DRN-4506456

The complaint

Mr and Mrs Y complain that Aviva Insurance Limited turned down a medical expenses claim they made on a travel insurance policy.

Mr and Mrs Y are represented by Ms F

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr and Mrs Y have travel insurance as a benefit of a packaged bank account. In March 2022, Mr and Mrs Y went through medical screening with Aviva and declared a number of pre-existing medical conditions. Amongst other conditions, Mrs Y told Aviva that she had asthma. Aviva decided to exclude asthma from cover – which meant it wouldn't cover any claims which were directly or indirectly linked to it. It sent Mr and Mrs Y a letter which confirmed which conditions it had decided to insure and which it had decided to decline.

In May 2022, Mr and Mrs Y were abroad with Ms F. Unfortunately, Mrs Y became very unwell and had to be admitted to hospital. Mr Y and Ms F had to extend their trip to remain abroad with her while she underwent treatment. So Ms F made a medical expenses claim on Mr and Mrs Y's behalf.

Aviva investigated the claim and it obtained medical evidence from the hospital which was treating Mrs Y. It noted that Mrs Y had been diagnosed with bronchospasm secondary to a lower respiratory tract infection and that the report had also listed bronchial asthma as a diagnosis. So it concluded that the claim was directly related to Mrs Y's existing asthma, which it had excluded from cover. Therefore, it turned down Mr and Mrs Y's claim.

Mr and Mrs Y were unhappy with Aviva's decision and they appealed. They provided a report from a consultant in the UK. The consultant said they'd reviewed Mrs Y's case notes and considered she'd been hospitalised due to community acquired pneumonia. However, Aviva maintained its stance and so Ms F asked us to look into Mr and Mrs Y's complaint.

Our investigator didn't think Mr and Mrs Y's complaint should be upheld. He thought Aviva had made it clear that it had excluded claims which were directly or indirectly related to Mrs Y's existing asthma. And he thought it was fair for Aviva to rely on the medical evidence provided by Mrs Y's treating specialists to conclude that the claim wasn't covered. He considered the UK consultant's report but thought it had been reasonable for Aviva to place more weight on the evidence dating from the time of Mrs Y's admission. Overall, he didn't think it had been unfair for Aviva to turn down Mr and Mrs Y's claim.

Ms F disagreed on Mr and Mrs Y's behalf and I've summarised her response. She considered that the diagnosis given by the consultants abroad hadn't fully been taken into account. She felt the diagnosis had been brought into disrepute and that the treating consultant's integrity and knowledge was of little consequence. She said the consultants had

been emphatic that the illness was airborne and of a community nature. Ms F didn't think it was acceptable that Aviva had taken 11-12 days to let Mr and Mrs Y know either that the claim wouldn't be covered, or that there was a cheaper hospital facility. The additional stress had had a significant impact on Mr and Mrs Y and that was why it had been advisable to leave Mrs Y in the hospital which was already offering her treatment. Ms F said that had they been told earlier that the claim wouldn't be covered, the outcome might have been different

I issued a provisional decision on 26 October 2023, which explained why I thought it had been fair for Aviva to turn down Mr and Mrs Y's claim, but why I thought there had been failings in the way it had handled the claim. I said:

'*The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the policy terms and the available medical evidence, to decide whether Aviva treated Mr and Mrs Y fairly.*

Was it fair for Aviva to turn down the claim?

It's common ground that in March 2022, Mr and Mrs Y went through a medical screening with Aviva. During that screening, Mr and Mrs Y declared several medical conditions, including that Mrs Y suffered from asthma. Based on its assessment of Mr and Mrs Y's health, Aviva decided to exclude cover for any claims caused directly or indirectly by Mrs Y's asthma. It sent Mrs Y a follow-up letter which set out a list of the conditions which had been declared and which indicated whether each condition had been accepted or excluded from cover. The letter clearly states that in Mrs Y's case, both asthma and asthma diagnosed over age 50 were excluded from cover. The letter said:

'If a medical condition is 'Excluded' the policy will not cover claims for anyone insured on the policy arising directly or indirectly from the declared condition.'

The letter also explicitly stated: 'Excluded conditions will not be covered by this policy.'

In my view, Aviva made it sufficiently clear that it had decided not to insure Mrs Y's asthma and what the impact of this exclusion was on the cover provided by the policy. Ms F acknowledges that Mr and Mrs Y were aware of the exclusion and that it meant claims arising from asthma wouldn't be covered.

Aviva assessed the available medical evidence, including seeking the opinion of clinical members of staff. It concluded that Mrs Y's admission was caused directly by her existing asthma and therefore, wasn't covered. Ms F, on the other hand, feels strongly that Mrs Y was diagnosed with and suffering from community acquired pneumonia – an infection which wasn't linked to asthma. So I've looked carefully at the medical evidence both parties have provided to decide whether I think Aviva reached a fair conclusion, based on the information it had available.

Firstly, I've looked carefully at the medical reports provided by the treating hospital during Mrs Y's admission. An entry in Aviva's medical assistance team's records show that the hospital provided a clinical judgment of:
'Lower respiratory airway infection

Hyperreactivity of airways (eosinophilic asthma).'

Further medical reports provided to Aviva by the treating hospital stated:

'Diagnosis: Episode of a severe bronchospasm secondary to a respiratory infection.

Bronchial Asthma.'

It appears that Aviva's medical assistance team also spoke with Mrs Y's treating doctor on 12 May 2022 and the following note was made:

'Advised dx (diagnosed) severe respiratory infection "this led to decompensation due to asthma – causing admission."

Advised progress is low as asthma difficult to control – stopped cough medication which caused deterioration. Confirmed respiratory infection exacerbated by asthma causing hospital admission.'

Based on the medical evidence available to Aviva during Mrs Y's admission, I don't think it was unfair or unreasonable for it to conclude that her hospitalisation was at least indirectly caused by asthma. It does appear from the treating specialist's comments that it was the existing asthma which had led to Mrs Y decompensating and therefore requiring hospital admission.

In August 2022, following Mr and Mrs Y's return to the UK, Mrs Y was seen by a consultant chest physician. Mr and Mrs Y sent a copy of the consultant's report to Aviva. I've set out what I think were the key findings:

'In May she was admitted to hospital with community-acquired pneumonia. I have been through the translated notes carefully…she had a raised CRP indicating that the dominant problem was a community-acquired pneumonia.'

Aviva reviewed the report, as I'd reasonably expect it to do. A doctor from its clinical team with specialist knowledge of lung disorders re-reviewed all of the available medical evidence. So, I've set out what I think are Aviva's doctor's main conclusions:

'As stated clearly in the medical report, the leading cause of admission in this case was bronchospasm. This was secondary to an exacerbation of the underlying severe eosinophilic asthma which was triggered by a LRTI. In the absence of the underlying bronchial hyperreactivity, neither of the predisposing factors above would have likely lead to an admission on their own, therefore eosinophilic asthma was the main cause of admission.

It is impossible to establish which of the contributing factors…were proportionally more responsible for the chest infection that led to the asthma exacerbation, what is incontrovertible is that without the well known underlying asthma they would have not led to admission…'

I've considered all of the medical evidence very carefully. It's important I make it clear that I'm not a medical expert and it isn't my role to substitute clinical judgement with my own. Instead, I've considered which evidence I find most persuasive as to whether Mrs Y's claim was directly or indirectly related to her excluded condition.

It's clear another specialist consultant reached a view that Mrs Y's condition was community-acquired pneumonia – which appears to be an airborne infection. However, I've borne in mind that this consultant's review took place around three months after Mrs Y's illness abroad and wasn't based on a contemporaneous review of her condition during the material time. Therefore, I currently think it was fair and reasonable for Aviva to place more weight on the contemporaneous medical evidence it was provided with by the doctors treating Mrs Y during her admission. That's because the treating doctors had the opportunity to examine Mrs Y first-hand during the period of her hospitalisation and decide on the most likely cause of her admission.

As I've set out above, it seems one of her treating doctors told Aviva that the cause of Mrs Y's hospitalisation was a severe respiratory infection which had decompensated due to asthma. And that the available medical reports shows that bronchial asthma was one of the overall diagnoses reached. On that basis, I don't think it was unreasonable for Aviva to decide either that Mrs Y's asthma significantly exacerbated her condition or that it was related to the cause of the claim. So it follows that whilst I'm sorry to disappoint Mr and Mrs Y, I currently find it was fair for Aviva to conclude that the claim was specifically excluded from cover. This means I don't currently intend to direct Aviva to accept or settle this claim.

Did Aviva handle the claim fairly?

Ms F has raised concerns about the service Aviva's medical assistance team provided. I've thought about this carefully. I can see that when it investigated Mr and Mrs Y's complaint, Aviva noted that it hadn't set expectations with Mr and Mrs Y as to what was happening with the claim and that it had been in a position to tell Mr and Mrs Y that the claim wasn't covered two days earlier than it actually did. It also appears that there were times when Aviva failed to communicate with Ms F, despite requests. In my view then, there were clear failings in the way Aviva handled this claim – which Aviva appeared to recognise itself, although it didn't offer any compensation.

I appreciate Ms F says that had the claim been turned down earlier, or if they'd been advised of a cheaper facility earlier, they may have been in a position to move Mrs Y. I've thought about this carefully and whether I think Aviva's failings caused Mrs Y to remain in a more expensive hospital longer than she ought to have done.

The evidence indicates that Aviva had decided, on 16 May 2022, that the claim wasn't covered. I think this was the point it had enough clear evidence to show that the claim was excluded. Prior to that, although a claim decline appeared to be a reasonable possibility, Aviva's clinical team wanted to review further medical evidence. I think this was reasonable. But Aviva didn't communicate its decision of 16 May 2022 to Ms F until 18 May 2022.

On the other hand, I'm mindful that even when Mr and Mrs Y did learn that their claim had been declined, they opted for Mrs Y to remain in the more expensive hospital, despite knowing that they'd be liable for the costs. So I don't think I could fairly or reasonably conclude, on the balance of probabilities, that Mrs Y's care would have been transferred to the cheaper facility even if the claims decision had been communicated two days earlier.

Nonetheless, it's clear that Mr and Mrs Y were caused some trouble and upset by the way Aviva handled their claim. As I've explained, there were some communication delays and I can see Ms F regularly had to contact Aviva for updates. I don't doubt that the unnecessary communication delays added to Mr and Mrs Y's upset at an already distressing time for them both. And I think it would've been reasonable for Aviva to have told Mr and Mrs Y about the decision not to cover the claim two days before it did. Again, I think this delay in communicating its claims decision would have added to Mr and Mrs Y's inconvenience and distress during a worrying time.

Therefore, I currently intend to direct Aviva to pay Mr and Mrs Y a total of £250 compensation to reflect the unnecessary trouble and upset its service failings caused them.'

I asked both parties to send me any further evidence they wanted me to consider.

Aviva accepted my provisional findings.

Ms F asked for an extension to respond until the end of November 2023, as she had sought further medical evidence from Mrs Y's treating consultants. However, we didn't receive any more information or submissions from Ms F before the extended deadline expired.

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, as Aviva has accepted my provisional findings and as Ms F didn't provide any substantive new evidence or comments before the extended deadline I gave, I see no reason to change my provisional decision.

So my final decision is the same as my provisional decision and for the same reasons. That means I don't find it was unfair for Aviva to rely on the contemporaneous evidence provided by Mrs Y's treating doctors to conclude that this claim was specifically excluded from cover. But I do think Aviva made mistakes in the way it handled this claim. So I direct it to pay Mr and Mrs Y £250 compensation to recognise the additional trouble and upset I think those errors caused them.

If Ms F is able to obtain new medical evidence to support Mr and Mrs Y's claim, it's open to her to send that evidence to Aviva for its consideration. If Mr and Mrs Y are unhappy with the outcome of Aviva's review of any potential new medical evidence, then they may be able to make a new complaint about that issue alone.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't think that Aviva acted unfairly when it turned down Mr and Mrs Y's claim.

But I direct Aviva Insurance Limited to pay Mr and Mrs Y £250 compensation to reflect the impact of its handling of the claim on them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y and Mr Y to accept or reject my decision before 9 January 2024.

Lisa Barham
Ombudsman