

The complaint

Mr K has complained that Union Reiseversicherung AG ('URV') hasn't fully settled a claim under his policy.

What happened

Mr K bought a travel insurance policy to cover his trip to the USA from 12 July 2019 to 11 November 2019.

Whilst abroad, Mr K needed to have treatment at a hospital and was admitted on 17 October 2019 for two days.

URV accepted the claim and in August 2021, sent a written notification of settlement to the hospital amounting to £9,918.86.

In September 2021, Mr K received a bill from a recovery agent on behalf of the hospital which confirmed there remained an outstanding balance of \$16,250.56.

Mr K complained and URV responded to say that the amount being claimed was excessive. But it offered to pay Mr K £800 compensation; £500 for the distress and inconvenience caused and £300 for the inconvenience of having to forward on further letters from the recovery agent. Mr K refused the offer and referred his complaint to this Service.

Our investigator looked into the complaint and didn't think URV had acted fairly. She recommended that it pay the compensation offered and the outstanding amount in full.

URV disagreed for the following reasons, in summary:

- The charges being claimed are inflated – the objective benchmark used by Medicare was taken as the cost rate in this case and an additional uplift of 50% was implemented. URV has paid a reasonable margin of profit.
- It has had no correspondence with the recovery agent since it sent its written notification of settlement in August 2020. It was hoping that Mr K would sign a declaration which could then be sent to the agent putting them on notice that the debt was disputed by both URV and Mr K. Negotiations may then have proceeded depending on the recovery agent's willingness to work from the actual data rather than arbitrary percentage discounts.

As an agreement couldn't be reached, the case was passed to me for 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 done so, I think URV should be given a further opportunity to negotiate the amount

due to the hospital. I'll explain why.

I issued my provisional decision on 9 November 2022 which I've set out in full below. I thank both Mr K and URV for responding to and accepting my provisional decision. As both sides accept, I see no reason to depart from my provisional findings which I adopt as my final decision.

As a matter of general legal principle, URV is bound to indemnify Mr K against losses covered by the policy as and when the amount of his loss (here the amount of Mr K's liability to the healthcare provider) has been ascertained. 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 K's name.

URV's policy terms say it can:

"take over and deal with, in your name, the defence/settlement of any claim made under the policy."

In effect, this means URV has the right to take over the conduct of a claim – defending or settling it – in the name of Mr K. But that isn't an unqualified right.

Legally, in situations where URV's interests' conflict with Mr K's, URV has a responsibility to act in good faith when it takes over the defence/settlement of a claim – having regard to Mr K'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 contesting the outstanding amount. In deciding whether – and how – to settle or defend claims against Mr K, URV is required to base its decision on the circumstances of Mrs K's individual case rather than on broader concerns about overcharging within the US healthcare industry.

The applicable regulations lead to a similar conclusion.

The Financial Conduct Authority (FCA) Handbook sets out a number of Principles for Businesses, which URV must follow, including:

Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 8 – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

The relevant regulations also include ICOBS 8.1.1R which says an insurer must:

- handle complaints 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); and
- settle complaints 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 for Businesses ("the Principles") and the detailed rules mean for providers and distributors of financial services. The RPPD explains that firms

should consider the impact of their actions, or inactions, on the customer throughout the life cycle of the service being provided.

I also find it appropriate to take into account what I consider to have been good industry practice at the time of the claim. This was for underwriters of travel insurance – and their agents - to engage diligently with healthcare providers to try to resolve disputes over medical bills by actively seeking a compromise or adjudication of their bills. That includes actively engaging in negotiation.

I'll now explain what this means for Mr K's complaint.

URV has said the charges being claimed are inflated. And has said the objective benchmark used by Medicare was taken as the cost rate in this case and an additional uplift of 50% was implemented. It says it has paid a reasonable margin of profit.

But I haven't been provided with any persuasive evidence to show that the US congressional guidelines are a valid or recognised benchmark for fair payment of medical treatment costs outside of the Medicare system.

I've seen no evidence that URV has engaged in any discussions to negotiate the bill. I don't see any reason why it shouldn't attempt to open negotiations. Even if Mr K hasn't signed the declaration URV has asked him to, this doesn't prevent it from contacting the recovery agent or proactively dealing with the matter via an alternative means.

I've considered whether URV has done enough to deal with Mr K's claim promptly and fairly. I've fully considered the guidelines URV has referred to. But I haven't seen how URV has used these for the basis of negotiations in Mr K's case.

I can understand why URV doesn't want to pay exaggerated costs. But I would have expected to see evidence that URV attempted to carry out cost containment negotiations. But there is no such evidence here.

Alternatively, URV could have sought to have the proper amount of the bill ascertained by a dispute resolution service such as by mediation, arbitration or litigation. Again, there is no evidence that URV has taken any steps of that kind. And it is aware that costs it has paid are not acceptable to the hospital but it still appears to have considered the matter settled.

Mr K has said the delay in payment has caused him considerable anxiety and embarrassment as well as damaging his reputation with the hospital. So URV's actions have had a significant impact on Mr K for which I think £800 compensation is appropriate in all the circumstances of this case.

The policy allows URV to take over and deal with the defence/settlement of any claim. But I expect it to do so in a fair and reasonable way. I must have regard to the law, the relevant industry rules and regulations and good practice. URV has a duty to deal with claims promptly and fairly and to act with due skill, care and diligence, paying due regard to Mr K's interests and treating him fairly. I don't think it has done that in this case.

URV took a unilateral decision to part pay the invoices. I haven't seen any evidence that URV has attempted to negotiate with the hospital or the recovery agent.

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 to address the particular issues in dispute to try to persuade the recovery agent to accept the sum being offered, or reach a mutually acceptable compromise.

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 debt ascertained by any form of dispute resolution process, contrary to both the regulatory guidance and good practice.

URV needs to act fairly in each individual case. It also has a duty to fairly manage any conflicts between its own interests and those of Mr K. I don't think it has had due regard to Mr K's interests here. And I think it has unreasonably put its own commercial interests above his without considering his specific circumstances. I don't think URV has considered the impact of its actions on Mr K, as it is required to do.

Putting things right

DISP 3.7.1R says that where a complaint is determined in favour of a complainant the ombudsman's determination may include a direction to the respondent, which in this case is URV.

DISP 3.7.11R also provides that a direction may require the respondent, here URV to take such steps in relation to the complaint as the ombudsman considers just and appropriate whether or not a court could order those steps to be taken.

Whilst I have seriously considered directing URV to pay the hospital bill in full, so as to bring the matter to a 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.

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 K's liability. So I intend to limit my award in respect of URV's mishandling of the matter up to the present date to monetary redress.

I'm satisfied that compensation is due for the worry that this matter has caused Mr K. I think the sum of £800 fairly compensates him for the trouble and upset caused to him by URV's handling of the claim so far – that is for its conduct up until the date of this decision.

However, URV's duties in relation to its handling of Mr K's claim don't end with this decision, as the matter of the outstanding bills remains live. The hospital will continue to seek payment of its bill and it remains URV's responsibility to take active steps to resolve this matter quickly and in a manner that has due regard to Mr K's interests and treats him fairly. In the interests of all concerned, I urge URV to take its continuing duties to Mr K very seriously.

Because URV's duties continue, the manner in which it handles the claim hereafter may give Mr K grounds for a further complaint to this service.

In particular, if after the date of this decision URV doesn't take active steps to ascertain the amount of the debts and discharge any outstanding bills in a fair and reasonable manner, such future unreasonable conduct is very likely to result in further worry for Mr K and in a

further complaint to this Service. (Any such further complaint would have to be based upon URV's conduct of the claim after the date of this decision, as opposed to during the period that I have considered.) I hope that this will not occur, as the intention behind my decision is to give it another chance to prosecute its settlement or defence of the debts diligently. If there are further failings, URV may be at heightened risk (amongst other things) of receiving a direction to pay the bills in full. But that would be a matter for a different ombudsman to decide in all the circumstances.

My final decision

For the reasons set out above, I uphold this complaint and direct Union Reiseversicherung AG to pay Mr K £800 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 9 January 2023.

Shamaila Hussain
Ombudsman