

## The complaint

Mr and Mrs G complain because AXIS Speciality Europe SE ('AXIS') hasn't paid a claim for irrecoverable unused accommodation costs under their travel insurance policy.

## What happened

Mr and Mrs G are insured under a group travel insurance policy, provided by AXIS.

Mr and Mrs G were due to travel to a destination, which I'll refer to as 'I', by ferry. On the day of their departure, the ferry crossing was cancelled due to the safety at lives at sea as a result of weather conditions arising from Storm Betty. The next available ferry crossing wasn't until five days later, which was the date Mr and Mrs G had been due to return from I. So, they cancelled their trip and made a claim with AXIS for their unused, non-refundable accommodation costs.

AXIS said Mr and Mrs G's claim wasn't covered under the '*Cancellation or Curtailment*' section of their insurance policy. Mr and Mrs G disputed this, and also queried why their claim wouldn't be covered under '*Travel Delay or Abandonment*', before bringing the matter to the attention of our service.

One of our investigators looked into what had happened and recommended that AXIS should accept Mr and Mrs G's claim. AXIS didn't agree with our investigator's recommendations so the complaint has been referred to me to make a final decision, as the final stage in our process.

## 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.

Industry rules set out by the regulator say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. Industry rules and guidance also say that firms must act to deliver good outcomes for retail clients, take all reasonable steps to avoid foreseeable harm to consumers and take all reasonable steps to act in good faith towards consumers. In addition, consumers must be given information they need, at the right time, presented in a way they can understand. I've taken these rules and guidance into account when making my final decision about Mr and Mrs G's complaint.

Under the rules that govern our service (the Financial Conduct Authority's Dispute Resolution (DISP)) rules, we determine complaints by reference to what we think is fair and reasonable in all the circumstances. This means I'm not bound to apply a strict application of the policy terms and conditions if I don't think this leads to a fair and reasonable outcome for both parties.

The terms and conditions of this policy, at page 32, under the heading '*Section 8 – Cancellation or Curtailment*' say that AXIS will pay for certain costs:

*‘... as a result of the necessary and unavoidable cancellation of ... trip due to:*

*...*

*J. a natural disaster which shall mean an unavoidable event caused by natural forces without any human interference.’*

I don't think a storm would reasonably be considered to constitute a 'natural disaster' within the ordinary, everyday meaning of the phrase. And I accept that a storm doesn't fall within the dictionary definitions of 'natural disaster' quoted by AXIS either. But AXIS has chosen to specifically define 'natural disaster' within the travel insurance contract and I'm satisfied that Storm Betty met the definition of 'natural disaster' that's set out in the policy terms and conditions. The storm was an unavoidable event caused by natural forces without any human interference.

If AXIS wishes to define 'natural disaster' within the travel insurance contract to include reference to widespread damage and death and/or injury then it's open to AXIS to do this. But AXIS has instead used a broader definition of 'natural disaster' within the policy terms and conditions. And it's this broader definition which has been presented to Mr and Mrs G as information about the circumstances under which this policy offers cover. So, I don't think Mr and Mrs G would have understood that AXIS instead intended for a narrower definition of the phrase 'natural disaster' to apply to a cancellation claim. I don't think the approach which AXIS is purporting to take in seeking to apply a different, narrower definition to that set out in the policy terms and conditions is in line with industry rules and guidance, and I don't think it's fair or reasonable in all the circumstances.

In correspondence with our service, AXIS has referred to Section 8 of the policy as only applying to situations where the insured person has had to cancel their trip for reasons specific to that individual. I don't agree with this and I'm satisfied that insured event 'J' which I've quoted above applies to the circumstances of Mr and Mrs G's claim. This means I think Mr and Mrs G's claim is covered under the terms and conditions of Section 8 of this policy, and I don't think AXIS has acted fairly or reasonably by declining their claim.

The terms and conditions of this policy, at page 34, under the heading '*Section 9 – Travel Delay or Abandonment....*' say:

*'B. Abandonment*

*The Insurer will pay the unused amount of the final invoiced and paid costs of a Trip that cannot be recovered from any other source...if an Insured Person decides to abandon their outward bound journey because the departure of the ... sea vessel... is delayed on the outward journey by at least 8 continuous hours ... due to: ... adverse weather conditions...'*

Section B doesn't require the insured person to be at the point of departure in order for the decision to abandon to be made. Even if it did, Mr and Mrs G told us they were enroute to the ferry terminal when they were notified that their ferry to I was cancelled. Given the timing of the events and circumstances here, I'm satisfied that Mr and Mrs G didn't have advanced warning of the cancellation which would have enabled them to act any differently than they did.

I accept that Mr and Mrs G's ferry wasn't delayed but was instead cancelled. So, under a strict interpretation of the policy terms and conditions, the abandonment provisions wouldn't apply to their claim. But our service's long-standing and published approach to situations like this is to consider the ultimate effect of the situation on the consumer. I think the effect of this

situation – where the ferry was cancelled and another crossing wasn't available for five days – was the same as if Mr and Mrs G's ferry had been delayed by more than 8 hours and they'd then taken the decision to abandon their trip. Mr and Mrs G would then have been entitled to claim for their unused accommodation costs. I don't think the fact that the ferry was cancelled rather than being delayed for more than 8 hours makes any fundamental difference to AXIS in these circumstances. This policy doesn't exclude abandonment claims where the transport provider has cancelled the transport, and Mr and Mrs G aren't claiming from AXIS for their transport costs.

So, even if I thought Mr and Mrs G's claim wasn't covered under Section 8 of this policy, I think it would be fair and reasonable in the circumstances for AXIS to pay their claim under Section 9.

#### The claim value

I note that some of the costs claimed for relate to non-insured persons. I'm not making any determination about what proportion of the costs are covered under the terms and conditions of this policy. AXIS is entitled to assess the claim in line with the remaining policy terms and conditions before making a payment to Mr and Mrs G and any subsequent dispute about the amount of the claim payment due would need to be directed to AXIS in the first instance before our service would have the power to consider the matter.

#### **Putting things right**

AXIS Speciality Europe SE needs to put things right by accepting Mr and Mrs G's cancellation claim, subject to the remaining terms and conditions of the policy, including any applicable policy limits and/or excesses. AXIS Speciality Europe SE needs to add interest to the claim payment at 8% simple per annum from the date this claim was originally declined until the date the settlement is paid.

#### **My final decision**

I'm upholding Mr and Mrs G's complaint about AXIS Speciality Europe SE and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 3 April 2024.

Leah Nagle  
**Ombudsman**