

The complaint

Mr W is unhappy with the way Union Reiseversicherung AG ('URV') has handled a claim made on his travel insurance policy.

Any references to URV include its claim handlers and costs containment agents. And although Mr W is being represented in this complaint, I've referred to him throughout as he is the policyholder who had a contract of insurance with URV.

What happened

Mr W had the benefit of a single-trip travel insurance policy, underwritten by URV, which he took out in around August 2019 ('the policy').

In November 2019, whilst abroad in the USA, Mr W was admitted to hospital and received medical treatment. He remained in hospital for a number of days. The medical facility invoiced Mr W for the medical care he received in the sum of just over \$38,000 ('the invoice'). Mr W subsequently made a claim on the policy to cover those medical costs.

URV didn't pay the invoiced amount in full. It only paid around \$15,074, leaving just over \$23,000 outstanding ('the outstanding amount').

Mr W was then chased for the outstanding amount by debt collectors instructed on behalf of the medical facility ('the debt collectors'). Mr W is unhappy that URV hasn't settled the outstanding amount.

It's URV's position that the amounts Mr W has been charged for the medical care he received are excessive and it says it's made a reasonable payment to the medical facility.

URV hasn't made any further offers to pay the outstanding amount. However, it's more recently said that it understood that receiving communications from debt collectors can be worrying and stressful. It advised Mr W to ignore any calls he receives from debt collectors and to forward any letters he receives chasing payment of the outstanding amount straight to URV. URV also said that it's willing to appoint a lawyer to represent Mr W with the aim of stopping further correspondence and pay Mr W £400 compensation for the distress and inconvenience he's experienced to date.

Although Mr W has said he's willing to accept the compensation offer to reflect the distress and inconvenience experienced as a result of being chased for payment of the outstanding amount, he'd like URV to pay the outstanding amount in full. He says he would like to feel settled in his remaining years without the worry and anxiety of the outstanding debt over his head, which has been ongoing for over two years.

Our investigator recommended that Mr W's complaint should be upheld. She didn't think URV had acted fairly or reasonably by paying part of the invoice for the care Mr W received whilst in the USA. She recommended URV pay \$19,214.71 to the medical facility. That represented 90% of the outstanding amount, taking into account a 10% discount offered by the debt collectors. She also agreed that the offer made by URV in the sum of £400 for the

distress and inconvenience it had caused him was fair and reasonable.

URV didn't agree. It's provided an extract of the American hospital directory which compiles hospitals' own data on its average charges, costs and payments. It says this shows that, on average, the medical facility charged around \$77,000 for the treatment in 2019. Whereas, on average, the treatment cost them around \$13,000 and they were paid an average sum of around \$9,000 for each treatment. It's also said that the average length of stay was almost six days whereas Mr W was in hospital for less than this.

URV says this supports that it's paid a reasonable amount for the medical costs. It's also said that the medical facility has suspended all collection activity through the debt collectors because of action brought by URV on behalf of other customers. And the medical facility recognises it's liable for damages because of the way in which debt collectors correspond with URV's customers.

The debt collectors have recently confirmed to our Service that the medical facility's offer to discount 10% of the outstanding amount in full and final settlement of the invoice no longer stands, given the time it's taken to settle the invoice in full.

Mr W's complaint was passed to me to consider everything afresh and decide. I issued my provisional decision in March 2022 explaining in more detail why I was also intending to the uphold Mr W's complaint. An extract of my provisional decision is set out below:

...

"As a matter of general legal principle, URV is bound to indemnify Mr W against losses covered by the policy as and when the amount of his losses has been established (in this case, the amount of Mr W's liability to the medical facility). 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 W'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 I'm satisfied that isn't an unqualified right and URV still need to act fairly and reasonably when exercising that term.

As our investigator acknowledged in her view to the parties dated 17 November 2021, legally, in situations where URV's interests' conflict with Mr W's, URV has a responsibility to act in good faith when it takes over the defence or settlement of a claim - having regard to Mr W'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 when deciding whether - and how - to defend possible legal action against Mr W, URV is required to base its decisions on the circumstances of his individual case.

I'm satisfied that our investigator also set out the relevant rules and regulations relevant to this complaint in her view.

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 consider what all this means in Mr W's particular complaint.

The amount paid by URV

URV hasn't said Mr W shouldn't have been charged for treatment – or that the invoice shouldn't be paid at all. And although it had initially said that Mr W failed to disclose all of his pre-existing medical conditions prior to taking out the policy, URV hasn't sought to proportionately settle the claim because he subsequently agreed to pay the recalculated premium for the policy. As such, I'm satisfied that URV has ultimately accepted liability for Mr W's treatment and sums properly due under the policy.

The policy does provide cover for emergency medical attention. It covers "customary and reasonable fees or charges for necessary and emergency medical expenses..." up to three million pounds.

URV's position is that the amounts charged by the medical facility are inflated and unreasonably excessive. It says it's paid reasonable fees for the medical care Mr W received and it's sought to rely on information from several sources in support of its position.

URV says the Congress guidelines set out the suggested rates of payment for medical procedures and treatment ('the Congress rates'). And that the amounts charged by the medical facility are considerably higher than the Congress rates for the medical care and treatment Mr W received. The Congress guidelines are issued annually by the USA government and I understand that the Congress rates 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, which it's disclosed to our Service.

On 5 January 2022, our investigator asked URV to provide our Service with the Congress rates relied on (applicable to November 2019) for each item charged by the medical facility in the invoice.

URV replied on 10 January 2022 to say that for inpatient cases, as in this case, there are no

individual codes for each service; the coding used is for the entire admission. It's relied on a document entitled "inpatient prospective payment (IPPS) payment result" which sets out the calculation. And although the charges are imputed as \$38,098.53 – which is the amount of the invoice - taking into account other weighting that's shown on the calculation has resulted in a much lower figure being generated. And URV has agreed to pay a certain percentage on top of that figure.

Having looked at the calculation and the various weighting, acronyms and abbreviations, I can't understand all of the factors that have been taken into account when significantly reducing the total payment. And I've not been provided anything to cross refer the calculation to. I understand that the calculation is based on the Congress rates which help determine the appropriate Medicare/Medicaid rates to be charged.

However, 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've also taken into account the average amount charged by the medical facility for ailments Mr W was treated for in 2019, as put forward by URV, against the average cost to the medical facility for such treatment. And on that basis, I accept that the average payment received is much lower - at just over \$9,000 per patient.

But I'm conscious that Mr W'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. Further, Mr W isn't a USA citizen entitled to Medicare and I understand this report relates to those patients whose medical costs have been covered by Medicare.

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 Mr W received treatment could be expected to charge privately funded/insured patients for his treatment. I'm not persuaded this report 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 Mr W's claim. I'll explain further below.

URV's handling of Mr W's claim

As set out above, the policy does allow URV taking over, and dealing with, the defence and/or settlement of any claim made under the policy in Mr W's name. However, as I've explained, it must do so having due regard to the law and relevant rules and regulations. URV has a duty to deal with claims promptly and fairly, and it's required to act with due skill, care and diligence, paying due regard to Mr W's interests and treating him fairly. URV must also manage any conflicts of interest between itself and its customers fairly. I don't think it's done that here.

I appreciate that the amount of the outstanding balance in dispute here isn't insignificant. I can understand why URV would seek to challenge it and why it's in its commercial interests to do so. However, URV took the unilateral decision to only pay part of the invoice. It didn't

discuss its approach with Mr W before doing so.

In an email to our Service dated 3 March 2021, URV has said in areas with high-volumes of tourism in the USA, bill inflation is virtually standard practice with charges raised far in excess of the actual cost of providing the service, regularly by 500% and sometimes even more. And that most facilities accept the fees paid by URV (based on their approach to pay a certain percentage above the Congress rates for medical costs incurred by a policyholder).

That might be URV's position about the way in which the market works but URV should also consider the individual issues of each specific case according to their own facts and having regard to the interests of the policyholder as well as its own. I don't think it's done that here especially as the debt collectors have indicated many times that it was prepared to negotiate the outstanding amount on behalf of the medical facility.

Negotiations with the debt collectors

The debt collectors emailed URV many times in July and August 2020 setting out the outstanding amount, after URV's unilateral part-payment of the invoice. It said that settlement of around 38% of the invoice wasn't enough to close the account. It also said that URV didn't have a contract with the medical facility to allow the invoice to be paid at a discounted rate, nor were any agreements in place with the debt collectors to pay the invoice at a discounted rate. URV was made aware that the medical facility allowed a discount to non-contracted insurers based on the promptness of payment ranging from 20% to 30% and that it was open to discuss settlement.

URV didn't reply and on 24 August 2020, the debt collector emailed URV offering a 10% discount. That offer was repeated several times in September 2020 but URV didn't reply until 22 September 2020 to say it had paid more than the Congress rates for the medical care Mr W received. And it substantially disputed that there was anything further to pay.

The debt collectors replied saying that URV's email didn't make anything clearer, nor did it address the issues raised and the account hadn't been settled. It again offered a 10% discount. The debt collectors followed this up with further chaser emails in September, October and December 2020. It only received a reply from URV on 16 December 2020 to say it wouldn't be making any further payment and would be instructing a barrister to defend any action taken against Mr W.

The debt collectors replied to say that it would welcome discussing the matter with URV's barrister. It said "if we do not receive a signed document from you that you accept full financial responsibility for the bill, we have no option but to bill the patient for the balance as the patient is the one who signed the financial responsibility at the hospital..." It again offered to settle the invoice for a lower amount and reiterated that it was open to discuss settlement.

URV replied on 12 January 2021 to say the debt was substantially disputed and that it would pay any debt established, not Mr W.

The debt collectors sent further emails offering to settle the invoice for a lower amount and reiterating that it was open to discuss settlement in January and February 2021.

By the middle of February 2021, the debt collectors had sent around 20 emails within a period of six months either offering to negotiate or offering a lower figure to settle the outstanding amount.

URV didn't reply until 22 February 2021. It said:

"We are willing to enter into negotiation but plainly that does not mean doing nothing more than accepting a standard discount on an unjustifiable original charge.

We know, and your clients know, what is a federally approved rate for the services performed. Our payment reflects that sum with no less than a [...] % uplift.

We believe that is a reasonable sum and can see no obvious reason why it would be considered otherwise.

Now it is your turn to explain why a bill that exceeds that rate by multiples should be considered. We would need to understand what factors could justify any uplift, and how it has been calculated".

The debt collectors replied on 16 March 2021 to say it was still awaiting URV's offer to settle the outstanding amount and: "it cannot be settled for something ridiculous like 20% of what you previously paid. That is not negotiation, as you know from multiple other cases that this will not be accepted. I await your offer with interest".

URV replied on 9 July 2020 requesting evidence to justify the amount charged by the medical facility. After which discussions reached an impasse when the debt collectors replied on 11 August 2021 to say:

"Why are you asking for something that no other insurer in the world asks for? This appears to be yet another delaying tactic from your side.

Instead other insurers simply get on with paying their customers' bills at a rate where the hospital can consider the bill to be settled accordingly, or they will negotiate to find a mutual agreement... [URV] fail entirely to do this, on every single case".

The debt collector then went on to say that the medical facility's charges are published online, and Medicare rates are irrelevant to international parties.

Discussions then reached an impasse with neither party altering its position.

Looking at the communications between URV and the debt collectors, I don't think URV's handling of those discussions were in line with treating Mr W – as its customer – fairly.

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, relying on the Congress rates which are applicable to USA residents who have the benefit of Medicare. It then proceeded to reiterate the same points. In doing so, it effectively, failed to engage in meaningful negotiation in the spirit of reaching a compromise on the outstanding amount. If it had, based on the tone of the debt collectors' emails, I think it's likely it would've brought about a prompt conclusion of the dispute. There's nothing to suggest that the medical facility/debt collectors wouldn't have conducted negotiations in good faith.

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 has it relied on any specific features of Mr W's claim. It's a reflection of a general policy to pay the

medical facility a certain percentage above the Congress rates for the medical care and treatment Mr W received in the USA. That's resulted in Mr W being pursued by debt collectors. And the issue of the outstanding amount is unlikely to be resolved until Mr W is either sued over the outstanding amount or the healthcare provider stops pursuing the outstanding amount and writes it off as a bad debt.

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

I think it's also relevant that a consumer – such as Mr W - who takes out travel insurance to cover medical treatment abroad doesn't expect to be exposed, without a very good reason, to continuing action from debt collectors many months after visiting an overseas medical facility when they've acted in accordance with the terms of the policy and paid the relevant excess, as is the case here.

The debt collector

In response to our investigator's view, on 30 November 2021, URV told our Service that the medical facility had suspended all collection activity through the debt collectors because of action bought by URV on behalf of customers. And that the medical facility recognises that the debt collectors are acting illegally in the way in it corresponds with its policyholders in the US state where the medical facility is based. As such, URV says Mr W won't hear from the debt collectors again.

On 10 January 2022, our investigator asked for documentary evidence of this. And on 15 February 2022, URV provided a draft claim form to be filed at Court in the USA against the debt collectors, which it says was sent to the debt collectors in September 2021. However, it accepts that the debt collectors haven't responded to that correspondence. And I haven't seen anything to confirm that the debt collectors have agreed it won't chase Mr W and/or URV for payment of the outstanding amount – or have been prohibited in any way from doing so. And, importantly, I haven't seen anything to confirm that the medical facility has agreed to write off the outstanding amount, it has previously been arguing is still owed. Indeed, the debt collectors has recently confirmed to our Service that the outstanding balance remains unpaid and the 10% discount it had been offering is no longer available given the length of time that has passed since the medical costs were incurred.

Mr W has confirmed that he hasn't received any communications directly from the debt collector for some time. Although, he might not have the worry of being contacted by the debt collector and the inconvenience of having to forward those communications onto URV, he still has the worry of the issue of the outstanding amount remaining unresolved. There's also the possibility that the medical facility could commence legal action against him, even though URV has said that Mr W won't be liable for any further costs to be paid arising out of his medical treatment".

...

I then explained why I was intending to direct URV to put things rights by paying:

- A. the outstanding amount to the medical facility; and
- B. £400 to Mr W as compensation for distress and inconvenience.

Response to provisional decision

Mr W replied clarifying how long he was in hospital for, the tests he underwent and treatment he received whilst in the hospital and the aftercare he received in the rented villa. He also raised other points including:

- costs would've been lower had an earlier settlement been sought and URV had entered into negotiations about the medical facility's costs.
- he's had over two years of worry and uncertainty when he was covered for £3 million of medical expenses under the policy.
- he's spent countless days and hours dealing with URV's non-payment of the invoices.
- the treatment he received whilst in the USA was excellent and undoubtedly saved his life.
- He'd like the outstanding invoices to be settled.

URV also replied on 13 April 2022. In summary it said:

- The medical facility is in discussions with URV to resolve all disputed claims, including Mr W's.
- I should allow it time to complete those discussions before directing URV to pay the outstanding amount to the medical facility as it may impact its wider negotiations.

On 25 April 2022, our investigator wrote to URV to confirm that I wouldn't issue any decision within 28 days. However, it was explained that unless I'd been notified that costs had been agreed in this case – or unless I received any further comments from URV to consider about this particular case - by 4pm on 23 May 2022, I'd assume that URV had no further information to provide in response to my provisional decision. And I'd reconsider everything on file before issuing a decision.

URV's provided no further information specific to this complaint.

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 uphold Mr W's complaint.

URV has provided an email which confirms that no account freeze had occurred to date. But it says the medical facility has agreed to a 30-day freeze of all accounts identified by URV once URV has confirmed that they're ready to commence in-depth negotiations of all accounts. I've received no further update in relation to this particular case – or further comments – from URV by 23 May 2022.

As explained in my provisional decision, I'm satisfied that there has been every opportunity for URV to engage in-depth negotiations with the medical facility and/or debt collectors about the outstanding amount in this particular case, over a number of months. But it didn't do so. I've received nothing further from URV to confirm that it has been able to successfully negotiate a settlement of the outstanding amount. Or that it has now entered meaningful negotiation.

URV has a duty to deal with claims promptly and fairly, and it's required by the Principles (set out in my provisional decision) to act with due skill, care and diligence, paying due regard to Mr W's interests and treating him fairly. And it must also manage fairly any conflicts of interest between itself and its customers and as between its customers. I remain satisfied it hasn't done that here. I don't think it's had due regard to Mr W's interests; it's unreasonably

put its own commercial interests above his interests as someone who has paid for travel cover and made a proper claim under it.

Given the amount of time the outstanding amount has been unpaid for, URV's failure to enter into meaningful negotiation about the outstanding amount and Mr W's personal circumstances and the continuing worry this is all having on him, I don't think it would be fair and reasonable to delay matters further on the basis that URV has said that it would be willing to enter into in-depth negotiations with the medical facility relating to a number of outstanding accounts relating to treatment provided to policyholders.

So for the reasons set out above, and as set out in detail in my provisional decision (an extract of which appears in the background section of, this, my final decision), I don't think URV has acted fairly in the way it has handled Mr W's claim. And I uphold his 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 W to pay the outstanding amount to the medical facility. So URV's duty to indemnify him by paying the outstanding amount hasn't yet crystallised.

But in this particular case, and for reasons already mentioned, I'm persuaded it's fair and reasonable for URV to make a further payment to the medical facility to the value of the outstanding amount to settle the invoice without further delay.

I don't think URV has acted fairly by paying the amount it has to settle the invoice and the way it subsequently dealt with the issue of the outstanding amount with the medical facility and/or its debt collectors.

When making this finding, I've taken into account that it may now be possible for URV to negotiate a reduction in the amounts charged by the medical provider and potentially agree a lesser amount. However, URV has had over two years to do this, and hasn't done so already.

- Distress and inconvenience

I've considered the impact this all has had on Mr W in light of my findings that URV hasn't acted fairly or reasonably by the approach it's taken when looking to settle the invoice. And I'm pleased that URV has acknowledged that receiving debt collection letters can be worrying and stressful. However, I also think Mr W would be worried about the possibility of being faced with legal proceedings in the USA if the outstanding balance isn't settled – which, given his age, is particularly distressing for him.

Even though URV has sought to reassure Mr W that he won't personally be liable for the outstanding amount – for example in its communication with Mr W dated 15 January 2020 – I think it's reasonable that Mr W would still be worried about being chased for the payment even though URV invited him to forward all communications received from the medical facility or debt collectors directly to it (and to not respond).

So, I'm satisfied URV has put Mr W to a considerable and unnecessary amount of distress, inconvenience and worry by initially being chased for the outstanding amounts, the length of the process and there being no end date in sight for it being resolved.

All in all, I remain satisfied compensation in the sum £400 fairly reflects what he's been through because of what URV did wrong here.

Summary

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

- A. the outstanding amount to the medical facility (if it hasn't already successfully negotiated a settlement of the outstanding amount with/on behalf of the medical facility by the date of this final decision); and
- B. £400 to Mr W as compensation for distress and inconvenience.

My final decision

I uphold Mr W'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 W to accept or reject my decision before 11 July 2022.

David Curtis-Johnson
Ombudsman