

## The complaint

Mrs H is unhappy American International Group UK Limited (AIG) turned down a legal expenses insurance claim she made.

## What happened

Mrs H has the benefit of legal expenses cover with AIG through a travel insurance policy provided by her employer. In February 2022 Mrs H was on a cruise during which her ship hit a wave which caused tables and chairs to be thrown across the restaurant. Mrs H was injured. She sought assistance from her legal expenses policy in pursuing a personal injury claim against the carrier for a breach of the conditions of carriage.

AIG turned down the claim. It said her policy excluded claims against any travel agent, tour operator, insurer or their agents. Mrs H was seeking to bring a claim against the tour operator (the cruise provider) so it thought that applied here.

Our investigator accepted Mrs H wanted to take action against the tour operator acting in their capacity as carrier. But the exclusion applied to any claim against a tour operator and that was who the claim was against. And there was no evidence to suggest a separate entity had carrier responsibility. She thought AIG acted fairly in turning down the claim.

Mrs H didn't agree. She said at all material times she'd been a passenger and the cruise provider were the carrier. Their responsibilities in that capacity were covered by a different regime to the one that applied to the package travel regulations. She didn't think it was relevant the carrier might also be operating as a tour operator as that wasn't relevant to the claim she was making. And the policy didn't exclude claims against carriers. She also said any doubt over the wording of a policy should read in favour of a consumer.

So I need to reach a final 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.

The relevant rules and industry guidelines say AIG has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of Mrs H's policy. It says *"The Company will reimburse the Insured up to the Sum Insured on the Schedule for Legal Expenses incurred by or on behalf of an Insured Person in pursuit of a claim for damages or compensation against a third party who has caused physical injury to, or death or illness of, that Insured Person from an incident occurring during the Period of Insurance and Operative Time."*

However, the policy has an exclusion for *"Legal Expenses incurred in pursuing any claim against any travel agent, tour operator, insurer or their agents"*. In this case although Mrs H's claim is against the operator of her cruise she's seeking to bring that against them in their

capacity as carrier. And her claim relates to an alleged breach of their responsibilities under the Athens Convention which covers the liability of a carrier for damage suffered as a result of death or personal injury to a passenger.

But the exclusion in her policy doesn't say that for it to apply the claim has to relate to something the tour operator was doing in that capacity. It refers to "*any claim*" against a tour operator. Mrs H's claim is against her tour operator and I haven't seen any clear evidence to show a different business had carrier responsibility in this case. So I think the exclusion would apply here.

And it's not unusual for a travel insurance policy to exclude the costs of taking action against the tour operator. I also note this policy wasn't taken out specifically to cover the cruise Mrs H was going on but was an annual policy provided through her employer. I think the policy term is clearly set out and I don't think there is any ambiguity or uncertainty about its meaning; it excludes legal costs involved in pursuing a claim against the tour operator.

However, I also need to consider what's fair and reasonable in all of the circumstances. I agree the exclusion is broadly worded. Mrs H has suggested it would exclude a claim against a high street travel agent where someone had an accident on their premises. That's potentially the case and I accept it might be unfair to apply the exclusion in a situation where the accident and resultant injury had no connection at all to the respondent's role as travel agent or tour operator.

I don't think that's the case here. Mrs H is seeking to bring the claim against the tour operator in their capacity as carrier. But Mrs H was only on the cruise because she'd booked with them in their capacity as tour operator. I think it's therefore reasonable to say there's a close connection between that role and the role they were carrying out as carrier. Given that I don't think it's unfair of AIG to have concluded the exclusion for claims against tour operators applies to the claim Mrs H wants to bring.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 13 October 2023.

James Park  
**Ombudsman**