

The complaint

Mr M and the estate of Mrs M are unhappy with the support they received from Inter Partner Assistance SA.

What happened

Mr and Mrs M were on holiday and were going on a tour. They were involved in a car accident and Mrs M sustained serious injuries which left her paralysed. She was taken to a local hospital for treatment and had emergency surgery. Mrs M was then transferred to another hospital and sadly died.

When Mrs M was first admitted Mr M and his family contacted IPA for assistance. They are unhappy with the support they received. IPA looked into what happened and upheld the complaint in part. They offered £1000 for the trouble and upset caused by a representative's conduct in a call and appearing to be dismissive when it was suggested Mrs M should be moved. Mr M asked the Financial Ombudsman Service to look into the complaint.

Our investigator looked into what happened and thought the compensation offered was fair. She didn't think IPA gave Mr M the impression that they'd sent a representative to assist the family. She thought IPA had explained to representatives of the family that this assistance wasn't usually provided for travel insurance medical assistance.

Mr M didn't agree with the investigator's findings. He said that IPA agreed to send a representative to assist them which would have been crucial to co-ordinating all the parties in an efficient manner. He felt IPA had failed them. So, the complaint was passed to me to make a decision.

Our investigator contacted Mr M's representative at my request to clarify the points he wanted the Financial Ombudsman Service to consider. He confirmed that his concerns were:

- When IPA were initially contacted by Mr M and his family they were told they were covered for a translator and a lawyer and were told that people were being sent.
- Someone at IPA checked the terms and conditions, including with a manager.
- He understood that people were sent, but didn't really do anything to help. This demonstrates there was cover as they were initially told.
- He was then told by IPA, on his return to the UK, that there was no cover for this.
- IPA shouldn't be able to change the terms and conditions on his return home.
- The position should have been made clearer and they felt they were led down a false path.

I asked IPA to provide copies of some further call recordings which I listened to together with the calls our investigator had already considered.

In April 2024 I issued a provisional decision. It said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I want to say at the outset how very sorry I am for Mr M and his family's tragic loss. It's clear that this was an exceptionally difficult and traumatic time for them all, which was exacerbated by challenging interactions with other parties involved.

I am aware that there were other issues referred to during the complaint to IPA. However, I've focused my findings on the points Mr M explained he wanted the Financial Ombudsman Service to consider.

The relevant rules and industry guidelines say that IPA has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions

The starting point is the policy terms and conditions which form the contract of insurance. It sets out what is and isn't covered by the insurer.

Section B of the policy offers Travel Assistance. It says:

During your trip we will:

1. Assist you with the procurement of a lawyer and/or interpreter and/or the advance of any legal or interpreter's fees if you are arrested or threatened with arrest while travelling, or are required to deal with any public authority.

Section G of the policy covers Emergency Medical and Other Expenses. It says:

We will pay the following costs if you suffer an unforeseen bodily injury, illness or die during a trip outside the United Kingdom:

1. All reasonable and necessary medical expenses which arise as a result of a medical emergency involving you. This includes medical practitioners' fees, hospital expenses, medical treatment and all the costs of transporting you to the nearest suitable hospital, when deemed necessary by a recognised medical practitioner.

The circumstances of the claim

It is important to highlight that the circumstances Mr and Mrs M faced whilst abroad were unusual and challenging for a number of reasons.

Mrs M was very seriously injured in the accident including serious injuries to her neck and spine which left her with very limited movement. She was taken to a hospital which was a three hour round trip away from where Mr and Mrs M were staying. They were unable to communicate with hospital staff due to the language barrier. And the family consistently described the very poor conditions Mrs M was receiving treatment in. That's consistent with IPA's own notes which say:

[Redacted] Hospital is a governmental one with the governmental bad

communication level and almost non-documentation circle, very few limited working hours in mornings. Medical and nursing care are of low to average

level...

Mr M, was also injured in the accident, as he experienced bruised ribs, broken toes and lacerations. Having listened to the calls he was clearly very shocked and distressed by the accident and the wider situation which I'll set out below.

The tour company who were transporting Mr and Mrs M at the time of the accident demonstrated some unusual and concerning behaviour in the aftermath of the accident.

There was confusion and concern from the family and IPA about the role they were attempting to play and also their motivation for doing so. The available evidence suggests that the drivers were arrested. The police also interviewed Mr and Mrs M shortly after the accident, despite the seriousness of Mrs M's injuries.

The consulate was involved with Mr and Mrs M's case but wasn't able to provide immediate assistance, due to the working hours of the consulate. This was communicated to IPA during the time Mrs M was in hospital. Mr M's daughter has also set out in detail some of the wider challenges they experienced in liaising with staff from the consulate and individuals acting on their behalf.

Taking all of the above into account it's clear this was a complex and challenging situation in addition to the inevitable trauma and shock of Mr and Mrs M's accident and injuries.

Telephone calls and local agent involvement

The crux of this complaint is that when IPA were initially contacted by Mr M and his family they were told they were covered for a translator and a lawyer and were told that people were being sent, someone at IPA checked the terms and conditions, including with a manager and they understood that people were sent, but didn't really do anything to help.

An agent acting on behalf of IPA had attended the hospital on 7 September and spoke to a tour guide, having located Mrs M's room. The tour guide advised the agent of Mrs M's condition post-surgery and that Mr M was due to be discharged that day.

I've listened to a number of calls between the family members and IPA. I have not located a call where they were specifically told that they were covered for a translator, a lawyer and that they were told people were being sent. There was a call between Mr M's son on 8 September recorded at 17.59. During that call there was discussion about the legal cover available under the policy and I can see that the call agent sent the policy terms and conditions to Mr M's son during the call.

On 9 September Mr M spoke directly with IPA. He explained that people were turning up but that he didn't want to move Mrs M unless he got a 'fit to fly' certificate in English which he could understand. He also expressed concern that he'd already had to sign forms in another language and that he'd had to accept the risk of the surgery already. When asked he said there was nothing else he needed except to come home.

There were two calls between Mr M's son and IPA on the 9 September. During the call Mr M's son expressed concern about a company who were driving Mr M to and from the hospital. IPA established this wasn't a company they'd authorised and

instructed their agent to source a reputable company. There was further discussion about contact with the legal team.

In a later call, the same day, with Mr M and his daughter, Mr M explained that people didn't understand them and they were having to translate using the phone. He reiterated that the intensive care unit was 'unreal' and commented on the cleanliness and facilities available.

During that call Mr M said there was no one from the insurance company there, he thought someone medical would come and he felt 'lost'. IPA explained that they would normally make the decision based on the medical evidence.

The call was passed to Mr M's daughter who expressed the urgency of someone being able to help and a representative to support them. She mentioned a person she was dealing with but it was unclear if this person was acting on behalf of IPA's agent. During the series of calls IPA were made aware that their agents had spoken to the tour guide and they were being told Mrs M was to be moved shortly. The family expressed concern that this person was speaking to the tour guide, given the overall circumstances of the accident. They also explained that this person, who was acting as IPA's agent, had said they couldn't attend the hospital that day but would attend the next day. The representative said that she would refer this to her manager.

IPA contacted their local agent who confirmed they'd spoken with the tour guide. IPA confirmed that this information shouldn't be passed to the tour guide. Subsequently Mrs M was moved to a different hospital.

Should IPA have provided an interpreter and/or a representative?

Based on the evidence available to me I don't think IPA gave any clear undertaking to send an interpreter to assist the family or gave them an expectation that would be the case.

However, I've thought about the wider circumstances of this case and the cover the policy provided. Having done so I think IPA could have taken a more pragmatic approach particularly bearing in mind the circumstances and the policy terms.

The policy covered assistance with the procurement of a lawyer and/or interpreter and/or the advance of any legal or interpreter's fees if you are arrested or threatened with arrest while travelling, or are required to deal with any public authority (my emphasis). It also covered all reasonable and necessary medical expenses which arise as a result of a medical emergency involving the policyholder. So the terms were not exhaustive as to what those reasonable and necessary medical expenses.

IPA did send an agent to the hospital to try and obtain medical evidence. But there's no evidence the agent clearly communicated with the family, for example regularly engaging with them and updating them on the available medical evidence. There was a vacuum of information as the family were struggling with the language barrier and lack of available information.

I think there was scope under the policy terms for IPA to proactively consider a greater level of assistance in the very specific circumstances of this case. Applying a strict interpretation of the policy terms and conditions there was no cover. However, I think in the circumstances of this case I think IPA should have recognised the need to step outside the strict terms of policy, recognising the importance of putting Mr and Mrs M's needs first. In reaching this conclusion I bear in mind that there were

ongoing concerns about the tour company involved in the accident, a pending criminal investigation, limited initial support from the consulate and general confusion about individuals involved in the case (for example the cars being sent for Mr M each day and who was acting on behalf of IPA).

Given the complexity of the case I think IPA should have proactively explored other options to support the family. For example those could have included, but aren't limited to, offering an interpreter to support the family, sending an independent medical professional to the hospital or instructing the local agent to offer additional support to the family (such as updating them on the medical information). I think there were missed opportunities to provide a great level of care given the extremity of the circumstances Mr and Mrs M were facing, including their lack of confidence and trust in the third parties involved and their motivations.

My conclusion reflects that this was an unusually complex case where I would have expected IPA to offer a significant level of assistance to Mr and Mrs M. I think there was scope to consider this level of assistance under the travel assistance and medical expenses sections of the policy. And, even if they weren't strictly covered by the policy terms and conditions, I'd have expected IPA to take a fair and reasonable approach. I think in the unusual circumstances of this case that would have amounted to a reasonable level of assistance.

Putting things right

I cannot award compensation to individuals not named on the insurance policy. I only have the power to award compensation to Mr and Mrs M. I'm intending to increase the compensation from £1000 to a total of £2500.

I think the lack of clear communication and understanding of who was acting on IPA's behalf caused unnecessary and avoidable distress and inconvenience to Mr and Mrs M. I think it would have been reasonable for IPA to provide additional assistance such as the examples I've outlined above. I think this would have avoided a lot of the confusion and concern on Mr and Mrs M's part. I'm persuaded that £2500 compensation would more fairly reflect the short term immediate impact on Mr and Mrs M and the longer term impact on Mr M.

I also wanted to clarify that the estate of the late Mrs M and/or her personal representatives are unlikely to be able both to accept an award from the Financial Ombudsman Service and then go on to claim damages in the courts in relation to the same or overlapping matters.

Without giving them legal advice, once a matter has been determined or settled parties are normally prevented from pursuing their claim again, even if they miss out on full compensation. This can apply where a complainant accepts an award from the Financial Ombudsman Service.

I say this because the Financial Ombudsman Service does not look at complaints that an estate, or the relatives or the dependents of a bereaved person, have suffered loss or bereavement because a person has died and should be paid compensation for it. So, any award of redress that I might ultimately make in this case would not include any element of that kind of compensation.

Both parties responded to my provisional decision. IPA said:

- Asking them to deviate from the policy terms didn't seem reasonable because of the

implications it would have on other similar cases.

- The purpose of the translator wasn't to act as a go between for a policyholder and a hospital. It is unfair to deviate from that support.
- My recommendations were an unachievable ask as they don't form part of the contract of insurance.
- Moving Mrs M removed some of the issues in relation to the language barrier.
- The award of £2500 was effectively penalising IPA for not providing a service which they didn't agree to. They had concerns this would set a precedent.

Mr M's representative said:

- He recalled a conversation in which the advisor said she was relatively new to the role and referred to her previous career, which Mr M recalled specifically. He was concerned this call was being withheld.
- He said he asked about representation in resort and the agent checked this. He was led to believe that although this wasn't usually done, in this case it would be.
- There was turmoil every day as IPA's local agents were difficult to identify – they didn't know who people were.
- The agent didn't attend an arranged meeting when Mrs M was due to be moved.
- IPA didn't provide the support needed.
- Mr M wouldn't accept the £2500 as compensation – he wanted the wording in the policy made clearer and training to be given to frontline staff.

Following the representations made in response to the provisional decision I requested a copy of the call Mr M had referred to. I also highlighted to IPA that the Financial Ombudsman Service determines every case on their own facts and bearing in mind the specific circumstances of the case. I also highlighted the FCA Handbook which sets out a number of Principles for Businesses including:

- Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly
- ICOBS 8.1.1R which requires a claim to be handled promptly and fairly
- 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 require respectively of providers and distributors of financial services in certain circumstances to treat customers fairly. The RPPD explains that firms should consider the impact of their action, or inaction, on the customer throughout the life-cycle of the provision of the service.

IPA asked the investigator to provide details of the call in order to locate it. Mr M provided an itemised bill of the outgoing calls. He believed it was an outgoing call in which the conversation with the advisor he referred to took place. IPA provided copies of additional

calls with the advisor which I listened to. Our investigator explained to Mr M that I'd listened to the additional calls but there was no call in which IPA had agreed that an interpreter would attend.

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.

The further representations from the parties haven't changed my thoughts about the overall outcome of this complaint. I am upholding the complaint and direct IPA to pay a total of £2500 compensation. I'll explain why:

- Based on the evidence available to me I still don't think IPA gave any clear undertaking to send an interpreter to assist the family or gave them an expectation that would be the case. I've listened to a number of calls. Legal cover and assistance is discussed. But I've not identified a call in which this was promised by IPA or in which Mr M was given the impression that this would be the case.
- My role is to decide the outcome of this complaint based on the specific circumstances of this case. I'm aware that IPA are concerned that I'm setting a precedent. However, my decision turns on the specific facts of this complaint which in my view are unusual and complex.
- I appreciate that IPA's medical assistance team often deal with similar cases. However, for the reasons I set out in my provisional decision, I think there were unusual features of this case. That's particularly due to the conduct of some of the third parties involved and their behaviour towards Mr and Mrs M at an already very stressful time. It's clear that there was an atmosphere of mistrust and confusion about who was acting on Mr and Mrs M's behalf and some of the third parties involved (not connected with IPA) may not have been motivated to put Mr and Mrs M's interests first. So, I think they were in a vulnerable situation which was compounded by the inability to communicate effectively, particularly with the hospital.
- I've considered all of IPA's representations in relation to the contract of insurance and their comments that some of the examples of assistance go beyond what's reasonable. However, these further comments haven't changed my thoughts about the overall outcome of the complaint. IPA has a responsibility to treat customers fairly and there were significant barriers to Mr and Mrs M communicating and accessing support in a challenging and high risk situation. They were in a very vulnerable situation and yet had limited help and support from the local agent, who was in a position to alleviate at least some of the pressures involved.
- I appreciate that Mr M may not want to accept the compensation. He's asked that IPA improve the policy wording and support available to customers. However, it's not my role to direct IPA to change their policy wording or make changes to their overall processes. My role is to focus on this specific complaint and the impact on Mr and Mrs M.

Putting things right

I direct IPA to put things right by paying Mr M and the estate of Mrs M a total of £2500 compensation for the distress and inconvenience caused.

My final decision

I'm upholding this complaint and direct Inter Partner Assistance SA to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and the estate of Mrs M to accept or reject my decision before 28 October 2024.

Anna Wilshaw
Ombudsman