

## **The complaint**

Mr and Mrs C are unhappy with the way Union Reiseversicherung AG ('URV') handled a claim Mrs C made on their travel insurance policy.

Any references to URV include its costs containment agents.

## **What happened**

Mr and Mrs C had the benefit of an annual travel insurance policy, underwritten by URV, covering the period mid-October 2018 to mid-October 2019.

In the summer of 2019, whilst abroad in the USA, Mrs C received medical attention in hospital.

Mrs C's hospital bill was around \$2,515 ('the hospital invoice') and she was invoiced around \$950 by the treating doctor ('the doctor's invoice'). She made a claim on the policy for those costs to be covered.

URV didn't pay the full amounts invoiced. It ended up paying around \$177 for the doctor's invoice and around \$688 for the hospital invoice – leaving a balance of around \$1,827 in respect of the hospital invoice ('the outstanding amount').

Debt collectors on behalf of the medical facility didn't accept the amount paid for the hospital invoice. It wrote to URV in early December 2020, saying that the outstanding amount needed to be paid in full. An amount hadn't been negotiated and an underpayment hadn't been agreed on.

The debt collectors continued to chase Mrs C and her son (who lived in the USA and with whom she had been staying with at the time of needing medical treatment) for the outstanding amount.

Neither Mrs C nor her son have received any further correspondence chasing the balance of the doctor's fees since payment was made in or around September 2020.

But Mr and Mrs C are unhappy that Mrs C and their son are being personally chased for the outstanding amount by debt collectors and that URV has allowed the issue to continue without being resolved. Mr and Mrs C would like URV to pay the outstanding amount.

It's URV's position that the amounts Mrs C has been charged for the medical treatment received are excessive and that it doesn't need to pay any more towards the hospital invoice. It says it has made a reasonable payment for the medical care Mrs C received and hasn't made any further attempts to pay – or negotiate - the outstanding amount.

However, URV does accept that the correspondence received from debt collectors would've caused distress and inconvenience. It's apologised and offered £500 in compensation to reflect that - and the distress and inconvenience which will be caused by receiving ongoing correspondence from the debt collectors.

It's also offered Mr and Mrs C a further £700 to settle their complaint and as compensation for any future inconvenience because of the outstanding amount remaining unpaid. It's also offered to pay for a legal representative to act on behalf of Mrs C to respond to any further communications about the outstanding amount.

Mr and Mrs C say they would like the outstanding amount to be settled to avoid any future distress and inconvenience. And as long as the hospital invoice remains outstanding they're also worried that it would be more difficult for them to travel to the USA – or to have access to medical treatment should they travel there and need medical care.

Our investigator upheld Mr and Mrs C's complaint. He didn't think URV had acted fairly or reasonably by paying part of the hospital invoice - particularly as it hadn't attempted to enter negotiations with the medical facility with a view to agree a mutually acceptable amount for the care Mrs C received whilst in the USA. He recommended URV pay the outstanding amount and pay Mr and Mrs C £350 for the distress and inconvenience it caused them.

URV didn't agree. So this complaint has now been passed to me to consider everything afresh 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.

At the outset I want to confirm that I haven't considered whether the amount paid by URV for the doctor's fees is fair and reasonable. That's because since the payment was made towards the end of 2020, Mr and Mrs C have confirmed that they haven't received any further communications about the doctor's invoice. Given that two years has now passed it would appear that the amount paid for the doctor's invoice has been accepted and so this issue has been resolved.

However, I uphold Mr and Mrs C's complaint in respect of the outstanding amount (in respect of the hospital invoice). I'll explain why.

As a matter of general legal principle, URV is bound to indemnify Mr and Mrs C against losses covered by the policy as and when the amount of the loss (here the amount of Mrs C's liability to the medical facility) 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 C's name.

The policy terms allow for URV to "take over and deal with in your name the defence/settlement of any claim made under the policy". But that isn't an unqualified right and URV still need to act fairly and reasonably when exercising that term.

Further, legally, in situations where URV's interests' conflict with Mr and Mrs C's, URV has a responsibility to act in good faith when it takes over the defence or settlement of a claim - having regard to their 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 invoices and contesting the outstanding amount.

In deciding whether - and how - to defend possible legal action against Mrs C, URV is required to base its decisions on the circumstances of her individual case.

### **The relevant rules, regulations and industry guidance**

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 information on its progress
- not unreasonably reject a claim (including by terminating or avoiding a policy)
- 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. This was for insurers - and their agents - to engage diligently with medical facilities (and their respective 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 all means for Mr and Mrs C’s complaint.

#### The amount paid by URV

URV has accepted ultimate liability for Mrs C’s treatment and sums properly due under the policy. It hasn’t said Mrs C shouldn’t have been charged for certain treatment – or shouldn’t be paid at all. It’s simply said that the amounts charged are inflated and unreasonably excessive.

URV has sought to rely on the Congressional guidelines (‘the guidelines’) to support the amounts it has paid to the medical facility for the medical care Mrs C received in 2019. It says the amounts charged by the it are considerably more than the rates set out in the guidelines for the medical care Mrs C received.

The guidelines are issued annually by the USA government and URV says they set out the suggested rates of payment for medical procedures and treatment. I understand that these rates apply to certain USA residents that qualify for ‘Medicare’. URV says it uses the guidelines 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.

But I haven’t been shown anything to convince me that the guidelines establish a valid benchmark for the fair market value of services provided outside the US Medicare/Medicaid systems to which they relate. So, I’m not persuaded the invoices are unreasonably

excessive or out of line with what might reasonably be charged for non-American residents who don't have Medicare – like Mrs C.

I've also taken into account the average amount charged by the medical facility for the medical care Mrs C received in 2019, as put forward by URV, against the average cost to the medical facility for such treatment. The average payment received is lower than the hospital invoice and lower than the amounts paid by URV. But I'm conscious that Mr and Mrs C's 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.

In this case, the issue isn't what losses the average hospital makes when it treats a patient on Medicare, nor how much URV considers to be an appropriate profit margin, but how much a facility of the quality and location where Mrs C received treatment could be expected to charge privately funded/insured patients for her medical care. I'm not persuaded the information provided by URV sheds any light on that issue. So, whilst I've taken it into account, I've placed less weight on its contents.

Further, and in the alternative, even if the various sources 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 Mrs C's claim. I'll explain further below.

#### URV's handling of Mrs C's claim

As explained, the policy does allow URV to take over, and deal with, the defence/ settlement of any claim made under the policy in Mrs C's name but it has to do so having due regard to the law and applicable regulations, including the regulatory Principles and rules I have set out above.

URV has a duty to deal with claims promptly and fairly, and it's required by the Principles to act with due skill, care and diligence, paying due regard to Mrs C's interests and treating her fairly. And it must also manage fairly any conflicts of interest between itself and its customers and as between its customers. I don't think it's done that here.

URV took the unilateral decision to only pay part of the hospital invoice. It didn't discuss its approach with Mrs C before doing so or attempt to negotiate the outstanding amount with the medical facility and/or debt collectors after correspondence in early December 2020.

Whilst there are no guarantees that negotiation will lead to a reasonable settlement being achieved in every case, in many cases it will do so. I've seen nothing to suggest that it couldn't have been productive in this case.

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, and then hasn't engaged further with the medical facility regarding the outstanding amount in an attempt to bring about a prompt conclusion of the dispute.

So, URV's decision not to negotiate in this case is not based on any detailed representations to the medical facility or consideration of the specific features of Mrs C's claim but is a reflection of a general policy. It means that Mr and Mrs C (and their son) have been made vulnerable to being pursued by debt collectors. And that the matter is unlikely to be resolved

until Mrs C is either sued over the outstanding amount or the medical facility stops pursuing the outstanding amount (and writes it off as a bad debt).

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

I also think it's relevant that someone who purchases travel insurance which covers medical treatment doesn't expect to be exposed, without a very good reason, to continuing action from debt collectors and threats of legal action years after visiting an overseas hospital when they've acted in accordance with the terms of the policy.

The amount in dispute is just over \$1,800; it's a comparably modest sum. URV has only agreed to pay around 27% of the total amount the medical facility charged Mrs C. I don't think it's fair to continue to embroil Mrs C in a protracted dispute over such a sum when considering the continuing worry, trouble and upset this is causing her and her family.

### **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 complainant as the ombudsman considers just and appropriate whether or not a court could order those steps to be taken.

I accept that, because the hospital invoice hasn't been agreed or adjudicated on, there isn't an ascertained legal liability on Mrs C to pay the outstanding amount to the medical facility so URV's duty to indemnify her by paying the outstanding amount hasn't been triggered. But in this particular case, and for the reasons I've set out above, I'm persuaded it's fair and reasonable for URV to do so in order to bring Mrs C's continuing inconvenience and worry to an end.

When making this finding, I've taken into account that it may be possible for URV to negotiate a reduction in the amounts charged by the medical facility and agree a figure less than the outstanding amount. However, it's had over two years to do so, and hasn't. So, in the circumstances of this particular case, I'm satisfied it's fair and reasonable for URV to settle the outstanding amount without further delay.

Although URV has sought to reassure Mr and Mrs C that it holds them free of any harm in relation to the outstanding amount, I'm satisfied URV has put Mr and Mrs C to unnecessary distress, inconvenience and worry by:

- the time spent communicating with URV about the debt collectors about the continuing outstanding amount;
- knowing their son is receiving communications chasing the outstanding amount;
- thinking it might be more difficult for them to travel to the USA and visit family as a result of the outstanding invoice and accessing medical care if they needed it; and
- how long this process has taken and there being no end date in sight for it being resolved.

All in all, I think compensation in the sum £350 fairly reflects what they've been through because of what URV did wrong. When making this finding, I'm conscious that URV did offer to compensate Mr and Mrs C £500 for distress and inconvenience. But that sum also reflected continuing distress and inconvenience experienced by Mr and Mrs C because URV would not be paying the outstanding amount. Given my direction that URV should now pay the outstanding amount, Mr and Mrs C should be prevented from experiencing continuing distress and inconvenience into the future.

### Summary

Within 28 days from the date on which we tell it that Mr and Mrs C accept our final decision I direct URV to:

- A. pay the outstanding amount to the medical facility; and
- B. pay Mr and Mrs C £350 as compensation for distress and inconvenience if it hasn't already done so.

### **My final decision**

I uphold Mr and Mrs C's complaint and direct Union Reiseversicherung AG to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 14 October 2022.

David Curtis-Johnson  
**Ombudsman**