DRN-4834651

Financial Ombudsman Service

The complaint

Mr and Mrs H complain that AWP P&C SA has turned down a medical expenses claim Mrs H made on a travel insurance policy.

Mr and Mrs H are represented by Mrs N.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr and Mrs H held travel insurance as a benefit of a packaged bank account. The policy provides cover until a person turns 71 years of age.

In December 2022, AWP emailed Mrs H to explain that due to her age, her cover under the policy would end in January 2023. It provided her with a link to alternative travel insurers.

Subsequently, in April 2023, Mrs H travelled abroad alone following a family bereavement. She was due to return on 20 April 2023. Unfortunately, while she was away, she broke her ankle and she was found to need surgery. She booked a later flight back to the UK. And contact was made with AWP's assistance company to claim on the travel policy with AWP.

AWP noted that Mrs H's cover under the policy had expired. But it told Mrs N that Mrs H was likely covered as a beneficiary of Mr H's cover. It told Mrs H to sign a consent form, provide it with medical reports and that it would appoint a local agent. It said too that it would organise Mrs H's repatriation to the UK.

Mrs H underwent surgery abroad and despite requesting that AWP provide the treating hospital with a guarantee of payment, she ended up settling the medical bills herself on a pay and claim basis. But she was unhappy with the way AWP had handled her claim and so Mrs N complained on her behalf.

Ultimately, AWP concluded that Mrs H's claim wasn't covered. That's because it said that her cover had expired when she turned 71 years of age – prior to her holiday. But it acknowledged that it had led Mrs H to believe that there was cover for her situation and so it offered to pay her £150 compensation.

Mr and Mrs H were unhappy with AWP's handling of the claim and Mrs N asked us to look into the complaint. Mrs N told us that had AWP correctly informed Mrs H that she wasn't covered by the policy terms, she'd have returned to the UK for free surgery on the NHS.

AWP subsequently offered to increase its offer of compensation to £400.

Our investigator thought AWP had made a fair offer to resolve this complaint. While she agreed that AWP should have made it clear to Mrs H that her surgery wouldn't be covered, given it had notified her that her cover was ending, the investigator felt it wouldn't be fair to tell AWP to pay the claim.

Mrs N disagreed on Mr and Mrs H's behalf and so the complaint was passed to me to decide.

I issued a provisional decision on 10 May 2024 which explained the reasons why I thought the fair outcome to this complaint was for AWP to pay Mr and Mrs H compensation equivalent to 50% of Mrs H's medical expenses. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken these rules into account, amongst other relevant considerations and regulatory principles, to decide whether I think AWP has treated Mr and Mrs H fairly.

I've first considered the policy terms and conditions, as these form the basis of the insurance contract. The policy defines what AWP considers to be an insured person. It says:

'All adults must be aged 70 or under'.

Page four of the policy includes a section called 'Operation of Cover'. This sets out the following:

'The cover under this policy stops when:…

The account holder reaches the age of 71.'

And the 'Demands and Needs' section of the contract, set out on page five of the policy terms says:

'This product meets the demands and needs of those under 71 years who want to insure themselves against medical emergencies, delayed or missed departures, cancellation, cutting a trip short, lost, stolen or delayed possessions, loss of travel money and passport, personal accident, personal liability and legal expenses when travelling.'

In my view then, the policy terms make it sufficiently clear that cover under the policy ends when an account holder or policy beneficiary reaches 71 years of age. There's no dispute that Mrs H was aged over 71 years at the time of her trip and therefore, at the time of her claim. So on a strict interpretation of the policy terms, her medical expenses simply aren't covered.

I'm mindful too that in December 2022, AWP emailed Mrs H to let her know that her cover would be expiring in January 2023 and provided her with a link to alternative insurers. Mrs H appears to accept that she did receive this email. I've taken this into account when deciding what I consider to be fair and reasonable in all of the circumstances.

While I'm satisfied the claim isn't covered by the policy terms, I can depart from a strict interpretation of the contract if I consider its application produces an unfair result. That's the case here as I'll go on to explain.

AWP accepts that when Mrs N got in touch with its medical assistance team to make a claim on Mrs H's behalf, the call handler noted that Mrs H's cover had expired. This call took place before Mrs H had arranged surgery abroad. It was open to the call handler, as the expert in this situation, to tell Mrs N that there was no medical cover available to Mrs H so that Mrs H could make an informed decision as to whether or not to proceed with the surgery at her own expense. But they didn't do so. Instead, AWP's call handler suggested that Mrs H would likely be covered as a beneficiary of Mr H's cover. They went on to send Mrs H the necessary paperwork to proceed with the claim and to explain the next steps.

It also appears that AWP indicated local agents would be appointed to manage billing. And Mrs H was asked to retain her paperwork and receipts. I've borne in mind too that at the time, Mrs H had suffered a painful injury and she was vulnerable and distressed following her recent bereavement. While I appreciate that Mrs H wasn't specifically informed her claim would be paid, I think it was reasonable for her to rely on what the call handler told Mrs N and to make arrangements for her treatment based on that conversation. Nor do I think the follow-up paperwork made it sufficiently clear that cover was not guaranteed, given the nature of the discussion Mrs N had already had with AWP on Mrs H's behalf.

Mrs H says that had she known the surgery wouldn't be covered, she would have flown back to the UK for free treatment. She says the treating doctor didn't consider her to be unfit to fly prior to surgery. I can't say with any certainty whether or not Mrs H would have been fit to fly without surgery. I asked AWP if its Chief Medical Officer (CMO) could comment on this particular point. The CMO said they 'didn't have enough objective medical evidence to confirm this 100%'. The CMO said though that they did consider Mrs H's surgery to be medically necessary abroad.

On balance, it seems at least possible that Mrs H could have flown back to the UK for free treatment on the NHS. So I currently think it's more likely than not that she was financially prejudiced by AWP's failure to tell her upfront that there was no cover for her situation.

Notwithstanding the above, I don't think it would be fair for me to direct AWP to pay all of Mrs H's medical costs. That's because, as I've said, I think AWP did clearly inform Mrs H that her cover would be ending in January 2023. Therefore, she was given an opportunity to source alternative cover. And as I've explained, I find the policy terms are clear and not misleading. As such then, I currently think that both parties bear some responsibility here. So I don't find the £400 compensation AWP has already offered is fair or reasonable to reflect the impact of its error on Mrs H. Instead, in my view, it would be fair and reasonable for AWP to pay Mrs H total compensation equivalent to 50% of her evidenced surgical and medical expenses.

I don't currently think it would be fair for me to direct AWP to pay 50% of Mrs H's replacement flight(s). I say that because on the evidence before me, it appears that Mrs H had already booked a new return flight prior to contacting AWP's assistance team. So I can't fairly say she relied on any misinformation from AWP in incurring the cost of the flight change. And nor do I think there's enough clear evidence to indicate that Mrs H couldn't travel on her rescheduled flight as a result of her injury or surgery. Instead, it seems she suffered a panic attack and therefore, couldn't fly.

It will be for AWP to consider the medical evidence Mrs H has provided in support of her claim to determine 50% of the costs of surgery and her medical expenses. It would be helpful if AWP could please provide me with a calculation setting out 50% of the evidenced medical expenses in response to this provisional decision.'

I asked both parties to provide me with any additional evidence or comments they wanted me to consider.

AWP didn't respond by the deadline I gave, so our investigator let it know that the case was being passed back to me.

Mrs N responded on Mr and Mrs H's behalf and I've summarised her response. She didn't necessarily agree that it was fair to share equal financial responsibility between Mr and Mrs H and AWP. That's because she felt AWP's behaviour had been shameful and humiliating. She said Mrs H maintains that if she'd been told her claim wasn't covered, she would have returned to the UK for surgery. Mrs N added that Mrs H's 'fault' in this case was a failure to miss email notifications from AWP – but she felt that AWP had committed numerous,

consecutive errors. Mrs N also told us that Mrs H would accept my decision.

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.

Having done so, my final decision is the same as my provisional decision and for the same reasons.

AWP didn't respond to my provisional findings, so I see no need to repeat them in detail here. I'd like to reassure Mr and Mrs H and Mrs N that I've considered their additional comments. But I must reiterate that I must reach a decision which I consider to be fair and reasonable in all of the circumstances. And it remains the case that AWP *did* tell Mrs H, ahead of time, that cover under her policy was ending and provided her with details of alternative insurers. I can't fairly hold AWP responsible for Mrs H not taking out a new policy which did cover her situation. This means I don't think I could fairly or reasonably find AWP liable for all of Mrs H's medical costs.

I explained in my provisional decision why I think AWP's failure to explain Mrs H's lack of cover may well have financially prejudiced her position. And I'm satisfied that the compensation award I'm making fairly recognises the impact of AWP's mistakes on Mrs H during its handling of this claim. I'd add too that our compensation awards aren't intended to fine or punish the businesses we cover. Instead, they're intended to compensate consumers for the distress and inconvenience we think a financial business' mistakes have caused them. In this specific circumstances of this complaint, I still find that fair redress is for AWP to pay Mrs H total compensation equivalent to 50% of her evidenced surgical and medical expenses.

It's unfortunate that AWP didn't provide a calculation setting out what 50% of the evidenced medical expenses would be in response to this provisional decision. It will be for AWP to consider the medical evidence Mrs H has provided in support of her claim to determine, calculate and pay Mrs H compensation equivalent to 50% of the costs of surgery and her medical expenses.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I partly uphold this complaint.

I direct AWP P&C SA to pay Mr and Mrs H compensation to the value of 50% of Mrs H's evidenced surgical and medical expenses.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 8 July 2024.

Lisa Barham
Ombudsman