

## **complaint**

Mr R complains that AWP Assistance UK Ltd declined his travel insurance claim and mis-sold the policy. My references to AWP Assistance 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.

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

Our investigator recommended AWP Assistance accept the claim. He thought the above exclusion applied when a person was on holiday and the claim should have been 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 Assistance 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 motor racing. He started the cover immediately to ensure he was covered for the race meeting before the holiday.

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

## **my provisional decision**

I explained that my provisional decision was just about whether AWP Assistance mis-sold the policy to Mr R.

The policy said the travel agent who sold the policy to Mr R was the appointed representative of AWP Assistance. The policy said the insurer was a separate business, not AWP Assistance.

I'd made a separate provisional decision about the claim aspect of Mr R's complaint against the insurer. I thought it highly likely that AWP Assistance and the insurer were related but I couldn't make a decision about the claim against AWP Assistance as it wasn't the insurer. As the potential mis-sale and claim were related I made reference to the separate decision.

I explained why I was intending to uphold the complaint about the mis-sale against APW Assistance. I said:

'Mr R has said he only started the insurance cover when he did so he'd be covered if anything happened to him at the race meeting.

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 seen no notes of what happened at the sale of the policy save for the standard tick box information. I have to decide what's more likely to have happened than not given all the evidence. I've listened to the phone recording between Mr R and AWP Assistance's and/or the insurer's complaint department and I find his account of what happened at the sale of the policy plausible and persuasive.

I am persuaded that Mr R told the travel agent that he wanted cover for the motorcycle race meeting. He's ended up being sold an additional option on his insurance for natural catastrophe that he didn't know he had.

The policy definition says natural catastrophe covers adverse weather but that's cover Mr R didn't know he had and didn't want. I appreciate AWP says experienced representatives were present when the holiday and insurance were sold (although it's not clear if they actually sold the policy). But looking at all the evidence I think it's more likely than not there was some mis-sale of the policy in that Mr R was told he had the highest level of cover and he understood he was paying extra for cover for the race meeting he said he wanted. He started cover from the date he bought the policy thinking he was covered for that race meeting.

The mis-sale is evidence that I've taken into account in making my decision about the claim complaint. But it also means I think Mr R was sold natural catastrophe cover for an additional premium which he didn't want.

AWP Assistance should refund the premium for the additional natural catastrophe cover (not the whole policy premium), plus interest as I've detailed'.

#### **responses to my provisional decision**

Mr R accepted my provisional decision. AWP Assistance 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 Assistance hasn't responded to my provisional decision. The business against who I made my related provisional decision about the claim against the policy also hasn't responded. 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 Assistance must refund to Mr R the premium for the additional natural catastrophe cover on the policy, plus interest as detailed below.

### **my final decision**

I uphold this complaint.

I require AWP Assistance UK Ltd to refund to Mr R the premium for the additional natural catastrophe cover on the policy. Interest\* must be added at 8% simple a year from the date of payment to the date of settlement.

AWP Assistance UK Ltd must make payment within 28 days of 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 Assistance UK Ltd 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.