

complaint

Mr W complains that U K Insurance Limited ('UKI') didn't pay his medical costs abroad upfront under his travel insurance policy which meant he had to return to the UK. He also wants UKI to pay all the costs he claimed.

background

Mr W had a visa to work abroad for a year and had travel insurance with UKI. He was planning to become a resident abroad. He injured himself playing sport and contacted UKI. It told him to pay for his medical expenses and then claim for the costs.

Mr W couldn't work because of his injury. He has said that after paying his medical expenses he couldn't afford to stay abroad or pay for the further treatment he might need. He returned to the UK and made a claim for his medical costs, the cost of his return flight and compensation because he'd lost the opportunity of sponsorship and residency as he couldn't get a second visa. He said that if UKI had paid the medical costs upfront he wouldn't have used all his savings, been able to recover from his injury abroad and continue with his residency plans.

UKI paid the medical expenses but not the return flight as it said it hadn't been medically necessary for him to come home. UKI did accept its service had been poor and offered £400 compensation. Mr W complained to us.

The adjudicator didn't think this was a reasonable offer. She asked UKI to pay:

- £1,000 compensation in addition to the £400 offered
- the cost of Mr W's return flight plus 8% interest from date of claim until date of settlement
- 8% interest on the medical expenses from date of claim to date of settlement (which she understood was August 2014).

UKI agreed and Mr W accepted the offer. But UKI didn't pay Mr W the agreed settlement. It delayed for three months before anything was paid and then only paid £400. So Mr W withdrew his agreement and asked for an ombudsman to look at his complaint. He also wanted additional compensation for the additional stress caused by UKI.

UKI didn't object to Mr W withdrawing his agreement. It agreed that Mr W didn't have to make a separate complaint about its delays over the settlement and that I could make my decision on all the issues Mr W raised under this complaint.

I made a provisional decision to uphold the complaint. There are three main parts of Mr W's claim and in summary I said:

About the claim:

- UKI should pay Mr W's return flight and it had now agreed to meet that cost plus interest.
- UKI should pay interest on the medical expenses from the date he made those payments rather than date of claim. The end date for the interest payments should be when UKI paid the medical costs which Mr W said was in July 2014.
- The policy excludes cover for Mr W's loss of earnings. Payment for his lost opportunity of sponsorship and residency isn't covered by this or, to my knowledge,

any other travel policy. So it isn't reasonable for me to say that UKI needs to pay this part of Mr W's claim. I looked at his overall situation in considering the compensation payments below.

About UKI's service while Mr W was abroad:

- Mr W strongly feels that his plans for his future were completely disrupted because of UKI's wrong advice. But our awards for a consumer's trouble and upset aren't designed to compensate Mr W for potential loss of earnings to the level he was originally claiming or for the potential loss of sponsorship to become resident abroad. And other things might have happened which meant his job and residence abroad wouldn't have happened as he planned.
- I can look at compensation for the trouble and upset Mr W had as a result of UKI's poor service. This has been significant. UKI accepts it gave Mr W poor service. Both parties had agreed to a total compensation award of £1,400 for UKI's poor service while Mr W was abroad. That's a reasonable sum and I see no reason to change what the parties had agreed.

About UKI's recent service:

- I would have expected UKI to pay the settlement shortly after the parties reached the agreed settlement but that didn't happen.
- UKI's continued poor service caused Mr W further stress. It should pay an additional £250 on top of the £1,400 compensation it agreed to pay in March 2015.
- I didn't think UKI should pay Mr W's legal costs as he recently requested. He chose to take legal advice and there's no basis on which I can say it's fair for UKI to pay those legal fees. He didn't need a solicitor to complain to UKI or bring his complaint to us and our service is free.

UKI agreed with my provisional decision.

Mr W responded in detail. He said he only agreed to the compensation the adjudicator suggested as he couldn't afford to go to court. His main point is he doesn't think my use of the term 'poor service' reflects the true situation. He says UKI has been negligent and in breach of contract. Because of that he wants UKI to pay for his potential loss of earnings and payment for lost opportunity of sponsorship and residency.

my findings

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

I have to decide whether UKI's new offer for costs and compensation is fair.

Mr W's solicitors didn't put a total figure on the sum he is looking for in loss of earnings and payment for loss of sponsorship and residency. But from the information it gave it looks as if he's asking for tens of thousands of pounds. As I explained in my provisional decision, our compensation awards aren't designed to compensate Mr W for that sort of sum even if I thought there was merit in his argument. If Mr W is seeking a finding of negligence and breach of contract against UKI and damages at that level he should take court proceedings.

I'm looking at the level of compensation I think is right for UKI's poor service. The policy says that UKI will pay all insured medical expenses direct if possible but that didn't happen. From the notes of the calls between UKI and Mr W, I can see that UKI generally told him he

needed to pay and claim when he returned to the UK. That's not an unusual approach for an insurer to take particularly where the costs are relatively small. Mr W's medical costs were about £800. But what went wrong is that when Mr W explained to UKI that he didn't plan to return, it didn't take his personal circumstances into account. It should have done so and paid the medical costs upfront.

I said in my provisional decision that having to pay about £800 for his medical costs was a comparatively small sum for him to have made such a big decision to return to the UK. Mr W has explained that he had to find that money on top of the all the costs of living abroad. He wasn't entitled to sick pay as he had just started work. He was facing a lot of uncertainty with his tenancy for his accommodation coming to an end and he was on three months' probation at work. He needed physiotherapy on his injury which he estimates would have cost about £1,300. He says it was the money he would have had to spend on top of the cost of living that caused him to come home.

Unfortunately for Mr W his injury happened at the wrong time for him. He was without pay and having to move accommodation. Even if UKI had paid the £800 and physiotherapy costs upfront Mr W would still have had all the living expenses and the uncertainty he detailed to me. And he wasn't receiving any pay. Lots of other things might have happened which meant his job and residence abroad wouldn't have happened as he planned. Mr W accepts that although he says he had plans to do other work if he lost his job. But as that was to do very physical work and Mr W has said he couldn't put weight on his leg for three months due to his injury I don't think that would have been possible immediately.

On all the evidence I can't reasonably say that it was only because UKI didn't pay £800 (or even the £2,100 if I include physio fees) upfront that Mr W missed out on the chance of sponsorship, residency and earnings. So I've no basis on which to increase the £1,400 that UKI has now offered for his trouble and upset. I think that offer is fair looking at the overall circumstances.

I've noted what Mr W says about his legal fees but that isn't a reason for me to say that UKI should pay his fees. If Mr W disagreed with UKI's initial offer he could take legal advice and/or come to us and that's what he has done. UKI should have paid him the settlement that was agreed shortly after agreement was reached. Its delay isn't acceptable and I understand Mr W was further distressed by that. But I think an additional payment of £250 is the right amount.

I'm sorry that Mr W will be disappointed with my award. But for the reasons I gave in my provisional decision and above I do think it's a fair outcome.

my final decision

I uphold Mr W's complaint. U K Insurance Limited should pay:

- Mr W's return flight cost, plus 8% simple interest a year from the date of claim to the date of settlement (less any tax properly deductible);
- 8% simple interest a year from the date Mr W paid the medical costs until the date of settlement (less any tax properly deductible);
- £1,400 in total for Mr W's trouble and upset caused by its original claim handling;
- £250 for Mr W's further trouble and upset caused by its claim handling since March 2015.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 October 2015.

Nicola Sisk
ombudsman