

The complaint

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

Any references to URV include its costs containment agents.

What happened

Mr and Mrs B had the benefit of a multi-trip travel insurance policy, underwritten by URV, which covered the period mid-September 2017 to mid-September 2018 ('the policy').

In May 2018, whilst abroad in the USA, Mr B fell ill and attended the emergency department of a hospital ('the medical facility'). He had a scan, was prescribed medication and attended a follow up appointment the next day.

The medical facility invoiced him as follows:

- Invoice 1 - \$36,493
- Invoice 2 - \$1,786
- Invoice 3 - \$204

Mr B made a claim on the policy for those costs. URV didn't pay the invoiced amounts in full. It paid:

- \$1,622.73 in respect of invoice 1
- \$268.60 in respect of invoice 2
- \$89.90 in respect of invoice 3

Taking into account some modest amounts already paid to the medical facility by Mr B, this left around \$35,000 outstanding ('the outstanding amount').

Mr B was then chased for the outstanding amount by debt collectors instructed on behalf of the medical facility ('the debt collectors'). Mr and Mrs B were unhappy that URV hadn't settled the outstanding amount.

It's URV's position that the amounts Mr B was charged for the medical care Mr B received are excessive. It based this on Congress rates issued annually by the USA government which apply to certain USA residents, who qualify for 'Medicare'. It said it made a reasonable payment to the medical facility by paying an amount in line with these rates together with a percentage uplift disclosed to our service.

In October 2020, an Ombudsman issued a final decision. She explained that didn't think URV had acted fairly and reasonably in the way in which it had handled Mr B's claim up until that date. Taking all relevant considerations into account she found that URV hadn't attempted to negotiate with the medical facility or the debt collectors in the spirit of reaching a settlement of the outstanding amount. She said:

“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 addressed to the particular issues in dispute to try to persuade the healthcare provider to accept the sum being offered, or reach a mutually acceptable compromise.

I haven’t seen any evidence that URV has attempted to negotiate with the hospital or the debt collector. 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 the debt ascertained by any form of dispute resolution process, contrary to both the regulatory guidance and good industry practice....”

She went on to say:

“Whilst I have seriously considered directing URV to pay the hospital bill in full, so as to bring this matter to 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 (although it hasn’t provided anything like enough evidence supporting its position for me to reach any finding to that effect).

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 B’s liability”.

The Ombudsman directed URV pay £400 for the distress and inconvenience URV’s wrongdoing had caused Mr and Mrs B to the date of her final decision and to reimburse him for the payment he made directly to the hospital (in the region of \$500) minus any excess together with 8% simple interest per year. Mr and Mrs B accepted the final decision.

In June 2021, Mr and Mrs B made a further complaint to our service. They said that although URV had paid the medical facility a further sum in region of \$2,300, reducing the outstanding amount, the medical facility didn’t accept this in full and final settlement of the outstanding amount.

URV said that it had attempted to negotiate with the medical facility, but negotiations had now reached an impasse. It did offer Mr and Mrs B further compensation in the sum of £500 for the further distress and inconvenience caused since October 2020.

Mr and Mrs B want the outstanding amount settled.

Our investigator looked into what happened since October 2020 – and in particular the steps taken by URV to negotiate with the medical facility. She concluded that given how negotiations went, it should’ve become clear to URV in around June 2021, that Mr and Mrs B’s liability to the medical facility was unlikely to be ascertained by negotiation alone. And that some type of adjudication needed to be explored. This wasn’t

done. And the delay in setting any such process in motion was unreasonable. She recommended that URV pay the remaining balance of the outstanding amount.

Our investigator also agreed that URV's offer to compensate Mr and Mrs B in the sum of £500 for the further distress and inconvenience experienced since October 2020 was fair and reasonable.

URV disagreed. It confirmed it had nothing further to add. So, I have 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.

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
- 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 FCA'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; 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 consider what all this means in Mr and Mrs B's complaint, focussing on what has happened since October 2020, after the Ombudsman issued her final decision.

Negotiations with the medical facility and debt collectors

Looking at the correspondence I've been provided, I'm satisfied that URV promptly contacted the debt collectors in November 2020 to start negotiating the outstanding amount.

Relying on the applicable Congressional rates, it maintained that it had made a reasonable payment to the medical facility by paying a certain percentage above this. It asked the debt

collectors to explain why the invoices exceeded that rate, to understand how the invoices had been calculated.

URV chased for a response in early January and early February 2021. On 8 February 2021, the debt collectors reiterated that URV's attempts to use Medicare rates as a starting benchmark was "entirely incorrect". They referred back to longstanding correspondence on this issue on other cases and invited URV to provide it with a settlement offer to consider in order to resolve matters.

URV offered an additional 10% on top of what it had already paid – around \$108. This was against the outstanding amount of around \$35,000.

The debt collectors replied asking URV to send a sensible payment proposal to which URV invited the debt collectors to make a proposal in mid-March 2021.

The debt collectors then offered a 10% discount of the amount invoiced.

URV replied at the end of April 2021 setting out why it considered the outstanding amount – the starting basis of the debt collectors' negotiations – to be flawed. It focussed on invoice 1 and said that even with a 10% discount this amounted to more than 56 times the amount it cost the medical facility to provide medical care to Mr B.

URV proposed that the debt collectors ask the medical facility for evidence of the total costs it had incurred treating Mr B and evidence of the sums it would accept in settlement for similar treatment on behalf of others. URV concluded that if an agreement couldn't be reached, the parties could look at alternative resolution mechanisms.

The debt collectors replied at the end of May 2021 reiterating that Medicare rates weren't the applicable rates for comparison. Using these rates as a starting point was flawed. And that the medical facility wouldn't be disclosing the costs incurred in treating Mr B – or details of previously accepted settlements. It offered a discount of 15% of the total invoiced amounts, meaning that it would accept around \$29,400 in settlement of the invoices. The offer was open for two weeks.

That offer was declined by URV in early June 2021. It restated its position that it used Medicare rates as an objective benchmark and applied a reasonable margin of profit above the base rate. It concluded by increasing its offer in respect of invoice 1 to \$4,000 - so offering an additional payment of \$2,377.27 ('the additional payment') to settle the outstanding amount. The debt collectors replied saying this would not be considered as full payment to settle Mr B's account for reasons already provided.

I'm satisfied that negotiations then reached an impasse in June/July 2021 with neither party altering its position further. But URV did make the additional payment.

Looking at the communications between URV and the debt collectors from November 2020 to the end of April 2021, I don't think URV's handling of those discussions were in line with treating Mr B – as its customer – fairly.

When attempting to proactively negotiate the outstanding amount, I would've reasonably expected URV to have sent the email it sent to the debt collectors at the end of April 2021 much earlier, rather than offering an additional \$108. It's clear from the communications that followed thereafter that this wasn't a conducive way of commencing negotiations.

URV relied on the Congressional rates which are applicable to USA residents who have the benefit of Medicare. It then proceeded to reiterate the same points. In doing so, I think it

effectively failed to engage in meaningful negotiation in the spirit of reaching a prompt compromise on the outstanding amount. If it had, and given the concessions made by the debt collectors in subsequent correspondence, I think it's most likely it would've brought about a quick conclusion of the dispute.

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 did it rely on any specific features of Mr B's claim. The basis of its negotiations was still a reflection of URV's general policy to pay the medical facility a certain percentage above the Congressional rates for the medical care and treatment Mr B received in the USA.

But it's clear from the communications that the debt collectors didn't accept that those rates constituted a valid benchmark from which URV ought to start its negotiation position – even with the percentage uplift URV paid above the base rates.

I haven't been shown anything to convince me that the Congressional rates URV relied on in this case established 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 invoices were unreasonably excessive or out of line with what might reasonably be charged for non-American residents who don't have Medicare. So, I don't think URV acted fairly and reasonably by rigidly relying on its position when negotiating. And as I've said, it's clear that this wasn't conducive to reaching a mutually acceptable outcome.

Further, URV only focused on invoice 1 when negotiating and didn't raise any new points about invoices 2 or 3 for the debt collectors to consider.

The average cost to the medical facility for such treatment may have been much lower than it charged. How much URV considers to be an appropriate profit margin for the medical treatment Mr B received when compared to the cost to it for providing the treatment isn't determinative but as the negotiations continued, I can understand why URV reasonably sought to raise this as an issue in order to advance negotiations.

However, I think by this stage – and largely due to the way in which URV had handled negotiations up until that point – negotiations weren't very conducive. And because they soon reached an impasse, Mr B is still vulnerable to being chased again for the remainder of the outstanding amount. And even if he's not, I can understand his worry that he might be. Even though URV has provided assurances that Mr B won't be responsible for any further sums that might be deemed payable, I can understand why he's concerned that he could be embroiled in legal proceedings through no fault of his own.

As I've said, 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 Mr B's interests and treating him fairly. And URV must also manage fairly any conflicts of interest between itself and its customers.

When looking at the way in which URV has handled the claim since October 2020 – and conducted negotiations – I don't think it's done that here. I don't think URV has had due regard to Mr B's interests; it's unreasonably put its own commercial interests (to pay the least amount of money for the medical treatment Mr B received) above his interests as someone who has paid for travel cover and made a proper claim under it.

As of June/July 2021, when negotiations reached an impasse and URV reasonably ought to have been aware that the outstanding amount wouldn't be settled by negotiation alone, it ought to have explored with the debt collectors or medical facility the option of more formal adjudication in order to move the issue forward without further delay – as it had intimated in

its email with the debt collectors in April 2021. However, I can't see that URV mentioned this again after the offer of the additional payment was rejected by the debt collectors.

I agree with our investigator that the delay in setting any such process in motion is unreasonable, given URV's regulatory obligations and duties owed to Mr and Mrs B. And Mr and Mrs B's reasonable expectation that URV would show some urgency in resolving the issue – given their circumstances.

Given the amount of time the outstanding amount has been unpaid for, and now that negotiations have reached an impasse, I don't think it would be fair and reasonable to delay matters further by giving URV another opportunity to negotiate the outstanding amount or exploring with the medical facility the option of more formal adjudication. Particularly given Mr B's personal circumstances and the continuing worry this is all having on him and Mrs B. After all, the treatment took place over four years ago and this issue has been ongoing for a long time without resolution.

So, I uphold Mr and Mrs B's complaint.

Putting things right

- Payment of the outstanding balance

As the invoice hasn't been agreed or adjudicated on, I'm satisfied that there isn't an ascertained legal liability on Mr and Mrs B to pay the outstanding amount to the medical facility. So URV's duty to indemnify them by paying the outstanding amount hasn't yet crystallised. But in this particular case, and for reasons already mentioned, I'm satisfied that it's fair and reasonable for URV to now make a further payment to the medical facility to the value of the outstanding amount (less the additional amount paid in the summer of 2021) to settle the invoices without further delay.

- Distress and inconvenience

URV has offered to pay Mr and Mrs B further compensation for the distress and inconvenience in the sum of £500. I understand that Mr and Mrs B haven't received any further communications from the medical facility or debt collectors since October 2020. However, I accept that the issue not yet having been resolved – and knowing that settlement of the outstanding amount hasn't been reached - is likely to have caused them unnecessary worry. I'm satisfied compensation £500 fairly reflects that.

Summary

Within 28 days from the date on which we tell URV that Mr and Mrs B accepts this final decision, I direct it to pay:

- A. the outstanding amount to the medical facility (if it hasn't successfully negotiated a settlement of the outstanding amount with/on behalf of the medical facility by then); and
- B. £500 to Mr and Mrs B as compensation for distress and inconvenience.

My final decision

I uphold Mr and Mrs B's complaint. I 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 B to accept or reject my decision before 13 October 2022.

David Curtis-Johnson
Ombudsman