An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0399
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Claim handling delays or issues Poor wording/ambiguity of policy
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant held an annual travel insurance policy from **30 March 2017** to **29 March 2018** which was underwritten by the Provider against which this complaint is made. The Complainant was the insured person for the purpose of the policy and the only person named on the certificate of insurance.

The Complainants' Case

The Complainant states that, for family reasons, in **January 2018** he was forced to cancel a holiday that he and his travel companion had intended to take to a destination within Europe. The Complainant asserts that as he paid for the entirety of the cost of the holiday he is entitled to be reimbursed for the totality of the losses incurred from the Provider. The Provider has paid the Complainant half of the losses incurred, in essence the costs he incurred to travel himself, on the basis that his travel companion was not a policy holder or named on the policy.

The Complainant took out a policy of insurance in **March of 2017** for a year and was the only person named on the certificate of insurance. The Complainant booked and paid for a holiday in Fuerteventura for himself and his sister. The holiday was cancelled in **January 2018** due to an accident that befell the Complainant's sister who was, as stated, his travelling companion.

The Provider has paid about half the amount of the total loss incurred on the basis that the traveling companion was not covered on the policy of insurance and therefore not eligible for compensation.

The Complainant contends that the refusal of the Provider to pay the full claim is wrong. The Complainant cites the wording of Section A of the policy and in particular *"any irrecoverable unused travel and accommodation costs which you have paid or contracted to pay"* and goes on to say that, if there is any anomaly or ambiguity between the quoted section and the Provider's definition of *"you"* and *"yours"* in the policy wording, this should be construed against the Provider as the Provider is the drafter of the policy.

The Complainant wants the Provider to pay this balance in the sum of €714.21.

The Provider's Case

The Provider contends that the claim was correctly assessed as the Complainant is the only person who is insured on the policy and therefore the liability is restricted to the Complainant's trip only.

The Provider does not dispute that the Complainant paid for the trip of his travel companion, however, as the companion is not insured with the Provider, the Provider contends that it is not liable for their costs.

The Provider contends it would not be fair or reasonable for the Provider to settle costs pertaining to a travel companion who the Complainant has not taken out travel insurance for on the Complainant's policy.

The Complaint for Adjudication

That the Provider has declined to pay the balance of the costs incurred by the Complainant, in respect of his travel companion, in circumstances where the Complainant says that it was he who paid for the entirety of the trip and that the policy wording covers this.

In the alternative the Complainant argues that the drafting of the policy was unclear and the Complainant was under the impression all of the costs incurred which he paid for would be covered and thus the policy should be interpreted in his favour.

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.

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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 23 September 2019, outlining my preliminary determination 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.

Following the issue of my Preliminary Decision, the parties made the following submissions:

1. Letter from the Complainant to this Office dated 1 October 2019.

2. E-mail from the Provider to this Office dated 9 October 2019.

These submissions were exchanged between the parties.

Having considered these additional submissions and all of the submissions ad evidence furnished to this Office, I set out below my final determination.

The main bone of contention in this dispute is the wording of the travel insurance policy. The relevant portions read as follows;

"Section A – Cancellation or Curtailment Charges

What is Covered

We will pay you up to the amount shown in the Schedule of Benefits for any irrecoverable unused travel and accommodation costs (including excursions up to €250) which you have paid or contracted to pay together with any reasonable additional travel expenses incurred if:

a) cancellation or rebooking of the trip is necessary and unavoidable; or

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b) the trip is curtailed before completion

as a result of any of the following changes in circumstances, which is beyond your control, and of which you were unaware at the time you booked your trip".

In a previous separate section "Definitions" the word "You" is described as:

"You/your/insured person(s)

Each person travelling on a trip whose name appears in the travel insurance certificate"

It is significant that the above "Section A" and the "Definitions" section do not follow each other and are not on the same page.

However, the Provider in its final response letter dated **25 May 2018** highlights the relevant terms of the policy in the exact manner below:

Section A – Cancellation or Curtailment Charges

What is Covered

We will pay you up to the amount shown in the Schedule of Benefits for any irrecoverable unused travel and accommodation costs (including excursions up to €250) which you have paid or contracted to pay together with any reasonable additional travel expenses incurred if:

a) cancellation or rebooking of the trip is necessary and unavoidable; or

b) the trip is curtailed before completion

as a result of any of the following changes in circumstances, which is beyond your control, and of which you were unaware at the time you booked your trip".

You/your/insured person(s)

Each person travelling on a trip whose name appears in the travel insurance certificate.

The Provider has listed the definition of Section A and has inserted the definition of "You" directly below the section with no page break, no indication that these sections are not following each other and it is misleading in the sense that one would believe on reading the final response letter at face value without examining the policy documents that the definition of "You" was located in "Section A" which it was not; it was located in the "definitions" section.

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On **31 January 2018** the Complainant called the Provider to register a claim for the cancellation of his trip due to the ill health of his sister (the travel companion).

On **28 February 2018** the Complainant provided the necessary documentation. An e mail was sent to the Complainant on **13 March 2018** asking for his bank details for settlement to be made to and a request was also made for the medical certificate completed by the Complainant's sister's General Practitioner, this was furnished on **22 March 2019**. A settlement letter was issued stating the amount to be reimbursed to the Complainant in the amount of €769.01 which was half of the flights and accommodation reimbursed, car rental plus insurance was reimbursed and an excess of €50 was applied.

Recordings of telephone calls have been provided in evidence. I have considered the content of those calls

On **17 April 2018** the Complainant called the Provider raising a complaint due to the settlement amount and that the full costs were not reimbursed. This was discussed with an agent of the Provider and the Complainant did not accept that he was only entitled to about half of the amount claimed.

On **17 April 2018** there were in fact two phone calls with the Complainant and Agents for the Provider. On the first phone call the Complainant referred to Section A of the policy and the Complainant queried as to why he was not being paid the full amount for the cancellation as he was the person who paid for the holiday for himself and his travel companion to which he stated *"I have paid and I have proved I have paid"* in relation to the total cost of the trip. The Complainant was at a loss as to why the policy wasn't clear that he would be the only person covered even if he paid for the travel companions trip also and went on to say *"If you want to avoid paying another member of the party you should say that in your wording"* The agent of the Provider was clearly not aware of the definition of "You" and instead informs the Complainant in an effort to appease him *"You've got a very good case [Complainant] if you just stick rigidly with what you have said"* before ending the call and informing him another Agent would be in contact within 24 hours and that his €50 excess charge will be reimbursed when the Complainant raised this and the fact that he is a member of an organisation that would entitle him to this.

In the second telephone call the Agent for the Provider has no counter argument to the Complainant's argument that it is unclear why he is not entitled to the full cost of the trip as he paid for the entirety. The Complainant is then put on hold and the Agent phones a colleague for advice and asks *"Is there any exclusion as to his portion or anything like that?"* The second Agent informs her colleague that she understands what his argument is stating *"I get what he is saying".*

What is clear from both of the phone calls is that neither of the Agents for the Provider were aware of the definition of "You" under the relevant definitions section and could not inform the Complainant as to why his portion was only covered.

The wording of the section "You" is clear in that the Complainant is the only person covered, however, Agents of the Provider should have been in a position to inform the Complainant

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as to the reasoning why he was only being paid his portion of the trip. The Complainant is entitled to the reasoning for his claim being portioned in the manner in which it was.

The complaint was passed on for formal investigation.

The error regarding the excess was acknowledged and a separate payment was raised to reimburse the excess.

On **24 May 2018** a final resolution letter was completed and issued to the Complainant. The Complainant sent an e mail to the Provider on **21 June 2018** chasing the response letter as it was not received. On **4 July** the Complainant called the Provider as no letter had been received on the complaint outcome.

It is clear from the reading of the relevant section policy that the only person entitled to be compensated for loss arising is a *"person travelling on a trip whose name appears in the travel insurances certificate".* Although the Complainant appears to have paid for his travel companion's trip, it was clear in the policy that she would not be covered. This was in accordance with the Complainant's policy. I am also satisfied that there is no *contra proferentem* argument as the definition of "You" is located in the definitions section.

After I issued my Preliminary Decision, the Complainant put forward an additional submission stating it contained an error of law.

The Complainant believes that I "*erroneously conflated and confused two distinct legal concepts: (a) the identity of an insured party and (b) the amount of the insured benefit"* in my Preliminary Decision.

The Complainant refers specifically to the first paragraph on page 6 of the Preliminary Decision in which I state:

> *"It is clear from the reading of the relevant section policy that the only person entitles to be compensated for loss arising is a "person traveling on a trip whose name appears in the travel insurance certificate", although the Complainant appears to have paid for his travel companion's trip it was clear in the policy that she would not be covered. This was in accordance with the Complainants policy. I am also satisfied that there is no contra proferentem as the definition of "You" is located in the definitions section"*

The Complainant further states that the "*Preliminary Decision completely ignores the plain English of the Wording in Section A".*

I do not accept the Complainant's contention that I have erred in law nor have I ignored the plain English wording in section A.

Section A is to be read with the definition of "You" applied in the policy in mind.

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I stated in my Preliminary Decision, that while it was not clearly explained to the Complainant by the staff of the Provider, and that *"it is significant…section 'A' and the 'Definitions' section do not follow each other"* and this contributed to the inconvenience caused to him.

However, *"the wording of the section "You" is clear in that the Complainant is the only person covered*".

The definition of "You" which applies to the policy is:

> *"You/your/insured person(s)*
> *Each person travelling on a trip whose name appears in the travel insurance certificate".*

I did not, as the Complainant has put forward, *"limit the amount of the insured benefit by the identity of the insured party"* for the Provider. The Provider would appear to have done this by defining "You" as "*Each person travelling on a trip whose name appears in the travel insurance certificate",* as such the Complainant's sister is not listed on the travel insurance certificate, and due to this her flights, accommodation and any other irrecoverable costs would not be covered.

I did however find that *"this complaint was not dealt with as expeditiously or efficiently"*.

The Provider, in its post Preliminary Decision submission of 9 October 2019, states:

> *"…I agree with the additional aspect noted in the decision and would not dispute these, However, I do disagree with the level of compensation offered".*

The Provider acknowledges that the customer service issues, *"would have caused unnecessary inconvenience to [the Complainant]",* they believe that the *"compensation however does not reflect the level of materiality caused and would ask this to be reduced to €250*".

The submission ends with the Provider stating *"this would be the outcome we feel is fair and reasonable".*

It may well be that such an offer would have been reasonable when this complaint was first made. However, given that the Complainant had to bring a complaint to this Office to have it resolved, I do not believe €250 to be adequate.

This complaint was not dealt with as expeditiously or efficiently, in circumstances where firstly Agents for the Provider could not inform the Complainant of the reason for the portioning of the claim when he queried with two separate Agents and secondly, the Complainant also had to follow up twice with the Provider in relation to the final response letter and that letter was misleading in its illustration of the relevant sections.

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Furthermore the Provider demanded an excess when the Complainant, by his membership of an organisation, was not required to pay one.

For the above mentioned reasons I partially uphold the complaint and direct the Provider to pay a sum of €500 to the Complainant for the inconvenience caused.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (f) and (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 €500, 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.

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.

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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 November 2019

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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.