

The complaint

Ms M is unhappy with the way in which Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. handled a claim on her travel insurance policy and the service provided.

What happened

Towards the end of 2019, Ms M travelled abroad. Whilst abroad she was sexually assaulted. She says the perpetrator was arrested by local police and held in custody, pending a criminal trial.

Ms M had the benefit of a travel insurance policy, underwritten by Mapfre ('the policy'). Ms M contacted Mapfre for legal assistance under the policy. At that time, she was still abroad and didn't speak the local language, so she wanted legal assistance liaising with the police and prosecution service to seek compensation from the perpetrator for the sexual assault and the personal injury caused. Mapfre declined the claim.

It initially concluded that any legal costs would exceed any losses claimed for because the criminal court didn't award compensation. Ms M was unhappy with the lack of support from Mapfre so she complained.

She also said that she was claiming for other losses under the policy including: the cost of replacing her clothes (taken as a result of the sexual assault), interpreter costs, phone calls and data services, the taxi fare to another hotel after the assault had taken place and the cost of staying at that hotel. I'll refer to these collectively as the "claimed items".

When responding to her complaint in April 2020, Mapre clarified that the legal assistance section of the policy didn't extend to criminal cases. It also said that the claimed items needed to be dealt with by a different department. However, Mapfre accepted that it should've communicated better with Ms M from the outset and been clearer that the policy wouldn't provide legal assistance to assist with a criminal case. It offered Ms M £300 compensation which she accepted. Mapfre also offered to put Ms M in touch with a law firm to advise on a potential civil claim against the perpetrator ('the law firm').

Many months passed without much progress or contact from Mapfre about legal assistance to pursue a civil court case - or the claimed items. Ms M raised concerns about this in July 2020, December 2020, March 2021 and August 2021 without any substantive reply from Mapfre. So, she brought a complaint to our service.

Shortly after, in October 2021, Mapfre apologised for the lack of communication and accepted that Ms M had been given the impression that someone would be in touch with her. It informed her that legal cover wouldn't be provided under the policy, as the law firm had advised that the legal costs involved in pursuing such a case would exceed the value of the claim.

However, Mapfre agreed to reimburse Ms M for the claimed items – totalling around £360. It also offered Ms M further compensation in the sum of £400.

Our investigator looked into what happened and although she could see that Mapfre hadn't fairly handled the claims made on the policy, she concluded that it had acted reasonably by declining the claim for legal assistance. And, ultimately, it had covered the claim for the claimed items. She felt that the compensation that had been offered to Ms M was fair and reasonable.

Ms M disagreed so her complaint has been passed to me to consider everything afresh to decide.

I issued my provisional decision in February 2023 explaining why I was intending to partially uphold this complaint. In response, the parties provided further information which I considered carefully and provided them with my further thoughts on this complaint.

Mapfre accepted what I said. Ms M didn't reply. So, I 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.

Mapfre has an obligation to handle claims fairly and promptly. And it mustn't unreasonably decline a claim.

Mapfre accepts that it should've handled the claims made on the policy better and provided a better overall service to Ms M. It accepts there were unnecessary delays, and its representatives didn't get back to Ms M when it should've. In total it's offered Ms M compensation in the sum of £700 in recognition of that. It's also covered the costs of the claimed items. So, the issues I think I need to determine are whether:

- the compensation amount of £700 reasonably reflects the impact Mapfre's errors had on Ms M;
- Mapfre reasonably ought to have confirmed coverage for the claimed items earlier than it did;
- Mapfre fairly and reasonably declined to provide legal assistance under the policy in respects of issues relating to criminal proceedings against the perpetrator;
- Mapfre fairly and reasonably declined to provide legal assistance under the policy to pursue civil proceedings for personal injury against the perpetrator/hotel he worked at.

The claimed items

Mapfre has agreed to cover the claimed items. Ms M asked for these expenses to be covered in early 2020 and they weren't paid until the end of 2021. Mapfre didn't request Ms M provide evidence in support the claimed items; it looks like the claim she sought to make was overlooked.

I'm satisfied that Mapfre took too long to accept the claim in the circumstances and there's no reason why it couldn't have taken the decision to pay the claim by the time Ms M raised her concerns on 24 July 2020. So, I think it would be fair and reasonable for Mapfre to pay

interest on the claimed items from that date until the date on which the claim was paid.

Claim for legal assistance (criminal proceedings)

The policy does provide cover for legal assistance. It says Mapfre:

“will pay up to the amount shown in the table of benefits for legal costs that result from dealing with claims for compensation and damages if you die, become ill or get injured during your trip...”

It goes on to say that it won't cover:

“any claim we or our legal representatives believe is not likely to be successful or if we think the costs of taking action will be more than any award”.

I'm satisfied that Mapfre fairly and reasonably concluded that a claim for personal injury isn't one that is pursued in criminal courts. I've seen nothing to say that a criminal court in the country where the sexual assault on Ms M took place would consider a claim and compensation for personal injury if the perpetrator was found guilty of the sexual assault. So, I'm satisfied that Mapfre fairly declined coverage for any legal assistance required by Ms M in connection with the criminal proceedings that were ongoing at the time.

I'm also satisfied that Mapfre was in contact with one its panel of legal firms to ascertain the details of any English-speaking lawyers in the country Ms M had visited to see if they could assist her. And they provided those details to Ms M. I'm also satisfied that Mapfre informed Ms M – relying on the advice of the law firm, which I think is reasonable in the circumstances – that Mapfre could consider providing legal assistance to pursue civil proceedings against the perpetrator. And, with her agreement, it appointed its panel law firm to consider the strengths of a civil claim being pursued under the policy.

Mapfre does accept that it should've handled Ms M's request for legal assistance under the policy in connection with criminal proceedings better. I appreciate that Ms M went to the trouble of having to chase Mapfre for a response and she didn't receive written confirmation at the time of Mapfre's decision. Mapfre also accepts it could've dealt with the request with more compassion given the circumstances she found herself in. I think this would've caused unnecessary distress to Ms M at an already incredibly difficult time for her.

Ms M was told around two weeks after first contacting Mapfre that it wouldn't be providing cover in connection with the criminal case. I think that is too long in the circumstances here but ultimately, I'm satisfied that Mapfre's decision was fair and reasonable.

So, all in all, I think the compensation offered to Ms M by Mapfre in the sum of £300 fairly reflects the distress and inconvenience experienced.

Claim for legal assistance (civil proceedings)

Mapfre's final response letter dated October 2021 says Mapfre had liaised with the law firm in order to ascertain the current status of her personal injury claim. And that the law firm had advised that following a full review of Ms M's case, legal assistance wouldn't be provided as the costs involved in recovering any compensation is likely to be more than the amount of compensation. It's accepted in the final response that Ms M hadn't been informed of this decision up until then.

I'm satisfied that the law firm instructed by Mapfre to consider the merits of Ms M's claim for personal injury (to be brought in the civil courts – as opposed to the criminal court) had

advised, before issuing the final response letter in October 2021, that there were reasonable prospects of Ms M succeeding in a claim against the manager of the hotel and/or the hotel and their insurers (if they were insured). However, the law firm also advised that the value of any claim would be limited to a maximum of £2,000. And in the law firm's opinion, the value of any claim would outweigh the likely legal costs involved in pursuing a personal injury claim.

I'm satisfied that Mapfre is reasonably entitled to rely on the legal advice of a qualified representative to decline the legal assistance claim under the policy. And as the policy says Mapfre won't cover "any claim... if we think the costs of taking action will be more than any award", I think Mapfre can reasonably rely on that term to decline the claim.

Distress and inconvenience

Mapfre has acknowledged in its final response letter dated October 2021 that it took too long to confirm its position about covering the legal costs associated with Ms M's legal costs. Ms M was only made aware of Mapfre's position in the final response.

So, Ms M was left in limbo for around 18 months not knowing what was happening about this claim and whether legal assistance would be available under the policy to pursue a personal injury claim. She was chasing for updates in July and December 2020. And also, in March and August 2021. I'm satisfied that this put her to unnecessary inconvenience.

From the tone of the correspondence, I can see that she was becoming increasingly distressed and felt she wasn't able to start moving on from the sexual assault until she knew whether there was legal assistance in place or not. I can also see why she felt Mapfre wasn't taking her claim seriously, despite the very traumatic circumstances which led to her needing legal support, and feeling like she was being treated as a second class citizen.

I can see why Ms M was left confused about where she stood and the legal routes available to her to claim compensation against the perpetrator, given the delays and lack of information provided by Mapfre.

I'm satisfied that she's been put to considerable distress and inconvenience because of all this – and the wait she's had to endure. This would've been made worse by having to also chase for an update on the claimed items and already having received poor service when handling her claim for legal assistance in connection with the criminal proceedings in early 2020.

Mapfre has offered Ms M £400 compensation, but I don't think that fairly reflects the distress and inconvenience she's experienced for this element of her complaint. I think Mapfre should pay Ms M a further payment of £500 (making the total sum of £900). This is on top of the £300 she's been paid in respect of Mapfre's errors in early 2020.

Putting things right

I direct Mapfre to pay Ms M:

- £900 distress and convenience as a result of the poor service provided from April 2020 and the way in which it handled her claim for legal assistance to pursue civil proceedings for personal injury. From this amount it can deduct the sum of £400 it paid Mrs M after the final response letter dated October 2021.
- simple interest at a rate of 8% per annum on the claimed items from the date on which the claim should've been paid (in July 2020) to the date on which payment was

made, shortly after the final response letter dated October 2021. If Mapfre considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Ms M how much it's taken off. It should also give her a certificate showing this if asked for one. That way Ms M can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I uphold this complaint and direct Mapfre Asistencia, Compania Internacional De Seguros y Reaseguros, S.A. 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 Ms M to accept or reject my decision before 31 March 2023.

David Curtis-Johnson
Ombudsman