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| <u>Decision Ref:</u> | 2019-0153 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Rejection of claim – partial rejection Poor wording/ambiguity of policy Disagreement regarding Settlement amount offered |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint is in respect of a travel insurance policy which the Complainant took out with the Provider, incepted on **21 July 2017**, to cover travel between **25 July 2017 and 24 July 2018** at a cost of £22.36.

The Complainant was on an organised group activity trip to [Location Redacted] in August 2017. During her time in [Location Redacted], the Complainant had an accident on **3 August 2017** while cycling and she was hospitalised for her injuries.

On **10 August 2017**, the Provider confirmed that:

“50% of medical and repatriation costs would be covered”

The Complainant’s father paid 50% of the total air ambulance cost in order to transport the Complainant home. The Complainant arrived home to the UK on **12 August 2017**.

The Complainant’s Case

The Complainant was on an organised triathlon camp run by a triathlon coach during August 2017. The Complainant took part in activities such as cycling, swimming and running during the trip.

The Complainant states that she was involved in an accident whilst cycling on the trip on **3 August 2017**. The Complainant was hospitalised for her injuries which included a broken nose and vertebra.

The Complainant states that following the accident, the group leader registered the claim with the claims handler. The Complainant states that no issues were raised by the claims handler when the accident was registered.

The Complainant states that she was medically approved to return to the UK on **8 August 2017**. The Complainant states that the Provider requested her height and weight in order to arrange for a stretcher on an air ambulance.

On **10 August 2017** the Provider advised that only 50% of the repatriation and medical costs would be covered. By email dated **11 August 2017**, the claims handler confirmed that the total cost of the repatriation would be £10,722.00.

The Complainant states that when she was advised of the Provider's position in relation to covering only 50% of the costs, her father approached the group organiser to enquire as to whether it had an insurance policy in place which would fully cover the claim.

On **11 August 2017**, the Complainant was advised by the organiser that it did not have a policy in place. The Complainant therefore continued the repatriation process through the Provider.

The Complainant states that her father paid a sum of £5,361 (50% of the total air ambulance cost) to repatriate the Complainant along with her mother who had flown to [Location Redacted] to be with the Complainant. The Complainant states that without this payment, she would not have been able to return home as she was wearing a back brace and needed to be transported lying flat.

The Complainant states that she was repatriated to the UK on **12 August 2017**, 4 days after she was medically cleared to return home.

In September 2017, the Provider wrote to the Complainant:

"The grade 1 cover for cycling states: 'Cycling (leisure, not racing or downhill racing)' and as such we would point out that you were not cycling for leisure. We understand you were training at a camp for athletes training for triathlons and that that training is for racing whether amateur or professional"

The Complainant states that at the time of the accident she was not racing, nor was she taking part in a triathlon, nor were any other cyclists involved. The Complainant states that she was on an easy ride and had planned to visit a water park later in the day.

The Complainant submitted a claim in **August 2017** under the Medical Expenses, Hospital Benefit and Baggage sections of her travel insurance policy.

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The Complainant received a letter from the Provider dated **22 December 2017** which states:

“I would respectfully remind you that the expenses which you are claiming arise from an incident undertaken whilst participating in a sports activity for which you had not paid the appropriate additional premium. Since the outset of your claim, you were advised that we were covering 50% of your claim on an ex gratia basis as a gesture of goodwill from the Provider. I have therefore maintained this gesture of goodwill and will accept 50% of the claims entitlements you would have had, if you had paid the appropriate additional Sports and Activities premium when purchasing the policy”

“I confirm that I have fully reviewed your claim and can now advise that I find this payable under your travel insurance policy as follows.... Total payable for medical expenses, hospital benefit and baggage is £484.09”

“Your claim payment will be issued within the next 10 working days and will be paid into your nominated bank account”

The Complainant states that the Provider paid a sum of £484.09 instead of £967.17 which was the total amount of the medical expenses, hospital benefit and baggage claim. The Complainant confirms that this payment of £484.09 was received on **28 December 2017**.

The Complainant states that she has since been in contact with the group organiser who confirmed that it did have a policy in place with an alternative Provider which would have covered the Complainant’s claim and that a retrospective claim would be possible.

The Complainant’s father subsequently made a claim under the group organiser’s policy. On **9 April 2018**, the Complainant’s father received payment for the costs that the Provider did not cover.

The Complainant’s father states that he is delighted that he did not suffer a financial penalty however, it took 8 months to reach this point. Furthermore, he remains extremely upset about the Provider’s attitude towards the Complainant’s time in hospital and continued position in relation the claim.

The Complainant’s father states that should the ruling be in the Complainant’s favour, he believes that the Provider should reimburse the group organiser’s Provider from the monies paid to the Complainant.

The Complainant seeks for the Provider to repay the £5,361 repatriation costs paid by her father which he subsequently recovered from another insurer. The Complainant also seeks for the Provider to confirm that any medical costs will be covered in full and to confirm that the costs relating to the damage to the Complainant’s personal possessions and her mother’s airfare will be covered in full.

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The Provider's Case

The Provider states that the Complainant was insured under a [Product name redacted] under 18s policy with a maximum trip length of 45 days. The policy was inception on 21 July 2017, to cover trips between 25 July 2017 and 24 July 2018.

The Provider states that it had no knowledge, prior to the Complainant sustaining her injuries, that she would be attending a triathlon camp.

The Provider states that the Complainant came off her bicycle after hitting a rock on [date redacted], whilst on a triathlon training camp in [Location Redacted]. The Provider states that it was notified of this case by its Emergency Assistance Service on **8 August 2017**. The Provider states that as a result of the Complainant's fall she suffered an open fracture to her nose which required surgery in [Location Redacted] and a fracture of her T6 vertebrae. The Provider states that following nasal surgery and bed rest, the Complainant had a corset fitted and was repatriated to the UK by Air Ambulance.

The Provider states that this case was reviewed by its Claims Controller and investigations were carried out into the policy inception to see if any reference had been made to a triathlon training camp. On 11 August 2017, the Provider states that its Emergency Assistance Service advised the Complainant's father that the appropriate cover had not been taken out when purchasing the insurance however, the Provider would as a gesture of goodwill, and on an ex-gratia basis, cover 50% of the claim.

The claim is as follows:

*"Air Ambulance £9711.11
Overseas Ground Ambulance £650.83
UK Ground Ambulance £360.00
Baggage £281.69
Flight costs £146.48
Hospital Benefit £540.00"*

The Provider states that under the *"General exclusions applicable to all sections of the policy"* the Complainant's insurance states:

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

...

6. Your participation in or practice of any professional sports or professional entertaining.

7. Your participation in or practice of any other sport or activity, manual work, or racing unless:

a) shown as covered without charge in the list or

*b) shown as covered in **Your** schedule"*

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The Provider states that under the heading “*Sports and activities*” that:

*“The following tables confirm the sports and activities that this policy will cover. If **You** are participating in any other sports or activities not mentioned in the Grade 1 table. **You** will not be covered by this policy unless **You have paid the additional activities premium**. If **You** pay for a higher grade of cover **You** are covered for all activities listed in that table and in the lower grade(s) table(s)”*

The Provider states that Grade 1 covers “*cycling (leisure, not racing or downhill racing)*”

On **21 July 2017**, when renewing the insurance policy, the Provider states that no additional cover was purchased to cover the Complainant’s triathlon training camp. The Provider states that had the Complainant added the appropriate Grade 2 sports and activities cover when incepting the insurance policy, the premium would have been £33.54.

The Provider states that there is an onus on an insured to familiarise themselves with the terms and conditions of the policy document to ensure it meets their needs.

The Provider states that if having reviewed the policy terms and conditions the Complainant or her parent/guardian at that time, found that these were not suitable for her needs, the policy could have been cancelled within 14 days with a full premium refund.

The Provider notes that the costs it did not cover under the claim have been paid by an alternative Provider as the Complainant was on an organised camp run by a triathlon coach. The Provider states that it was unaware that these expenses had been covered by another provider or that there was another insurance policy in place for this incident.

The Provider states that under its “*general conditions applicable to the whole policy*” the Complainant’s document states:

“1. Dual Insurance

*If at the time of any incident which results in a claim under this policy, there is another insurance covering the same loss, damage, expense or liability **We** will not pay more than **Our** proportional share”*

The Complaint for Adjudication

The complaint is that the Provider wrongfully refused to pay more than “*50% of the repatriation and medical costs*” arising from the Complainant’s cycling accident in France in August 2017. The Complainant says that the Provider is wrong in suggesting that she sustained her injury whilst cycling as part of triathlon training camp (which was not covered by the Complainant’s policy).

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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 11 April 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.

The Complainant states that she did attend a triathlon training camp while in [Location Redacted] in August 2017 however, she did not take part in a triathlon event during her time in [Location Redacted]. A triathlon is defined in the Cambridge English Dictionary as "*a competition in which the people competing must swim, ride a bicycle and run particular distances without stopping between events*". The Complainant states that during her time at the camp she undertook separate cycling, swimming and running training activities.

From the documentary evidence before me I note the following from the Policy Wording Booklet:

"General exclusions applicable to all sections of the policy

*7. **Your** participation in or practice of any other sport or activity, manual work or racing unless:*

a) shown as covered without charge in the list or

*b) shown as covered in **Your** schedule"*

At the time of the accident, the Complainant held Grade 1 cover with the Provider. I note that Grade 1 covers:

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“Cycling (leisure, not racing or downhill racing)”

The Complainant states that she was on an easy, social ride on her bicycle and had planned on visiting a water park later in the day. The Complainant states that she was cycling, not racing and that Grade 1 cover should apply. Furthermore, the Complainant states that this was taken into consideration when the policy was taken out.

I note that some of the other activities that Grade 1 covers includes:

“Running, Sprint/Long Distance (amateur)....

*...
Swimming”*

There is no evidence available as to the speed at which the Complainant was travelling when she was injured. The Complainant herself acknowledged however, in an email of 10 September 2017 that *“At the time of the incident I have described my activity as cycle training. By this I mean I was cycling. There was no racing involved...”*. The Complainant’s father also confirmed that the Complainant was *“on a British triathlon-organised camp run by a British triathlon-employed coach”*. On the day of the incident, the Complainant may not have been participating in a specific triathlon event, but bearing in mind that the Complainant had transported her bike to [Location Redacted] on 24 July, to be used whilst participating at the triathlon camp, I do not accept the Complainant’s subsequent description of her cycling training on the day in question, as *“an easy, social ride on her bicycle”* which would fall within *“cycling (leisure, not racing or downhill racing)”* within the meaning of the policy. In my opinion the cycle training being undertaken by the Complainant was not leisure cycling, but rather training within the context of triathlon requirements.

I note from telephone recordings furnished in evidence by the Provider that, when the Complainant’s father was renewing her policy by telephone in **July 2017**, he was asked firstly, whether he would like any “activity” cover which he said no to and secondly, whether he needed any winter sport or activity covered and again he answered no to this question.

I note that the Complainant’s father received payment for the costs that the Provider did not cover, though from the documentary evidence before me an exact figure of the payment received from the third party has not been confirmed.

In those circumstances, I am satisfied that because the Complainant’s policy at the time of the accident did not cover her for the activity in which she was engaged, it would have been open to the Provider to have refused to offer the Complainant or her family any benefit pursuant to the policy. I take the view that, in the circumstances outlined, the position taken by the Provider, to meet 50% of the costs of repatriation and medical expenses, was a reasonable one. I note that the Complainant received a sum of £484.09 to cover the claim for medical expenses, hospital benefit and baggage claim, representing 50% of the total costs incurred which amounted to £967.17. I accept that this payment was made by the Provider as a gesture of goodwill, in recognition of the circumstances which had arisen.

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Whilst the Complainant's father also paid a sum of £5,361 to repatriate her along with her mother, back to the UK, I note that he was in a position to recover those monies from the separate insurance which the triathlon camp had in place.

Under the general conditions as set out in the policy wording booklet it states:

"1. Dual Insurance

*If at the time of any incident which results in a claim under this policy, there is another insurance covering the same loss, damage, expense or liability **We** will not pay more than **Our** proportional share"*

From the documentary evidence before me, I accept that the Complainant received payment from an alternative third-party Provider through the group organiser's policy and therefore even if the Complainant had been covered for the event giving rise to her injuries, I am satisfied that the Provider would have been entitled to rely on the dual insurance provision in its policy, in any event.

Insofar as the Complainant's medical expenses are concerned, I take the view, for the reasons outlined above, that this payment on the part of the Provider was a more than reasonable gesture on its part and for all of the reasons outlined above, I take the view that there was no wrongful conduct on the part of the Respondent Financial Service Provider and that consequently, this complaint cannot be upheld.

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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

8 May 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.

