An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0152
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim – psychological/mental health
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants purchased a travel insurance policy with the Company on 17 January 2015, which provided them with cover from 16 September to 24 September 2015, when they were scheduled to holiday in the United States.

The Complainants' Case

The Complainants were scheduled to holiday in the United States from 16 September to 24 September 2015, however *"before going on holiday* [the First Complainant] *suffered Auditory Hallucinations and paranoid ideas and was referred for treatment by his doctor and advised not to travel"*. Following his attendance with his GP on 10 September 2015, the First Complainant cancelled his holiday and registered a claim with the Company on 15 September 2015 seeking a refund of their holiday costs.

The Company, based on the information provided by his GP, declined the First Complainant's claim as there is a general exclusion in the Complainants' policy terms and conditions which specifically excludes claims arising directly or indirectly from stress, anxiety, depression or any other mental or nervous disorder.

In this regard, the Complainants set out their complaint, as follows:

> *"*[The First Complainant] *suffered a mental episode and was advised by his doctor as being unfit to travel and thus not to go on holiday. When I contacted the insurer to compensate me through the policy they refused to compensate as their policy states*

> *'they would not pay for claims arising from stress, anxiety, depression or any other mental disorder!' …*
>
> [The First Complainant] *was healthy at the time of purchase and had no indication of a future problem"*.

In addition, Representatives of the Complainants submit in correspondence dated 26 April 2016, as follows:

> *"We undertook to help* [the First Complainant] *and used indirect discrimination as a basis for our appeal as he was treated differently from another customer who many have incurred a* ***physical*** *problem to prohibit him travelling.*
>
> [The First Complainant] *was in a position where his insurance was not covering his unforeseen condition yet if he travelled his insurance may not have covered him in the event of a serious psychotic episode as he would have travelled against his doctor's advice.*
>
> *It seems that in this case* [the First Complainant] *could not be compensated as the insurance used their procedures correctly but they would suggest bias against a* [policyholder] *who had been advised not to travel by a medical professional and is not covered because of an unforeseen mental episode"*.

The Complainants seek for the Company to admit the First Complainant's travel insurance claim, which he calculates as *"*[GBP] *£1,165 – Holiday, £108.56 – Insurance, £135.50 – Interest @ 8%"* and *"to be determined – Compensation"*.

The Complainants' complaint is that the Company wrongly or unfairly declined the First Complainant's travel insurance claim.

The Provider's Case

Company records indicate that the Complainants purchased a travel insurance policy with the Company on 17 January 2015, which provided them with cover from 16 September to 24 September 2015, when they were scheduled to holiday in the United States.

The First Complainant cancelled his holiday following medical advice to do so that he received from his GP on 10 September 2016. He registered a claim with the Company on 15 September 2015 seeking a refund of his holiday costs.

The Company notes that the First Complainant's GP, Dr S. L. G. completed the medical claim form on 25 November 2015, as follows:

> *"Please state the precise mature of the medical condition/illness or injury that gives rise to the claim:* ***Psychosis***
>
> *If more than one condition, please confirm the main condition:* ***Psychosis*** *…*

/Cont'd…

He was advised by Mental Health Team to cancel the holiday*".*

In this regard, the Company notes that the 'General exclusions applicable to all sections of the policy' of the Complainants' Travel Insurance Policy document states at pg. 15:

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

17. Your stress, anxiety, depression or any other mental or nervous disorder".

As a result, the Company declined the First Complainant's claim by way of correspondence dated 8 December 2015.

The Company notes that the Complainants' Representatives have made allegations of indirect discrimination, which it does not accept. The Company, as an Insurer, is entitled to stipulate in the policy specific terms and conditions that will apply to anyone purchasing the insurance. In this regard, the contract of insurance is one of offer, acceptance and consideration. The insurer offers cover upon terms and conditions which the customer may accept, by paying the premium. There is an onus on an insured to familiarise themselves with the terms and conditions of the policy document to ensure that it meets their needs. If, having reviewed the policy terms and conditions, the Complainants found that the policy was not suitable for their needs, they could have cancelled the policy within 14 days and received a full premium refund, in accordance with their statutory cancellation rights set out in the policy document.

Accordingly, the Company states that it is satisfied that it declined the First Complainant's claim in accordance with the terms and conditions of the Complainants' travel insurance policy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

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A Preliminary Decision was issued to the parties 11 October 2018, outlining the preliminary determination of this office in relation to the complaint.

The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, my final determination is set out below.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the First Complainant's travel insurance claim. In this regard, the Complainants purchased a travel insurance policy with the Company on 17 January 2015, which provided them with cover from 16 September to 24 September 2015, when they were scheduled to holiday in the United States.

However, *"before going on holiday* [the First Complainant] *suffered Auditory Hallucinations and paranoid ideas and was referred for treatment by his doctor and advised not to travel"*. Following his attendance with his GP on 10 September 2015, the First Complainant cancelled his holiday and registered a claim with the Company on 15 September 2015 seeking a refund of his holiday costs. The Company, however, based on the information provided by his GP, declined the First Complainant's claim as there is a general exclusion in the Complainants' policy terms and conditions which specifically excludes claims arising directly or indirectly from stress, anxiety, depression or any other mental or nervous disorder.

In this regard, I note that the First Complainant's GP, Dr S. L. G. completed the medical claim form on 25 November 2015, as follows:

> *"Please state the precise mature of the medical condition/illness or injury that gives rise to the claim:* ***Psychosis***
>
> *If more than one condition, please confirm the main condition:* ***Psychosis*** *…*
>
> ***He was advised by Mental Health Team to cancel the holiday****".*

I also note from the documentary evidence before me that in correspondence dated 10 September 2015 the First Complainant's GP, Dr S. L. G. advises, as follows:

> *"This is to inform you that* [the First Complainant] *suffered from Auditory Hallucinations and paranoid ideas. He was seen by Mental Health Team and having counselling. He is supposed to go for Holiday abroad next week. He booked his holiday February this year and at that time he did not suffer any mental health problems. I have advised him not to go for holiday till he has full treatment"*.

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Travel insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, the 'General exclusions applicable to all sections of the policy' of the Complainants' Travel Insurance Policy document states at pg. 15, as follows:

> *"We will not pay for claims **arising directly or indirectly** from: …*
>
> *17. Your stress, anxiety, depression or any other mental or nervous disorder"*.
>
> ***[Emphasis added]***

As his GP, Dr S. L. G. advised the Company in the medical claim form dated 25 November 2015 that the First Complainant was not fit to travel due to a diagnosis of *"Psychosis"*, I accept that the Company declined the First Complainant's claim in accordance with the terms and conditions of the Complainants' travel insurance policy.

In addition, I note that Representatives of the Complainants submit in correspondence dated 26 April 2016, as follows:

> *"We undertook to help* [the First Complainant] *and used indirect discrimination as a basis for our appeal as he was treated differently from another customer who may have incurred a **physical** problem to prohibit him travelling.*
>
> [The First Complainant] *was in a position where his insurance was not covering his unforeseen condition yet if he travelled his insurance may not have covered him in the event of a serious psychotic episode as he would have travelled against his doctor's advice.*
>
> *It seems that in this case* [the First Complainant] *could not be compensated as the insurance used their procedures correctly but they would suggest bias against a* [policyholder] *who had been advised not to travel by a medical professional and is not covered because of an unforeseen mental episode"*.

I do not believe that excluding certain illness or categories of illness constitutes discrimination.

As such, it is a matter for the Company to determine the specific terms of the cover it is offering and it is for the individual seeking insurance to decide whether they wish to accept such terms and conditions offered.

For the reasons set out above I do not uphold this complaint.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

9 November 2018

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,
(ii) a provider shall not be identified by name or address,
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.