

complaint

Mr R complains that Aviva Insurance Limited ("Aviva") still hasn't paid a claim he made under his travel insurance policy following an incident abroad in May 2017, when he suffered severe injuries including the loss of his sight in one eye.

background

I issued a provisional decision on this complaint on 15 February 2019, a copy of which is attached to, and forms part of, this decision.

Mr R accepted the provisional decision. Aviva said it had no further comments to make and no more evidence to provide.

my findings

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

As neither Mr R nor Aviva has provided any fresh information or evidence in response to my provisional decision, I find no basis to depart from my earlier conclusions.

my final decision

My decision is that I uphold this complaint. I require Aviva Insurance Limited to:

1. pay Mr R's claim of £30,000, subject to any applicable policy excess, with simple interest at the annual rate of 8% from 28 February 2018 until settlement;⁽¹⁾ and
2. pay Mr R in addition compensation of £300 for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 4 April 2019.

Lennox Towers
ombudsman

(1) If Aviva considers that it's required by HM Revenue and Customs to withhold income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue and Customs if appropriate.

Copy of provisional decision

I've considered the relevant information about Mr R's complaint. Based on what I've seen so far I'm thinking of upholding this complaint.

I'll look at any more comments and evidence that I get by 1 March 2019. But unless the information changes my mind, my final decision is likely to be along the following lines. Final decisions will be published on our website. So that Mr R can't be identified, I'll call him "Mr R".

complaint

Mr R complains that Aviva Insurance Limited ("Aviva") still hasn't paid a claim he made under his travel insurance policy following an incident abroad in May 2017, when he suffered severe injuries including the loss of his sight in one eye.

background

In April 2017, Mr R went abroad with a group of friends for a short break. Soon after arriving, Mr R became separated from his friends. He was found some time later semi-conscious with multiple injuries in a locked compound behind a 3-4 foot wall in another part of town. He was taken to hospital and from there, when stable, Aviva arranged for him to be returned by air ambulance to the UK.

In 2018, Mr R's specialist in the UK confirmed that he had suffered complete total and permanent loss of sight in one eye, from which there was no hope of recovery. So he claimed under the personal injury section of his travel policy, which carried a benefit of £30,000 for the accidental loss of one eye.

Aviva tried to get further details of the circumstances of Mr R's injury. It arranged for Mr R to be interviewed, but he said the effect of the injuries he had suffered was that he had little memory of the relevant events. The limited local police report and hospital records shed little light on what had happened. Aviva was trying to obtain a second local police report. Eventually Mr R complained to us that Aviva should now pay his claim.

Our investigator recommended that this complaint should be upheld. She said Mr R thought it likely he had been attacked and left. Aviva on the other hand thought it likely he had fallen. She said Aviva was entitled to make reasonable enquiries before paying a claim. But the regulator also considered that claims should be dealt with in a timely manner. She didn't think taking well over a year to deal with a claim of this nature was reasonable.

Aviva was suspicious that Mr R might have been under the influence of alcohol or other substances at the time of the accident, which under the policy terms would invalidate his claim. However she said the onus was on Aviva to show this, and there wasn't any evidence that this was the case. And it was unreasonable to drag out a claim while looking for something to turn up to invalidate it.

The investigator thought Aviva should accept that Mr R had suffered an injury for which he was entitled to claim under his travel policy, and should now pay the claim. She thought it should have been able to reach this conclusion by February 2018. So she recommended that it also pay interest on the claim from then, and a further £300 compensation for the distress and inconvenience it had caused Mr R.

Aviva responded to say, in summary, that:

- the circumstances of the incident remained unclear, particularly how Mr R came to be inside the locked compound;
- although the policy covered an accidental injury such as Mr R's this would be excluded if it resulted from a number of causes listed in the policy such as misuse of

- alcohol or drugs or Mr R putting himself deliberately at risk. It was possible the second police report might cast some light on this;
- Aviva only received confirmation of the extent of Mr R's injury from his specialist, and that he wished to claim for it, on 5 February 2018; and
- Mr R had been unable to provide information. So it had been reliant on police and hospital reports. It had also asked Mr R in April 2018 to reaffirm the statement he had given it, but he hadn't yet done so.

Aviva said it would be willing to pay Mr R the £30,000 benefit on condition he:

- reaffirmed the statement he had previously made as it had asked him to do; and
- signed an indemnity form which specifically stated that if it later found there was evidence to discredit his claim, he would be liable to repay the £30,000 and the expenses in the region of £15,000 it had paid for the air ambulance home to the UK.

Mr R said he wanted to have an end to the process, and didn't accept Aviva's proposal. So this complaint has been passed to me to issue a decision.

my provisional findings

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 agree with the investigator that it isn't reasonable for Aviva to drag out an investigation in the hope that something will turn up to support its suspicions. Nor do I think it's reasonable for Mr R to have the prospect of a large sum of money taken back some time in the future on the basis of evidence that Aviva at that stage may think proves its suspicions.

There's no doubt that following the incident, Mr R was left with substantial injuries, and lost his sight in one eye. Mr R says he has no memory of what happened to him until he woke up in hospital. The policy has a number of exclusions which would allow Aviva to avoid liability, for example if the injuries arose because Mr R:

- misused alcohol or drugs;
- deliberately put himself at risk of death or injury; or
- jumped or climbed over any balcony, railing, ledge or wall.

However the limited local police report and the hospital records don't explain what happened, and Aviva hasn't been able to show that any of the policy exclusions apply in this case, or that Mr R isn't being truthful when he says he can't remember what happened.

I don't think the knowledge Aviva has now is significantly greater than it had in early February 2018, when it received the specialist's report and knew of Mr R's claim. So I think that by the end of February 2018 it should have reached a decision to pay the claim, and should have paid Mr R the £30,000 due under the policy.

Aviva has asked Mr R to sign a document reaffirming the statement he made in April 2018 and giving it certain rights if new evidence comes to light. This is a matter for Mr R, but isn't something I require as part of my decision, which is based on what in my opinion is fair and reasonable in all the circumstances. For the avoidance of doubt a decision of this service, if accepted by the consumer, is binding on the financial business.

I conclude that Aviva should now pay Mr R's claim of £30,000, with simple interest at the annual rate of 8% from 28 February 2018 until settlement. It should pay him in addition compensation of £300 for the distress and inconvenience its delay in dealing with his claim has caused him.

my provisional decision

For the reasons I've explained, but subject to any further comments and evidence I receive from either Mr R or Aviva by 1 March 2019, I intend uphold this complaint. I intend to require Aviva Insurance Limited to:

1. pay Mr R's claim of £30,000, subject to any applicable policy excess, with simple interest at the annual rate of 8% from 28 February 2018 until settlement;(1) and
2. pay Mr R in addition compensation of £300 for the distress and inconvenience it caused him.

Lennox Towers
ombudsman

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