

complaint

Mr R complains that AWP P&C SA declined his travel insurance claim and mis-sold the policy. My references to AWP include its agents.

background

Mr R had an accident while motorcycle racing and had to cancel a special holiday for him and his family. Mr R says he went to the travel agent a week before the accident to buy travel insurance for the cover to start that day as he wanted cover if he was hurt at a race meeting before they departed. He says the travel agent confirmed he'd be covered for the motorcycle racing and he paid for additional cover.

AWP, the insurer, wouldn't pay the claim. It said the policy 'Adventurous Activities and Winter Sports' section clearly said:

'There is no cover for:

- *any professional or semi-professional sporting activity, or*
- *any kind of racing except racing on foot'.*

Mr R had told AWP the policy exclusion was clear but had said after his conversation with the travel agent he hadn't read the policy. AWP told us the travel agent said motorcycle racing wasn't discussed when it sold the policy to Mr R.

Our investigator recommended the claim be accepted. He thought the above exclusion applied when a person was on holiday and the claim should be considered under the cancellation section. Also our investigator was persuaded that Mr R was told by the travel agent that he'd be covered for the motorcycle racing meeting before his trip.

AWP disagreed and wanted an ombudsman's decision. It said:

- its policy was clear racing was excluded
- under the cancellation section the policy excluded 'deliberately putting yourself at risk'. Mr R accepted he put himself at risk a couple of days before travelling as he'd said the only reason he took out the insurance was to cover the race meeting before going on holiday
- it didn't accept the travel agent mis-sold the policy. The branch manager and assistant manager were present at the sale of the holiday and insurance and were experienced in the process to follow.

Before I made my decision I asked Mr R for some more information about the motorcycle racing. He said it was a hobby. I also asked why he'd taken out the natural catastrophe cover option. He said he'd never heard of that cover and didn't know he had it. He said the travel agent had just told him he had the highest level of cover and he was covered for motorcycle racing. He'd started the cover immediately to ensure he was covered for the race meeting before the holiday.

I told AWP that Mr R's complaint about the claim should be against it but the mis-sale part of the complaint shouldn't for the reasons I gave in my provisional findings.

my provisional decision

I explained that my provisional decision against AWP (the insurer) was just about whether AWP fairly and reasonably declined Mr R's claim.

The policy said AWP was the insurer and the travel agent who sold the policy to Mr R is the appointed representative of another business, not AWP. I thought it highly likely that the other business and AWP were related.

I explained that I'd made a separate provisional decision about the mis-sale aspect of Mr R's complaint against the other business. As the claim and potential mis-sale were related I made reference to that separate decision.

I explained why I was intending to uphold the complaint about the claim against AWP. I said:

'The policy lists numerous activities and winter sports that the policy covers which includes motorcycling (within criteria). However the policy is clear there's no cover for any kind of racing, except on foot, so motorcycle racing isn't covered.

However, I think the policy can reasonably be read so that the activities section only relates to activities that are and aren't covered on holiday. Mr R had his accident doing an activity before his holiday. So I think AWP should have fairly and reasonably considered whether Mr R's claim met the policy's requirements under the cancellation section without reference to the activities section.

The policy covers cancellation for serious injury. From the medical evidence I've seen Mr R needed to cancel his holiday due to surgery required as a result of the accident that occurred after the policy cover was in place.

AWP says cancellation isn't covered if Mr R deliberately put himself at risk. I accept that exclusion is clear under the policy.

But in deciding whether a policyholder has put themselves at risk the test I use is set out in the leading legal case on reasonable care - *Sofi v Prudential Assurance*. So I need to decide whether Mr R recognised a risk but took it anyway by taking measures which he knew were inadequate or no measures at all.

I think Mr R knew he was taking a risk in taking part in the motorcycle racing just before he went on holiday. He said he only started the insurance cover when he did so he would be covered if anything happened at the race meet. But I also think he thought he'd taken adequate measures to protect him from the risk if anything happened.

I say that because I do think Mr R reasonably believed he had taken out insurance to cover him if he had an accident at the race meeting before the holiday. I note from the claim Mr R has other insurance to cover him for medical costs and lost income if he has a motorcycle accident. So I think it's more likely than not that he did want to take insurance to cover him for lost holiday costs if he had an accident. He's told us it was an expensive family holiday of a lifetime.

I've set out in my separate decision why I think the policy was mis-sold and Mr R did believe he had insurance to cover him for motorcycle racing before he went on holiday. The effect of that decision on this decision is that as far as Mr R was concerned he'd taken steps to mitigate any risk by insuring himself for the risk.

I don't think AWP can fairly and reasonably rely on the 'racing' policy exclusion or the 'putting self at risk' exclusion for cancellation to decline the claim. It must pay the claim in

line with the remaining policy terms subject to any policy limits and excess, plus interest as detailed below'.

responses to provisional decision

Mr R accepted my provisional decision. AWP didn't respond.

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 uphold this complaint.

AWP hasn't responded to my provisional decision. The business against who I made my related provisional decision about the mis-sale of the policy also hasn't responded. Mr R accepts my provisional decision. So I've no reason to change my mind about the outcome of this complaint. For the reasons I've given in my provisional decision I uphold this complaint. AWP must pay Mr R's claim in line with the remaining policy terms and subject to any limits and excess, plus interest as detailed below.

my final decision

I uphold this complaint.

I require AWP P&C SA to pay Mr R's claim in line with the remaining policy terms and subject to any limits and excess. Interest* must be added at 8% a year simple from the date of claim to the date of settlement.

AWP P&C SA must make payment within 28 days of us telling it that Mr R accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 6 December 2018.

Nicola Sisk
ombudsman

*If AWP P&C SA considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr R how much it's taken off. It should also give Mr R a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.