

complaint

Mr H complains that the Society of Lloyd's (which I'll call simply "Lloyd's") won't meet his claim under his travel insurance after he and his wife cancelled a planned trip to Cuba.

background

Mr and Mrs H booked a trip to Cuba. Through his employer, Mr H held travel insurance that covered him and his wife for various events – including cancellation.

After they'd booked their trip, Mrs H fell pregnant. So she and Mr H consulted their doctor about the wisdom of travelling to Cuba while she was expecting. Their doctor advised against travelling to Cuba, because of the presence of the Zika virus in that country. And the advice from the Foreign and Commonwealth Office (FCO) was that pregnant women should consider cancelling non-essential travel to Cuba, for the same reason.

Mr and Mrs H took their doctor's and the FCO's advice and cancelled their trip. They made a claim under their travel insurance for the losses they'd incurred as a result. Lloyd's said however that it wouldn't meet their claim. It said the reason for the claim was one which was expressly excluded under the terms of the policy. Specifically, it said the cancellation cover didn't extend to "*... any losses arising from an epidemic or pandemic as categorised as such by any Government and/or the World Health Organisation.*"

Mr and Mrs H didn't accept that the outbreak of the Zika virus in Cuba had been classified as an epidemic or pandemic and didn't think the exclusion applied. Lloyd's maintained that it did, though, and so Mr and Mrs H referred the matter to this service.

One of our investigators looked at the complaint but didn't uphold it. She agreed with Lloyd's that it could rely on the exclusion I've referred to above. Mr and Mrs H didn't accept her conclusions though, and asked that an ombudsman look at things.

I issued a provisional decision in August this year. I indicated that I was minded to agree with Mr and Mrs H that the exclusion relating to epidemics or pandemics didn't apply – and so it would be fair for Lloyd's to meet the claim. Lloyd's didn't agree with my provisional conclusions though. It said, in summary, that the fact that the Zika virus had spread widely was evidence that it was an epidemic. The spread of the virus was well documented.

Because Lloyd's didn't accept my provisional decision, I've looked the case afresh.

my findings

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

cancellation of the trip – what was covered?

The cancellation provisions of the policy say that Mr and Mrs H are covered for cancellation charges which they must pay as a result of the necessary and unavoidable cancellation of their trip due to circumstances beyond their control.

I think cancellation of the trip was necessary. Mrs H had been advised not to travel to Cuba. Had she done so, against advice, it's most unlikely her insurance would have covered her

had she contracted the Zika virus. Perhaps more importantly, she and Mr H knew about the possible consequences for their child.

I also think the cancellation was due to circumstances beyond Mr and Mrs H's control. The combination of Mrs H's pregnancy and their plans – made before her pregnancy – to travel to an area affected by Zika mean that I don't think it would be fair to say the cancellation was down to them. So my starting point here is that the cancellation provisions did cover the circumstances here. I therefore need to consider whether any policy exclusions applied.

exclusions

The policy said Mr and Mrs H weren't covered if they'd booked the trip against the advice of their doctor. That doesn't apply here though – since they didn't get any medical advice until after they'd booked the trip. They followed that advice by not travelling.

Claims arising from pregnancy were also excluded, with exceptions. I don't think it would be fair to say Mr and Mrs H's claim arose from her pregnancy.

The third exclusion that might apply is that which Lloyd's (and our investigator) relied on – namely, that the losses arise from an epidemic or pandemic. An epidemic is commonly taken to refer to a widespread occurrence of a particular disease in a particular area. A pandemic occurs when the disease spreads more widely. In medicine, "epidemic" refers to an occurrence of more cases of a disease than would be expected in an area during a given period of time.

Whilst it's clear that the World Health Organisation (WHO) recognises the potential for the Zika virus to reach epidemic levels, I haven't been able to identify any evidence that says it had reached those levels in Cuba at the relevant time. Indeed, its reports at the relevant time speak of "*outbreaks*" – a rather different scale of infection. The evidence that Lloyd's relies on here dates back to 2014, but doesn't refer specifically to Cuba.

In February 2016 WHO declared a Public Health Emergency of International Concern (or PHEIC) in relation to the Zika virus. But it declared in November 2016 that the virus was no longer an international emergency. Its current information and that available at time of cancellation lists Cuba under "*Countries with a reported outbreak from 2015 onwards*".

If Lloyd's is to rely on the exclusion here, I'd expect it to show that WHO or a relevant government had clearly said that the virus had reached epidemic proportions in Cuba at or around the time Mr and Mrs H cancelled their trip. I don't think it's done that here.

I've considered very carefully the points Lloyd's made in response to my provisional decision. I'm not persuaded though that I should change my mind. It appears that the Zika virus is unusual in Cuba. A small number of cases of a rare disease can be classed as an epidemic. And I accept that the virus had become much more widespread than usual in other parts of the Americas in the year or so before Mr and Mrs H were due to travel – to the extent that many people might have referred to it as an "epidemic".

But the virus wasn't particularly common in Cuba, even in the period of the PHEIC I've mentioned above. And that emergency didn't apply by the time Mr and Mrs H were due to travel. So the position was, in summary:

- The virus had been unusually prevalent in countries in the same region.

- There had been “*a reported outbreak*” in Cuba at some point in the previous two years.
- By the time Mr and Mrs H were due to travel, it was no longer seen as a health emergency.

It’s unlikely that Mr and Mrs H really considered what an epidemic or pandemic was before they planned their trip, or how the exclusion in their travel policy might affect their cover. But I doubt they would have expected cover to be excluded for that reason in the circumstances here. They were travelling to a country that hadn’t been badly affected, some time after the virus’s peak. If Lloyd’s had intended people in Mr and Mrs H’s position to have cover excluded, I think the terms needed to make that much clearer.

my final decision

For these reasons, my final decision is therefore that, subject to any other policy limitations, the Society of Lloyd’s should pay Mr H’s claim.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 13 November 2017.

Michael Ingram
ombudsman