

complaint

Mr D is unhappy with the way Aviva Insurance Limited handled the claim he made after he had an accident while on holiday abroad.

All references to Aviva include their agents.

background

In late-2017 Mr D had an accident while riding a moped on holiday and broke his leg. He needed medical treatment and tried claiming on a travel insurance policy, but the insurer didn't respond. Three days after the accident Mr D's father found some paperwork which showed Mr D had another travel insurance policy – with Aviva – arranged in connection with, and through the bank with which he held, his current account. So his father got in touch with Aviva the next day to make a claim.

The day after that Aviva told Mr D's father that Mr D wasn't covered by the policy because he didn't have a license in the UK to ride a 100cc moped. However, Aviva liaised with the bank that provided the current account and linked insurance policy to see if it would meet his claim as a gesture of goodwill. The bank confirmed the following day that it would do so and Aviva passed on this information to Mr D's father.

Aviva subsequently handled Mr D's medical expenses claim in accordance with the other policy terms. This included covering his medical bills, some of the costs his parents incurred after they flew out to be with him and paying for him to be repatriated to the UK.

Mr D has said, in summary, that:

- Aviva failed to support him or progress his claim sufficiently in the four days after the claim was made. At that point he consented to having his leg amputated above the knee. Had Aviva acted quicker then it's possible amputation could have been avoided completely or limited to below the knee.
- Aviva failed to support his parents adequately and they ended up having to borrow money to pay for costs that should've been met as part of the claim.
- Aviva have refused to pay the claim he made latterly under the personal accident section of the policy.

Our investigator thought that Aviva had paid enough in respect of Mr D's claim and the £3,000 compensation it'd offered Mr D (and has since paid) was more than she would have awarded. But Mr D disagreed so the case has come to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Including that the relevant rules and industry guidance say Aviva has a responsibility to:

- handle claims promptly and fairly

- provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress
- not unreasonably reject a claim

Should Aviva have done anything more with regards to Mr D's medical expenses claim?

Mr D ended up in a potentially life-threatening situation after his accident and had to make some difficult decisions to safeguard his health. I understand this would have been an incredibly worrying and challenging time for both him and his parents. But insurers don't have to accept every claim they receive, regardless of the severity of the situation in which the policyholder finds themselves.

When making my decision I've first considered the policy terms and conditions relating to the medical expenses cover afforded by Mr D's policy. They say:

"If you are injured...during you trip, we will pay the following:

- 1. Emergency Treatment*
 - a. Emergency medical treatment (including rescue services to take you to hospital) outside the UK.*
- 2. Associated Expenses*
 - a. Any reasonable extra charges for half-board accommodation (of a similar standard to the accommodation you had booked for your trip) if it is medically necessary for you to stay after the date you were going to return home. We will also pay travel costs, which you have to pay to get back to your home if you cannot use your return ticket*
 - d. The cost of getting you home, if it is medically necessary because you are seriously injured or fall seriously ill during your trip and you cannot use your return ticket.*

If our Medical Emergency Assistance provider and the treating doctor agree that it is necessary, we will also pay for reasonable travel and accommodation costs, under items 2a and 2d, for one relative or friend who has to stay with you or travel to be with you.

3. Hospital Benefit - £25 for each full 24 hours that you are in hospital, outside the UK receiving in-patient treatment following your injury or illness during your trip.

But there is also a general exclusion which says the policy won'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...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."*

The moped Mr D was riding at the time of the accident was 100cc and he wasn't licensed in the UK to use such a vehicle. So I don't think it was unfair or unreasonable of Aviva to decline Mr D's claim. Nor do I think there was any obligation for Aviva to investigate if Mr D's bank would agree to pay the claim as a gesture of goodwill. But, nonetheless, it did take steps promptly to explore this possibility and stressed in its communication with the bank that its referral was urgent. The possibility the claim might be paid was also explained to Mr D's father during the call in which Aviva told him the claim wasn't covered, through a strict interpretation of the policy terms.

Aviva had no control over the length of time it took for the bank to decide whether or not to pay the claim as a gesture of goodwill. But, importantly, I note that while awaiting the bank's decision Aviva continued trying to gather information about Mr D's medical condition. That was proving somewhat difficult, which is why Aviva authorised a local agent to try and help liaise with the hospital – which had not been responding to requests for information. And its internal notes say it did so because *“that at least helps the policyholder and their family to understand the necessary course of action.”* So I think Aviva was trying to be supportive even though it didn't yet know if the bank would cover the claim.

Mr D's bank agreed to pay the claim as a gesture of goodwill some hours after Aviva escalated the request. And this news was relayed within an hour of receipt to Mr D's father. I can't hold Aviva responsible for the time it took the bank to make a decision. But, in any event, I actually don't think this delayed anything because Aviva worked on gathering information about Mr D's medical condition while waiting for the bank's decision

I've gone on to consider what happened after the bank agreed to pay the claim as a gesture of goodwill in order to decide whether there's anything more Aviva could or should have done given Mr D's concerns about this. With that in mind, I note, in particular that:

- Mr D said Aviva should've arranged much sooner for him to get a second opinion. But Aviva continued having difficulty gathering information from the hospital even after it employed a local agent. And from the emails I've seen and the calls I've listened to between Aviva and Mr D's father it seems they might've been having difficulty too. It also seems that the hospital had been giving him incorrect information by, for example, telling Mr D that Aviva hadn't authorised any payments or the transfer when, actually, the hospital had simply been resisting Aviva's attempts to gather information about Mr D's condition. The evidence suggests to me that after Mr D asked for a second opinion, Aviva was making every attempt to arrange this.
- Mr D's injury was severe and by the time his father first contacted Aviva, he'd already undergone several surgical procedures, he needed ongoing medical attention including regular debridement and the possibility of amputation had already been discussed. The morning after the bank agreed to cover the claim, Aviva received medical information from the hospital which indicated an above-the-knee amputation was being considered but Mr D's doctor thought they had a three-day window before this would likely be required. Unfortunately, Mr D's condition worsened fairly rapidly and the doctor ended up recommending amputation that same day. And Mr D ultimately decided not to risk waiting for the transfer Aviva had arranged for the following morning in order to get him a second opinion. But I don't think Aviva could have foreseen this and I think it did what it could to arrange the transfer as soon as possible given the associated logistics. As Aviva explained to Mr D and his father, it needed to find a hospital both with the required competence and that would accept Mr D and also arrange an air ambulance. These things take time and, in this particular case, I think Aviva did what it could to expedite matters. But even if I were to conclude that Aviva should have done more to secure an earlier transfer, in the circumstances, I can't say this would have changed the medical outcome. Given the severity of his injury, the associated infection and his rapid deterioration Mr D might well have still required an above-the-knee amputation.
- Mr D has suggested Aviva didn't do enough generally to support him and his parents. But I can see it exchanged a number of emails and had a number of phone calls with Mr D and his parents in order to ensure everyone was kept up-to-date and involved with any decision-making that was needed. And there are various expressions of thanks and

praise from Mr D and his parents to Aviva throughout the emails and phone calls. So it seems they were happy with Aviva's support in the moment. Aviva also arranged accommodation for Mr D's parents and moved them closer to the hospital when they requested this and when such accommodation became available. And Aviva paid for taxi fares and food, in accordance with the policy terms and condition after Mr D submitted his claim for these costs. I wouldn't usually expect an insurer to pay for such in advance and I can't see that Aviva should've done anything differently in this particular case. There is nothing which shows Mr D or his parent's made Aviva aware they were having difficulty meeting their daily costs.

- Once Mr D's doctors deemed him fit to fly, Aviva promptly arranged his repatriation to the UK by air ambulance. His flight home was interrupted due to bad weather and he had to spend a night in another hospital. I understand Mr D was unhappy with aspects of his treatment at the hospital and the ongoing repatriation and I've taken this into account when considering whether Aviva should pay any additional compensation. There were also some concerns raised about the way Aviva handled a subsequent call with Mr D's mother. I haven't been given a recording of that call, but Aviva's notes say it spoke with Mr D's father about this and their apology along with some flowers for his mother was accepted.

Overall I consider Aviva handled Mr D's claim compassionately and in a reasonable manner. It has already paid Mr D £3,000 compensation in recognition of anything it may have done wrong or could have done better while handling the claim and the subsequent complaint. Having considered everything that's happened I think that is a fair amount and I make no further award.

Should Aviva pay Mr D's personal accident claim?

Mr D's policy provides personal accident cover, so up to £30,000 might be paid if he suffered "*an accidental injury*" while on holiday which led "*solely, directly and independently of any other cause to your...loss of one or more limbs.*" But, the general exclusions I've already mentioned also applied to the personal accident cover. So I don't think, by a strict interpretation of the policy, it was unreasonable for Aviva to have declined Mr D's personal accident claim.

Mr D seems to accept this but thinks his claim should be paid in the same way that his medical expenses claim was, as a gesture of goodwill. I've considered this carefully but don't think Aviva is under any obligation to cover this part of Mr D's claim.

I say that because:

- When Mr D's father first got in touch with Aviva in relation to the claim he was solely seeking help with Mr D's medical expenses claim. At that point, Mr D hadn't undergone the amputation so there could have been no valid claim for the personal accident benefit at that point.
- Aviva initially declined the medical expenses claim with reference to the general exclusion mentioned above. Mr D's bank subsequently agreed to pay the claim Mr D had made as a gesture of goodwill. There is no mention in any correspondence I can find that this offer extended to covering any future personal accident claim that might be made. So I don't think Aviva mis-managed Mr D's expectations in this respect.

- After the bank agreed to cover the claim Mr D had made, Aviva handled things as it would any medical expenses claim. But that doesn't mean Aviva, as the underwriter, should also accept the personal accident claim Mr D made towards the end of March 2018, after he'd been repatriated and was undergoing rehabilitation.

As I've already said, the claim isn't covered through a strict interpretation of the policy terms and conditions. And I don't think Aviva at any point told Mr D that a personal accident claim would be met. So I don't think it would be fair to tell Aviva to pay this part of Mr D's 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 Mr D to accept or reject my decision before 17 October 2019.

Ruth Hersey
ombudsman