An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0099
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Delayed or inadequate communication Dissatisfaction with customer service Advice given by medical-assist line
Outcome:	Upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant held a travel insurance policy. The complaint concerns poor communication, customer service and poor complaint handling the Complainant says was displayed by the Provider, following an accident the Complainant suffered when on holidays. The complaint also relates to alleged maladministration on the part of the Provider.

The Complainant's Case

The Complainant had arranged a holiday with her partner and three children, departing on 04/08/2017 and returning on 25/08/2017. The Complainant sustained an injury on 11/08/2017 at a water park which required medical attention. Having been advised by a nurse on site to present to a hospital once the swelling reduced, the Complainant states that her partner contacted the Provider on 13/08/2017 to inform it of the accident and to enquire as to which hospital to attend. This was the start of a sequence of events which, the Complainant states, included poor customer service, maladministration and continual failings on the part of the Provider to assist her and her family.

The Complainant lists 14 criticisms on her FSOB Complaint Form which she believes have not been fully addressed by the Provider despite "*being assured that her complaint would*

be investigated fully". The Complainant states that the "*investigation appears to have been extremely minimised and in addition, the letter of response to the investigation from the Provider is not consistent with what happened.*" The Complainant also highlights unanswered emails, unreturned phone calls and poor all-round communication from the Provider and/or its representatives from 13/08/17 onwards. "*They consistently failed us and avoided every request to discuss the nightmare they made us endure*."

The Provider's Case

The Complainant has been paid a "*settlement sum*" of €752.00 covering medical expenses and the cost of cancelled excursions. This figure includes an amount of €475 which is said to have been provided as a gesture of goodwill in light of the substandard service to which the Complainant was subjected. The Provider's Final Response Letter of 3 November 2017 offered additional compensation in the amount of €500.

In a letter to this office of 27/08/2018, the Provider stated as follows:

> *We believe that we have fully acknowledged our shortcomings in the handling of this claim and that we have been reasonable in our attempts to date to resolve same by way of offer of gesture of goodwill. However, in a further attempt to resolve this matter amicably, we wish to place a further offer formally on the record as follows:*

Thereafter, the Provider sets out an offer in the total amount of €3,475 comprising of €2,500 for the cost of flights and accommodation to which the Provider might have been exposed, and €975 by way of gesture of goodwill (of which €475 has already been paid).

The Complaint for Adjudication

The complaint is that the Provider displayed very poor customer service to the Complainant insofar as it:-

1. Consistently demonstrated poor communication, in not answering or acknowledging questions raised in the Complainant's emails;

2. Failed to respond to emails or return phone calls from the Complainant in a timely manner;

3. Failed to demonstrate a comprehensive or consistent customer service to the Complainant;

4. Failed to put in place procedures to deal with the Complainant when she sustained injuries while on holiday and to adequately communicate any such procedures in a consistent manner to the Complainant;

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5. Acted in a "negligent manner" causing stress and uncertainty for the Complainant and her family between 13/08/2017 and up to and including the Complainant's return flight home;

6. Failed to date to carry out a full investigation of **all** the Complainant's grievances and failed to communicate a documented outcome of any such investigation to the Complainant;

7. Issued a letter of response that the Complainant states "*is not consistent with what happened";*

8. "*Failed to provide the professional service that they claim to provide*".

The Complainant wants to the Provider to provide "*financial compensation"* for the "*loss*" of the holiday including compensation to reflect the inconvenience and unnecessary stress caused by the Provider. The Complainant has furnished details of the cost of the holiday which is stated to be the sum of Stg£2,522.93 plus €985.68.

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 Complainant was 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.

A Preliminary Decision was issued to the parties 15 March 2019 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, the final determination of this office is set out below.

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Prior to considering the substance of the complaint, it is useful to set out a chronology of events, quoting certain correspondence.

Chronology

4 August 2017	Departure date for holiday in Turkey.
11 August 2017	The Complainant suffered injuries at a waterpark. She states that she was advised to present at a hospital 72 hrs later once the swelling had subsided.
13 August 2017	The Complainant's partner contacted the Provider to advise of injury.
14 August 2017	The Complainant attended at a public hospital but was advised that her insurance was not valid there. The Complainant then contacted the Provider and was advised of the name of another hospital at which the Complainant then attended and where she was diagnosed with a fractured coccyx and tissue damage to her upper left shoulder/neck/back. A request for an MRI was declined. The Complainant was given a prescription and advised to come back in 3 days if the pain persisted. The report subsequently furnished by the hospital omitted to reference the fractured coccyx- all of the foregoing was communicated to the Provider.
16 August 2017	The Complainant re-attended at hospital due to the severity of her symptoms and underwent an MRI. Diagnosis of fractured coccyx confirmed. The Complainant states that this was communicated to the Provider which "*agreed by phone and email that the treatment was inadequate as was the reports*". Thereafter the Complainant states that the Provider advised that it was going to transfer the Complainant to another hospital, only for this to fall through subsequent to a request from the Complainant for confirmation that the costs would be covered. The Complainant states that her partner was then advised that "*a follow up appointment* [in the same hospital] *would be adequate to obtain a fit to fly document*". It is contended that a request to put this in writing in the form of an email was declined by the Provider.
22 August 2017	The Complainant presented for follow-up appointment, but the doctor was unavailable.

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23 August 2017	The Complainant presented again for follow-up appointment and was provided with a 'fit to fly' document which stipulated the necessity for a second seat on the airplane to be booked for the Complainant- same communicated to the Provider.
24 August 2017	The Provider emailed during the morning, promising update in short course. It then requested the Complainant to complete medical questionnaire which was duly completed and returned in the afternoon. That evening, the Provider emailed seeking a copy of MRI scan from 16 August and stating that the Complainant would be flying at her own risk if she departed the following day. The Provider also stated that the Complainant's "*case was covered and they would rebook flights and accommodation if we missed our original flights*".
25 August 2017	Original scheduled return date from holiday. The Complainant contacted the Provider shortly after 00:00 hrs only to be told that the Provider "*could not comment on repatriation*". At 10:05 hrs the Provider rang the Complainant claiming that the Complainant had failed to answer the medical questionnaire. The Complainant clarified that this was inaccurate and was assured that the mistake would be rectified and the additional airplane seat arranged. Upon reaching the airport, and 2 hours before the flight was due to depart, the Complainant still had not heard from the Provider regarding the extra seat. The Complainant states that she contacted the Provider and was told for the first time that she was unfit to fly, that her partner and children should fly home (as the insurance "*would not cover them to stay with me*") but that she should not fly. The Complainant was at this time very much dependent on the assistance of her partner. The Complainant was assured that accommodation would be arranged for her. The Complainant states that owing to her utter lack of faith in the Provider at this time, she resolved to fly home and she endured the lengthy journey home. The Complainant states that her decision was justified in that 9 hours later, the Provider (which presumably thought that the Complainant had remained in Turkey) had still not contacted her regarding accommodation.
01 November 2017	The Provider's letter responded to the claim made on the policy and proposed a settlement sum of €752 referable to medical expenses (taxis to hospital and prescriptions) and referable to cancelled tours (scuba-diving and quad-biking). The cancelled tours component amounted to €475 and was described to have been provided "*as a gesture of goodwill*" in circumstances where it would not typically be covered. [It

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seems that the hospital medical costs were discharged separately by the Provider.]

03 November 2017	Final Response letter acknowledging shortcomings and offering compensation in the amount of €500. This letter sought the Complainant's acceptance which was not forthcoming. The compensation was therefore not paid over.
27 August 2018	The Provider's response to this office offering increased compensation in the total amount of €3,475 comprising €2,500 for flights and accommodation and €975 by way of "*offer of gesture of goodwill*". The letter clarified that €475 of the 'gesture of goodwill' has already been paid over, resulting in a proposal to actually pay over a further €3,000.

Analysis

In this case, the Provider has acknowledged wholesale shortcomings on its part. These are set out at length in the Provider's Final Response Letter of 03/11/2017 which concludes as follows:

> *In summary, we acknowledge our performance could and should have been better. We believe we should have had you reassessed long before your return flight to Ireland. We agree our communication was, for the most part, confusing and that we could have responded to some of your emails much sooner than we did.*
>
> *We hope you will accept our sincere apologies for any undue confusion, inconvenience or upset caused by our actions. We appreciate the entire experience must have been quite trying for* [sic] *and we understand how worrying it must have been to have your doctor seemingly ignore or fail to at least report your concerns. We realise the significance of your injuries and we recognise the impact this incident had on your holiday. Although we believe our intentions were sound, we should have acted decisively and we are truly sorry if you felt in any way let down by us during your time of need.*

The Final Response Letter concludes by offering the Complainant the amount of €500 "*to compensate you for service received*". The Provider's response to this office of 27/08/2018 also acknowledged in detail and apologised for the "*shortfall in service*". This later letter proposed an increased offer of compensation in the total amount of €3,475 (of which €475 was said to have been paid already).

It is clear that the Complainant's complaint relates to conduct in respect of which the Provider concedes that it has been guilty of maladministration, poor customer service and poor communication. In the circumstances, it is not necessary for me to individually parse and assess each discrete aspect of the Complainant's complaint, of which there are many. Suffice it to say that if, as suggested in the Provider's Final Response Letter, the Complainant

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"*felt in any way let down*", this was because she had indeed been let down by the Provider, notwithstanding the steps taken prior to departure on holiday, to put cover in place for just such an event.

The Complainant's travel insurance policy, like all insurance policies, did not provide cover for every possible eventuality; rather, the cover was subject to the particular terms, conditions, endorsements and exclusions set out in the policy documentation. In this instance however, there is no suggestion that the Complainant was not covered for benefit in the circumstances which arose. Section B "Emergency Medical and Other Expenses" anticipates recovery of emergency medical and other expenses including reasonable additional transport or accommodation expenses including such costs for a friend or relative to remain with the injured person or indeed the cost of repatriation where required.

The Complainant, in her Complaint Form, appears to seek compensation in the amount of £2,522.93 plus €985.68. These figures relate to the cost of the holiday (the Sterling figure corresponds to the price of the package holiday from an England-based travel agent and the Euro figure relates to the cost of connecting flights from Ireland to England). By reference to current exchange rates, these costs would amount to a total of some €4,000.

Elsewhere, the Complainant articulates her grievance regarding the consequences of the Provider's actions (or inactions) in the following terms:

> *We could have been repatriated on numerous occasions but had to suffer another two weeks of our holiday from when the accident happened.*

The Provider initially offered compensation in the amount of €500. However, as is clear from the Provider's response to this office, this offer was not accepted or paid over. Thereafter, the Provider increased its offer to €3,475, to include the amount of €475 already paid over to the Complainant (in the context of the original claim settlement letter dated 01/11/2017) such that it was proposed to pay over a further €3,000. When this matter was queried by this office, the Provider clarified as follows:

> *We would point to the fact that the sum of €475 (included in the settlement sum of €752) offered as a gesture of goodwill in respect of cancelled excursions etc. which are items not normally covered once a trip commences has been paid in our original settlement.*

This is a reference to the letter of 01 November 2017 settling the Complainant's claim on her policy (but not purporting to answer the Complainant's grievances as regards the Provider). That letter stated as follows:

> *However, we are willing as a gesture of goodwill to cover the loss of the diving and quad biking.*

It seems in that respect that those costs would not normally have been covered as "entertainment tickets" by the Curtailment Charges Section of the policy.

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The Provider calculated the offer of compensation of a further €3,000 by reference to the likely cost of 5 further nights' accommodation in Turkey plus the cost of new fights home for the entire family after that period. This was done on the basis of the Provider's proposition that the Complainant would have been fit to fly home after 5 further days of recuperation. This was calculated to amount to €2,500 to which the figure of €500, which had previously been offered (but not accepted) as a gesture of goodwill, was added.

Both parties have presented two very different means for quantifying compensation. The Complainant has sought the cost of the holiday. She is not however entitled to be compensated for the cost of what was essentially a lost holiday, owing to the accident which befell her. The insurance policy does not provide for the return of the purchase price of a holiday in circumstances where the holiday has begun and something befalls an insured on the holiday.
Rather, the policy appears to be designed to cover the cost of medical treatment abroad and the cost of repatriation if necessary, whether at an earlier or later date than the original scheduled return date.

In this instance, the Complainant's hospital expenses were covered and she ultimately returned home on her scheduled flight thereby leading to no expense to be recovered in terms of the costs of repatriation. I should also note that the medical advice would not appear to support the Complainant insofar as she speculates that she may have been fit to fly home at an earlier date thereby avoiding the necessity to endure some component of that part of the holiday subsequent to the injury.

The Provider postulates an entirely different methodology for calculating compensation. In essence, the Provider has engaged in an exercise of imagining what should have happened and what would have happened had proper procedures been followed and had proper and effective communication been employed. In such a scenario, the Provider concludes that the Complainant would have been provided with early notification that she would need to recuperate for a further period beyond her scheduled return date before flying home. This seems to be supported by reference to the Provider's stated policy of ensuring that an insured is capable of sitting for 3 consecutive hours before deeming that person fit to fly.

Although, I consider the Provider's methodology to be somewhat artificial (given that, in that event, the Provider may have incurred a liability for the figure of €2,500, but the Complainant would not have been the direct beneficiary of that figure) nevertheless, I am cognisant of the methodology in circumstances where the Provider has proposed it. I am also cognisant however, that as events transpired, the actions of the Provider led to this expenditure being saved, but at a significant cost to the Complainant in terms of the experience which she had to endure in taking 2 flights home on the original scheduled date.

I note that the Provider's offer also included an amount by way of "*gesture of goodwill*"; a total of €975. This leads to the conclusion that this is the figure offered by way of compensation for the substandard service provided to the Complainant (in circumstances where the figure of €2,500 represents what the Provider *should* have been liable for *in the absence of* substandard service). Though the figure of €975 is not insignificant, I am of the

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view that it does not adequately reflect the consequences to the Complainant of the failings in the service from the Provider in this instance.

It is common case that the Complainant was provided with conflicting and incorrect information which I am satisfied caused significant anxiety and inconvenience to her. It is also accepted that there was a failure to address the Complainant's concerns and queries which were clearly articulated on multiple occasions and via multiple mediums. The Provider also concedes that it wrongly apprehended that the Complainant had failed to answer a medical survey and that it wrongly advised her that an extra airplane seat would be arranged. Additionally, I am satisfied that the Provider was guilty of inordinate delay in seeking a copy of the medical reports including the MRI results, in coming to a determination as regards the Complainant's fitness to fly, prior to the scheduled flight home and in also communicating with the Complainant regarding any such determination and the ramifications flowing therefrom.

All of this clearly amounts to maladministration, poor communication and poor customer service generally, at a time when the Complainant was dependent upon the expertise of the Provider to help her to negotiate the logistical difficulties arising from the injuries she had sustained abroad. She must surely have felt that she had little option but to board the flights originally booked, in order to travel home with her family, notwithstanding her questionable fitness to fly in the circumstances outlined, and the very long journey which lay ahead.

In all of those circumstances, to take account of the loss, inconvenience and upset caused to the Complainant by the particularly poor level of service made available to her by the Provider, I consider it appropriate to direct the Provider to make a compensatory payment to the Complainant in the sum of €5,000, separate and distinct from any goodwill payment included in the previous "settlement sum" paid by the provider in relation to out of pocket expenses and the cost of cancelled tours.

This complaint is upheld.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is upheld on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

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- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

9 April 2019

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.