

The complaint

Mr F and the estate of Mrs F complain that U K Insurance Limited declined a claim they made on their travel insurance policy.

What happened

Mr F and the late Mrs F were on a cruise when Mrs F became unwell. Prior to going on the cruise, she'd been diagnosed with cancer in her lungs. This predominantly impacted her right lung but there was minor growth in the left lung. Mrs F's oncologist was happy for her to go on the trip. When she became unwell the cruise ship doctor suspected a chest infection and Mrs F was taken to a private hospital on the mainland. She was repatriated to the UK via air ambulance and was seen by her own consultant on her return.

Mrs F wasn't covered under the policy for the cancer. UKI declined the claim on the basis that she was treated for cancer whilst abroad. Mr F complained but UKI maintained their decision to decline the claim.

Our investigator looked into what happened and didn't uphold the complaint. She thought UKI's decision was fair, taking into account the medical evidence.

Mr F didn't agree and asked an ombudsman to review the complaint. In summary, he says Mrs F had a viral infection, diagnosed as pneumonia, which caused fluid on the lung and her symptoms of breathlessness. He also said that the results from a test of the fluid drained from Mrs F's lungs showed that the fluid wasn't caused by the cancer. Mr F also explained that the treating doctor prepared her report for UKI prior to these tests results becoming available.

In December 2023 I issued a provisional decision which said:

The relevant rules and industry guidelines say that UKI has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions say there is no cover for:

"3. Medical conditions

Any claim due to a medical condition, unless you had already told us about the condition and we had agreed to cover it."

A medical condition is defined as:

Any illness or injury for which, at the date you became an insured person or the date when you booked your trip, whichever is later you would have answered 'yes' to any of the questions in the Medical Screening section on page 8.

As UKI is relying on the exclusion to decline the claim, it's for them to demonstrate the exclusion applies.

There's no dispute that Mrs F hadn't declared her existing cancer. The key issue for me to decide whether UKI fairly relied on the exclusion.

I'm intending to partly uphold this complaint because:

- Mrs F had a terminal diagnosis but had seen her treating team shortly before departing on the cruise. There were no concerns about her ability to travel. Mrs F's cancer was predominantly in her right lung.
- The initial diagnosis from the ship's doctor was pneumonia, mesothelioma and shortness of breath. A report from the medical assistance file indicates that Mrs F was admitted with community acquired pneumonia. At that time UKI were expecting the fluid drained from Mrs F's lungs to show signs of infection and malignancy.
- Mrs F was found to have fluid on her left lung. The main diagnosis was recorded by the treating hospital as 'Mesothelioma' and the secondary diagnosis as 'Mesothelioma in progression and bilateral pleural effusion'. There was no mention of a chest infection on the medical report and Mrs F didn't experience a fever. However, Mrs F was prescribed antibiotics as part of her treatment which would suggest that it is most likely she was being treated for infection. Those were administered intravenously and that's consistent with UKI's notes as Mr F told them Mrs F was receiving antibiotics intravenously.
- The initial admission report refers to 'Mesothelioma and Respiratory infection'. There were no malignant cells found in the fluid drained from Mrs F's lungs. The treating oncologist prepared the report for Mrs F's discharge from hospital before these results were available. I can see that Mr F has unsuccessfully attempted to contact the hospital for an updated report following the results. UKI's own file notes also comment on the results. They say, 'The pathology of the pleural effusion reported inflammatory response. There is no mention of pus or other specific signs of infection. The inflammatory response could be triggered by both malignancy and infection'.
- Mrs F's consultant wrote a letter on her return to the UK saying that the working diagnosis was an infection. Mrs F was still in hospital at that point that letter was written and UKI hasn't had sight of information about her admission or treatment on her return to the UK.
- Mrs F sadly died a short time after her return to the UK. The cause of death, according to UKI's notes, was recorded as pneumonia.
- I've considered some of the commentary in UKI's notes from the medical team which say that Mrs F was more likely to have caught an infection due to her condition. However, that's not reflected in the medical evidence provided.
- Taking all of the above into account I'm not persuaded that UKI has demonstrated that it's most likely Mrs F was receiving treatment for cancer alone whilst abroad. On balance, I think she was treated for an infection which was an acute condition.

Putting things right

I'm intending to direct UKI to reassess the claim on the basis that Mrs F was treated for an acute condition rather than an underlying condition which she ought to have declared.

Mr F responded to my provisional decision and highlighted a number of points. He explained that he'd renewed the policy online and couldn't recall being given the opportunity to say what conditions Mrs F had. He felt UKI's position from the outset was that Mr and Mrs F had sought to deceive them. Mr F also highlighted that he wasn't offered guidance about which hospital to go to and that Mrs F was transferred to the only hospital they were able to contact. He felt that UKI had pre-emptively dismissed the claim which is why there was a lack of meaningful assistance. Furthermore, Mr F highlighted inconsistencies between the medical report relating to Mrs F's admission and correspondence from UKI.

UKI responded with some further comments. In summary they said that the medical information from the GP said that Mrs F had been advised against travel. They highlighted that Mrs F was treated by an oncologist in S and the treating doctor had expressed surprise that Mrs F had been allowed to travel. UKI said that an inflammatory reaction could be caused by both a malignancy and an infection and that her underlying terminal condition played a major part in her admission and death.

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.

I've considered all of the further comments made by the parties. Having done so I'm still going to partly uphold this complaint.

Mr F had previously declared his wife's medical condition but following the renewal Mrs F's condition wasn't specified on the policy. Mr F said he completed this online and doesn't recall being asked to specify the condition. I can't comment on the renewal process as I'm considering the actions of UKI as the underwriter of the policy and their decision to decline the claim.

The treating doctor expressed the opinion that she was surprised Mrs F had been allowed to travel. But I don't agree that the report from the GP clearly indicates that Mrs F was advised against travel. The question asked covers a number of scenarios as it says:

Has this patient been advised not to travel or been diagnosed with a terminal illness/condition or is the patient travelling for the purpose of obtaining medical treatment?

'Yes' is circled, and the GP has written 'Malignant Mesothelioma'. But it's unclear if the GP was stating that Mrs F had a terminal illness, was advised against travel or both. Furthermore, Mr F has given consistent and credible testimony that Mrs F was seen by the consultant shortly prior to her departure who permitted her to travel. So, I think there were opportunities to explore this information in more detail.

I don't think the medical evidence demonstrates, on the balance of probabilities, that Mrs F's illness abroad was caused by her pre-existing condition. As I explained in my provisional decision it's for UKI to demonstrate that the exclusion they've relied on applies. And, based on all of the available medical evidence, I'm still not persuaded that they have for the following reasons.

My provisional decision was not based purely on the information provided by the cruise ship

doctor. Although there may have been more limited diagnostic facilities available on the ship, I think it's relevant medical evidence. And, in any event, it's consistent with the other medical evidence I referred to in my provisional decision, which indicated that Mrs F was being treated for an infection.

UKI has commented that the lack of malignant cells doesn't imply that the effusion was triggered by an infection. They said an inflammatory reaction could be caused by both a malignancy and an infection. Although Mrs F was treated by an oncologist whilst in S I think it's relevant to consider the wider evidence I've been provided with, including the information provided by Mrs F's consultant in the UK and her death certificate. Even if this wasn't available to UKI whilst Mrs F was abroad it was available information which ought to have been considered before confirming the decision to rely on the exclusion when declining the claim.

Finally, whilst UKI has said that Mrs F's underlying terminal condition played a major part in her admission and death, I don't think they've provided compelling or persuasive evidence in support of their position on this point. And, in reaching my conclusion, I've also taken into account the specific policy terms UKI has relied on when declining the claim. Having done so I don't think that they support UKI's decision to decline cover given the specific facts of this case.

Mr F has provided a breakdown of his expenses in response to my provisional decision. He's also explained that Mrs F went to the only hospital that was contactable by the cruise company. UKI haven't yet assessed the specific costs and whether they were reasonably incurred as the claim was declined on the basis of the treatment being linked to the pre-existing medical condition. However, I'd expect UKI to take into account what Mr F has said about the availability of hospitals and the practicalities of moving her following her admission when reassessing the claim. If Mr F is unhappy with the further assessment or settlement of the claim he may be entitled to bring a further complaint to the Financial Ombudsman Service.

Putting things right

I'm directing UKI to reassess the claim on the basis that Mrs F was treated for an acute condition rather than an underlying condition which she ought to have declared.

My final decision

I'm partially upholding Mr F and the estate of Mrs F's complaint about U K Insurance Limited and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and the estate of Mrs F to accept or reject my decision before 6 February 2024.

Anna Wilshaw
Ombudsman