

The complaint

Mrs G complains about how Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. handled her travel insurance claim.

What happened

Mrs G was on holiday abroad when she fell and sustained a head injury which led to her being hospitalised. She had a number of symptoms associated with the injury including concussion, loss of peripheral vision and loss of hearing in one ear.

She is unhappy with the service she received from Mapfre. In summary, she says Mapfre acted in a way that would have potentially led to life changing injuries, didn't engage with her within reasonable timeframes, caused her unnecessary stress and that they provided insufficient support whilst she was abroad. She says that Mapfre booked to bring her home before she was safely able to fly.

Mapfre looked into what had happened and acknowledged that there had been issues with an appointment arranged for Mrs G to determine if she was fit to fly. They also acknowledged that they hadn't explained their rationale for wanting to bring her back to the UK and they could have explained themselves better. They offered Mrs G £400 compensation and offered to cover some of the costs of medical tests and reasonable accommodation costs up until 25 October 2019, when Mapfre consider Mrs G was fit to fly home.

Unhappy, Mrs G complained to our service. She said she wants Mapfre to pay £5500 for the stress and trauma, £10 000 for medical damages, hospital benefit, £960 living expenses, the cost of a CT scan and the cost of a blood test.

Our investigator looked into what had happened. She upheld the complaint as she wasn't satisfied that Mapfre had explained their decisions clearly, based on the medical evidence. So, she thought that Mapfre should pay a further £200 compensation and consider her claim for medical damages and living expenses in line with the remaining policy terms.

Mrs G didn't agree. She said that the effects of the accident and Mapfre's actions had a devastating impact on her health and she was seeing several specialists to deal with the physical and mental impact. She didn't think a further £200 fairly reflected this. And, she said that it had taken Mapfre one year and two months to respond to her complaint. Mrs G was also concerned that the investigator's conclusions painted her in an unfavourable light – she said that she'd seen all the doctors that the Mapfre team arranged for her to see and it wasn't her fault that they wouldn't take responsibility for completing forms requested by Mapfre. Mrs G was also unhappy as she said her injuries could have been a lot worse, Mapfre kept on contacting her by phone and she said she found their emails threatening.

Mapfre didn't agree and provided a response from their Chief Medical Officer (CMO). They said Mrs G hadn't been admitted to hospital and there was never any suggestion from the medical reports that she was suffering with serious effects from the head injury. They referred to the International Air Transport Association (IATA) medical manual and explained

that concussion is not affected by airline travel. Furthermore, they said that the purpose of seeking a medical review was to reassure Mrs G that it was safe to fly. Mapfre reiterated that it was acting in Mrs G's best interests at all times and questioned whether it was the role of the investigator to question the medical decision made by a registered doctor.

In February 2020 I issued a provisional decision saying that I was intending to reach a different outcome to the investigator. I said:

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 and industry guidelines say that Mapfre has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

Repatriation

Mapfre offers immediate help and support to policyholders who fall ill abroad. Accordingly, the assistance teams act as the first contact point for policyholders who experience a medical emergency abroad. In some cases, this may involve the claims handler seeking guidance from the medical team on the policyholder's behalf. That includes seeking their guidance on decisions about authorising expenditure on medical treatment and repatriation.

Mapfre's CMO has expressed concerns about whether the conclusions the investigator reached go beyond the remit of our service because it calls into question the medical opinion of their team or specific individuals within it.

The Financial Ombudsman Service is an alternative to the courts which is set up to resolve disputes quickly and with minimal formality. My role is to consider what is fair and reasonable in all the circumstances of a case – taking into account any relevant law, regulation and guidance – and I have to decide whether a business acted fairly and reasonably.

In making that decision, I can't substitute expert medical evidence with my own, but I am entitled to look at all the evidence and decide whether I think Mapfre handled Mrs G's claim as I think it should have. I don't consider that the fact that some of the individuals in this case were doctors who gave advice that was expressed in terms of medical risk prevents me from examining all the evidence. Nor have I found that, on the particular facts of this complaint, its medical context has prevented me from being able to reach a decision that I am satisfied is fair and reasonable in all the circumstances.

Mapfre has acknowledged that they didn't communicate some of their decisions to Mrs G as clearly as they could have done. In their final response they said that they thought Mrs G was fit to fly as of 25 October 2019. Mrs G didn't return back to the UK until early December 2019.

It's clear from the correspondence I've seen that Mrs G was in a stressful and upsetting situation. She was travelling on her own and sustained a head injury which, according to the notes, knocked her unconscious. It led to her staying in hospital for around two days, based on the evidence I've seen, and left her with hearing and visual problems. I've also seen a picture of the injury, it was clearly a significant one. Her children weren't in a position to come and help Mrs G as they were unable to take time off work.

I appreciate that Mrs G was told that she wouldn't be able to fly for a period of three weeks. And, I can understand why she was worried when Mapfre told her that they'd be looking to bring her back to the UK before then, particularly when she was still feeling very unwell.

Mrs G attended an appointment on 10 October 2019. The doctors she saw wouldn't sign a fit to fly form and the specialist recommended an MRI scan. At that point in time Mrs G was still reporting significant issues with her sight and balance. So, it's understandable Mrs G was worried and confused when Mapfre then told her on the evening of 11 October 2019 that they'd booked a flight for her the next day. As Mapfre acknowledged in their final response letter I think this should have been explained, and discussed with, Mrs G. She refused to get on the flight and remained abroad.

On 15 October 2019 Mrs G attended the accident and emergency department over concerns about her continuing symptoms. The notes indicate that the treating doctor recommended a referral for further tests, although the report doesn't indicate with what urgency they should be made. There is also a note that Mrs G wouldn't be fit to fly until the 3 November 2019.

Having read the more recent, and detailed, explanation for the decision to return Mrs G to the UK I'm satisfied that Mapfre were acting with Mrs G's best interests in mind when they made the decision to return her to the UK. They've referred to the IATA guidelines and other supporting evidence in support of their position.

However, I think that Mapfre could have communicated their reasons for disagreeing with the treating doctor's opinion much more clearly. I particularly bear in mind that there was no evidence of the rationale noted on the file at the time and so Mrs G was simply told on a number of occasions that the decision had been made and it was final. This was at a time when she continued to feel very unwell and had experienced a significant head injury. I think this decision, and the discussion with Mrs G, could have been handled with more empathy. No one took the time to communicate to Mrs G why the medical team had made their decision, what evidence they'd relied on or why their opinion was different to the treating doctor. In reaching that conclusion I've taken into account that Mrs G had been referred for further tests and was being told by the treating team that she wasn't fit to fly.

Taking all of the above into account I still think that Mrs G should receive a total of £600 to reflect the distress and inconvenience caused when Mrs G was told she was well enough to return home on two occasions, without a clear explanation about the reasons for reaching that caused her additional worry at an already upsetting and stressful time.

Medical assistance

I appreciate that Mrs G was frustrated she had to go through data protection checks and that she couldn't be assigned a dedicated person to speak to. I understand Mrs G's frustrations but the nature of the assistance service and the function it performs means that it has to ensure it operates on a 24 hour a day, 7 days a week basis. And it also involves handling sensitive data about the policyholder's health. So, I can't say that Mapfre acted unfairly in asking her questions to verify her identity and not allocating her a dedicated case handler.

I understand that Mrs G was frustrated to receive a lot of calls from Mapfre. But I'm satisfied that in trying to make contact with Mrs G they were trying to ensure that she was receiving appropriate assistance from them.

I've also looked at the emails sent to Mrs G and I don't think that they were threatening or inappropriate. Although Mapfre did explain they'd close their file, for example during a time when Mrs G wasn't contacting them, I don't think the tone or content of the emails was inappropriate. When Mrs G let Mapfre know that she was becoming stressed and upset by calls I think they took appropriate steps and contacted her by email. And, for example, when Mrs G expressed concerns about being asked to attend a medical appointment, I think Mapfre explained to her why they thought that was necessary.

Delays in complaint handling

Mrs G first complained to Mapfre during September 2019 when her repatriation was ongoing. But a final response letter wasn't issued to her until December 2020. In the final response letter Mapfre apologised for the delay but didn't elaborate on the reasons for it which suggests it's most likely that they accept there was a significant delay in this being dealt with. I can understand that this added to Mrs G's frustration given the issues she'd had with Mapfre's previous communications.

Hospital benefit

Mrs G hasn't completed a claim form and sent it to Mapfre. The policy will pay a set benefit for each complete 24 hours that a policyholder is hospitalised as an inpatient. I understand that Mrs G was admitted to hospital on 28 September 2019 and discharged on 30 September 2019. So, given the passage of time, I think Mapfre should pay hospital benefit to Mrs G for each complete 24 hours she spent in hospital.

Living expenses

Mrs G told us that during her extended stay she stayed with acquaintances. So, she's asked for Mapfre to pay her around £960 based on the cost of living expenses in the city she was living in.

The policy terms don't provide for living costs in such circumstances. Mapfre only needs to cover actual costs Mrs G incurred which are covered by the policy. However, Mapfre did say that they were willing to consider a claim for Mrs G's expenses up until 25 October 2019 as they considered that was the date that she was fit to fly home.

Mrs G didn't incur hotel or other accommodation costs. And I also note that she didn't, for example, ask her insurer to fly a family member across to help support her during her recovery. So, it seems most likely to me that her decision to stay with acquaintances saved Mapfre a considerable amount of money in the circumstances. Therefore, I think their offer to consider her expenses is reasonable. I appreciate that Mrs G has used a calculation to work out what the cost of living was. But her contract of insurance only covers losses she actually incurred of costs she incurred for Mapfre to assess.

Personal injury claim

Mrs G has indicated that she wants to make a claim on the personal accident section of the policy as she's told us that she has continued to have physical symptoms relating to her injury abroad. I understand from what she's said that she's been unable to return to work.

Based on the evidence I've been provided with Mrs G hasn't yet submitted a claim to Mapfre under this section of the policy. So, Mapfre hasn't had the opportunity to consider the claim and whether Mrs G meets the criteria set out in the policy. If Mrs G wants to make a claim under that section of the policy, she'll need to submit a claim form to Mapfre together with any relevant evidence in support of it.

Medical expenses

Mrs G has claimed for the cost of a blood test and a CT scan, totalling £56. Looking at the date of the payments made relate to costs incurred on 29 November 2019 and 3 December 2019.

These costs were incurred nearly two months after the accident and I've not been provided with an explanation as to why they were incurred. And, in any event, for the reasons I've outlined above I don't think it was unreasonable for Mapfre to conclude that by the end of October Mrs G would have been reasonably able to return home.

Putting things right

I'm intending to direct Mapfre to put things right by paying Mrs G:

- The hospital benefit she's entitled to in line with the policy terms and conditions plus 8% simple interest from 25 October 2019 to the date of settlement.
- £600 for the distress and inconvenience caused by poor communication at a time when Mrs G was unwell, distressed and alone abroad. My award also takes into account the comments Mrs G made about the delay in responding to her complaint.

As I've outlined above if Mrs G wishes to pursue a personal injury claim and recover other costs she'll need to submit a claim for this to Mapfre with the relevant supporting documentation.

Mapfre accepted my provisional decision. Mrs G made a number of further comments and provided more evidence. In summary she said:

- She was admitted to hospital for 48 hours and there was a possible blood clot. She was referred for further tests which she arranged without help from Mapfre
- I should take into account the Vento compensation band which says that the minimum award for injury to feelings is £1000. The range is between £900 and £9100 and her original claim for £5500 is around the middle of this range. My award of £600 adds to the feelings of insult caused by the situation
- It was threatening to tell a very ill person that they must fly – all communication was directed at a person who had experienced an accident and wasn't able to fully co-operate

- The living costs she incurred should be paid beyond 25 October 2019
- She is worried that Mapfre will not consider the personal injury claim and she doesn't feel comfortable submitting a claim. Mapfre should fast track the claim and should be directed to consider it without further delay and without further forms needing to be completed
- The scan and blood test costs should be paid as it wasn't unreasonable for her to seek treatment and undertake tests ordered by the doctor.

So, I now 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 considered the further evidence and information provided by Mrs G I haven't changed my thoughts about the outcome of this complaint. I think the fairest way for Mapfre to put things right is to pay £600 for the distress and inconvenience caused plus the hospital benefit. I say that because:

- Mapfre accepted my provisional findings – it is accepted that Mrs G was admitted to hospital and that she had a head injury. So, this point is no longer in dispute and my decision has been made on the basis that Mrs G was treated in hospital for a head injury
- My role is to decide what is fair and reasonable in all the circumstances. Whilst Mrs G has referred me to the Vento guidelines on the Citizens Advice Bureau website. I'm not bound by these guidelines and, in any event, I don't think that they fairly apply in the circumstances of this case. The Vento guidelines are bands of awards for injury to feelings relating to successful claims for discrimination under the Equality Act 2010. This case relates to the distress and inconvenience caused by claims handling by a travel insurer. So, I don't consider that these guidelines fairly apply in the circumstances of this case
- As I outlined in my provisional decision I don't think that the tone or content of Mapfre's communications with Mrs G were inappropriate. I can understand that it was a worrying and stressful time for her, especially when she was feeling unwell and given that I've identified that Mapfre could have explained the reasons behind the decisions they were making to her more clearly. Having taken all of this into account I think £600 fairly reflects the overall distress and inconvenience caused. In reaching this conclusion I've taken into account what Mrs G has said about the impact on her and how she was feeling during the relevant time
- I remain satisfied that it is fair and reasonable for Mrs G to submit her claim for living expenses to Mapfre for them to consider. Mrs G says that these should be paid beyond 25 October 2019. Although I agreed that Mapfre could have communicated more clearly to Mrs G the reasons why she should be repatriated back to the UK it doesn't automatically follow that I agree all of her living expenses should be paid until she came home in December 2019. Mapfre did say to Mrs G on 25 October 2019 that they considered her fit to fly on that date. I can see that this was based on a review of the medical evidence by Mapfre's medical panel. So, I think Mapfre has reasonably offered to consider any living expenses up until that date. Equally, as the evidence indicates that it would have been reasonable for Mapfre to repatriate her at that point in time I don't think it's fair and reasonable for them to cover the costs of the additional medical tests
- I can understand why Mrs G is worried about making a personal injury claim and why she wants Mapfre to assess the claim without having to fill out more paperwork. I've looked at the medical information Mrs G provided us with in response to my provisional decision. But Mapfre hasn't yet had the opportunity to assess the claim. And it's likely to involve a detailed review of the relevant medical evidence. Mapfre may also need to request more medical information from Mrs G and/or her treating doctors. So, I don't think it would be fair for me to make a finding at this stage on the personal injury claim. Mrs G will need to submit her claim in the usual way, completing any paperwork Mapfre requires
- As I outlined in my provisional decision Mrs G will need to submit a claim for any further costs she wants to claim from Mapfre, such as her accommodation and personal injury claim costs. If she remains unhappy with the settlement then she may be able to bring a further complaint in relation to the settlement of the claim.

Putting things right

Mapfre needs to put things right by paying Mrs G:

- The hospital benefit she's entitled to in line with the policy terms and conditions plus 8% simple interest per annum from 25 October 2019 to the date of settlement.
- £600 for the distress and inconvenience caused by poor communication at a time when Mrs G was unwell, distressed and alone abroad. My award also takes into account the comments Mrs G made about the delay in responding to her complaint.

As I've outlined above if Mrs G wishes to pursue a personal injury claim and recover other costs, she'll need to submit a claim for this to Mapfre with the relevant supporting documentation.

My final decision

I'm upholding Mrs G's complaint about Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. and direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 18 May 2022.

Anna Wilshaw
Ombudsman