

The complaint

Mr and Mrs P are unhappy with the way that Union Reiseversicherung AG handled a claim they made on their travel insurance policy.

What happened

In July 2019 Mr and Mrs P, were on holiday with their two children who I'll refer to as P1 and P2. They were involved in a road traffic accident in the country they were visiting, which I'll refer to as A.

They received medical treatment in a hospital and were repatriated home. Mr and Mrs P are unhappy with the service they received from URV whilst they were abroad and that URV hasn't settled all of their medical bills. This has meant that debt collectors have been trying to recover the outstanding balance owed to the hospital.

Mr and Mrs P complained to URV. In their final response letter URV said that they had arranged to repatriate the family within four days which was very quick. They acknowledged that there had been a mis-communication with Mrs P about anticoagulant advice and apologised for this. In relation to the outstanding medical bills they said that the costs had been inflated and that they were willing to appoint a solicitor to correspond with them. They offered £600 compensation for the distress and inconvenience of having been chased for the medical bills and £400 as an apology for the miscommunication with Mrs P. And to compensate for the inconvenience of having to send on any future correspondence in the future they offered a further £400. Unhappy, Mr and Mrs P complained to our service.

Our investigator looked into what happened and upheld the complaint in part. He thought that URV had arranged the repatriation within a reasonable timeframe. But, he thought the communication could have been more effective. He acknowledged Mrs P's concerns about the advice she was given about an anticoagulant injection but explained that he couldn't make an award for what might have happened had Mrs P gone ahead with the injection. In relation to the medical bills he said that URV hadn't taken into account Mr and Mrs P's interests but recommended that they had a further opportunity to enter into meaningful negotiation in order to settle the outstanding balance. However, he thought the offer of £1000 compensation to acknowledge the poor service and medical bills not being settled was fair and reasonable. He didn't include the £400 compensation URV offered Mr and Mrs P in relation to future communication because he said that this suggested URV may not carry out meaningful negotiation with the debt collection agency and would continue to refuse to make payments to settle the bills.

Mr and Mrs P didn't agree and asked an ombudsman to review the complaint. They said that URV have already had three years to settle the bill and that the £1000 compensation didn't fairly reflect the impact on them. Mrs P said that the bill should be settled in full. In summary, she said that URV were engaged in making false arguments and it wasn't believable that a world class hospital was engaged in billing fraud. Finally, Mrs P referred to other decisions made by our service.

URV provided further information which they said highlighted the issues of overcharging in A. They said that they stood by their commitment to ensure that Mr and Mrs P wouldn't need to pay anything towards their treatment and to pay £400 for any ongoing distress and inconvenience. They also reiterated that they were happy to instruct a UK based solicitor and take other steps to address the outstanding balance.

So, I need to make a decision.

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'm upholding Mr and Mrs P's complaint. I'll explain why.

There are two core issues which Mr and Mrs P have complained about – the service they received in relation to repatriation and the settlement of hospital bills. I'll address each of these concerns in turn.

(1) Repatriation and medical assistance

The relevant rules and industry guidelines say that URV has a responsibility to handle claims promptly and fairly.

Mr and Mrs P were involved in an accident together with their young children. They clearly went through a traumatic and frightening experience. However, they were repatriated back to the UK within approximately five days of the accident. All four family members required treatment and therefore URV needed to verify cover and ensure they had sufficient medical evidence to confirm they could safely return home.

I can see that Mr and Mrs P had to chase URV for information and that they felt URV didn't help them. But the evidence available to me demonstrates that URV weren't responsible for causing a significant delay to the repatriation and I think a timescale of five days was reasonable in all the circumstances of this case.

Mrs P was advised that she should arrange an anti-coagulant injection before travel. URV acknowledges she wasn't given clear information about this. Mrs P sought guidance from the treating doctor who explained she shouldn't have the injection. I appreciate Mrs P was worried to receive different information from the treating doctor. But, as our investigator explained, I can only take into account what did happen (as opposed to what might have happened if she'd gone ahead with the injection).

Taking into account all of the above I think the total of £400 compensation for the service they received is fair and reasonable.

(2) The settlement of bills

Mr and Mrs P are also being chased by debt collectors for the outstanding balance of medical bills. Neither party disputed our investigators summary of the amounts outstanding. So, in summary there are four outstanding invoices:

- An invoice for Mr P for \$4,601.00 - URV have made a payment of \$914.74
- An invoice for Mrs P for \$27,246.60 - URV have made a payment of \$3,067.09
- An invoice for P1 of \$24,826.30 - URV have made a payment of \$2,446.12
- An invoice for P2 of \$24,459.18 - URV have made a payment of \$2,517.20.

I understand that some payments have been made towards the medical treatment by a car insurance company. However, there is a total remaining balance of \$64,498.33 for all treatment which the debt collectors are expecting to be paid by URV.

URV have advised that they will only be paying the annually published US Congress rates plus 50% and so no further payments have been made towards the medical bills.

As a matter of general legal principle, URV is bound to indemnify Mr and Mrs P against losses covered by the policy as and when the amount of her losses has been established (in this case, the amount of Mr and Mrs P's liability to the medical facility). That may be by agreement, by court judgment or by arbitration. So URV has a commercial interest in being able to take over the defence and settlement of such claims in Mr and Mrs P's name.

The policy terms say URV can "take over and deal with in your name the defence/settlement of any claim made under the policy". But I'm satisfied that URV still need to act fairly and reasonably when exercising that term.

Legally, in situations where URV's interests' conflict with Mr and Mrs P's, URV has a responsibility to act in good faith when it takes over the defence or settlement of a claim - having regard to Mr and Mrs P's interests as well as its own commercial interests. URV isn't entitled to act arbitrarily in the way it goes about declining to pay the full amount of the invoice. And when deciding whether - and how - to defend possible legal action against Mr and Mrs P, URV is required to base its decisions on the circumstances of their individual case.

The Principles for Businesses ("Principles") are set out in the Financial Conduct Authority (FCA) Handbook and URV is obliged to follow these.

Principle 6 says a firm must pay due regard to the interests of its customers and treat them fairly. And Principle 8 says a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

ICOBS 8.1.1R says an insurer must handle claims promptly and fairly, provide reasonable guidance to help a policyholder make a claim and appropriate and settle claims promptly once settlement terms are agreed.

The Regulatory Guide, published by the FCA, entitled: 'The Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD) includes the Regulator's guidance

on what the combination of Principles and the detailed rules require providers and distributors of financial services in certain circumstances to treat customers fairly. The RPPD makes clear that firms should consider the impact of their actions, or inactions, on the customer throughout the life cycle of the service being provided.

I've also considered what I consider having been good industry practice at the time of the claim. That's for insurers - and their agents - to engage diligently with medical facilities (and their agents) to try to resolve disputes over medical bills by actively seeking a compromise or adjudication of their bills. And this includes actively engaging in negotiation.

I'll now explain what this means for Mr and Mrs P's complaint.

URV doesn't dispute that Mr and Mrs P, and their two children, didn't need treatment or shouldn't have been charged for it. So, I think URV has accepted liability for their treatment and sums properly due under the policy.

The policy covered up to £10 million of costs for emergency medical attention. The policy says it will cover customary and reasonable fees or charges to be paid outside your home country for medical, surgical, hospital nursing home or nursing services.

URV's position is that the amounts charged by the medical facility are inflated and unreasonably excessive. It says it's paid reasonable fees for the medical care the family received and it's sought to rely on information from several sources in support of its position.

URV says the Congress guidelines set out the suggested rates of payment for medical procedures and treatment ('the Congress rates'). And that the amounts charged by the medical facility are considerably higher than the Congress rates for the medical care and treatment the family received. The Congress guidelines are issued annually by the USA government and I understand that the Congress rates apply to certain USA residents, who qualify for 'Medicare'. URV says it uses Congress rates as a benchmark when deciding whether the amounts charged are reasonable. It says it then pays a certain percentage above this, which it's disclosed to our Service. It's also provided our Service with some examples which, it says, demonstrates evidence of inflated charges in Mr and Mrs P's case.

But even if I accepted that, on the face of it, the charges were lower than the Congress rates it doesn't mean that URV are treating Mr and Mrs P fairly. Their policy isn't a medical insurance policy akin to the type of policies that can be taken out in the USA to cover medical care and treatment for people who reside there; it's a travel insurance policy. Further, Mr and Mrs P and their children aren't USA citizens entitled to Medicare and I understand this information relates to those patients whose medical costs have been covered by Medicare. So, whilst I've taken this information into account, I've placed less weight on its contents.

Further, and in the alternative, even if the various information advanced by URV in support of its position do support its decision to not pay the outstanding amount, I'm not satisfied URV has acted fairly and reasonably in the way in which it's taken over the handling of Mr and Mrs P's claim. I'll explain why.

As set out above, the policy does allow URV taking over, and dealing with, the defence and/or settlement of any claim made under the policy in Mr and Mrs P's name. However, as I've explained, it must do so having due regard to the law and relevant rules and regulations. URV has a duty to deal with claims promptly and fairly, and it's required to act with due skill, care and diligence, paying due regard to Mr and Mrs P's interests and treating them fairly. URV must also manage any conflicts of interest between itself and its customers fairly. I don't think it's done that here.

I appreciate that the amount of the outstanding balance in dispute here isn't insignificant. I can understand why URV would seek to challenge it and why it's in its commercial interests to do so. However, URV took the unilateral decision to only pay part of the invoice. It didn't discuss its approach with Mr and Mrs P before doing so.

URV should also consider the individual issues of each specific case according to their own facts and having regard to the interests of the policyholder as well as its own. Between September 2019 and December 2020 there was a significant amount of correspondence from the debt collector, chasing up payment. In August 2020 URV told the debt collectors that they wouldn't pay anything more. The debt collector offered a discount but URV maintained their position to pay no more than what had already been offered. The debt collector continued to chase payment throughout.

Looking at the communications between URV and the debt collectors, I don't think URV's handling of those discussions were in line with treating Mr and Mrs P – as its customers – fairly.

I would normally expect to see an insurer explain and justify its position by reference to the particular items in dispute, take on board any response it receives, and advance arguments addressed to the particular issues in dispute to try to persuade the medical facility to accept the sum being offered, or reach a mutually acceptable compromise.

I'm satisfied that's good industry practice and it didn't happen here. URV has simply stated – and paid – a sum it says is reasonable, relying on the Congress rates which are applicable to USA residents who have the benefit of Medicare. It then proceeded to reiterate the same points. In doing so, it effectively, failed to engage in meaningful negotiation in the spirit of reaching a compromise on the outstanding amount. If it had, based on the tone of the debt collectors' emails, I think it's likely it would've brought about a prompt conclusion of the dispute. There's nothing to suggest that the medical facility/debt collectors wouldn't have conducted negotiations in good faith.

I'm also satisfied that URV's failure to explore meaningful negotiation in this case isn't based on any detailed representations to the medical facility and/or the debt collectors. Nor has it relied on any specific features of Mr and Mrs P's claim. It's a reflection of a general policy to pay the medical facility a certain percentage above the Congress rates for the medical care and treatment Mr and Mrs P received in the USA. That's resulted in Mr and Mrs P being pursued by debt collectors. And the issue of the outstanding amount is unlikely to be resolved until they are either sued over the outstanding amount or the healthcare provider stops pursuing the outstanding amount and writes it off as a bad debt.

URV has a duty to fairly manage any conflicts between its own interests and those of Mr and Mrs P. I don't think it's had due regard to Mr and Mrs P's interests here; it's unreasonably put its own commercial interests above their interests as someone who has paid for travel cover and made a proper claim under it.

I think it's also relevant that consumers – such as Mr and Mrs P - who take out travel insurance to cover medical treatment abroad don't expect to be exposed, without a very good reason, to continuing action from debt collectors many months after visiting an overseas medical facility when they've acted in accordance with the terms of the policy and paid the relevant excess, as is the case here.

URV offered £600 for the distress and inconvenience caused to Mr and Mrs P in relation to its handling of settling the claim so far. I think that's fair and reasonable. I accept it has been worrying and inconvenient for Mr and Mrs P to be left in a position where their medical bills haven't resolved and over a significant period of time. Mr and Mrs P have the worry of the matter remaining unresolved. But the contact from the debt collector has been with URV and the debt collector hasn't sought to pressurise Mr and Mrs P to make payment. So, I think £600 fairly reflects the distress and inconvenience caused to them.

I've taken into account all of Mr and Mrs P's points in response to the investigator's opinion, including that URV should settle the full bill. And, I've thought about what they've said about URV's wider practices, including what they've said about fraud. I've seen no specific or credible evidence that URV has been involved in fraud in the manner in which Mr and Mrs P have suggested. I've carefully considered whether to direct URV to settle the bill in full but I remain persuaded that it is fair and reasonable to direct URV to carry out further, and meaningful, negotiation with the debt collector. That's because there remains a significant difference between what the two parties consider to be the appropriate payment. And I think it's fairer to give URV a further opportunity to negotiate the bill rather, and to compensate Mr and Mrs P for the distress and inconvenience caused, rather than direct URV to settle the bill at this stage.

More recently, URV says it has sought to re-engage and further negotiate with the debt collectors to resolve matters. They've also told us that they are planning to work through outstanding accounts. But there is still no firm timescale for resolution of the matter at this point in time. In addition to the compensation our investigator recommended it also says it will offer:

- £400 compensation for the ongoing distress and inconvenience
- UK legal representation (paid for by URV) to act between the debt collector and Mr and Mrs P
- To pursue action against the debt collector and the medical provider if the debt collector continues to communicate with Mr and Mrs P despite them having legal representation
- To obtain relevant legal advice in A.

Having considered the overall circumstances, I haven't included this offer within the settlement figure I'm directing URV to pay. That's because it concerns future, as opposed to past, conduct of the claim. So, if Mr and Mrs P wish to take up URV's offer of the £400 compensation and the other support then they'll need to get in touch with URV directly.

Putting things right

DISP 3.7.1R says that where a complaint is determined in favour of a complainant the ombudsman's determination may include a direction to the respondent, which in this case is URV.

DISP 3.7.11R provides that a direction may require the respondent, here URV, to take such steps in relation to the complainant as the ombudsman considers just and appropriate whether or not a court could order those steps to be taken.

On balance, I don't think that the stage has yet been reached in URV's handling of this claim where I should direct it to pay this bill in full. I consider that it is fair and reasonable to give URV a further opportunity to handle the negotiation or ascertainment of the debt more appropriately than it has so far in order to fix and pay Mr and Mrs P's liability. So, I intend to limit my award in respect of URV's mishandling of the matter, up to the present date, to monetary redress.

URV's duties in relation to handling this claim don't end with my decision, because the matter of the outstanding bill is ongoing. The debt collector is likely to continue to seek payment and may start litigation to pursue this. It remains URV's responsibility to take active steps to resolve this outstanding matter expediently, in a manner that has due regard to Mr and Mrs P's interests and treats them fairly. I'd urge URV to take its continuing duties to Mr and Mrs P very seriously.

As URV's duties continue, the manner in which it handles this claim going forward, may give Mr and Mrs P grounds for a further complaint to this Service. Any such further complaint would be based upon URV's conduct of the claim after the date of this decision, as opposed to during the period I have considered.

I hope that this will not occur, as the intention behind my decision is to give URV another chance to prosecute its settlement or defence of the debts diligently. As we are a service which tries to resolve disputes with the minimum of formality. In my view, in light of this decision, Mr and Mrs P can reasonably expect URV to start taking active steps to have the bills settled or adjudicated as quickly as possible. If it doesn't do that, or if there are further failings of any other sort, URV may be at heightened risk (amongst other things) of receiving a direction to pay the bills in full (litigation or no litigation).

I'd expect URV to ensure that, even if it takes steps such as litigation, they are proactive and ensure that matters don't come to a standstill or stall. But URV's future conduct would be a matter for a different ombudsman to decide in all the circumstances. In particular, I would myself expect URV to take account of Mr and Mrs P's views on matters that affect them, such as how to bring the matter to a rapid conclusion; and if litigation is under way, as to the choice of tactics for achieving that end.

URV should also pay Mr and Mrs P £400 for the failings in the customer service they received whilst they were abroad.

That means URV means should pay Mr and Mrs P a total of £1000 if they haven't done so already.

My final decision

For the reasons set out above, I uphold this complaint. Within 28 days from the date on which we tell it that Mr and Mrs P accept my final decision, I direct Union Reiseversicherung AG to pay Mr and Mrs P £1000 compensation if they haven't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 17 August 2022.

Anna Wilshaw

Ombudsman