

The complaint

Mr W and Miss L complain that AWP P&C S.A. declined their claim against their travel insurance policy. Reference to AWP includes its agents.

What happened

In summary, on 1 March 2023, Mr W and Miss L booked a family trip with departure and return dates of 11 June 2023 and 22 June 2023 respectively. They also bought single trip travel insurance underwritten by AWP. Unfortunately, in April 2023, Mr W's mother was seriously unwell. On 16 May 2023, Miss L contacted AWP about their situation. I'll refer to that phone call in more detail below. Mr W and Miss L cancelled their trip and on 30 May 2023, they made a claim against their policy.

In September 2023, AWP declined the claim. It relied on the exclusion in the policy terms relating to pre-existing medical conditions of a family member. AWP noted Mr W's mother was diagnosed with lung cancer in February 2022 and a new cancer diagnosis led to the cancellation.

Mr W and Miss L say Miss L explained the situation in a call with AWP on 16 May 2023 and gave information about Mr W's mother's previous illness. They say AWP told Miss L it would reimburse them for the cost of the trip. They asked AWP to provide the call recordings, but it didn't provide all of them.

Mr W and Miss L say if they had known AWP would decline their claim, a friend could have taken the trip in their place. Or, alternatively, they may have chosen to travel and return home early if the need arose. Mr W and Miss L want AWP to settle their claim, as it said it would.

One of our investigators looked at what had happened. She didn't think AWP had acted unfairly or unreasonably in declining Mr W and Miss L's claim in line with the policy terms. The investigator referred to one of the exclusions in the policy which says there's no cover for claims arising from the health of a family member in certain circumstances that are relevant here.

The investigator was satisfied Miss L's phone call with AWP on 16 May 2023 took place but as AWP couldn't trace the recording of that call, she couldn't confirm what was discussed. So, the investigator wasn't able to conclude AWP had given Miss L misleading information.

Mr W and Miss L didn't agree with the investigator. They said that it's questionable why AWP can't provide the recording of the phone call to which Miss L has referred. Mr W and Miss L said they now understand what the policy says about cancellation caused by the health of a family member, but AWP didn't explain that when Miss L phoned to discuss a claim. Mr W and Miss L said that the call recording would show that AWP gave them incorrect information.

Mr W and Miss L want more information about why AWP can't provide the recording of the relevant phone call. They say they cancelled the trip as a direct result of the incorrect information AWP gave to them. Mr W and Miss L asked that an ombudsman consider their complaint, so it was passed to me to decide.

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.

I've taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say AWP should deal with claims promptly and fairly and must act to deliver good outcomes for retail customers. I'm sorry to note the circumstances which led to the claim in this case.

The starting point is the terms and conditions of the policy. Subject to the policy terms, there's cover for certain costs following cancellation caused by the illness of a family member. There's a relevant exclusion which says as follows:

[...]

***You** will not be covered for any directly or indirectly related claims [...] arising from the health of [...] a **family member** if at the time **your** policy was issued:*

- ***you** were aware they have been receiving medical treatment or consultation at any medical facility for a medical condition in the last 12 months;*
- ***you** were aware they have been awaiting medical treatment or consultation at any medical facility or have been under investigation for a medical condition;*
- ***you** were aware that a **doctor** had diagnosed them as having a terminal condition, or that their medical condition was likely to get worse in the next 12 months.*

Note

Indirectly related claims

*An indirectly related claim means a medical problem that is more likely to happen because of another medical problem **you** already have. Sometimes these conditions can lead to the development of other conditions. For example if **you**:*

- *[...]*
- *Have or have had cancer, **you** are more likely to suffer with a secondary cancer.'*

I've looked at the medical evidence provided by Mr W and Miss L in support of their claim. Mr W's mother was diagnosed with primary lung cancer in February 2022, was given a terminal prognosis on 30 March 2023 and was diagnosed with secondary cancer in April 2023.

Mr W's mother's secondary cancer diagnosis was related to her primary cancer. Mr W and Miss L weren't aware of Mr W's mother's terminal prognosis and secondary cancer when they took out the policy. But that's not the determining issue here. On balance, I think it's more likely than not that when Mr W and Miss L took out the policy they were aware Mr W's mother's medical condition was likely to get worse in the next 12 months. So, I think AWP was entitled to rely on the terms of the policy and decline Mr W and Miss L's claim.

The remaining issue for me to decide is whether AWP misled Miss L. Mr W and Miss L say, during a phone call on 16 May 2023, AWP told Miss L it would settle their claim. AWP says it can't locate that phone call. Mr W and Miss L don't accept AWP can't locate the recording of that call. I'm satisfied the investigator made appropriate enquiries of AWP about the call. It's sometimes the case that calls are not in fact recorded or recordings are not retained. There's also no note of the phone call to assist me in determining what was said.

As I haven't listened to the recording of the phone call of 16 May 2023 between Miss L and AWP, or seen a contemporaneous note, I can't know for sure what was said. Where there's a dispute about what's happened – as there is here - I come to a decision based on what I think is most likely to have happened, based on the available evidence and the surrounding circumstances.

On balance, I don't think there's sufficient evidence to enable me to conclude AWP told Miss L it would settle the claim. I think it's unlikely AWP would agree to settle a claim like this without first seeing the claim form and supporting medical evidence. The more unlikely something is, the more evidence is required to prove it took place. In this case, there's nothing to support Miss L's recollection of what was said. I don't think I can fairly conclude AWP gave Miss L incorrect information about the claim.

I'm sorry to disappoint Mr W and Miss L, but for the reasons I've explained, I don't think AWP acted unfairly in declining their claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L and Mr W to accept or reject my decision before 11 September 2024.

Louise Povey
Ombudsman