

The complaint

Mr and Mrs B are unhappy that AXA Insurance UK Plc ('AXA') declined a claim made on their travel insurance policy.

What happened

Mr and Mrs B have the benefit of a travel insurance policy as part of their bank account ('the policy'). The policy was underwritten by AXA at the time.

Mr and Mrs B also have the benefit of a timeshare arrangement which has been in place for many years. They must pay a number of weeks in advance of the first of the week of their use of the timeshare property for a particular calendar year. If they're in any arrears, Mr and Mrs B say they're not allowed to use any of their scheduled weeks for that year. And if unpaid for two consecutive years, Mr and Mrs B's share of the timeshare property can be sold.

In early October 2020, Mr and Mrs B made their usual contractual payment for their allocated timeshare weeks in 2021. However, they were unable to make use of those weeks for reasons relating to the Covid-19 pandemic – including national lockdown restrictions in place at the time and the Foreign and Commonwealth Office's advice against all but essential travel to the Country – and island – where Mr and Mrs B have a timeshare property.

Mr and Mrs B made a claim on the policy for the unrecoverable part of the amount they'd paid under the timeshare agreement in early October 2020 for use of the timeshare property in 2021. That claim was declined by AXA. It said the FCO advice not to travel was in place at time the payment for the timeshare was made and it was foreseeable that they wouldn't be able to travel.

Mr and Mrs B didn't think that was fair. Because they had to make the contractual payment when they did. Unhappy, they complained to AXA and although it accepted that it should've provided them with better service, it maintained its decision to decline the claim.

Mr and Mrs B brought a complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold it. Mr and Mrs B didn't agree so their complaint was passed to me to consider everything afresh and decide.

I issued my provisional decision in July 2023 explaining in more detail why I wasn't intending to uphold Mr and Mrs B's complaint. An extract of my provisional decision is set out below.

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AXA has an obligation handle insurance complaint fairly and promptly. And it mustn't unreasonably decline a claim.

In its final response letter dated July 2022, AXA accepted that it should've provided better service to Mr and Mrs B after a claim was made on the policy and it took too long to provide

an outcome to their complaint about their claim being unfairly turned down. In total it paid £200 compensation to Mr and Mrs B. I'm satisfied that amount fairly reflects the distress and inconvenience experienced by Mr and Mrs B because of these service failings. I accept it would've been frustrating and inconvenient to wait longer than necessary for an outcome, not receiving promised call backs and waiting in telephone queues to speak to a representative.

However, for reasons set out below, I don't think AXA has unfairly declined the claim.

Travel disruption

The policy's terms and conditions provide cover for travel disruption (section Q). The terms reflect:

Before You reach Your destination

We will pay You up to £5,000 for Your unused travel, accommodation (including excursions up to £250) and other Pre-paid Charges that You cannot claim back from any other source if You cannot travel and have to cancel Your Trip as a result of...

The Travel Advice Unit of the Foreign & Commonwealth Office (FCO) or other regulatory authority in a country to/from which You are travelling advising against all travel or all but essential travel to the country or specific area You are travelling to providing the advice came into force after You opened Your account or made Your travel arrangements for this Trip (whichever is the later) and was within 28 days of Your departure date...

Pre-paid Charges are defined as:

...charges You have paid before You travel, or are contracted to pay, for car hire, car parking, airport accommodation, airport lounge access, kennel and cattery fees, excursions, green fees and ski passes and/or lessons.

Mr and Mrs B paid the service charges for their timeshare (to be used in 2021) in early October 2020. At the time, I'm satisfied that the FCO was advising against all but essential travel to the country – and the particular island – Mr and Mrs B were hoping to travel to. That advice didn't change until the end of October 2020.

Mr and Mrs B were unable to travel abroad to use the timeshare property in the early part of 2021 due to the government restrictions around leaving home (i.e. the national lockdown) and the FCO advice in place at the time, relating to Covid-19.

I'm satisfied that it's fair and reasonable to conclude that making the contractual payment for their planned trips in 2021 (which I understand from Mr and Mrs B are the same scheduled weeks each year) amounted to making travel arrangements for the trips that they weren't able to take in 2021. And as this was paid at the time the FCO advice was advising against all but essential travel to the particular island, I don't think AXA has unfairly concluded that the claim wasn't covered.

Further, and in the alternative, although 'accommodation' isn't defined, I don't think it would be fair and reasonable to conclude that the payment made in October 2020 represented payment for accommodation. That's because I'm satisfied an annual maintenance fee for the timeshare property isn't specifically part of the unused or pre-paid accommodation cost of their trip. Rather, it's the annual amount Mr and Mrs B are contracted to pay their timeshare resort each year, even if they make use of the timeshare property or not.

I also don't think the payment made in early October 2020 amounted to a pre-paid charge as defined by the policy – set out above.

Cancellation

The policy's terms and conditions also provide cover for cancellation and curtailment (section A). The terms reflect:

We will pay You up to £5,000...for any irrecoverable unused travel and accommodation costs (including excursions up to £250) and other pre-paid charges (including green fees of up to £75 per day, up to a maximum of £300) which You have paid or are contracted to pay together with any reasonable additional travel expenses incurred if...

cancellation of the Trip is necessary and unavoidable...

...as a result of any of the following events occurring...

...A government directive prohibiting all travel to, or recommending evacuation from, the country or area You were planning to visit or were staying in provided such a directive came into force after You have left the United Kingdom.

Even if I accepted that the FCO advice against all but essential travel to the island where Mr and Mrs B had their timeshare property - in conjunction with the national lockdown in place at the time – amounted to a government directive not to travel abroad, for similar reasons set out above when considering cover for trip disruption under the policy, I don't think AXA has unfairly declined the claim. That's because:

- although not defined under this section of the policy, I think it's fair and reasonable in the circumstances of this case to conclude that pre-paid charges include those defined under the trip disruption section of the policy. The cancellation section of the policy says pre-paid charges includes green fees and that's also listed under the definition of pre-paid charges in the travel disruption section of the policy.
- although 'accommodation' isn't defined, I don't think it would be fair and reasonable to conclude that the payment made in October 2020 represented payment for accommodation. That's because I'm satisfied an annual maintenance fee for the timeshare property isn't specifically part of the unused or pre-paid accommodation cost of their trip. As I've explained, I think it's the annual amount Mr and Mrs B are contracted to pay their timeshare resort each year, even if they make use of the timeshare property or not.

Further, the cancellation section of the policy excludes:

Any claims arising directly or indirectly from:

...circumstances known to You prior to the date You opened a new Added Value Account or at the time of booking any Trip which could reasonably have been expected to give rise to cancellation or Curtailment of the Trip.

Mr and Mrs B have said that Covid-19 wasn't a foreseen event at the time they bought and committed to their set timeshare weeks, years ago.

However, I don't think it's fair and reasonable to conclude that the dates when they first

bought and scheduled their timeshare weeks should be taken to be the date they made their booking. I'm satisfied that their payment was made for the trip they intended to go on in 2021, when they made payment in early October 2020. Afterall, to secure the weeks for 2021, they had to make the contractual payment in 2020.

But alternatively, if that isn't right, then I don't think the costs being claimed relate to the trip Mr and Mrs B intended to take in 2021 as they relate to a contractual agreement a timeshare owner is always obligated to pay, regardless of whether the timeshare is actually used.

Although not relied upon by AXA when first declining the claim, I think it's important to note that the travel disruption section of the policy excludes:

Accommodation costs paid for using any Timeshare, Holiday Property Bond or other holiday points scheme ...

I've considered all points raised by Mr and Mrs B about this exclusion in response to our investigator's view. But I don't agree. I don't think the above term is ambiguous with regards to what type of timeshare costs are excluded. In common with many other travel insurance policies on the market, I'm satisfied that Mr and Mrs B's policy doesn't cover timeshare costs in any event.

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I invited both parties to provide any further information they wanted me to consider. AXA didn't reply. Mr and Mrs B did. In summary they said:

- By mid-August 2020, most lockdown 1 restrictions had been lifted. And so by the time of making payment in October 2020, it appeared that life was returning to normal and the worst of the global pandemic appeared to be over. What became known as lockdown 2 was only announced at the end of October 2020.
- They disagree that when they made payment in October 2020 it was foreseeable that they wouldn't be able to travel due to the FCO advice in place at the time.
- Not being able to travel in 2021 formed part of lockdown 3 and was therefore not anticipated in October 2020. There were two separate and unconnected travel bans.
- The timeshare was for use of accommodation. It's no different to staying in a hotel.
- The reference to timeshare is irrelevant. And they disagree that the exclusion mentioning timeshare is relevant to this complaint.
- AXA had considered paying the claim so isn't wholly against reimbursing timeshare fees.

Mr and Mrs B have also provided an invoice for payment for 'all weeks owned' during their visit under the timeshare agreement for 2024. This refers to their forthcoming stay – which implies use of accommodation and facilities.

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.

Having done so, I don't uphold this complaint. I'll explain why.

Some restrictions had been lifted in the UK in the summer of 2020 and life, for many, may have seemed to be getting back to normal as Mr and Mrs B say. However, at the time of making payment, I'm satisfied that not being able to travel because of Covid-19 was a

foreseeable event. The FCO advice was still in place advising against all but essential travel to the country – and the particular island – Mr and Mrs B were hoping to travel to.

That advice subsequently changed and then changed again at a later date. However, at the time they made payment, I'm satisfied that AXA has fairly concluded that it was foreseeable that Mr and Mrs B may not be able to travel when they intended to – notwithstanding some other government restrictions being lifted.

I'm not persuaded that it's relevant that the date they had wished to travel occurred during lockdown 3 or after the FCO had reverted back to giving advice against all but essential travel to Mr and Mrs B's intended destination. I'm satisfied the relevant consideration is what was reasonably foreseeable at the time they made payment and the travel advice that was in place at the time.

I've explained in my provisional decision, the reasons why I think the claim reasonably isn't covered under the travel disruption and cancellation sections of the policy. I've considered Mr and Mrs B's further points in response, but they don't change my mind. I remain satisfied an annual maintenance fee for the timeshare property isn't specifically part of the unused or pre-paid accommodation cost of their trip. As I've explained, I think it's the annual amount Mr and Mrs B are contracted to pay their timeshare resort each year, even if they make use of the timeshare property or not.

So, for these reasons, and for reasons set out in my provisional decision (an extract of which is set out above and forms part of my final decision), I don't think AXA has unfairly declined Mr and Mrs B's claim.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 October 2023.

David Curtis-Johnson
Ombudsman