

The complaint

Mrs M and Mr P complain about Aviva Insurance Limited's decline of their claim for surgery abroad and how it handled their medical treatment claim and repatriation arrangements under their travel insurance. My references to Aviva include its agents.

What happened

Mrs M and Mr P have travel insurance through a package bank account, Aviva is the insurer. While on a family skiing trip abroad Mrs M injured her knee in an accident which happened on 15 March. Mrs M and Mr P wanted Aviva to cover her surgery abroad. Aviva didn't agree and said she could reasonably have surgery in the UK. Mrs M and Mr P complain about Aviva's decision and about how Aviva handled the medical treatment claim and repatriation arrangements. In summary they said:

1. The doctor Mrs M saw abroad at the specialist clinic told them that for her injury surgery within three days of the injury was recommended to prevent further damage to the knee. Surgery after that time could delay and reduce recovery. The doctor suggested surgery happen on the next morning, 16 March, before inflammation occurred. Although the policy excluded treatment where it would be reasonable for Mrs M to return home it was impossible for her to return home for the operation in those time periods. So it would have been reasonable for Aviva to cover the surgery abroad.
2. The definition of reasonable refers to 'normal'. As the treating doctor said surgery within three days of Mrs M's injury was normal procedure it was reasonable.
3. The definition of emergency medical treatment used for insurance typically refers to medical care that's necessary due to an unforeseen illness, injury, or condition that requires immediate attention to prevent further harm or danger to the insured person's health. The treating doctor said that not completing the operation within three days would risk further damage to the knee which met the definition of 'emergency'.
4. Aviva's doctors failed to talk to Mrs M's treating doctor to clarify the injury and urgency of treatment required. Although Aviva spoke to someone at the treating clinic it wasn't the treating doctor so Aviva made a decision without knowing all the facts. And although Aviva said on 15 March that it would talk to the treating doctor it didn't speak to a doctor at the clinic until after the opportunity for Mrs M to have surgery on 16 March had passed which affected their opportunity to self fund the surgery.
5. Aviva failed to arrange appropriate repatriation arrangements for Mrs M's injury. To protect against DVT it was best for Mrs M to have three seats together to elevate her leg but Aviva didn't arrange that and they had to accept a business class seat which was an unnecessary health risk to Mrs M.
6. Aviva's poor communication caused a lot of stress and disturbance for the remainder of their trip.
7. The policy cover is mis-advertised. The policy is advertised with £10 million cover for emergency treatment but Aviva didn't provide that cover.

Mrs M and Mr P would like:

- Compensation from Aviva for refusing to cover Mrs M's surgery and the potential harm to her health by not following the treating doctor's recommendation for surgery and not repatriating Mrs M appropriately for her injury. They said the delay in surgery led to Mrs M having sick leave from work and could potentially affect her ability to do her job.
- Compensation from Aviva for their distress and inconvenience caused by its poor communication.

Aviva said:

- The policy didn't cover medical treatment that could reasonably wait until a policyholder returned home. Its doctors have a lot of experience in ski injuries and Mrs M's treating doctor wasn't available to speak to. It had spoken to a doctor at the same clinic who was referring to Mrs M's medical notes as they talked and it was clear Mrs M's surgery didn't have to be done before her return home.
- There was no unnecessary delay in it handling the claim and it had told Mrs M and Mr P early on in the claim that the surgery abroad wasn't covered by the policy terms. Aviva accepted its communication should have been better and offered £250 compensation for Mrs M and Mr P's distress and inconvenience.

Our investigator said Aviva had acted fairly and reasonably in declining the claim for surgery abroad and in offering of £250 compensation for Mrs M and Mr P's distress and inconvenience due to its service issues.

Mrs M and Mr P disagree and want an ombudsman's decision.

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.

Mrs M and Mr P say the policy is 'mis-advertised'. If they consider they were mis-sold the policy that's a separate complaint and I understand they have made a separate complaint about the bank to which the policy is attached. This decision is about Aviva's decline of the claim for surgery abroad and how it handled that claim and the family's repatriation. I won't be make any findings about whether or not the policy was mis-sold in this decision.

I've considered all the points Mrs M and Mr P have made but I won't address all their points in my findings. I'll focus on the reasons why I've made my decision and the key points which I think are relevant to the outcome of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably.

I think Aviva acted fairly and reasonably in declining and handling the claim for surgery abroad and in offering £250 compensation for Mrs M and Mr P's distress and inconvenience due to its poor communication issues. I'll explain why.

The policy under the 'emergency medical and associated expenses' section says:

'If you are injured...we will cover you, up to the limits shown on your policy schedule, for:

- Emergency medical treatment...outside of your home territory'.

Overseas medical assistance is subject to the following 'special condition' in the policy:

'If you are injured or fall ill during your trip, our Medical Emergency Assistance provider may ... arrange for you to return to the UK at any time. They will only do this if they and the treating doctor think that it is safe for you to be moved or returned to the UK'.

The policy excludes under the 'What is not covered' heading:

*'Any claim for:
Any form of treatment that your treating doctor and our Medical Emergency Assistance provider think can reasonably wait until you return home'.*

I need to decide is whether Aviva reasonably considered that Mrs M's surgery could wait until she returned home.

This policy doesn't specifically define emergency treatment in the definition section of the policy. But given the above policy exclusion, emergency treatment for this policy is treatment which the treating doctor and Aviva's medical team think can't reasonably wait until Mrs M returned home. That definition isn't unusual for a travel insurance policy.

Mrs M and Mr P said as the treating doctor told them that surgery within three days of the injury was the clinic's normal procedure immediate surgery at the clinic was reasonable.

Our service makes decisions on what's fair and reasonable in all the particular circumstances of the complaint taking into account, among other things, the relevant law, regulations and good practice. I think it's fair and reasonable for Aviva to have taken into account all the medical evidence and circumstances it had when deciding whether surgery for Mrs M's injury could reasonably wait until she returned home.

From the information in the medical report Aviva's doctor decided Mrs M could reasonably return home for treatment, noting she was due to return a couple of days after her injury. The doctor Mrs M had seen about her injury, who I'll refer to as the treating doctor, then wrote to Aviva that they:

'Reject a late operation then important remanent structures are lost forever and patient runs the risk of additional damage to the internal structure of the knee, due to instability for weeks. Moreover meniscal suturing requires a stable knee joint. Early treatment of cruciate ligament tears is very important, as the treatment of additional menisci injuries through suturing can only then be successful'.

Although the treating doctor doesn't specifically say her opinion was that surgery had to be done immediately, I think there's enough information in the letter to support Mrs M and Mr P's evidence that the treating doctor recommended the surgery should be done immediately.

Mrs M and Mr P strongly requested that Aviva's doctor speak to the treating doctor as they didn't accept Aviva's decision. Aviva sent the following email to the clinic:

'From the medical information you have provided, there is no indication that surgery needs to happen straight away and can wait until the patient returns to the UK for treatment on the NHS.

Can you confirm why you have suggested surgery'.

I've seen no evidence that Aviva received a written response to the query. Aviva then called the treating clinic. The treating doctor wasn't available until about three and a half hours later. So Aviva left a message asking for a call back to discuss the surgery and Aviva's doctor spoke to another doctor at the clinic, who I'll refer to as Dr M. I've listened to the call recording and I understand Mrs M and Mr P have listened too.

In the call Dr M confirmed he knew about Mrs M's injury and situation. Aviva's doctor asked him to clarify whether Mrs M had a 'locked knee' that couldn't bend, Dr M said it wasn't but it was a complex rupture, which he detailed. Dr M said Mrs M wasn't an inpatient.

When Aviva's doctor told Dr M that Mrs M's travel insurance only covered emergency surgery Dr M said:

'There are definitely injuries that need operation, but you know, emergency and emergency are two topics'.

Aviva's doctor told Dr M the policy would cover Mrs M to be returned home to enter the health sector in the UK unless he could advise Aviva there was an emergency. Dr M responded:

'It's a rupture of the CL and rupture of menisci but .. she can still move it. I would lie if I would tell you that is...that it would be something different if the collateral ligament would be gone all the way as well. But if you ask me, is she able to travel home with that, then I have to say yes, and that's the way it is'.

I think Aviva's doctor fairly understood that Dr M's opinion was Mrs M's surgery could reasonably wait until she returned home.

Aviva's doctor then summarised to Dr M that he would give notice to Aviva's underwriters that there was no defined emergency to Mrs M's knee presentation so under the policy terms there was no cover for her to have the surgery at the clinic. Dr M didn't dispute there was no emergency.

I understand Mrs M and Mr P would have preferred Aviva's doctor to have spoken to the treating doctor but she wasn't available. I think it was reasonable for Aviva to speak to a different doctor at the clinic who confirmed he was aware of Mrs M's injury and situation.

Mrs M and Mr P have made various points about why Aviva should have disregarded Dr M's opinion, which I've considered. But although Dr M hadn't physically assessed Mrs M and wasn't the doctor recommending the operation, it's clear from the call that Dr M was referring to Mrs M's medical notes as he spoke to Aviva's doctor. I think Aviva could reasonably understand that Dr M was qualified to give an opinion about whether surgery for the injury could wait until Mrs M returned home.

Mrs M and Mr P have asked why Aviva's doctor didn't ask Dr M various questions about why he'd given his opinion. But I think Aviva's doctor acted reasonably in just asking Dr M the key question - was there any reason why Mrs M's injury should be treated as an emergency. Dr M said why he didn't think so.

Given the overall medical evidence I think Aviva fairly considered that Mrs M's surgery could reasonably wait until she returned home. Under the policy terms that meant there was no cover for Mrs M to have the surgery at the clinic abroad.

Mrs M and Mr P say they had to let the clinic know if the surgery could go ahead by 10am on 16 March and Aviva's delay in handling their claim meant they lost the opportunity to self fund the operation. Aviva's case notes show Mr P notified it of the claim in the late afternoon of 15 March. Aviva received the medical report, made the decision not to cover and informed Mrs M and Mr P of that decision later that afternoon. Aviva did initially tell Mrs M and Mr P there was no need for its doctor to speak to the treating doctor but given their strong requests Aviva contacted the clinic in the morning of 16 March, tried but couldn't speak to the treating doctor and spoke to Dr M around 12.30pm.

I think Aviva's actions were within reasonable timescales in all the circumstances. And I don't think Mrs M and Mr P were disadvantaged as Aviva had told them on 15 March that it didn't agree to cover the surgery abroad. So Mrs M and Mr P knew Aviva's decision about cover well before 10am on 16 March for them to take that into account when considering whether they would self fund the surgery.

Aviva accepts it should have given better service around some of the calls and that Mrs M and Mr P had to wait too long on hold. That was frustrating for Mrs M and Mr P at a very stressful time for them but those issues didn't affect the reasonable outcome of the claim.

As I think overall Aviva acted reasonably in its handling and decline of the claim for surgery abroad there's no basis on which I can fairly award compensation to Mrs M and Mr P in relation to those matters.

I think Aviva gave Mrs M and Mr P poor service around the arrangements for their and their child's repatriation. It would have been reasonable for Aviva to have started the repatriation arrangements earlier than it did. Mrs M and Mr P didn't receive notice from Aviva that Mrs M would need a fit to fly (FTF) certificate until the morning of their scheduled flight on 18 March. Mrs M got a FTF certificate from the treating doctor, but the timescale was stressful and Aviva should have raised the need for a FTF certificate sooner. There was a lot of confusion about what flights Mrs M and Mr P should take, whether their scheduled flight airline would give medical clearance and whether it would have suitable seating arrangements for Mrs M's injured leg. There were discussions about whether Aviva should book them a hotel if they couldn't get on a flight that day which Mrs M and Mr P understandably didn't want as they had family arrangements to return home to.

Ultimately Mrs M and Mr P resolved the flight home and seating arrangements for Mrs M themselves. I haven't seen any medical evidence that the seating arrangements Mrs M had on the return flight has caused a problem with her health but I appreciate she and Mr P were worried about the risk of DVT.

Mrs M and Mr P say that instead of enjoying the last four days of their trip they spent them stressed about medical treatment and travel arrangements. Unfortunately some of that stress and worry was inevitable given Mrs M's injury and Aviva's decision not to cover surgery, which as I've said was reasonable. But Aviva's poor communication caused Mrs M and Mr P unnecessary distress and inconvenience and I think it's appropriate for Aviva to pay compensation. I'm satisfied that the £250 compensation Aviva offered is a reasonable amount for the unnecessary distress and inconvenience it caused due to its poor service.

Putting things right

Aviva should pay Mrs M and Mr P £250 compensation for their distress and inconvenience its poor service caused, which it had offered to do.

My final decision

Aviva Insurance Limited has already made an offer to pay £250 compensation to settle the complaint and I think the offer is fair in all the circumstances.

My decision is that Aviva Insurance Limited should pay Mrs M and Mr P £250 compensation for their distress and inconvenience its poor service caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr P to accept or reject my decision before 22 November 2023.

Nicola Sisk
Ombudsman