

The complaint

Mr and Mrs O complain about the way that Zurich Insurance PLC handled a medical assistance claim they made on a travel insurance policy.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr and Mrs O took out travel insurance through a specialist broker, which provided cover for Mrs O's medical conditions, including paraplegia, post-traumatic stress disorder (PTSD) and complex regional pain syndrome. They travelled abroad with their children in August 2022.

Unfortunately, on 14 August 2022, on their way to the airport to return to the UK, Mrs O suffered a fall. She was admitted to a private hospital. Mr O made a medical assistance claim on the policy.

Initially, the private hospital diagnosed Mrs O with a severe sprain. She was prescribed pain management treatment. However, two days later, following a CT scan, Mrs O was diagnosed with a fractured femur.

Mrs O was in a great deal of pain and wished to be repatriated to the UK as soon as possible. As Mr and Mrs O's children were under the age of 16, they weren't allowed to visit her at the hospital. So Mr O asked whether Zurich could cover the costs of childcare and the cost of another adult flying out to them and accompanying the children back to the UK.

It seems that Mrs O's treating doctors considered that Mrs O would be fit to fly back to the UK in a business class seat with a medical escort, if one particular medication could be stopped for the duration of the journey. As such, Zurich's medical officer concluded that this would be an appropriate means of repatriating Mrs O.

But Mr and Mrs O strongly disagreed. They said the treating doctors had told Mrs O that she'd need air ambulance repatriation. They felt Zurich was trying to put cost-saving measures ahead of what was best for Mrs O. They were also unhappy with the lack of contact from Zurich's assistance team and with the delays in approving the cost of a relative travelling out to them and escorting their children back to the UK. Additionally, they had concerns about the quality of the care provided by the hospital.

Ultimately, Zurich covered the cost of a relative travelling out to Mr and Mrs O and escorting their children back to the UK. And on 24 August 2022, it agreed to cover the cost of repatriating Mrs O back to the UK by air ambulance, in addition to paying Mrs O's medical expenses and hospital benefit. It went on to cover their out-of-pocket expenses – including costs which weren't covered by the terms of the contract. These included the costs of child entertainment; phone costs and the costs of Mr and Mrs O's pre-booked return flights.

Zurich also accepted that there'd been failings in the way it had handled Mr and Mrs O's claim. So it offered them compensation of £2500 for the way it had handled Mrs O's

emergency assistance claim, along with a further £250 compensation for delays in settling their out-of-pocket expenses. It also told Mr and Mrs O that it would arrange for its solicitors to contact Mr and Mrs O to discuss a potential clinical negligence claim against the treating hospital.

Mr and Mrs O didn't accept Zurich's offer and they asked us to look into this complaint. They felt the compensation was too low. They said that Mrs O's UK medical team had said that if she'd been repatriated sooner than she was, her recovery would've been significantly quicker. They felt that Mrs O's rehabilitation costs should be met – including the cost of psychological treatment Mrs O underwent to treat PTSD. Mr and Mrs O said this condition was due to the trauma caused by Zurich's handling of the claim and delays in Mrs Os' repatriation. And they considered that Zurich had ignored the opinions of the treating doctors about the best way of repatriating Mrs O to allow it to keep its costs down.

Our investigator felt that Zurich had made a fair offer of compensation. She considered this was an exceptional award, which was enough to compensate Mr and Mrs O for Zurich's mistakes.

Mr and Mrs O disagreed and they provided a letter from Mrs O's treating psychologist, which says that Mrs O had developed new symptoms of PTSD as a result of her hospital admission and repatriation.

I issued a provisional decision on 8 September 2023, which explained the reasons why I thought Zurich had already made a fair offer of compensation. I said:

'First, I'd like to reassure Mr and Mrs O that while I've summarised the background to this complaint and their detailed submissions to us, I've carefully considered all that's been said and sent to us. Within this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the main issues.

Secondly, it's clear that Mr and Mrs O went through a very difficult time and I don't doubt how upsetting and worrying this situation must have been for both them and for their family. I was sorry to read about Mrs O's painful injury and her subsequent recurrence of PTSD and I do hope she's now recovering well.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. Zurich accepts that it didn't handle this claim as well as it should have done and it's now offered to pay an exceptional award of compensation to reflect this. Mr and Mrs O don't think this offer is fair and reasonable to recognise the impact of Zurich's claims handling on them. I've considered this very carefully and I'll deal with each point I think is key in turn.

The hospital care

Mr and Mrs O have raised concerns about the quality of the treatment Mrs O received at the hospital. It's clear that Mrs O was originally diagnosed with a sprain, when, in fact, she had a fractured femur. So I can understand why Mr and Mrs O were concerned about the ability of the hospital to provide Mrs O with appropriate treatment.

However, Zurich isn't responsible for the diagnosis given by a treating hospital. I think it was reasonably entitled to rely on the findings initially communicated to it by Mrs O's treating doctors. It asked its local agents to comment on the quality of the care provided at the hospital and was assured, more than once, that it was the best hospital in the region where Mr and Mrs O had been staying. Zurich's assistance team also offered Mr and Mrs O the opportunity to move Mrs O from the private to a public hospital for treatment. So, in the

circumstances, I think it took reasonable and appropriate steps to ensure Mrs O was receiving the right level of care.

Additionally, Zurich also told Mr and Mrs O that it would ask its solicitors to contact them to look into making a clinical negligence claim against the hospital. In my view, this was a fair response from Zurich. It isn't clear whether such a claim has been pursued, but this would be outside the scope of this decision.

Mrs O's repatriation

It's clear how strongly Mr and Mrs O feel that Zurich unreasonably delayed repatriating Mrs O by air ambulance because they consider it wanted to keep its costs down. I've looked carefully at Zurich's claims notes from around the time. As I've explained, originally, the hospital diagnosed Mrs O with a sprain. It wasn't until two days later that a fracture was diagnosed. The notes indicate Zurich was informed that Mrs O could be repatriated on a commercial flight in business class, with a nurse escort. And the notes show that on 18 August 2022, Zurich spoke with one of Mrs O's treating doctors. They suggested they could pause one of Mrs O's medications for the duration of the return flight. The notes state too that the doctor told Zurich that Mrs O didn't want some of the treatment that had been suggested.

Based on the information Zurich appears to have been given by the treating hospital, I don't think it was unreasonable for it to have concluded that there wasn't enough evidence to indicate that an air ambulance repatriation was medically necessary. I've seen no evidence that potential cost implications had any impact on this decision. It appears that the treating doctors did initially think that a business class, escorted flight would be appropriate for Mrs O. So I don't find Zurich acted unfairly when it initially decided that Mrs O could receive treatment locally and then return to the UK on a commercial flight.

It appears that on 24 August 2022 (10 days after Mrs O's accident), Zurich concluded that Mrs O did require air ambulance repatriation. It says that it was at this point that it decided a commercial flight wouldn't be suitable for her. It isn't clear whether or not Zurich was in a position to make a decision on this point before it did – but it seems to me that even if I did think there'd been an unreasonable delay in approving air ambulance repatriation, this is likely to have amounted to five or six additional days in hospital abroad. In my view, the compensation Zurich's already offered would fairly take such a delay into account.

The children's repatriation

Mr and Mrs O consider that Zurich unreasonably delayed approving the claim for an escort to fly abroad and bring their children back to the UK. They say that this caused both them and the children additional upset and worry. The policy provides cover for a person to either remain with an injured or ill policyholder, or for someone to fly out to and remain with an injured/ill policyholder. In this case, Zurich was responsible for covering the cost of Mr O remaining with Mrs O and the additional expenses he incurred as a result. There was no cover for the costs of an adult flying abroad to escort the children back to the UK. However, Zurich agreed to cover these costs outside of the policy terms, which I find to have been a fair and reasonable response given Mr and Mrs O's situation.

It's unfortunate that the children were not able to visit Mrs O in the hospital. I appreciate this would have been very upsetting for the whole family. Initially (and correctly), Zurich told Mr and Mrs O that there was no cover for childcare costs – although it did offer to ask its agent to look into available options. It doesn't appear that Mr and Mrs O asked Zurich to make such enquiries. Nonetheless, Zurich went on to pay the costs of children's entertainment – again, outside of the policy terms and its liability.

Additional expenses

Zurich has settled all of Mr and Mrs O's out-of-pocket expenses, with the exception of food and clothing. I wouldn't generally expect an insurer to cover the costs of food, as these are costs which would necessarily be incurred irrespective of an accident or illness. And I don't think it was unreasonable for Zurich to conclude that clothing wasn't covered under the medical expenses section of the policy. It did, however, cover Mr O's car hire and fuel costs, along with his roaming charges – again, outside of the policy terms.

Mr and Mrs O have also claimed for the costs of private treatment with a psychologist for PTSD. Cover under the policy ends once a policyholder has returned to the UK – so neither NHS nor UK-based private treatment is covered. But Mr and Mrs O consider that Mrs O needs private treatment as a direct result of the way Zurich handled the claim. Mrs O's psychologist has sent us a report, which I've looked at carefully.

I don't think though that the report indicates that Mrs O's recurrence of PTSD was caused by Zurich or any failings in the way it handled the claim. It seems that Mrs O's symptoms were down to the accident itself; being in hospital and being on the repatriation flight. Experiencing such a difficult situation as Mrs O did abroad will inevitably be very upsetting – but Zurich can't fairly be held responsible for the consequences of the accident. So while I appreciate that Mrs O's symptoms are very distressing, I don't think I could fairly or reasonably find that this report is evidence to show that Zurich should be liable for paying for the costs of ongoing private psychological therapy.

And while Mr and Mrs O say that Mrs O's UK medical team told her that if she'd been repatriated immediately for surgery, she'd have recovered far sooner; there simply isn't any available medical evidence to demonstrate that this is the case.

Customer service

Zurich accepts there were failings in its communications with Mr and Mrs O and their representatives. I can see that most contact was driven by Mr O and Mrs O's family. Zurich doesn't appear to have always been proactive in updating or contacting them. I can entirely understand why Mr and Mrs O may have felt unsupported by Zurich during this period and why the relationship effectively broke down. In my view, had Zurich kept Mr O and Mrs O's family better updated about the status of the claim and been more proactive in its dealings with them, Mr and Mrs O are unlikely to have felt that Zurich was acting in its own interests. Again, I don't doubt that this caused them unnecessary distress at an already stressful time for them.

So in the round, I think it's appropriate and fair that Zurich should compensate Mr and Mrs O for the impact I think its failings likely had on them and their children. I need to bear in mind that £2750 is an exceptional award of compensation to reflect the trouble and upset caused during Mrs O's broadly two-week hospital admission and repatriation, along with a delay in settling expenses. And I haven't seen enough evidence to indicate that Zurich's failings was the cause of the recurrence of PTSD. In the circumstances of this complaint then, I currently think £2750 is a fair and reasonable sum to compensate Mr and Mrs O for Zurich's service failings. This means I think Zurich has already made a fair offer to resolve this complaint. So I don't intend to direct it to offer anything more.'

I asked both parties to provide me with any further comments or representations they wished to make.

Mr and Mrs O provided a detailed response to my provisional decision, which I've summarised:

- They felt my provisional decision contained mistruths, factual inaccuracies and wording which could be considered to be libellous;
- I had found that Zurich couldn't be held responsible for the diagnosis of the treating hospital. However, the treating hospital had requested Zurich's authorisation for an MRI scan on 15 August 2022, which it had refused. This had led to Mrs O's diagnosis with a fracture being delayed until much later;
- Mr O had wrongly been told that the delay in the MRI scan being done was down to the hospital;
- With regard to legal cover under the policy, Mr and Mrs O had been told that the costs of legal action would supersede the cost of a negligence claim;
- There was no doubt that there had been an unnecessary delay in Mrs O's repatriation; especially given the treating doctors had originally stated that Mrs O would need stretcher repatriation. They referred to Zurich's records of 18 August 2022, which showed that air ambulance repatriation had been a consideration. And they maintained that Zurich had pursued a cheaper option, rather than working in Mrs O's best interest;
- They wished me to take into account that Zurich had wished to repatriate Mrs O on a lay-flat business class seat, despite the fact that such a seat didn't exist. They felt Mrs O could have been repatriated within four days if the appropriate form of repatriation had been approved, rather than the 14 days it had actually taken;
- Mr and Mrs O didn't feel that Zurich should be credited for acting outside of the policy terms with regards to their children's' repatriation. They also didn't agree that they hadn't asked for assistance in arranging childcare. They provided a screenshot which showed that Mr O had asked for childcare support, that Zurich had offered to provide a quote – but that a quote had never materialised;
- They considered it was fair to conclude that Zurich's handling of the claim had contributed to Mrs O's current episode of PTSD. And they stated that there was a significant cost involved in instructing a medical expert to demonstrate that if Mrs O had been repatriated sooner, she'd have made a faster recovery. Based on the fact they couldn't recover these costs within this arena, they didn't think it had been practicable to explore this avenue;
- Zurich hadn't taken ownership of the miscommunications and poor service during the handling of the claim. They didn't think there'd been any attempt by either Zurich or the treating hospital to understand Mrs O's medical conditions;
- Mr and Mrs O provided a screenshot dated 24 August 2022 which showed that air ambulance repatriation had been approved due to Mr O's complaints and social media contact. This email had suggested that Mrs O would continue to experience severe pain if her IV pain medication was taken away and her medication had been reduced, as Zurich had suggested.

I asked Zurich to comment on Mr and Mrs O's concerns. Again, I've summarised what I think are its key responses:

- It was correct that on 15 August 2022, the assistance company had told the treating hospital that it wouldn't authorise an MRI. However, less than two hours later, a further email was sent which did authorise the costs of the scan. Zurich wasn't responsible for any delay in the treating hospital carrying out the procedure;
- Outside of its usual protocols, Zurich had sent Mrs O and her mother copies of fit to fly documentation;

- It agreed that it had been considering air ambulance repatriation on 18 August 2022. But at this point, repatriation by this method hadn't been considered medically necessary, as local treatment was considered to be appropriate;
- The final decision to repatriate Mrs O by air ambulance had been made after the treating doctor confirmed that she hadn't tolerated other forms of pain-relief medication and that the IV pain relief would need to be continued;
- Where it's appropriate to do so, Zurich will book a row of business class seats – this is common practice and what was meant when Zurich referred to 'lay-flat' options;
- With regard to childcare options, Zurich had offered to obtain a quote, but had asked Mr O to provide it with details of the hotel the family were staying in. This information wasn't received and at this point, the assistance company hadn't taken over the payment of any bills. But Zurich considered there had been a missed opportunity to follow-up on this, which was why it had covered the cost of the children's entertainment;
- It agreed with my findings in regard to Mrs O's current episode of PTSD and in regard to the lack of medical evidence to show her condition worsened due to its handling of the repatriation;
- It felt it was unfair for Mr and Mrs O to say it hadn't taken ownership of the errors with the claim, given it had agreed to uphold the complaint and pay compensation;
- Zurich hadn't pushed for Mrs O's medication to be changed – it had asked whether her medication could be administered orally or through a patch, to allow commercial repatriation. When this was shown not to be the case, air ambulance repatriation had been approved. It wished to stress that Zurich would not and did not attempt to advise a medical professional on how to treat a patient.

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.

Having done so, whilst I'm sorry to disappoint Mr and Mrs O, I still find that Zurich has already made a fair offer of compensation and I'll explain why.

I'm satisfied that my provisional decision contains an accurate representation of the facts in this case, as I understand them. Mr and Mrs O have brought their complaint to us for an informal, independent and impartial decision on the matter, and they are not obliged to accept my final decision if they do not wish to do so.

As I explained in my provisional decision, whilst I've summarised both parties' detailed, further submissions, I've carefully considered all that's been said. Given the informal nature of our service though, I won't comment on each point that's been made and I'm not required to under our rules. It's for me to decide what evidence I think I need to decide a complaint fairly and reasonably. And so I've relied on what I think is the key evidence in this case and focused on what I think are the main points to make a decision I think is fair and reasonable in all the circumstances. I'll deal with what I think are the central issues in turn.

Costs outside of the policy terms

As I set out in my provisional decision, it's clear that Zurich did pay costs which were over and above the cover set out in the policy terms. There was cover for Mr and Mrs O's children to be repatriated and I've seen no evidence to suggest that Zurich indicated that the children should fly back to the UK without an adult. However, it's still the case that the cost of Mr and Mrs O's relative flying out to collect the children, staying overnight in a hotel and then accompanying the children back to the UK *isn't* a cost which Zurich would normally cover . And it isn't a cost which is covered under the terms and conditions of Mr and Mrs O's

contract with Zurich.. Given the circumstances of Mrs O's hospitalisation and the need for Mr O to remain with her, I still think Zurich's agreement to cover these costs outside of the policy terms was fair and appropriate.

I can see from Zurich's notes and the screenshot Mr and Mrs O have provided that Mr O did ask whether childcare could be arranged and that Zurich indicated that it could arrange a quote. The email asked Mr O to confirm which hotel he and the children were staying in. It doesn't appear that Mr O provided Zurich with this information at that point. Given Zurich didn't appear to know where Mr O was staying at this particular time, I don't think it could have taken immediate steps to obtain such a quote. Nonetheless, Zurich now accepts that it could subsequently have done more to assist Mr O with this query and it says this was the reason it agreed to pay for the children's entertainment.

In the circumstances, I can entirely understand why Mr and Mrs O wanted appropriate childcare for their children, while Mr O spent time with Mrs O in hospital. But again, this isn't a cost which would generally be covered under a travel insurance contract. And so I think Zurich responded fairly to its failure to follow-up on Mr O's query by covering these costs.

The fact that Zurich settled parts of this claim when I don't think it needed to do so under the terms and conditions of Mr and Mrs O's policy is a relevant consideration in reaching my decision about whether I think Zurich has acted fairly and reasonably in all the circumstances.

As I explained above, Zurich also paid for other costs which wouldn't usually be covered under this policy – such as Mr O's car hire and roaming costs. It didn't agree to pay for food costs, or clothing costs and I'm still satisfied that it was reasonably entitled to conclude that these costs weren't covered by the contract terms.

Mrs O's hospital care and repatriation

It's clear how strongly Mr and Mrs O feel that Zurich put cost above what was best for Mrs O. I appreciate they feel that Mrs O remained in hospital abroad for significantly longer than she ought to have done and that she could have been repatriated some days sooner than she was. And they believe it was responsible for delays in Mrs O's actual diagnosis. I've reconsidered these points carefully.

Zurich acknowledges that on 15 August 2022, it told the treating hospital that it wouldn't authorise an MRI scan. I've seen a copy of the email it sent the hospital at 12.08 that day. However, I've also seen a copy of a follow-up email it sent the hospital at 12.59 on the same day – 51 minutes later. This email did authorise the cost of an MRI scan and asked for it to be carried out as soon as possible. But it doesn't appear that a fracture diagnosis was made until the following day. In the round then, I don't think I could fairly hold Zurich responsible for the overall period of delay in Mrs O being diagnosed with a fracture rather than a sprain.

During the course of Mrs O's hospitalisation, Zurich spoke with the treating doctors on a number of occasions. I remain satisfied that the doctors did agree that Mrs O could be repatriated in business class and that her IV medication could be paused. I appreciate Zurich's notes show that air ambulance repatriation was being considered on 18 August 2022. But I don't think it was unreasonable for it to rely on the clinical opinion of the treating doctors that Mrs O could be repatriated commercially and that therefore, an air ambulance wasn't clinically indicated at that point. Nor do I think it was unreasonable for Zurich to question whether pain relief could be administered orally or by a patch, to allow Mrs O to be repatriated by commercial means. I don't think this amounted to directing the treating doctors to reduce Mrs O's medication. And it's clear from Zurich's notes that it was aware of Mrs O's existing conditions and how they impacted on her injury.

Having reviewed further evidence, I do acknowledge that Zurich seems to have taken into account Mr O's complaint when it reassessed whether or not air ambulance repatriation should be authorised. But in my view, this wasn't the main reason for the change in its position. During further calls with the treating doctors, I can see that Zurich was broadly told that patch and oral pain relief medication wasn't working for Mrs O. And that she still required IV medication. It was following this conversation that Zurich agreed to repatriate Mrs O by air ambulance, to allow her to continue to receive medication by IV. I've seen no compelling evidence that cost containment was the reason for the delay in arranging air ambulance repatriation for Mrs O.

Mr and Mrs O's policy entitles Zurich to make repatriation decisions in consultation with the treating doctor. I'd expect Zurich to exercise this discretion reasonably, taking into account Mr and Mrs O's individual circumstances, in reliance on the available medical evidence. I'm satisfied that Zurich did so in Mr and Mrs O's particular circumstances.

In the round, I do think Zurich was entitled to rely on the opinions of Mrs O's treating doctors that she was receiving appropriate local care and to conclude, initially, that air ambulance repatriation wasn't necessary. I think it was reasonably entitled to rely on clinical opinion that Mrs O would be fit for commercial repatriation if IV medication could be paused. And while I appreciate it's *possible* that Zurich could have organised air ambulance repatriation a few days earlier than it did, I still don't think there's persuasive evidence to show that Mrs O could have been repatriated 10 days earlier than she actually was. I remain satisfied that even if there was a delay of a few days between the date air ambulance repatriation could have been arranged and the date it was arranged, the compensation Zurich's already offered fairly takes this into account.

The impact of the claim

As I explained in my provisional decision, I was very sorry to hear that Mrs O has suffered a new episode of PTSD. It's clear from the psychologist's evidence that this is largely due to her accident, hospitalisation and repatriation. I don't doubt how upsetting the situation was for both Mrs O and her family. But, as I've explained, I don't think the evidence indicates that Mrs O's symptoms are down to any failing on Zurich's part. And it's still the case that Zurich isn't responsible for the consequences of Mrs O's accident. So I don't think I could reasonably direct Zurich to cover any costs associated with treatment of PTSD.

I appreciate Mr and Mrs O say that it wasn't practicable to obtain medical evidence to show that Mrs O's recovery was hindered by Zurich's handling of her repatriation, due to the costs not being recoverable in this arena. In the absence of such evidence though - from the medical professionals who treated Mrs O following her return to the UK - I still don't think I could fairly or reasonably find that Zurich adversely impacted Mrs O's recovery.

Customer service

Zurich acknowledges that it did make mistakes in the handling of Mrs O's claim. As I explained above, most of the communication was driven by Mr O and Mrs O's family and I do think there were clear failings in the way it dealt with this claim. It's clear that the lack of support and the delayed communications Mr and Mrs O felt they were receiving from Zurich did cause them material trouble and upset at an already very worrying time.

Conclusion

I do acknowledge what a very distressing time this has been for Mr and Mrs O and their family. Mrs O suffered a painful injury and it's clear that she's been through a prolonged period of recovery and rehabilitation. I appreciate that my decision is likely to be

disappointing to Mr and Mrs O.

But, given its accepted mistakes, Zurich has already offered Mr and Mrs O a total award of £2750 compensation to recognise the impact its failings had on them. This remains an exceptional award of compensation – especially taken together with the costs Zurich has covered outside of the policy terms. And I need to bear in mind that the award covers a broadly two-week period of hospitalisation and repatriation. In all the circumstances of this complaint, I still find that this offer is a fair and reasonable award to reflect the impact of Zurich's overall service failings on Mr and Mrs O. And so I'm still not persuaded to direct Zurich to offer anything more.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that Zurich's offer to pay Mr and Mrs O £2750 compensation is fair and reasonable in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 29 November 2023.

Lisa Barham
Ombudsman