

## **The complaint**

Mr H and Ms J complain about AWP P&C S.A's settlement of their travel insurance claim.

My references to AWP include its agents which includes the business that our Investigator referred to in her correspondence.

## **What happened**

Mr H and Ms J had an annual travel insurance policy. AWP was the insurer and is the correct business for the complaint to be about.

Mr H and Ms J bought a bespoke holiday through their travel agent. They were due to fly from the UK on 27 December 2023 to a country I'll refer to as P for two nights' accommodation and an excursion then on 29 December take a flight to a country I'll refer to as C to take a cruise.

Adverse weather meant Mr H and Ms J's flight from the UK on 27 December 2023 was cancelled. They took new flights departing the UK on 29 December 2023 now having to fly direct to C to reach the cruise. Mr H and Ms J made a claim on the travel policy for their lost cost of about £2,400 for the unused two nights' accommodation, the excursion and business class flight from P to C. The travel agent provided a letter saying refunds of those costs weren't available from suppliers.

AWP assessed the claim under section 8 of the policy terms, 'Travel Delay and Abandonment' and paid Mr H and Ms J £100 travel delay benefit, the policy limit, to settle the claim.

Mr H and Ms J complained to us. They said their claim was payable under section 16 of the policy 'Travel Disruption Extension' and AWP's representatives had given them 'mixed messages' about whether their claim was covered.

Our Investigator considered that AWP had unfairly settled the claim because under the policy terms Mr H and Ms J could have abandoned the trip and if they'd done so the whole claim would be covered. Our Investigator said AWP should assess and pay the claim less the £100 travel delay benefit it had already paid, plus interest.

AWP disagrees and wants an Ombudsman's decision. It said Mr H and Ms J didn't abandon the trip and anyway under the 'Package Travel Regulations' the package provider should pay Mr H and Ms J the unrefunded lost cost. AWP also sent us the correct version of the policy terms for this claim.

Before I made my decision I asked Mr H and Ms J whether they had checked in for the cancelled flight and for details about how they had booked their holiday. I'll detail their response in my findings below.

## 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly and not unreasonably reject (or settle) a claim.

I think AWP unreasonably settled this claim, I'll explain why.

We set out to Mr H and Ms J why we think the way they bought the holiday means it's a package holiday and they haven't told us that our understanding of how the holiday was bought is incorrect.

So I think the holiday was a package holiday, albeit a tailor made one for Mr H and Ms J. Section 16 of the policy 'Travel Disruption Extension' says that the extension to the policy is specifically for trips that do not constitute a package, so I don't think section 16 applies to Mr H and Ms J's claim.

I've also considered section 8 of the policy (on page 9 of the policy document which AWP recently sent us). That section 'Travel Delay and Abandonment' says:

*'You are covered if your outward or return flights... are delayed for more than 12 hours beyond the intended arrival time (as specified on your travel ticket) as a result of...*

*b) adverse weather conditions;*

*.. then we will pay;*

*1. a benefit as shown on the Summary of Cover in total per person following a complete 12 hour or more delay, or*

***2. if you are delayed on your outward journey from the United Kingdom so that your trip has been re-scheduled to arrive at your destination more than 24 hours after the original scheduled arrival time, you may choose to abandon the trip instead of payment for delay (my emphasis), you are covered up to the maximum as shown on the Summary of Cover.***

### **Conditions**

*1. you must obtain written confirmation from the airline, shipping, coach or train company, confirming the period of and the reason for the delay.*

*2. this benefit is only payable in respect of either 1 or 2 as detailed above.*

### **Not Covered...**

*1. the policy excess as shown on the Summary of Cover of any incident. This applies to each person making a claim and is only applicable if you abandon your trip;*

*2. if you have not checked-in sufficient time for your outward or return journey'.*

AWP used subsection 1 of the above terms to pay Mr H and Ms J £100 travel delay benefit to settle the claim. The policy gives a maximum of £50 in total per person following a complete 12 hour or more delay, as happened to Mr H and Ms J when their original flight was cancelled.

But under subsection 2 of section 8, which I've highlighted in bold text above, Mr H and Ms J could have chosen to abandon the trip and be covered. The cancelled flight meant they were delayed on the outward journey from the UK which meant they never reached their destination at P on this trip. If they had abandoned the trip they would be covered to the relevant policy limit which is £3,000 per person less the policy excess.

Mr H and Ms J didn't choose to abandon the trip and instead continued, having a shorter trip. So the claim isn't covered by a strict interpretation of the policy terms.

But I have to decide what's a fair and reasonable outcome in all the circumstances. The policy wording I've referred to above is slightly different to the policy wording our Investigator referred to in making her recommendation but the principle for a fair and reasonable outcome is the same. As Mr H and Ms J could have abandoned their trip and successfully claimed for up to £3,000 per person I think it's fair and reasonable for AWP to cover the claim for their lost cost of £2,382.

The letter from the travel agent details the total of the lost cost and what the cost is for and I think is sufficient evidence of Mr H and Ms J's lost cost.

An exclusion to section 8 is if Mr H and Ms J hadn't checked in. But I've seen evidence that they did check in online for the flight from the UK which was cancelled.

AWP has referred to the 'Package Travel Regulations' and I take it that AWP means the Package Travel and Linked Travel Arrangements Regulations 2018. It's not clear to me that Mr H and Ms J's claim for the lost cost for the missed trip to P would be covered by those regulations in these circumstances and anyway section 8 doesn't have any specific exclusion for package holidays.

I think the fair and reasonable outcome is for AWP to pay the claim in line with the remaining policy terms, less the applicable excess per person and less the £100 travel delay benefit as the policy says '*benefit is only payable in respect of either 1 or 2 as detailed above*'. Interest must be added to the claim payment as I've detailed below.

### **My final decision**

I uphold this complaint.

I require AWP P&C S.A to pay Mr H and Ms J's claim in line with the remaining policy terms, less the applicable excess, less the £100 travel delay benefit it's already paid. Interest\* must be added at 8% simple a year from the date of claim until the date of settlement.

\*If AWP P&C S.A considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr H and Ms J how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms J to accept or reject my decision before 24 December 2024.

Nicola Sisk

**Ombudsman**