

The complaint

Mr S is unhappy that Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. only agreed to offer a proportionate settlement of a claim made under his travel insurance policy.

He's also unhappy with the assistance he received when first notifying Mapfre of the circumstances which led to his claim.

Although Mr S is being represented in this complaint, I've referred to him throughout as he's the policyholder.

What happened

Mr S had the benefit of an annual travel insurance policy, underwritten by Mapfre ('the policy'). He travelled abroad in December 2019. Unfortunately, whilst away, Mr S fell ill and required medical treatment. He was hospitalised for many days.

He made a claim on the policy to cover certain costs including his medical expenses, an internal flight, and a pre-booked tour he'd missed.

Mapfre agreed to cover 61% of his claim. That's because it said Mr S hadn't taken reasonable care to answer medical questions correctly when taking out the policy. If he'd answered a question differently, and in the way he should've, Mapfre says he would've been charged more for the policy. So, it said it would pay a proportionate share of the expenses claimed.

Mapfre also accepted that the service it provided Mr S was below the standard it would expect. It apologised and offered him £300 compensation in recognition of this.

Mr S didn't think that was fair, so complained to our service. Our investigator looked into what happened. He didn't think Mapfre had unfairly concluded that Mr S should've answered 'yes' to a particular question when taking out the policy. And he was satisfied, that if Mr S had done so, the policy would've cost more. He asked Mapfre to settle 61% of the costs directly with the medical providers (if they remained outstanding) or to pay Mapfre's contribution to certain costs directly to Mr S, if they'd already been paid by him.

Our investigator also recommended that Mapfre pay an additional £100 to Mr S to represent the distress and inconvenience he'd experienced as a result of Mapfre's service failings.

Mapfre accepted our investigator's view. Mr S replied to say that Mapfre had only ever paid around £535 towards medical costs. It said Mapfre should therefore pay an additional sum in excess of £6,000 to represent 61% of the claimed costs. He also said he was disappointed that our investigator didn't make any recommendation for Mapfre to contribute towards his legal costs.

Our investigator subsequently issued a further view recommending Mapfre pay Mr S simple interest at a rate of 8% per annum for any costs he'd paid himself from the date payment

was made until Mapfre refunded him those amounts.

Mapfre accepted this and asked for Mr S's bank details. These were provided and Mapfre paid Mr S around £4,300. However, this was less than Mr S was expecting and Mapfre didn't provide a breakdown of the payments made – and what they covered.

Our investigator asked Mapfre for a breakdown which was provided and passed on to Mr S.

Mr S then provided a detailed breakdown of the amounts he was claiming, the amounts that had already been paid by him (along with documentary evidence) and by Mapfre. This breakdown was passed to Mapfre but, ultimately, a final amount couldn't be agreed between the parties. Although Mapfre did say that, subject to Mr S providing proof of payment and invoices, it would consider paying certain claimed expenses.

So, the complaint was referred to an Ombudsman to determine.

I looked at the amounts in dispute and, in October 2022, I set out to parties my understanding of the amounts which remained outstanding and owed to Mr S. I also explained why simple interest at a rate of 8% should be added to certain outstanding amounts but why I didn't think it was fair and reasonable for Mapfre to have to contribute to the costs of Mr S's legal representatives.

I did, however, say that I intended to direct Mapfre to pay Mr S £600 in total (so another £200) to reflect the distress and inconvenience Mapfre had caused him in this case. I invited the parties to provide any further comments.

Mapfre didn't reply. Mr S didn't disagree with my calculations but asked me to confirm the exact amount of interest Mapfre should pay.

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.

Mapfre's decision to pay 61% of the claimed amounts

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

Mapfre says, when taking out the policy and answering the medical questions, Mr S failed to take reasonable care not to make a misrepresentation. So it only agreed to cover 61% of his claimed costs.

I think Mapfre's position was fair and reasonable because:

- When taking out the policy Mr S was asked 'In the last 2 years have you or any person insured on the policy suffered from or received any form of medical advice or treatment or medication for... (a) any blood circulatory condition including, but not limited to, high blood pressure, hypertension or high cholesterol?...' Mr S answered 'no' to that question. But when Mapfre reviewed Mr S's medical records there was reference to him taking medication usually associated with high cholesterol. So, Mapfre says he should've answered 'yes' to this question.
- Mr S says that he wasn't aware that the medication he'd been prescribed was to lower his cholesterol and that he'd answered the questions to the best of his knowledge. But having looked at the medical evidence, I don't think Mapfre has unreasonably concluded that Mr S is likely to have been aware of the reason why he was taking the medication in question, particularly as it looks like he wasn't taking much other medication.
- So, I think Mr S's misrepresentation was a qualifying one under CIDRA. I'm satisfied that had Mr S answered 'yes' to the question the cost of the policy would've been higher. And that Mr S effectively paid 61% for the policy than he would've done if he hadn't answered the question carelessly.

Outstanding elements of the claim:

Both parties agree with the exchange rate to be used when calculating the expenses incurred and being claimed for, which were paid in local currency.

Taking into account payments already made to Mr S by Mapfre, I explained to the parties in October 2022 that I'd calculated the outstanding sum owed to Mr S to be £3,085.71. This included the outstanding hospital benefit of £30. Mr S was in hospital for 14 days but Mapfre had only paid a hospital benefit representing 13 days.

Neither party disagreed with that.

Interest

With reference to the spreadsheet which was compiled by Mr S and sent to Mapfre on 18 July 2022 setting out the amounts claimed - and having considered the evidence - I'm satisfied that Mr S paid items 1, 2, 3, 4 and 5 in full.

So, I think it would be fair and reasonable for Mapfre to pay simple interest at a rate of 8% per annum on:

- the difference between the full amount Mr S paid and 39% of each amount (this being the amount Mr S is responsible for paying) from the date each payment was made by him to the date on which Mapfre makes payment to him.
- the hospital benefit from the date on which his claim was accepted to the date on which the first payment was made towards the end of the 2021 – and on any outstanding payment of the hospital benefit to the date it's paid.

From all interest amounts, Mapfre can deduct any interest payments already paid to Mr S – in response to our investigator's view - if they cover any of the periods mentioned above.

I also think Mapfre should give Mr S with a clear breakdown of all the interest calculations paid to him.

Mr S has asked that I set out the specific amount of interest Mapfre should pay. I don't think that's for our service to do, especially as the amount of interest to be paid is dependent on the date on which Mapfre makes payment to Mr S for the outstanding amounts. But there's nothing stopping Mr S (or his representative) forwarding his interest calculation to Mapfre to consider.

Customer service issues

Mapfre accepts that its communication with Mr S was poor and that it could've been more proactive in requesting his medical records, so it was in a better position to advise him on cover sooner, when he was still in hospital. Failing which, it said it could've also offered to cover his medical expenses in full on a 'disclaimer' basis – subject to Mr S's written guarantee to reimburse all of part of the outlay of the claim which fell wholly or partly outside the scope of policy cover.

It offered Mr S £300 in recognition of this and apologised. It later agreed to pay an additional £100 as recommended by our Investigator.

Given the length of time this claim has gone on for and given that there are parts of the claim that remain outstanding – which Mapfre hasn't made a 61% contribution towards – I don't think £400 is enough to reflect the distress and inconvenience experienced by the continuing and unnecessary delays.

I know Mr S is being represented but I accept that he would be frustrated to know that Mapfre has asked for the same evidence in support of his claim on a number of occasions – which has already been provided to it. This has impacted the progress of the claim.

I think £600 would be a fairer amount. So, Mapfre should pay Mr S an additional £200 for distress and inconvenience in addition to the £400 it's offered.

Legal fees

I don't think it would be fair and reasonable in this case for Mapfre to reimburse Mr S for his legal costs (or to pay a contribution towards them). I appreciate the point that's been made about Mr S's medical condition, but it was his choice to seek - and pay for - legal assistance to contact Mapfre about his claim and to raise a complaint with our service. I'm not persuaded that he couldn't do so without legal assistance.

Putting things right

Within 28 days from the date on which we notify Mapfre that Mr S accepts this final decision, I direct it to:

- (i) pay Mr S the sum of £3,085.71 in settlement of his claim.
- (ii) pay simple interest at a rate of 8% per annum on the difference between the full amount Mr S paid in respect of items 1 – 5 inclusive (as detailed on Mr S's spreadsheet sent to the Mapfre on 18 July 2022) and 39% of each amount (this being the amount Mr S is responsible for paying) from the date each payment was made by him to the date on which Mapfre makes payment to him.
- (iii) pay simple interest at a rate of 8% per annum on the hospital benefit paid to Mr S from the date on which his claim was accepted to the date on which the first payment was made towards the end of the 2021 – and on any outstanding hospital benefit paid to Mr S to the date it's paid.
- (iv) provide Mr S with a clear breakdown of all the interest calculations paid to him.
- (v) pay Mr S £600 compensation for distress and inconvenience in total (from this it can deduct the £400 it's already agreed to pay, if payment has already been made).

From the interest amounts, detailed at (ii) and (iii) above Mapfre can deduct any interest payments already paid to Mr S – in response to our investigator's view - if they cover any of those periods.

If Mapfre considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr S how much it's taken off. It should also give him a certificate showing this if asked for one. That way Mr S can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I partially uphold Mr S's complaint and direct Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 December 2022.

David Curtis-Johnson
Ombudsman