

## **complaint**

Mr and Mrs T complain that Union Reiseversicherung AG (Union) declined Dr T's claim for medical expenses.

Mr and Mrs T are being represented on this complaint by a family member who I shall refer to as Mr T.

## **background**

Mr and Mrs T went on holiday abroad in mid-2016. Unfortunately, Mr T became unwell and had to seek medical attention.

The initial treating doctor advised Mr T that he had to go to hospital and transported him there in a taxi. Mr T says that, despite Mrs T showing their European Health Insurance (EHI) card, the treating doctor explained that, due to the seriousness of his condition, Mr T had to go to a particular private hospital.

Mr T called Union to let it know that Mr T had become unwell and needed medical attention. The notes from this call suggest he was told that private medical treatment wouldn't be covered. Some 15 minutes later, Mrs T called Union to let them know Mr T had been admitted to intensive care in hospital and that she'd given them her credit card. The notes suggest that Mrs T was also made aware that private medical treatment wouldn't be covered and that, if fit to, Mr T should move to a public hospital. She was also told not to pay for anything further.

Mr T remained in hospital for two days before declining some of the treatment suggested and discharging himself to continue treatment in the UK.

A claim was submitted to Union to cover the medical expenses incurred. In response, Union told the treating hospital that Mr T wasn't covered for any private medical expenses. But, it didn't make Dr or Mrs T aware of this until it responded to their complaint about the lack of communication and progress on the claim in December 2016.

Unhappy with Union's decision to decline the claim and for its lack of contact between July and December 2016, Mr and Mrs T brought their complaint to this service.

One of our investigators looked into the complaint and initially thought it should be upheld on the basis that Mr T appeared to have been unfit to travel and given no option but to attend the private hospital in question. She also thought Union's lack of communication between July and December caused additional distress and inconvenience at what was already a stressful time for Mr and Mrs T. So, she recommended Union pay £250 in recognition of this.

Union responded with a report from its Chief Medical Officer (CMO) who had reviewed Mr T's medical notes from the time. Having done so, he concluded that Mr T was fit for travel to a public hospital which would've been a short distance away. Union also reiterated that both Mr T and Mrs T had been made aware that private treatment wouldn't be covered as soon as they called.

The investigator reconsidered the complaint in light of the evidence of the CMO's report and concluded that Union should instead pay the difference between what it would've paid had Mr T been admitted to and treated in a public hospital and what Mr and Mrs T were actually

charged. She remained of the opinion that Union should pay £250 for the additional and unnecessary distress and inconvenience caused by its lack of contact.

Union responded to say that it would pay £58 in medical expenses as this is what the country charges non-residents who hold an EHI card. It also agreed to pay the £250 compensation recommended by the investigator.

Mr T responded on behalf of Mr and Mrs T disagreeing with the investigator's most recent opinion. In summary, he believes the policy to be unsuitable for anyone travelling in the EU in countries where the EHI card is accepted. He has also explained that Mr T didn't choose to go to the private hospital. Instead he was taken there by the treating doctor, so if Union wanted to mitigate its losses it should've arranged for Mr T to be moved. As it didn't, he thinks Union should pay the full claim.

As the case couldn't be resolved informally, the complaint has been passed to me for a final decision.

### **my findings**

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 uphold the complaint in part. I've explained why below.

I should first say that while Mr T suggests this policy to be unsuitable for all EHI card holders travelling in an EU country, my decision relates solely to Union's decision to decline the claim for medical expenses. Should Mr and Mrs T want to complain about the sale of the policy, they are entitled to do so, but that would be a separate complaint. The same applies to their claim for missed flights.

In declining this claim at outset, Union has relied on its policy terms and conditions. Specifically:

***“Your policy covers treatment at a public/state facility only.”***

Followed by:

***“Your policy does not cover any costs for private medical treatment unless authorised by us.”***

I'm satisfied the above policy terms are clear that the policy intends to only cover treatment at a public facility and would *only* extend to private treatment in individual and pre-authorised scenarios. I don't consider the above terms to be inherently unfair or unreasonable – and it is standard practice in such policies to exclude private medical costs. In agreeing to take out the insurance offered by Union, Mr T and Mrs T agreed to be bound by these policy terms.

In addition to my finding that the above terms are clear and not inherently unfair, I can see that both Mr T and Mrs T were told directly that private medical expenses wouldn't be covered. The messages they were given around this don't appear to have been ambiguous and I'm not persuaded that Mr and Mrs T ought reasonably to have been of the opinion at this stage, that their medical expenses would be covered.

I've also taken into account that, other than Mrs T's call to Union in which she refers to Mr T being admitted to intensive care, the evidence suggests Mr T was able to move to a public facility before his stay in hospital ended. I say this because the medical notes record Mr T as having been treated 'conservatively' and I can see he declined treatment and discharged him after just two days. This isn't something I would expect to see if someone was in such a serious condition that they couldn't be transported to a nearby hospital. It's also the case that Mr T was well enough to be driven to the hospital in a taxi rather than an emergency response vehicle. And Mr T seems to be of the opinion that his father could be moved as he has suggested Union should've arranged for this to happen if it didn't want to cover private medical expenses. So, taking all of this into account, I find the opinion of Union's CMO plausible and persuasive.

Overall, having carefully considered this case, I can understand why Union initially sought to decline this claim. However, it's not in dispute that Mr T required medical attention whilst on holiday and that, given the country he was in, he would've still incurred a charge for medical expenses had he attended a public facility. So, I think the investigator's recommendation and Union's subsequent agreement, to pay the difference between what it would've paid had Mr T been treated in a public facility and what Mr T was actually charged, to be fair and reasonable in the circumstances.

Mr T believes the decision to attend a private hospital was that of the initial treating doctor who both ignored their EHI card and made the decision for them. I can understand how this came to be and it's certainly plausible that the treating doctor made this decision on Mr and Mrs T's behalf. But it can't be forgotten that the policy doesn't cover private medical care and this was communicated verbally to Mrs T and her representative at the time. So they had an opportunity either before, or shortly after arrival, to change hospitals if they wanted to ensure that any costs would be covered by Union.

Mr T says that Union had a responsibility to mitigate its losses and move Mr T to a public hospital if it didn't want to cover the cost of private care. He believes this position to be supported by English law. But, the responsibility to mitigate losses doesn't sit with Union and instead sits with the claimant or in this case, the policy holder. Upon being notified that a claim wouldn't be paid should the costs be incurred through private care, Mr and Mrs T had the opportunity to mitigate the costs they would incur by changing to public hospital. Instead they chose not to do this and remained with the private hospital until Mr T discharged himself – it would not be fair to hold Union responsible for this decision.

I turn now to Union's lack of communication with Mr and Mrs T throughout their time abroad and following their return to the UK. Having reviewed the case carefully, I agree with the investigator's conclusions that Mr and Mrs T were put to additional and unnecessary distress and inconvenience at what would've been an already stressful time. But as Union has agreed to pay this compensation to Mr and Mrs T, I don't need to comment on it further.

**my final decision**

For the reasons set out above, I uphold this complaint in part and direct Union Reiseversicherung AG to pay Mr and Mrs T:

- The difference between what they've been charged for the private medical expenses and what they would've been charged had Mr T attended a public facility, which I understand to be £58;
- Add interest on this amount at 8% simple interest per annum from the date Mr T was charged to the date of settlement; and
- Pay £250 in compensation for the distress and inconvenience Mr and Mrs T experienced as a result of its handling of this claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 29 January 2018.

Lucy Wilson  
**ombudsman**