

The complaint

Mr and Mrs F are unhappy about the way Union Reiseversicherung AG ('URV') has handled their travel insurance claim.

All references to URV include its representatives and cost containment agents.

What happened

Mr and Mrs F bought a travel insurance policy underwritten by URV to cover a trip to the United States ('US').

Mrs F had to have emergency medical treatment whilst abroad in October 2019. She was in hospital for a number of days and then had to attend on a daily basis for antibiotic treatment. Mr and Mrs F made a claim to URV, but it only partially settled the invoices as it said the medical costs were excessive, and that it had made payment in line with US Congressional guidelines.

URV made part payment towards the following invoices:

1. Medical costs of \$50,203.50 – URV has paid \$12,407.88
2. Medical costs of \$2,099 – URV has paid \$346.07
3. Medical costs of \$1,954.52 – URV has paid \$900.87
4. Medical costs of \$1,145 – URV has paid \$903.53
5. Medical costs of \$425.97 – URV has paid \$213.53
6. Medical costs of \$3,658.15 – URV has paid £1,508.91

Mr and Mrs F have been copied into correspondence from the debt collector. And have been told that if URV doesn't pay the outstanding amount, they will be liable. They have been worried about the effect this will have on any future travel and have cancelled trips back to the US for fear of getting arrested or not being treated in the hospital, if needed.

URV offered to pay £300 as an apology for any distress caused and an additional £500 if Mr and Mrs F were willing to continue to support URV in denying any further payment to the debt collectors.

Our investigator looked into the complaint and didn't think URV had provided any clear evidence to show that the costs claimed were unreasonable or excessive. So she recommended that URV be given an opportunity to negotiate the costs to bring the matter to a conclusion. She also found £800 compensation was fair and reasonable for the trouble and upset caused to Mr and Mrs F as URV hadn't kept them updated and they were concerned about their future travel plans.

Mr and Mrs F replied to say they would accept £800 compensation but they wanted URV to settle the bill directly with the hospital.

URV responded and in summary, made the following comments:

- It has evidence of overcharging issues in the USA
- It uses Medicare data as an objective benchmark
- It has provided the hospital's data report to show the profit it has made – and it shows that the hospital has accepted lower payments in respect of some of its invoices, as much as 85% in some cases
- It has provided summaries of data which show the costs charged and the cost rate

As an agreement couldn't be reached, the case has been passed to me to decide.

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 agree that this complaint should be upheld. I'll explain why.

As a matter of general legal principle, URV is bound to indemnify Mr and Mrs F against losses covered by the policy as and when the amount of their loss (here the amount of Mr and Mrs F's liability to the healthcare provider) has been ascertained. 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 F's name.

URV's policy terms say it can:

“take over and deal with, in your name, the defence/settlement of any claim made under the policy.”

In effect, this means URV has the right to take over the conduct of a claim – defending or settling it – in the name of Mr and Mrs F. But that isn't an unqualified right.

Legally, in situations where URV's interests' conflict with Mr and Mrs F's, URV has a responsibility to act in good faith when it takes over the defence/settlement of a claim – having regard to Mr and Mrs F'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 contesting the outstanding amount. In deciding whether – and how – to settle or defend claims against Mr and Mrs F, URV is required to base its decision on the circumstances of Mr and Mrs F's individual case rather than on broader concerns about overcharging within the US healthcare industry.

The applicable regulations lead to a similar conclusion.

The Financial Conduct Authority (FCA) Handbook sets out a number of Principles for Businesses, which URV must follow, including:

Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 8 – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

The relevant regulations also include ICOBS 8.1.1R which says an insurer must:

- handle complaints promptly and fairly;

- provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress;
- not unreasonably reject a claim (including by terminating or avoiding a policy); and
- settle complaints 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 for Businesses ("the Principles") and the detailed rules mean for providers and distributors of financial services. The RPPD explains that firms should consider the impact of their actions, or inactions, on the customer throughout the life cycle of the service being provided.

I also find it appropriate to take into account what I consider to have been good industry practice at the time of the claim. This was for underwriters of travel insurance – and their agents - to engage diligently with healthcare providers to try to resolve disputes over medical bills by actively seeking a compromise or adjudication of their bills. That includes actively engaging in negotiation.

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

URV has provided additional information and statistics which it believes shows overcharging issues in the USA. It shows that the hospital is accepting discounts of up to 85% across its entire patient population and it says it has paid approximately 25% of the charges the hospital is claiming.

But I don't think this information demonstrates that this particular hospital is overcharging Mr and Mrs F in bad faith. Or that the charges were unjustified or disproportionate to what they might have been charged by another hospital in the same area.

I haven't been provided with any persuasive evidence to show that the US congressional guidelines are a valid or recognised benchmark for fair payment of medical treatment costs outside of the Medicare system. And I've also seen letters from the debt collectors to URV suggesting that they are open to discussing settlement. I've seen no evidence that URV has responded to the debt collector's invitation or that it has engaged in any discussions to negotiate the bill. Based on the information URV has provided, this suggests a discount can be negotiated. So I don't see any reason why it shouldn't attempt to open negotiations.

I've considered whether URV has done enough to deal with Mr and Mrs F's claim promptly and fairly. I've fully considered the guidelines URV has referred to. But I haven't seen that URV has used these for the basis of negotiations in Mr and Mrs F's case.

I can understand why URV doesn't want to pay exaggerated costs. And so I would have expected to see evidence that URV attempted to carry out cost containment negotiations. But there is no such evidence here.

Alternatively, URV could have sought to have the proper amount of the bill ascertained by a dispute resolution service such as by mediation, arbitration or litigation. Again, there is no evidence that URV has taken any steps of that kind. And it is aware the costs it has paid are not acceptable to the hospital but it still appears to have considered the matter settled.

Mr and Mrs F have cancelled a number of trips to the US as they are concerned that they won't be able to access treatment at the hospital they were treated at previously, if required, due to the outstanding bills. And it has also heard from the debt collector who has said that the hospital considers Mr and Mrs F liable for the outstanding amount. And that URV hasn't attempted to negotiate. In addition, Mr and Mrs F have said they haven't been kept updated

by URV. So I think URV's actions have had a significant impact on Mr and Mrs F and compensation of £800 is appropriate in all the circumstances of this case.

The policy allows URV to take over and deal with the defence/settlement of any claim. But I expect it to do so in a fair and reasonable way. I must have regard to the law, the relevant industry rules and regulations, and good practice. URV has a duty to deal with claims promptly and fairly and to act with due skill, care and diligence, paying due regard to Mr and Mrs F's interests and treating them fairly. I don't think it has done that in this case.

URV took a unilateral decision to part pay the invoices. I haven't seen any evidence that URV has attempted to negotiate with the hospital or the debt collector.

Whilst nobody could suggest that negotiation will lead to a reasonable settlement being achieved in every case, in many cases it may do so; and I've seen nothing to suggest that it couldn't have been productive in this case. Before negotiation is abandoned in a case like this, 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 to address the particular issues in dispute to try to persuade the healthcare provider to accept the sum being offered, or reach a mutually acceptable compromise.

URV doesn't have the absolute right to partially settle or defend a case in accordance with its own practices or interests – it still must act fairly and reasonably when doing so – and must have regard to the interests of the policyholder.

I find the fact that URV made no attempt to negotiate with the hospital or its agent and no other attempt to have the amount of debt ascertained by any form of dispute resolution process, contrary to both the regulatory guidance and good industry practice.

URV needs to act fairly in each individual case. It also has a duty to fairly manage any conflicts between its own interests and those of Mr and Mrs F. I don't think it has had due regard to Mr and Mrs F's interests here. And I think it has unreasonably put its own commercial interests above theirs without considering their specific circumstances. I don't think URV has considered the impact of its actions on Mr and Mrs F, as it is required to do.

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

Whilst I have seriously considered directing URV to pay the hospital bill in full, so as to bring the matter to a conclusion, I am conscious that the bill is a sizeable one and that it may be that URV has grounds for obtaining a significant reduction.

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 F'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.

I'm satisfied that compensation is due for the worry that this matter has caused Mr and Mrs F. I think the sum of £800 fairly compensates them for the trouble and upset caused to them by URV's handling of the claim so far – that is for its conduct up until the date of this decision. I don't think this compensation should have any conditions attached to it, as suggested by URV.

However, URV's duties in relation to its handling of Mr and Mrs F's claim don't end with this decision, as the matter of the outstanding bills remains live. The hospital will doubtless continue to seek payment of its bill and it remains URV's responsibility to take active steps to resolve this matter quickly and in a manner that has due regard to Mr and Mrs F's interests and treats them fairly. In the interests of all concerned, I urge URV to take its continuing duties to Mr and Mrs F very seriously.

Because URV's duties continue, the manner in which it handles the claim hereafter may give Mr and Mrs F grounds for a further complaint to this service.

In particular, if after the date of this decision URV doesn't take active steps to ascertain the amount of the debts and discharge any outstanding bills in a fair and reasonable manner, such future unreasonable conduct is very likely to result in further worry for Mr and Mrs F and in a further complaint to this Service. (Any such further complaint would have to be based upon URV's conduct of the claim after the date of this decision, as opposed to during the period that I have considered.) I hope that this will not occur, as the intention behind my decision is to give it another chance to prosecute its settlement or defence of the debts diligently. If there are further failings, URV may be at heightened risk (amongst other things) of receiving a direction to pay the bills in full. But that would be a matter for a different ombudsman to decide in all the circumstances.

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 F accept my final decision, I direct Union Reiseversicherung AG to pay Mr and Mrs F £800 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F and Mrs F to accept or reject my decision before 11 March 2022.

Shamaila Hussain
Ombudsman