing to show that the policyholder or Mr and Mrs B were asked any questions about specific holiday intentions when they were being added to Mr B's employer's travel insurance policy many years ago or at renewal.

So, I don't currently think it would be fair and reasonable for Aviva to rely on that term to decline the claim.

The way in which the claim was handled

I don't think Aviva progressed Mr and Mrs B's claim as quickly as it should've, and I don't think the claim was handled fairly. The claim was submitted in August 2022, and it took Aviva one month to ask Mrs B for further information, which I think she promptly provided.

I don't think the claim was promptly progressed thereafter, leading Mrs B to contact Aviva on a couple of occasions in October 2022. And although I can see from Aviva's contact notes that it was in discussions with the underwriter in November 2022, Mr and Mrs B weren't told that the claim was declined until December 2022. I've seen no persuasive reason why it took Aviva so long to decline the claim once Mrs B provided it with the information requested in mid-September 2022. This unnecessarily caused Mr and Mrs B uncertainty and worry over the outcome of their claim for a long period of time. The claimed amount is over £10,000 so I understand why Mr and Mrs B were chasing Aviva for updates.

Aviva accepts that the reason put forward to decline the claim at that stage was a mistake. I accept why Mr and Mrs B felt frustrated by discovering that Aviva put forward a different reason to decline the claim to our Service – which for the reasons set out above, I'm currently satisfied isn't a fair and reasonable reason either.

I think Aviva should pay £250 compensation to Mr and Mrs B to reflect the distress and

inconvenience it's caused them.

Putting things right

Within 21 days from the date on which our Service notifies Aviva that Mr and Mrs B accept any eventual final decision, I intend to direct Aviva to:

- reassess the claim made by Mr and Mrs B in line with the remaining terms of the policy - on the basis that their trip amounted to an insured journey and the exclusion doesn't apply - including any excess and policy limits.
- pay Mr and Mrs B £250 compensation for distress and inconvenience.

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I invited both parties to provide any further information in response to my provisional decision. Mr and Mrs B said they agreed with the proposed outcome.

Aviva accepted the claim could've been handled better and agreed to pay £250 compensation for distress and inconvenience. However, it didn't accept that the trip which was cancelled amounted to an insured journey as defined by the policy.

In summary Aviva said:

- considering the evidence and background, any reasonable person would conclude that the trip wasn't devoted entirely to pleasure, rest or relaxation.
- its risk appetite is for leisure forms of the activity Mrs B was due to take part in. It doesn't include an endurance version of this activity or record attempts, which it says would increase the risk and falls outside of its underwriting appetite for this policy.
- by completing the endurance activity, Mrs B promoted her own personal profile and that of her business.
- if the full nature of the planned trip had been disclosed to it, Aviva wouldn't have underwritten the additional risk. It says the additional risk would be considerable.

Aviva has also provided various links to websites in support of its submissions.

What I've decided – and why

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

That includes Aviva's response to my provisional decision. Having done so, I uphold Mr and Mrs B's complaint. Aviva's further points haven't changed my mind. I'll explain why.

- As set out in my provisional decision, the words 'pleasure', 'rest' and 'relaxation' are subjective. And those three words aren't separately defined in the policy. Mrs B may have been seeking to make history with the swim she planned to make and if she'd accomplished the swim, it may have raised her personal profile. But I'm persuaded that she intended to derive pleasure from the endurance swim she was intending to do and her hope of completing it. As this was the purpose of the trip, I'm satisfied that it amounted to an insured journey as defined the policy.
- I've been provided with no documentary evidence to support what Aviva says about not having a risk appetite to cover trips involving the (endurance) activity Mrs B

planned to partake in whilst away or if it involved a record attempt – as opposed to a simple leisure activity. But in any event, as I explained in my provisional decision, the policy sets out at page 11 the activities and sports covered under the policy. It expressly states that the activity/sport Mrs B was taking part in was covered and it doesn't put further conditions on that unlike some of the other activities/sports mentioned. So, if Aviva didn't intend to cover the activity Mrs B was due to partake in – if it involved an endurance element – that isn't made clear at page 11 of the terms. So, I don't think it's fair and reasonable for Aviva to conclude that the activity wasn't covered.

- I've seen nothing to show that the policyholder or Mr and Mrs B were asked any questions about specific holiday intentions when they were being added to Mr B's employer's travel insurance policy many years ago or at renewal. So, even if – as Aviva says – Aviva wouldn't have agreed to cover the trip if it had been made aware of the purpose - I don't think it would be fair to conclude that Mr and Mrs B ought to have disclosed to Aviva the purpose of the trip when booking it (or at any time) to see whether it was covered, and if so, on what terms.

For reasons set out above and in my provisional decision (an extract of which is set out above and forms part of my final decision), I uphold Mr and Mrs B's complaint.

Putting things right

Within 21 days from the date on which our Service notifies Aviva that Mr and Mrs B accept my final decision, I direct Aviva to:

- reassess the claim made by Mr and Mrs B in line with the remaining terms of the policy - on the basis that their trip amounted to an insured journey and the exclusion doesn't apply - including any excess and policy limits.
- pay Mr and Mrs B £250 compensation for distress and inconvenience.

My final decision

I uphold this complaint and direct Aviva Insurance Limited to put things right as set above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 18 September 2023.

David Curtis-Johnson
Ombudsman