

## **The complaint**

Mr and Mrs F have complained about the way their travel insurer, Union Reiseversicherung AG (URV), dealt with a claim they made on their policy.

All references to URV include its agents.

## **What happened**

Mr and Mrs F were away on holiday in late 2018 when Mr F injured his elbow and had to go into hospital. He had some tests and received treatment but didn't have to stay overnight.

Mr F paid around \$200 (US Dollars) to the hospital at the time of his treatment which he later claimed back from URV. Not long after his hospital visit, Mr F was informed by the hospital that there was a further payment outstanding (for around \$1000) which he passed on to URV.

URV told Mr F that it had instructed another company to review the new invoice and also that it had asked the hospital for a specific form which included a breakdown of the treatment he had received and the related cost.

The hospital appointed a separate debt collection company who have been the ones contacting Mr F regarding the outstanding invoice over the past years.

In June 2021 URV paid around \$180 towards the hospital bill and said this was based on USA government published rates plus a 50% uplift. It said it believed the hospital bill was inflated.

Mr and Mrs F were unhappy that URV hadn't settled the bill in full, especially after such a long time, and complained. URV responded to say that the hospital didn't provide a breakdown as requested until May 2021 and that, in any event, it had paid what it considered to be reasonable costs. It also told Mr and Mrs F that if any debt was deemed to be due, it would pay it and asked them to sign a form asking the debt collectors to get in touch with URV directly about this. It also offered Mr and Mrs F £200 compensation for the distress and inconvenience having to deal with the debt collectors was causing them and for having to forward communication on to it.

Mr and Mrs F accepted the £200 but refused to sign the form. They said they didn't agree with URV's reasons for not paying the bill in full.

Mr and Mrs F then complained to us saying they wanted URV to pay the bill in full. They also said they were worried in case they wanted to retire to the location of the hospital and presumably did not wish to have outstanding debts in that jurisdiction.

One of our investigators reviewed the complaint and thought it should be upheld. He said he hadn't seen any evidence that URV had tried to negotiate with the hospital or that the bill was inflated. He said as the amount due was so low and due for such a long time, he

thought URV should settle it in full and pay Mr and Mrs F £350 in total for the distress and inconvenience they suffered.

URV didn't agree. It said it was entitled to query the bill and provided what it considered to be evidence that the hospital had been overcharging.

Our investigator reviewed the complaint again but didn't change his view. He said even if there was evidence that the bill was inflated, it was still unreasonable for URV to refuse to settle the bill given the low amount involved. He reiterated that he had seen no evidence of any negotiation between URV and the hospital.

URV disagreed and asked for an ombudsman's decision.

Before I issued my decision, I went back to URV and asked for its comments on the following:

- I said even with the additional evidence it had provided I still didn't think there was sufficient evidence to show overcharging. I added that as Mr F isn't a US citizen he is not entitled to the rates URV had referred to. I also said that I hadn't been shown anything to convince me that the rates applied in this case established a valid benchmark for the fair market value of service provided outside the US medical systems to which they related.
- URV had only provided data in relation to part of the care Mr F received. I therefore hadn't seen anything to persuade me that the entire invoice was inflated.
- Even if I were persuaded that there was enough evidence of overcharging, I was not satisfied URV has acted fairly and reasonably in the way in which it had taken over the handling of Mr F's claim. I said this was because of the lack of proactivity from URV as well as various delays and lack of any activity in URV's file over large periods of time.
- I hadn't seen any attempt by URV to negotiate. And given the low amounts involved I thought it was fair and reasonable for URV to settle the claim in full and pay £350 compensation to Mr and Mrs F.

URV asked for two extensions in order to provide its response which I agreed to. After the second extension I said I would not grant any further extensions. URV said it could not agree that it had provided no evidence to show it had attempted to negotiate with the healthcare providers. It said it would ask its solicitors to provide an update. I agreed but said if this was not received by 6 July, I would proceed based on the evidence I had.

URV's solicitors wrote to us on 5 July (letter received on 6 July) but their letter related to separate complaint of Mr and Mrs F's, so I was not able to take it into consideration in this decision. Our investigator informed URV of this on 7 July and said I would now proceed with my 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've decided to uphold it.

I understand that Mr and Mrs F made a separate complaint regarding a claim for an injury that Mrs F suffered at a different time. That complaint has already been looked at by another

ombudsman and so in this decision I am only looking at the complaint relating to Mr F's 2018 injury.

### *Relevant rules and regulations*

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 hospital) 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.

### *The amount paid*

The policy says if there is a need for emergency medical attention URV will pay up to £10,000,000 following necessary emergency expenses for:

*“customary and reasonable fees or charges for necessary and emergency treatment, to be paid outside your home country for medical, surgical, hospital, nursing home or nursing services.”*

URV said it believes there are overcharging issues in the USA. It also said that the particular hospital accepted discounts of around 75% across its entire patient population in 2018. It added that the documents it provided after our investigator's first view show that the “Medicare” rate (a rate based on US Congress guidelines) for the tests Mr F had, would have cost the hospital, on average, around \$76. URV paid \$93.17 towards that cost for which the hospital was claiming around \$700. It says another document it provided shows that in 2018 this particular hospital charged an average of \$598 for these types of tests but received an average payment of \$56.

The Congress guidelines are issued annually by the USA government and I understand that they 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.

Mr F is not a USA resident and, therefore, not entitled to Medicare. Furthermore, I haven't been shown anything to convince me that the Congress rates applied in this case 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 that for this reason alone the invoice is unreasonably excessive or out of line with what might reasonably be charged for non-American residents who don't have Medicare.

I also note that URV has not provided any data in relation to the care Mr F received for which the hospital charged around \$600. URV said it has no access to comparative data in relation to that part of the invoice. So, I haven't seen anything to persuade me that that part of the invoice was also inflated, as URV argues. It's, therefore, unclear to me how URV calculated its payment in respect to that element of the invoice. It follows that based on what I've seen, I don't think that offer was fair and reasonable.

I'm also conscious of the fact that Mr and Mrs F's policy isn't a medical insurance policy like 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.

URV said the particular hospital accepted large discounts in 2018. In this case, the issue isn't what losses the average hospital makes when it treats a patient on Medicare, or how much URV considers to be an appropriate profit margin, but how much a facility of the quality and location where Mr F received treatment could be expected to charge privately funded/insured patients for his treatment. I'm not persuaded the information URV provided sheds any light on that issue. So, whilst I've taken it into account, I've placed less weight on it.

Nevertheless, even if I were persuaded that there is evidence of overcharging and that the various sources advanced by URV 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 F's claim. I'll explain further below.

#### *URV's handling of the claim*

As I mentioned above, this claim dates back to 2018. URV said it asked the hospital for a breakdown of the costs at the time but didn't receive it until May 2021.

The hospital provided its invoice not long after Mr F had his treatment. Shortly thereafter, URV wrote to the hospital asking for a particular form which itemised the treatment provided. I have seen correspondence from the hospital and its debt collectors to Mr and Mrs F in 2019 saying they hadn't received anything from URV. It's not clear why the hospital didn't appear to have received URV's letter. I have also seen correspondence between Mr F and URV in 2020 and 2021 where URV said it was still waiting for the breakdown from the hospital. From what I've seen the breakdown was provided by the hospital in April 2021 and URV made a payment of \$178.23 in June 2021.

I appreciate URV says it didn't receive the breakdown until 2021 but at the same time I can't see that it was actively chasing the hospital to get it. As far as I can see, it would mainly chase the hospital after Mr F would get in touch with it first (after receiving correspondence from the debt collectors). Also, from what I've seen, there were large gaps in activity in URV's file in relation to this claim; more specifically between the middle of 2019 and January 2020 and between February 2020 and February 2021. I appreciate that this was around the time of the Covid-19 pandemic, nevertheless, the claim itself predates the pandemic and also a gap of a year is, in my view, quite long even by pandemic standards. Bearing in mind that it was Mr F who was being directly chased for the balance I think URV could have done more to chase the breakdown, particularly as it was the one who considered having a breakdown in this case to be so important.

But even if URV had done more to chase the breakdown I still can't see that it tried to enter into any meaningful negotiations with the hospital or the debt collectors. From what I have seen it made its offer and didn't try to negotiate when it was clear this wouldn't be acceptable.

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.

I also think the fact that Mr and Mrs F have had to forward correspondence from and liaise with debt collectors since 2018, to have caused them a certain amount of distress and inconvenience. I can also understand why they would be concerned about travelling to or retiring in the US whilst part of this bill is still outstanding. And even though URV has reassured them that they would not be liable for any debt, I think receiving debt collection letters can in itself be quite stressful. I therefore agree with our investigator that URV should pay Mr and Mrs F £350 in total for the distress and inconvenience they suffered as a result of its handling of the claim.

## **Putting things right**

We are bound by a set of rules known as the DISP rules which can be found in the FCA handbook.

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.

URV has said that the bill is clearly inflated. Even if I were to accept that this is the case and that the evidence URV provided to us proves this, bearing in mind that the amount due is relatively low I think it's fair and reasonable in these particular circumstances that URV settles the bill in full. I say this because even if URV now enters into negotiations with the hospital, it will still take some time for these to be completed. And, even if the negotiations are successful, any costs URV ends up saving it may have to pay to Mr and Mrs F for the further amount of time it is taking to resolve this claim and for the added distress and inconvenience they may suffer in the meantime.

## **My final decision**

For the reasons above, I've decided to uphold this complaint. I'm directing Union Reiseversicherung AG to pay Mr and Mrs F £350 for the distress and inconvenience it caused them and to settle the outstanding bill for Mr F's 2018 hospital treatment mentioned above in full.

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 4 August 2022.

Anastasia Serdari  
**Ombudsman**