

The complaint

Mrs T is unhappy with the way in which Union Reiseversicherung AG ('URV') has handled a claim made on her travel insurance policy.

Any references to URV include its claim handlers and costs containment agents.

What happened

Mrs T had the benefit of a single-trip travel insurance policy, underwritten by URV, which she took out in 2016 ('the policy').

In December 2016, whilst abroad in the USA, Mrs T was admitted to hospital and received medical treatment. She was in hospital for many days. The medical facility invoiced Mrs T for the medical care she received. She received two invoices: one in the sum of around \$38,000 and the other around \$200 ('the invoices').

After returning to the UK, Mrs T made a claim on the policy to cover her medical costs and URV accepted the claim. However, it didn't make any payment to the medical facility at that stage. So, debt collectors instructed on behalf of the medical facility ('the debt collectors') started to chase Mrs T for the invoiced sums in early 2017.

URV made payment in mid-2017 but it didn't pay the invoices in full; it only paid just over \$15,700 leaving just over \$22,435 outstanding ('the outstanding amount'). The debt collectors then began chasing Mrs T for the outstanding amount.

Mrs T is unhappy that she has been chased for payment and that URV hasn't settled the outstanding amount. She says she's been subjected to years of stress and anxiety as a result of receiving numerous emails and letters from the medical facility and the debt collectors. She says she lives with a medical condition and the unnecessary stress and worry this has caused hasn't helped her manage her condition.

It's URV's position that invoiced amounts are excessive. It says it's made a reasonable payment to the medical facility. However, it's more recently told Mrs T (in December 2020) said that in view of her continuing to receive correspondence from – or on behalf of – the medical facility historically and potentially into the future it would pay her £500 as compensation. Mrs T would still like the outstanding amount to be paid.

Our investigator upheld Mrs T's complaint. In the circumstances of this particular case, she didn't think URV had acted fairly or reasonably by not paying the invoices in full. She recommended URV pay 90% of the outstanding amount (around \$18,825), taking into account a 10% discount offered by the debt collectors. She agreed that the offer made by URV in the sum of £500 for the distress and inconvenience it had caused Mrs T was fair and reasonable.

URV didn't agree. It's provided some statistics showing the average charges, average cost and average payment to treat the type of injury Mrs T had suffered, for which she was treated. It said these statistics related to the medical facility Mrs T was treated at for the

years 2008 – 2020. The statistics reflect that, on average, the medical facility charged around \$42,304 for the treatment in 2016. Whereas, on average, the treatment cost them around \$11,280 and they were paid an average sum of just over \$10,000 for each treatment. URV says this supports that it's paid a reasonable amount for the medical costs. It's also provided the financial accounts of the medical facility which includes its net profit for various years, including 2016.

This information didn't change our investigator's opinion. So, Mrs T's complaint was passed to me to consider everything afresh and decide. I issued my provisional decision on 1 July 2022 explaining in more detail why I was also intending to uphold Mrs T's complaint. An extract of my provisional decision is set out below:

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"As a matter of general legal principle, URV is bound to indemnify Mrs T against losses covered by the policy as and when the amount of her losses has been established (in this case, the amount of Mrs T'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 Mrs T's name.

The policy terms say URV can "take over and deal with in your name the defence/settlement of any claim made under the policy". But I'm satisfied that URV still need to act fairly and reasonably when exercising that term.

Legally, in situations where URV's interests' conflict with Mrs T's, URV has a responsibility to act in good faith when it takes over the defence or settlement of a claim - having regard to Mrs T'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 Mrs T, 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 and 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. That's for insurers - and their agents - to engage diligently with medical facilities (and their 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 Mrs T's particular complaint.

The amount paid by URV

The policy provides cover for emergency medical attention. It covers "customary and reasonable fees or charges for necessary and emergency medical" treatment/charges up to the policy limit which is ten million pounds. URV hasn't said Mrs T shouldn't have been charged for treatment – or that the invoice shouldn't be paid at all. So, I'm satisfied that URV has ultimately accepted liability for sums properly due under the policy in respect of the medical attention Mrs T received whilst abroad in 2016.

URV's position is that the amounts charged by the medical facility are unreasonably excessive. It says it's paid reasonable fees for the medical care Mrs T received and it's sought to rely on information from different 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 invoiced by the medical facility are considerably higher than the Congress rates for the medical care and treatment Mrs T received. I know from experience that Congress guidelines are issued annually by the USA government and, as I understand, 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 and then pays a certain percentage above this (which it's disclosed to our Service).

I haven't been provided with the Congress rates for each item charged by the medical facility relevant to the invoices. And I think that's because for inpatient cases there are no individual codes for each service provided by the medical facility; the coding used is for the entire admission. But even if I accepted that the Congress rates URV has used as the base rate before adding a percentage uplift is accurate, 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 currently 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. Mrs T's policy isn't a medical insurance policy similar to the type of insurance that can be taken out in the USA to cover medical care and treatment for people who are resident there; it's a travel insurance policy.

I've also taken into account the average amount charged by the medical facility, in 2016, to treat the injury Mrs T experienced whilst in the USA, as put forward by URV, against the average cost to the medical facility for such treatment. It looks like the average payment received is much lower - at just over \$10,000 per patient and I accept that URV has paid the medical facility more than this.

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 medical facility of the quality and location where Mrs T received treatment could be expected to charge privately funded/insured patients for the treatment received. I'm not convinced the statistics provided by URV are relevant to this. The statistics might show the average cost of the treatment and average payment but there's no analysis of how the treatment received by Mrs T is similar to or differs from the other cases in 2016 – or, for example, whether the type of treatment Mrs T required was, comparatively, any more or less complicated.

So, whilst I've taken the statistics into account, I've placed less weight on what they reflect. Further, even if the statistics do support URV's 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 T's claim for reasons I'll now go on to explain.

URV's handling of Mrs T's claim

I've explained above that the policy does allow URV to take over, and deal with, the defence and/or settlement of any claim made under the policy in Mrs T's name but 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 Mrs T's interests and treating her fairly, as its customer. URV must also manage any conflicts of interest between itself and its customers fairly. I don't think it's done that here.

Given the amount in dispute in this case, I can understand why URV would want 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 Mrs T before doing so.

In its communication to Mrs T in November 2020, URV said that "medical providers often attempt to charge excessive amounts for treatment" so it "adjusted the settlement to ensure that only reasonable costs were paid" to the medical facility under the policy. 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, in this case, having regard to the interests of Mrs T, as its 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 and it wasn't until mid-2021 that URV provided a substantive reply to the debt collectors, setting out further reasons why it felt the invoices were inflated.

Negotiations with the debt collectors

I've seen evidence that debt collectors had been chasing URV for payment of the outstanding amount – as well as demanding payment from Mrs T for the outstanding amount - throughout 2020 (if not before) but the debt collectors didn't receive a substantive reply from URV.

In December 2020 (so shortly after Mrs T complained to URV about being chased for the outstanding amount) URV wrote to the debt collector and 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 in early February 2021 offering to reduce the outstanding amount

by 10% as a gesture of goodwill to resolve matters. The debt collectors repeated this offer in a communication to URV later in February 2021. And in March 2021, after receiving no reply to either of those communications, the debt collector said:

“As we have had no response from you, I have been instructed to direct my collection back to the patient.

If at any point you are willing to negotiate and resolve the matter, please do not hesitate to reach out to me directly”.

URV promptly replied offering an additional 10% over the settlement it had already made (just over \$1,000) which was declined by the debt collectors – who made a counter-offer of 85% of the total charges.

The debt collectors chased for a reply in April and May 2021 and having not received a reply it said it would again pursue Mrs T for the outstanding amount.

Two months later, in July 2021, URV responded pointing out the statistics I’ve referred to above and why it believed this supported its position that Mrs T hadn’t been charged the fair market value for the treatment received. It set out the medical facility’s net profit in 2016 and reports that the medical facility accepted payments “from all payers for all patients in 2016 at 25% of its billed charges”. URV said it had paid more than this and had also offered another 10% on top to settle the outstanding amount.

URV concluded:

“you have failed to provide any data or facts that might justify the total billed charges you continue to claim are due. Instead, your position in essence is: ‘pay these charges or we’ll pester your customer...We suggest....that rather than contacting our customer, you provide us with a full response to the above facts (for example, asking your client to verify or dispute those facts) and, as per our original request, provide us with a justification of why the billed charges are reasonable, bearing in mind all the foregoing. Alternatively please put our settlement offer to your client again”.

URV has contacted the debt collectors for a response to its communication dated July 2021 several times since but URV has said that it hasn’t received a response.

As a result, I’m satisfied that negotiations have now reached an impasse with URV agreeing to pay an additional 10% over the settlement it had already made (just over \$1,000) and the debt collector offering to accept 85% of the total amount in full and final settlement of the outstanding amount.

Looking at the overall communications between URV and the debt collectors, I don’t think URV’s handling of those discussions – up until July 2021 - were in line with treating Mrs T 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.

From the outset, URV simply 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 provide no substantive response when chased for payment and when it did reply, it only sought to reiterate the same point – as it did its communication to the debt collectors dated December 2020 which was prompted by Mrs T’s complaint to it.

So, overall, I think it failed to engage in meaningful negotiation in the spirit of reaching a

compromise on the outstanding amount at that stage. If it had, given that the debt collectors had offered two reductions in fees, I think it's likely the dispute would've been promptly resolved. There's nothing to suggest that the medical facility/debt collectors wouldn't have conducted negotiations in good faith.

Up until July 2021, 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. And nor did it rely on any specific features of Mrs T'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 Mrs T received in the USA.

That's resulted in Mrs T being pursued by – and on behalf of - the medical facility. It's unlikely that the issue of the outstanding amount will be resolved until Mrs T is either sued over the outstanding amount by the medical facility or it stops pursuing the outstanding amount and writes it off as a bad debt.

As I've said, URV has a duty to fairly manage any conflicts between its own interests and those of Mrs T. I don't think it's had due regard to Mrs T's interests here; it's unreasonably put its own commercial interests above Mrs T's interests as someone who has paid for travel cover and made a proper claim under it. I'm satisfied that a consumer – such as Mrs T - 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 years after visiting a medical facility abroad when they've acted in accordance with the terms of the policy and paid the relevant excess, as is the case here.

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 Mrs T to pay the outstanding amount to the medical facility. So URV's duty to indemnify her 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 85% of the total of the invoices to settle them without further delay.

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

When provisionally making this finding, I've taken into account that it may now be possible for URV to negotiate a further reduction in the amounts charged by the medical provider and potentially agree a lesser amount. However, I think URV has had enough time to do this, and hasn't done so already. But I'm conscious that there is nothing preventing it from trying to do so during the time it has to respond to this provisional decision before the deadline to respond expires.

- Distress and inconvenience

I've considered the impact this all has had on Mrs T in light of my findings that URV hasn't acted fairly or reasonably when handling Mrs T's claim. Even though URV has sought to reassure Mrs T that she won't personally be liable for the outstanding amount – for example in its communication with Mrs T in November 2020 – I think it's reasonable that Mrs T would still be worried about being chased for the payment even though URV invited her to forward all communications received from the medical facility or debt collectors directly to it (and to

not respond).

I can see that Mrs T was regularly chased for payment of the full invoiced amounts in early 2017 and then, again, for the outstanding amount once URV made part payment of the invoices. I'm satisfied URV has put Mrs T to considerable and unnecessary distress, inconvenience and worry by initially being chased for the outstanding amounts, the length of the process. There's also no end date in sight for it being resolved. All in all, I think compensation in the sum £500 fairly reflects what she's been through because of what URV did wrong here, given her personal circumstances".

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I invited both parties to provide any further comments or information in response to my provisional decision. Neither party replied.

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 and considering that neither party has provided anything further for me to consider, my thoughts about this complaint remain the same. So, for the reasons set out in my provisional decision – an extract of which appears above - I uphold Mrs T's complaint.

Putting things right

Within 28 days from the date on which we tell URV that Mrs T accepts this final decision, I direct URV to pay an amount equivalent to 85% of the total of the invoices 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 then).

As URV has paid £500 compensation to Mrs T, it doesn't need to make any further payment directly to her.

My final decision

I uphold Mrs T'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 Mrs T to accept or reject my decision before 15 August 2022.

David Curtis-Johnson
Ombudsman