

## **complaint**

Mr M has complained about the way Aviva Insurance Limited dealt with a claim under his travel insurance policy. References to Aviva include the actions of their agents.

## **background**

Mr M and his partner were involved in an accident abroad and they were hospitalised with serious injuries. They were both riding as passengers on a motorbike, when a motorbike traveling on the wrong side of the road hit them. Mr M contacted Aviva from the hospital to tell them what had happened. He also told them he was concerned because they'd left some baggage at a place they were staying in a different country, as they had intended to travel back there before flying home.

Aviva asked the hospital to send medical reports and asked for some details of what had happened. The hospital sent medical reports, which said they wanted to keep Mr M and his partner in hospital for another week, and that they weren't fit to fly. Aviva asked Mr M about the motorbike they were traveling on when the accident happened, because his policy had particular conditions relating to cover for motorbikes. Mr M told Aviva he couldn't provide any details of the make or model of motorbike, and he hadn't been able to contact the driver of the motorbike since the accident. Aviva were also concerned because the police weren't called to the scene of the accident, so there wasn't a police report, despite there being serious injuries.

Aviva told Mr M they weren't able to confirm cover because he couldn't provide details of the motorbike they were on – but they could still provide assistance to them. Mr M and his partner then discharged themselves from hospital and arranged to fly home themselves. Mr M complained about the way their claim had been handled, and the fact that Aviva didn't confirm cover while they were in the hospital. Mr M also said he wasn't given a copy of his full policy terms when he bought his policy, so he didn't know about the limits on cover for riding motorbikes. Mr M was also then able to confirm the make and model of the motorbike they were riding.

Aviva considered the circumstances of the accident and said that as both of them were riding as passengers on one bike, they weren't covered by the terms of the policy. This was because they had deliberately put themselves at risk. Aviva also confirmed that Mr M had had the same travel policy over previous years, and the terms of cover for riding motorbikes was the same.

Mr M had bought his travel policy through his bank, and his bank then said they would cover the claim as a gesture of goodwill. The bank reimbursed Mr M for the medical bills he'd paid for himself and his partner, and they waived the policy excesses for both of them. They also paid the daily hospital benefit and holiday disruption they were entitled to under the policy terms, and the cost of their flights home. The bank also refunded interest charges that had been incurred by family members and friends who borrowed money to pay the hospital bills for Mr M and his partner, and for their flights home. The bank also arranged to have Mr M and his partner's baggage couriered home to the UK.

Mr M wasn't happy and brought his complaint to us. He said that as cover was later confirmed, Aviva should have been able to do this straight away, while they were still in hospital overseas. He said he wanted compensation because his injuries were now worse than they would have been if Aviva had dealt with his claim effectively.

The adjudicator who investigated his complaint said that it was reasonable that Aviva had to check whether the claim fell within the terms of the policy before they could confirm cover. As Mr M didn't know the type of motorbike they'd been riding, the adjudicator didn't think it was unfair that Aviva couldn't confirm cover immediately. He also thought that as there were three people riding a two-person motorbike, it wasn't unfair that Aviva thought this fell outside the scope of the policy terms because they'd deliberately put themselves at risk. The adjudicator also noted that Mr M had had similar travel policies through his bank since 2013, so he should reasonably have been aware of the cover for riding motorbikes. He said he hadn't seen anything which suggested Mr M and his partner's injuries were worse now because of the way the claim was handled. And as the bank had covered the claim for Mr M and his partner in full, including interest charges, and arranged to have the bags couriered back to the UK, he didn't think it was reasonable to ask Aviva to pay any further compensation. Mr M wasn't happy.

So his complaint has been passed to me to decide.

### **my findings**

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, I've decided not to uphold it.

Mr M's policy says it does not cover '*any claim where during the trip you deliberately put yourself at risk of ... injury*'. It also says it doesn't cover '*any claim for an incident occurring during the trip that results from... you using a scooter, moped or motorcycle as a rider or passenger on a machine*

- i. 125cc or under, unless you wear a crash helmet and, as a rider, you are fully licensed to use such a vehicle in the UK;*
- ii. over 125cc, unless this is your mode of transport from the UK and you wear a crash helmet and appropriate protective clothing.'*

So the policy is clear that there are limits on the cover it provides for riding motorbikes. I think it's reasonable for an insurer to check whether the circumstances of a claim fall within the terms of cover the policy provides. So I think it was reasonable that Aviva couldn't confirm whether Mr M and his partner were covered immediately, as Mr M didn't know what make or model of motorbike he was riding. Aviva were also concerned that both Mr M and his partner were riding as passengers on a motorbike, putting themselves at risk.

In these circumstances, I don't think it was unreasonable that Aviva didn't confirm cover immediately. And I also don't think it was unreasonable that – given the terms of the policy – they still didn't think the claim was covered after Mr M told them the motorbike was 125cc. This was because there were three people traveling on a motorbike designed for two people.

Mr M complained about poor communication from Aviva while he was in hospital, and said that his injuries are now worse because of the way Aviva dealt with the complaint. He said that if they were able to cover the claim later when he got back to the UK, they should have been able to do this immediately. As I've said above, Aviva were entitled to consider if the claim fell within the terms of the policy, and I don't think it was unreasonable that they weren't able to confirm cover immediately.

From the information I've seen, the hospital where Mr M and his partner were treated sent the medical report to Aviva the day after they were admitted. This was after Mr M and his partner had already had surgery to clean and treat their wounds, and the treating hospital decided on the treatment they gave. The medical report was reviewed by Aviva's medical team, and as far as I can see no concerns about the treatment given were raised. And Mr M didn't raise any concerns about the treatment from the hospital at the time. I think it's usual for a treating hospital to decide on treatment, and I don't think – even if Aviva had been able to confirm cover straight away – that the treatment given would have been different.

From the calls I've listened to, Mr M told Aviva that he wanted to get home as soon as possible, partly because they were struggling with the language barrier. He told Aviva the doctor had said they could give them some antibiotics for the flight. He also told Aviva the doctor had told him they could leave the hospital and receive their treatment as outpatients. But the medical report Aviva got said that they both needed to stay in hospital for a further five to seven days. And they weren't fit to fly. Aviva's agent told Mr M that their medical teams also wouldn't issue them with a fit to fly certificate because medically, they weren't fit to fly. And Aviva's agent advised them it may not be safe for them to fly, but Mr M said that they just wanted to get home. So Mr M and his partner discharged themselves from hospital anyway and flew home.

From the notes and calls I've got, I can see that it would have been concerning for Mr M that Aviva couldn't confirm cover for them while they were in hospital. But I can see that Aviva's agent was in regular contact with Mr M and his partner. And they said they could still provide assistance even though Aviva couldn't confirm cover. So for the reasons I've explained above, I don't think on balance – based on the evidence I've seen – that Aviva handled Mr M's claim unfairly or that the treatment Mr M and his partner received would've been different if Aviva had been able to confirm cover sooner. And Mr M and his partner chose to discharge themselves and fly home, even though they weren't fit to fly. Mr M's bank has now covered the claim in full, including waiving the excesses, covering interest charges incurred by Mr M's friends and family in borrowing money to cover Mr M's costs. And they arranged to have Mr M's baggage couriered home, which cost around £700. So in these circumstances, I don't agree that Aviva should now pay Mr M any compensation.

### **my final decision**

For the reasons I've set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 February 2017.

Mary Dowell-Jones  
**ombudsman**