

## **complaint**

Mrs S has complained that Europäische Reiseversicherung AG (ERV) refused to pay her medical expenses under her travel policy.

My references to ERV include its agents.

## **background**

Mrs S had single trip travel insurance taken through an airline. ERV is the insurer. Mrs S's husband, Mr B, was also named on the policy.

While on a long haul holiday Mrs S had a motorcycle accident. She was taken to hospital by ambulance. After some tests the hospital discharged her. They arranged for her to go to a different hospital the following day, for a doctor to set her broken finger.

On the day of the accident Mr B called ERV to report it. He told the call handler that Mrs S had already been seen at a hospital, and he needed to give them ERV's claim number and address details. He also told it about the next day's appointment and what would be done. ERV told him that second day's appointment was pre-approved and ERV would take care of the first hospital's costs.

But ERV later turned down Mrs S's claim, saying that the policy didn't cover the loss as the motorcycle was above 125cc. Mrs S then brought her complaint to us. She said she wouldn't have gone ahead with the second day's treatment had she known it wasn't covered.

The adjudicator accepted the claim wasn't strictly covered under the policy terms. But she ultimately thought that ERV should be liable for the cost of the second day's treatment given what it had told Mr B about approving the treatment. ERV disagreed and so the complaint has been passed to me to decide.

## **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 this complaint, and I'll explain why.

Mrs S's policy excludes cover for riding a motorcycle above 125cc. And given that she was riding a higher powered bike than this when she had her accident the policy didn't cover her.

But I can step outside the strict policy terms where I consider it's fair and reasonable in all the circumstances to do so. And here I consider ERV should fairly pay for the treatment Mrs S received during the second, follow up appointment of 14 September 2017.

I've listened to Mr B's calls with ERV. In my view, the key call is the first one on 13 September – the day of the accident. Mr B told ERV that Mrs S had been in a motorcycle accident, and that she'd received medical attention. ERV took details about the policy, trip and Mrs S's injuries.

ERV was aware that Mr B was giving the claim number details to the first hospital, and that Mrs S was due to have her finger set the following day. ERV didn't ask for details about the engine size of the motorcycle despite being told at the outset it was a motorcycle accident.

Instead ERV told Mr B it would send confirmation of cover to the first hospital, and that it would take care of the payment. It also said it had pre-approved payment for the following day's appointment (14 September). ERV told Mr B that only the second day's appointment had been approved, and he should call back if Mrs S needed any further tests or appointments.

So I'm satisfied ERV told Mr B that the first hospital's bill would be taken care of and that the second appointment had been pre-approved. ERV told Mr B that all expenses were subject to the terms, conditions and exclusions (of the policy). But this was a very short part of a much longer call, and must be taken against the wider content of the call. The overall impression Mr B was given was that he'd done enough for ERV to pre-approve treatment.

ERV didn't have all the accident details at the point of the first telephone call. It didn't have the police report or medical report. An insurer would usually want this information before making a decision on cover. ERV says its call handler was trying to be helpful. But if ERV couldn't guarantee payment of the second hospital visit at that point then it should have made that absolutely clear to Mr B. This is particularly important given he and Mrs S were in a country where the cost of health care is high, and ERV was aware of this. Instead ERV clearly told Mr B the second day's hospital appointment (to set the finger) had been approved and the first hospital bill would be taken care of. There was no reason for them to doubt the costs would be covered.

Mrs S has explained that she would have returned home if she wasn't covered for the further treatment. I accept her evidence on that. She had a fractured ring finger and fractured left wrist (and cuts and bruises). This was clearly painful and I'm sure she wanted it treated. But doctors could have strapped her arm and hand to allow her to return for treatment in the UK. So I'm satisfied her position was prejudiced by the information ERV had given her (via Mr B) as I don't think she'd have opted to pay for the treatment abroad herself.

ERV says the treatment wasn't 'emergency' treatment under the policy, and so wasn't covered anyway. But its internal notes say that its medical team said the operation (setting the finger) was necessary. In any event, ERV approved the treatment. And given its cost I accept Mrs S would have taken steps to avoid the additional cost had she realised there was a very real risk that her claim wasn't covered under the policy.

ERV has further said that Mrs S should have made sure the policy was suitable for her bearing in mind the holiday she was on – and that she should have read the terms and conditions fully before travelling.

Mrs S says that she genuinely didn't realise she wasn't covered. She says she didn't notice this when reading the policy terms and conditions. I accept her evidence about this. She and Mr B had taken the time to get insurance for their trip and to pay for extra collision damage waiver cover when hiring the motorcycles. I think it was a genuine oversight on their part that the policy didn't cover them while using motorcycles over 125cc. And in any event I don't think any failure on her part to read the policy terms and conditions means ERV can avoid the consequences of what it told them during the 13 September phone call. It was the expert in that exchange, and not Mrs S and Mr B, who were looking to ERV for advice and guidance.

Mrs S has already reasonably said that she accepts the help she got from the accident scene (ambulance charges) and the first hospital are for her to bear as she hadn't sought

advice from ERV at that time. She's paid those expenses herself. So it's just the second hospital expenses (of 14 September 2017) she wants covered. I think that's fair.

So I find ERV must pay the costs of the second day's hospital treatment (14 September 2017). Mrs S has confirmed that those hospital expenses remain outstanding. So ERV must pay those expenses directly to the hospital. This means ERV doesn't have to pay interest to Mrs S (as it would do that only if she'd paid the second hospital expenses directly). In paying the claim it will need to contact the hospital to say it's responsible for the expenses, and arrange to pay them directly. It must also write to Mrs S to confirm that it's done that.

Finally, I think ERV's rejection of the claim has caused Mrs S inconvenience and distress, given she understood from her conversations with it that ERV had approved the second hospital's expenses. I think fair compensation is £150.

### **my final decision**

I uphold this complaint. I order Europäische Reiseversicherung AG to:

1. Pay Mrs S's claim for the second hospital's expenses; that is, for the treatment she received on 14 September 2017.
2. Confirm in writing to Mrs S that, for the second hospital expenses for the treatment she received 14 September 2017:
  - ERV is responsible for the second hospital's bill (14 September 2017) and that she should pass any correspondence about that bill to ERV; and
  - ERV has contacted the hospital and told it to send correspondence to ERV, not to Mrs S; and
  - In the unlikely event legal proceedings are issued then ERV will take responsibility for the costs; and
  - It will keep Mrs S updated as to what's going on (in the event of any delay in settling the medical expenses with the hospital); and
3. pay Mrs S £150 compensation for distress and inconvenience in this matter.

ERV must pay the compensation to Mrs S within 28 days of the date we tell it Mrs S accepts my final decision. If it pays later than this it must add interest\* from the date of my final decision to the date of settlement at the simple rate of 8% per year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 11 June 2018.

Amanda Maycock  
**ombudsman**

\*If Europäische Reiseversicherung AG considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs S how much it's taken off.

It should also give Mrs S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.