

complaint

Mr M says Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. unfairly declined a claim he made on his travel insurance policy.

background

Mr M and his wife were walking back to their holiday cruise ship when Mr M tripped on an uneven surface. He injured his head, but the ship's doctor said he was also intoxicated. She described him as violent and said he was screaming. Shortly afterwards the doctor issued another report. She removed those words about Mr M's behaviour. She also said he'd had only three alcoholic drinks.

Mapfre said it wouldn't cover a claim where a person's judgement was so seriously affected by the amount they'd drunk that it led to a claim. It added that the exclusion applied where - in the opinion of a treating doctor - the alcohol consumed caused or contributed to an injury.

Mr M said the fall wasn't related to the fact he'd had several drinks. Mapfre checked with the ship's doctor. She said she'd made a mistake, so she'd corrected the first report. She'd already told Mr M that she mixed-up some of his details with those of another patient. Mapfre said the diagnosis of intoxication remained.

Initially, our investigator said Mapfre had acted fairly, as it had taken into account the medical evidence. Following further comments from Mr M, he reconsidered. The investigator noted that the doctor hadn't suggested the alcohol led to the injury. And no screening was done to check what amount of alcohol was in Mr M's system. Mapfre didn't think there was any need for a blood test, as the doctor could see Mr M was drunk. It suggested that it was fair to decline the claim on the balance of probability.

The investigator asked Mapfre to seek an opinion from the doctor about the cause of Mr M's injury. It declined to do so and asked for a review of the complaint by an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think it should be upheld.

It's for Mapfre to show that the exclusion applies, as it wants to rely on it. The policy doesn't say a consumer shouldn't avoid alcohol altogether. The exclusion only applies where a consumer's had so much alcohol that it's seriously affected their judgement. I don't think there's any evidence that Mr M was in that position.

The doctor who treated Mr M didn't say there was a connection between his alcohol intake and his fall. So in my view, that part of the exclusion isn't satisfied. Mapfre says a doctor wouldn't necessarily comment on that – although I think the exclusion assumes that such a comment *would* be made.

Mapfre contacted the doctor about why she'd changed her initial report. She said she'd made an error, but didn't comment further. Mapfre could have asked the doctor for her opinion. That could've been done when it got the initial medical report or at any point later on. As it didn't, there's no medical opinion on whether alcohol's likely to have contributed to Mr M's injury.

It's not unusual for insurers to insist that a consumer who's been injured is screened for alcohol consumption. That's the case even when there's no evidence they've been drinking alcohol. I don't think it's always necessary to have screening done to show a consumer's blood-alcohol content. But I can see why Mr M thinks it would have assisted in this case.

I don't think Mapfre's been able to show that Mr M's injury was caused by his alcohol intake, or that it contributed to it. So I think it should pay his claim. I think Mr M has faced a fair amount of frustration and upset as the result of the claim's decline. I think a moderate sum in compensation would be fair and reasonable.

my final decision

My final decision is that I uphold this complaint. I require Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. to do the following:

- Pay Mr M's claim, in line with other policy terms and conditions
- Add interest, at the simple yearly rate of 8%, from the date of the claim to the date of payment
- Pay Mr M £100 compensation for trouble and upset.

HM Revenue & Customs requires Mapfre to take off tax from the interest. It must give Mr M a certificate to show how much is taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 October 2017.

Susan Ewins
ombudsman