

The complaint

Mr C is unhappy that Inter Partner Assistance SA has declined to cover a claim he made on his travel insurance policy and with the service he received.

What happened

Mr C was on holiday with a relative, who I'll refer to as Mr D, when he was involved in a road traffic accident. Mr C was a pedestrian and was hit by a car. He was very seriously injured and was taken to hospital where he was operated on and admitted into intensive care. He was placed in an induced coma for several days.

In summary, IPA declined the claim because they didn't think Mr C had taken reasonable care when crossing the road. They said that Mr C had crossed a multi-lane freeway at night and he wasn't on a pedestrian crossing. This contravened the law of the country where he was visiting. As cover was declined Mr C's family had to arrange for him to be repatriated via stretcher as opposed to by air ambulance. Mr C complained to IPA.

In their final response letter IPA said that they had actioned Mr C's case to the best of their ability and they'd proactively managed the case to reach a cover decision at the earliest opportunity. They maintained the claim had been fairly declined in line with the policy terms and conditions. Unhappy, Mr C complained to the Financial Ombudsman Service.

Our investigator looked into what happened and upheld Mr C's complaint. She recommended IPA pay £5000 compensation, cover the claim in full, pay the expenses of both Mr C's parents, add 8% simple interest and assess other costs under the legal expenses section of the policy.

In summary our investigator didn't think IPA had fairly relied on the policy terms to decline the claim. She highlighted that the vehicle that struck Mr C had been travelling above the speed limit and without headlights at night. She didn't think the incident was caused by Mr C's lack of care. She also concluded that IPA's decision to decline the claim had significant financial, emotional and physical implications for Mr C.

IPA asked an ombudsman to review the complaint. They asked for some information referenced in the investigator's opinion. IPA also said that 'major' liability was attributed to Mr C by the police, Mr C was noted to smell strongly of alcohol and that Mr C could attempt to claim some compensation from the driver's insurer. IPA said that at no time was cover confirmed to Mr C and they were struggling to see how the road markings could be construed as a pedestrian crossing.

The investigator explained the information she relied on was provided by IPA and highlighted the sources of evidence she had used when reaching her conclusions. She further explained that the evidence indicated there were issues with the vehicle lights and it was speeding. She didn't think the system of apportioning blame (in the country Mr C was visiting) had any bearing on this.

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 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 policy terms and conditions say:

"You must comply with the following conditions to have the full protection of your policy. If you do not comply, we may cancel the policy or refuse to deal with your claim or reduce the amount of any claim payment.

2. Reasonable precautions."

At all times you must take all reasonable precautions to avoid injury, illness, disease, loss, theft or damage and take all reasonable steps to safeguard your property from loss or damage and to recover property lost or stolen."

And:

"We will not pay for claims arising directly or indirectly from:

10. Unlawful action, Your own unlawful action or any criminal proceedings against you."

Was it unreasonable for IPA to decline the claim?

I'm upholding Mr C's complaint as I don't think it was fair and reasonable for IPA to decline Mr C's claim for the following reasons.

I'm persuaded the vehicle that struck Mr C was most likely travelling significantly over the speed limit at night. The car's headlights were not on. This is confirmed by the evidence of the police officer, Mr D and IPA's own investigator.

Mr D provided a detailed overview of the dashcam footage. Mr D's testimony was that it was only possible to see the vehicle's lights on when they were close to a wall even when in a well-lit area. He also pointed out that the vehicle was travelling at 76 km per hour at the point of impact despite having passed several 60km speed restriction signs. The driver didn't slow down or react before hitting Mr C and continued after impact. It also wasn't possible to see Mr C in the distance when the dashcam was on. The CCTV also showed that the vehicle didn't swerve. IPA's investigator commented that they, 'were able to confirm pretty much everything as stated by Mr D'.

I've thought about the fact that Mr C was walking across the road when he was struck, rather than on a pedestrian crossing. There are a number of points which persuade me it's not fair to conclude Mr C failed to take reasonable care. Mr D explained that he was trying to direct he and Mr C home, using his phone. There were issues with the signal and Mr C was following Mr D's lead as they crossed the road. On the description provided of the footage Mr D was in front of Mr C. There were white lines on the road which transpired to be directional arrows rather than a pedestrian crossing.

I've weighed up the evidence relating to this carefully and, on balance, I'm not persuaded Mr C failed to take reasonable precautions. There were markings on the road and I've looked at the map, photos and video's prepared by IPA's investigator. The video and photographs show the presence of the markings. However, I don't think they give a fair reflection of the scene as Mr C experienced it.

Mr C's accident took place in the dark and in the early hours of the morning. I therefore think it's reasonable to conclude the setting of the accident is likely to have looked different to the video and photographs which are taken in daylight and at a time when the traffic flow is likely to have been noticeably different.

I've also taken into account that Mr C did, strictly speaking, break the legislation of the country where he was visiting by crossing in that location. However, Mr C had recently arrived in the country and I'm not persuaded he ought reasonably to have been aware of the nuances of the country's traffic law. On balance, I'm persuaded Mr C and Mr D most likely crossed the road, having checked for traffic and believing they were in a safe place to do so. I note that Mr C wasn't fined by the local police. And I don't think there were any other obvious options to cross the road in an alternative safe place in the immediate vicinity. It's possible that Mr C and Mr D could have walked to a crossing. However, I bear in mind Mr D's testimony about the limitations of his phone and the time of night. So, overall, I don't think Mr C failed to take reasonable precautions when crossing the road.

I've considered that the police officer referred to Mr C smelling of alcohol and the driver commented on this to the police as well. However, I'm not persuaded in the circumstances of this case that this meant Mr C failed to take reasonable care. Mr D has given a detailed overview of how they spent their evening. His other testimony has proved to be credible, as I've outlined above.

Mr D's account is that Mr C had consumed some alcohol. But this was a fairly limited amount and over the course of several hours. Mr C also had food and spent time playing pool. The ambulance and hospital didn't make any notes which indicate Mr C was heavily intoxicated or impaired. I don't think that Mr C's alcohol consumption indicates his judgement or faculties were significantly impaired. Nor do I think his use of alcohol, in the circumstances of this case, suggests it is most likely that he failed to take reasonable precautions. So, this hasn't changed my thoughts about the overall outcome of this complaint.

Finally, in the very specific circumstances of this case I think it would be fair and reasonable for IPA to cover the costs of two parents being present with Mr C, rather than one. On a strict application of the policy terms there was only cover for one companion. However, Mr C's mother was told by the treating doctor that it was unclear whether Mr C would 'make it'. This is reflected in the contemporaneous notes made by IPA at the time. Mr C was visiting a long-haul destination and was very seriously ill with major, life-threatening injuries. Therefore, I think that it would be fair and reasonable in the circumstances of this case for IPA to cover the costs of both parents travelling to assist Mr C and the relevant expenses which the policy terms would typically cover in such circumstances.

Distress and Inconvenience

I think that £5000 compensation is fair and reasonable in all the circumstances of this case. I'll explain why.

The implications of cover being declined, unfairly in my view, have been significant and extensive. There was a very significant impact on Mr C in the short and long term. It had an impact on the treatment he received and caused sustained distress, particularly during the repatriation process. I also think there has been an ongoing physical, mental and financial

impact.

There were a number of implications of the claim not being authorised. Mr C's mother had to act in the capacity as his nurse and had to cover the cost of treatment including equipment. At one point the hospital also withdrew sedatives and pain relief at the point Mr C was in an induced coma. This left Mr C writhing on the bed as the medication wore off. His injuries were very serious and significant, so I'm satisfied this was most likely detrimental to his physical and mental wellbeing. Furthermore, once Mr C was stable there was no attempt to move him to a different facility despite IPA's agent confirming that the hospital wouldn't work with them. Whilst IPA did send a doctor to assess Mr C this didn't address the day-to-day issues with care and communication.

Mr C's mother was also assured that the claim was going to be covered. IPA says it's not identified this call but I've listened to a call in which an agent of IPA confirms this. Based on the evidence available to me this assurance was given after the report from the investigator was received. But, in any event, that reassurance was given to Mr C during a call. In a further call, repatriation plans were discussed and I can understand why Mr C, and his family, were of the understanding that a medical evacuation was being arranged. In the circumstances it was therefore very distressing to find that this wasn't the case.

Mr C's family borrowed money from his mother's employer to fly him home and also borrowed money from other family members. Despite this they couldn't afford an air ambulance and so Mr C travelled home without a medical escort on a stretcher in the back of a plane. This meant he was strapped down for 18 hours on a commercial flight on a stretcher whilst recovering from his injuries. This caused Mr C avoidable distress and inconvenience as if he'd have been repatriated by IPA he most likely would have been transported by air ambulance with a medical escort. Mr C has also been making repayments towards the money borrowed from his benefit payments which has caused added worry at an already difficult time.

Additionally, unsupported by IPA, Mr C had to pursue legal action in the country he was visiting which meant he had to return and start the legal proceedings himself. Had the claim been accepted it's most likely this could have been overseen or supported by IPA, avoiding further distress and inconvenience to Mr C.

I think that all of the above features of this case caused Mr C avoidable distress and inconvenience. I think this had an extreme short and long term impact on him. In the short term it impacted his treatment and the method of repatriation which led to an unnecessarily long and worrying trip home without a formal medical escort. In the longer term it's had a significant financial impact and he's left dealing with the longer-term mental impact of some of the experiences he had at a very difficult time. There was also a loss of expectation when he was incorrectly told, via his mother, that the claim had been accepted when that wasn't the case.

Putting things right

I'm upholding Mr C's complaint and direct IPA to put things right by:

- Settling the claim in full, subject to the remaining policy terms, under all relevant policy sections, including the Hospital benefit.
- Extending the settlement to include the expenses of Mr C's father as I've outlined above.
- Paying 8% simple interest per annum on the amounts outlined above calculated from

the date Mr C returned home until the date of settlement. If IPA considers it's required by HM Revenue & Customs to take off income tax from any interest paid on this amount, it should tell Mr C how much it's taken off. It should also give him a certificate showing this if he asks for one. That way Mr C can reclaim the tax from HM Revenue & Customs, if appropriate.

- Paying £5000 compensation for the distress and inconvenience caused to Mr C. That includes the very serious immediate impact and the lasting impact on Mr C which I've outlined above.
- Assessing the costs incurred by Mr C in pursuing legal action abroad and providing any support available under the legal expenses section of the policy terms.

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 C to accept or reject my decision before 13 December 2024.

Anna Wilshaw
Ombudsman