



<u>Decision Ref:</u>	2020-0265
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant's friend and that friend's husband booked a holiday to a European destination in **June 2018**. It later transpired that the friend's husband could not go on the trip. The Complainant agreed to go on the trip instead of her friend's husband. The cost of the trip was €958.00. The Complainant agreed to share this cost equally with her friend with the Complainant paying for a name change on the relevant tickets. Unfortunately, prior to the Complainant's departure, her friend's husband passed away resulting in the cancellation of the trip.

The Complainant made a claim under her travel insurance policy in respect of the cancelled trip. This policy was underwritten by the Provider which declined the claim, on the basis that the Complainant was unable to provide acceptable supporting documentation to evidence any agreement or commitment on her part to pay a contribution towards the cost of the trip.

The Complainant's Case

The Complainant explains that one of her friends invited her to go on a holiday in place of her husband. The Complainant states that she paid for the name change on the relevant tickets and also paid half of the cost of the holiday to her friend, who contacted the travel agent to make the necessary changes. A few days before the Complainant was due to travel, her friend's husband passed away. The trip was cancelled and the Complainant and her friend, sought to make claims under their respective travel insurance policies.

The Complainant states that she provided a copy of the name change on the tickets, a death certificate, a letter from the Complainant's friend stating that the Complainant paid half of the cost of the holiday, and a letter from her friend's travel insurer to demonstrate that her friend had only claimed half of the cost of the trip.

The Complainant says that the Provider approved her claim for the cost of the name change on the tickets of €135, which she accepted. However, the Provider has declined the Complainant's claim for her half of the cost of the trip of €479, on the basis that the Provider was unable to accept personal handwritten receipts as confirmation that a payment had taken place and it referred the Complainant to her policy in this regard. The Complainant's remarks that:

"I have looked at my policy and nowhere does it define receipts as a document which only a business can provide. As [the Provider] have not sought to define receipts in such a manner and have accepted that the document provided to me by [my friend] was a receipt (albeit it was handwritten) then my claim has fulfilled all terms of the policy and should accordingly be paid in full."

The Complainant adds in a submission dated **26 January 2020**, that

"... nowhere do [the Provider] define what 'acceptable documentation' is. The policy asks for receipts If [the Provider] sought to define receipt differently they should have done so in the policy."

The Complainant continues with her original submission by stating that:

"... nowhere in the policy does it state that I have to have paid for the holiday myself. Indeed no doubt many holidays are a gift, for example. However the loss of the trip was suffered by me, therefore even if they don't accept [my friend's] letter that I paid her, the fact that they have accepted that a name change did take place means that I was a rightful passenger on half the trip and therefore suffered half the loss of the trip, regardless of who paid for it."

The Complainant delivered further submissions dated **20 August 2019**. In these submissions, the Complainant has taken issue with the Provider's suggestion in its Final Response letter that a claim for the cost of the trip should be made under the policy of her friend's husband. The Complainant states that the ticket was in her name and responsibility for a claim should lie with the Provider.

The Complainant also states that it was a requirement of the travel provider that she have a valid travel insurance policy and

"I would never have thought about travelling if I did not believe I had valid travel insurance for the trip."

As the Complainant is still a customer of the Provider, she has expressed concern that any future claims she may have will be declined on the same basis as her present claim.

The Complainant submits that:

"It needs to be clarified in their policy if they only accept claims (a) when the insured person has paid for the trip themselves and (b) what is acceptable as a 'receipt'."

While acknowledging that a lot of documentation is required for a claim, the Complainant finds it upsetting

"... to have [the Provider] deny my claim when I provided every scrap of proof they looked for ..."

The Complainant also explains the embarrassment caused by the situation and that she suspects her age is a factor in the Provider's decision to decline her claim

"... thinking perhaps as an older woman that I would not pursue it ..."

The Complainant states that, as an older person, she deals in cash much more frequently than younger generations. The Complainant refers to the reason for the Provider's declination of her claim as *fraud prevention measures* and that the Provider advised her that it was obliged to assess all claims fairly and consistently against the same criteria. The Complainant observes that she has not been provided with these criteria, stating:

"In the schedule of documents that they look for when processing claims, proof that one has paid for the holiday themselves is not required; it is only the invoice for the holiday that is sought. I do not believe my claim was assessed using the same criteria as everyone else as this proof of specific payment is not generally sought."

The Complainant believes that the Provider has called her integrity into question and is suggesting that she and her friend were involved in some sort of scam.

In resolution of this complaint, the Complainant wants:

"... to receive my refund of €479 and an apology for the distress caused plus time wasted."

Cost of holiday = €958 [/] 2 = €479

(I had claimed less originally (€442.29) but now I'm angry and offended)."

The Provider's Case

The Provider states that under the policy section entitled *Claims Procedure*, the policyholder is alerted to the fact that additional information may be requested. The policy also gives examples of what documentation may be required. In relation to cancellation, the Provider explains that a policyholder is advised that they must provide the reason for cancellation supported by the booking invoice (from the tour operator), cancellation invoice (from the tour operator) and medical certificate/death certificate where appropriate.

The Provider acknowledges that this claim is somewhat unusual in that none of the standard forms of substantiation such as evidence of payment to a tour operator directly by the Complainant or booking invoices with the Complainant's name, are available for validation. The Provider states that it sought to obtain alternative evidence of financial loss, such as evidence of a transfer of funds but the Complainant was unable to provide this. Neither did the Complainant provide evidence of a withdrawal of a large sum of cash:

"... which may have been deemed acceptable by us in the unique circumstances, were it not for the fact that the withdrawal was 3 months prior to the name change on the ticket, and 1 month prior to the original booking, so did not correspond with the timelines provided."

The Provider explains that its requests for validation of the Complainant's loss are not an indication of a reluctance to pay for valid losses. The Provider submits that it believes that it has demonstrated its commitment to honour the terms of the policy by paying the portion of the loss that it has been able to validate (the name change fee) and by demonstrating flexibility in what would be acceptable as evidence of the remainder of the loss.

It is pointed out by the Provider that it was clear to it that the Complainant did not have a valid claim as a cancellation on the basis of illness or death of a third party is only covered if that third party is a close relative, travelling companion or person with whom the Complainant was due to stay with during travel. However, the Provider

"... decided at an early stage, given the nature and circumstances of this loss, to overlook this key requirement and consider this claim despite it not meeting acceptance criteria"

The Provider advises that it is committed to paying valid amounts that the Complainant paid. However, there remains no evidence that the Complainant ever paid, intended to pay or agreed to pay any contribution towards the total cost of the holiday with the exception of the change of name fee, apart from the letter from the Complainant's friend, written after the claim was submitted, confirming the agreement.

The Provider states that it would be highly irregular to accept a retrospective claim of a verbal agreement between friends, with no evidence or record of the amount agreed and no evidence of the transfer of funds, as the only evidence to substantiate loss.

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The Provider observes that under such circumstances, an individual could claim that they intended to take the place of a friend or family member on a trip and submit a claim for cancellation with little or no evidence of loss. The Provider clarifies that:

“... while we don’t believe there are grounds for suspicion, there were prudent questions that remain unanswered, and whilst we maintain that the Complainant did not meet the minimum threshold of evidence of a loss covered by her policy, we recognise that the unique circumstances of this claim may warrant a discretionary approach.”

The Provider explains that it declined the Complainant’s claim on the basis that she did not provide acceptable supporting documentation to evidence any agreement or commitment to pay a contribution towards the cost of the trip. The only cost the Provider has been able to validate as payable to the Complainant, is the cost she incurred in transferring the tickets for the trip, in to her own name. This was accepted and paid in full. The Provider further explains that any valid and sufficiently evidenced claim will be paid without exception but it must apply a fair and consistent standard to claim assessment and it must ensure, at the very least, that a claimant can demonstrate that an insured loss occurred and evidence the value of such loss.

The Provider states that it is sometimes necessary to request additional information and the requirement for additional information arose in this instance because the booking invoice did not list the Complainant as a traveller or as being associated with the €958 that was paid. This renders the booking invoice redundant as evidence to substantiate the Complainant’s loss. The Provider states that it then looked for alternative non-standard forms of substantiation.

The Provider states that it is not specifically stated in the terms and conditions of the policy that a claimant must be able to demonstrate that they paid for the booking nor is it a stipulation that in order to successfully claim for a cancelled booking, a claimant must be able to demonstrate that he or she paid for the booking. The policy however covers losses that the claimant has paid or is contracted to pay.

When a holiday has been gifted, the Provider outlines that all travel documentation will name the person to whom the trip was gifted. Although the policy only provides for losses that an insured has paid for or is contracted to pay, the Provider will generally exercise discretion in situations where a trip has been gifted and the travel documentation aligns with the travel policy documentation. The Provider also submits that the *Principle of Indemnity* underpinning all general insurance policies requires a financial loss to occur in order for a claim to be payable.

The Provider states that the Complainant’s policy was purchased online and during the online purchase process and before payment of the premium, the purchaser is afforded the opportunity to review all policy documentation prior to purchase and is asked to tick a box to confirm that they have read, agree with and accept the policy terms and conditions. The Provider submits that, on purchasing the policy, the Complainant was supplied with a copy of the policy terms and conditions, policy cover summary and terms of business.

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The Provider concludes this submission by pointing out that it was not its intention to divert its responsibility to another insurer. In the absence of any evidence that the financial interest passed from one party to another (from the original traveller to the Complainant) the Provider wanted to highlight that there may be a possibility that the insurer of the original traveller may have been able to accept the claim. The Provider states that it has to consider the possibility that it was only the name change fee which was either paid or payable by the Complainant and that the cost to the Complainant's friend of one of them being unable to travel, was or could be the subject of a claim with the friend's insurer.

The Provider explains that it operates in an environment where there are often multiple insurers covering risks associated with a trip abroad and it is sometimes necessary and in the interest of the insured, to remind them that there may be cover available elsewhere for the losses incurred by other travelling passengers. However, the Provider acknowledges that

"... this referral in this case was not the most appropriate course of action, as in the absence of evidence it wasn't clear if the financial responsibility had transferred or remained with the original travelling party."

The Provider submits that this was not a straightforward cancellation. It was complex in that the Complainant took up a trip that was originally booked for someone else, who it was understood could no longer travel, and whose death resulted in the cancellation of the trip. The Complainant could not evidence that she ever paid for or intended to pay for the trip. Neither could she provide any evidence to enable the Provider to confirm that the other insurer was not liable for the loss. The Provider states that it had to consider that the proximate cause of the loss was the illness and subsequent death of one of the original travellers and that their insurers would be liable for the cancellation costs in a scenario where the financial loss might not have transferred to the Complainant.

The Provider submits that while it is evident throughout the claim process that it was attempting to assist the Complainant by adapting its validation requirements to suit the specific circumstances

"... we acknowledge that we did not make our position clear in our correspondence, which evidently has contributed to a lack of trust and frustration on the part of the Complainant."

In a submission dated **11 February 2020**, the Provider addresses a number of additional points made by the Complainant. In particular, the Provider has extended the following apology:

"We are sorry that the Complainant remains offended and angry, feels that the integrity of her and her friend have been questioned and that the theme of our response had been prevention of fraud. We have already stated that we do not believe that there are any grounds for suspicion in this case and re-iterate our assurances to the Complainant in this regard. ..."

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In addressing the Complainant's point regarding *acceptable supporting documentation or receipts*, the Provider states that the claim form provides a list of the grounding documentation required to support a claim and in addition, refers to the fact that it may be necessary to request additional documentation.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's claim for half the cost of the holiday originally booked by her friend.

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 on **22 June 2020**, 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Travel Insurance Policy

The Complainant's husband appears to have purchased the policy at the heart of this complaint in or around **11 July 2018**. An email dated **11 July 2018** to the Complainant's husband acknowledged receipt of his payment in respect of the policy and also acknowledges him as the *Insured*.

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Insurance Certificate

The insurance certificate is dated **11 July 2018** and covers the period **22 July 2018** to **21 July 2019**. It lists the Complainant's husband as the *Main Insured Person* and the Complainant as one of the *Additional Insured Persons*.

Policy

The policy terms and conditions contain a *Definitions* section listing the following definitions:

"Close Relative: *Mother, father, sister, brother, wife, husband, daughter, son, grandparent, grandchild, parent-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, aunt, uncle, niece, nephew, step parent, step child, step-sister, step-brother, foster child, legal guardian, next of kin, or fiancé/fiancée or common law partner ...*

Travelling Companion: *A person accompanying You without whom the Trip cannot commence or continue."*

A number of generally applicable conditions are set out in the *General Conditions* section. Clause 7 states:

"You must comply in full with the terms and conditions of this Policy before a claim will be paid."

I note in the *General Exclusions* section, at section q, that cover is specifically excluded for any loss of enjoyment.

In terms of cancellation, the policy states at section 1 as follows:

*"We will cover you up to the amount shown on Your Schedule of Cover per Insured Person in total under this Policy for financial loss suffered by You during the Period of Insurance, being non-refundable deposits and amounts You have paid (or have contracted to pay), for travel to/from Your holiday destination and accommodation, You do not use because of Your inability to commence travel or You curtail the Trip as a result of any of the following events occurring after payment of the policy premium, and/or at the time of booking Your trip, and/or occurring within the Period of Insurance. **Your cancellation or Curtailment must be necessary and unavoidable in order for You to claim.***

[Underlining added for emphasis]

You are covered for:

- *The death, Bodily Injury, Illness of You, Your Travelling Companion, any person with whom You have arranged to reside temporarily during your Trip, Your Close Relative, or Your Close Business Associate*

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- *If you become pregnant ...*
- *Compulsory quarantine, jury service ...*
- *Redundancy ...*
- *You or the person with whom You are travelling or have arranged to travel with are a member of the Armed Forces, Garda [etc] ...*
- *In the event of burglary ...*

...

Conditions applicable to cancellation charges:

(See also General Conditions)

- *You must advise Your travel agent/tour operator or provider of transportation/accommodation, as soon as You become aware of the need to cancel Your Trip. ...*
- *All claims relating to cancellation due to a medical reason must be supported by relevant documentation ...”*

The Claims Procedure states as follows:

“...

All claims must be submitted within 30 days of Your return Home from Your Trip on an original Claim Form, accompanied by original invoices, receipts, reports, etc. ...

...

PLEASE NOTE

As the circumstances of different claims are not the same it may be necessary for Us to request additional information / documentation in respect of a claim along with the details given below.

Depending on the type of claim, please complete (in full) the relevant Claim Form and forward it together with all accompanying documentation required on Your Claim to [the Provider]. For Your convenience, some of the additional information/documentation that may be required is outlined below.

...

Cancellation

Provide the reason for cancellation supported by the booking invoice (from the tour operator) cancellation invoice (from the tour operator) and medical certificate / death certificate where appropriate.”

The Complainant's Claim

The Complainant contacted the Provider by telephone on **23 November 2018** to request a claim form. On **27 November 2018**, the Complainant wrote to the Provider outlining the background to her claim. This letter states:

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“... I will set out the sequence of events as follows:

1. My friends, [names] booked a [tour provider] holiday break in [location] in June 2018 at cost of €958. (Copy of booking form enclosed)
2. In August, [friend's husband] decided not to go and rather than forego the break, [the Complainant's friend] asked me to accompany her. I paid fee for name change of €135 on 8 August and agreed to share the remaining cost. (Copy of amended booking enclosed)
3. On [date redacted], [friend's husband] was admitted to hospital for investigation as he was feeling unwell. He subsequently died on [date redacted]. (Original death certificate enclosed)
4. On [the Complainant's friend's] behalf, I informed [the travel provider] that we could no longer travel. [The travel provider] refund of €218.60 was sent to [the Complainant's friend] on 2 November. (Copy enclosed)
5. The Complainant's friend] has claimed from her travel insurance and received €432.20 (Copy enclosed, [Insurer]) and I am now submitting my claim for the outstanding balance of €442.20. ...”

Cancellation Claim Form

The Complainant submitted a claim form to the Provider dated **27 November 2018**. On the claim form, the Complainant describes the reason for cancellation as “*Death of travel companion's husband ...*” The Complainant states her relationship to the person who gave rise to the claim as *Friend*. In the *Cancellation Expenses Claimed* section, the Complainant lists the following expenses:

Date Expense Incurred	Description	Amount Paid	Refund Amount	Claimed Amount	Office Use Only
June '18	Holiday cost	€958.00	€218.30		
8/8/18	Name Change Fee	€135.00			
13/11/18	[Friend's] Insurance Settlement		€437.20		
27/11/18	Balance claimed by [Complainant]			€442.20	

I also note that the *Declaration* on this form advises, amongst other things, that the Complainant would “... agree to provide any further information or documentation as may be required.”

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Supporting Documentation

The documentation submitted to the Provider as part of the Complainant's claim were the travel provider's *Confirmation Invoice*, *Payment Confirmation* and *Cancellation Invoice*. I note that the *Confirmation Invoice* contains the names of the travel companion and her husband. It records the trip cost as €958.00.

A payment of €400.00 was received on **24 June 2018** with the balance of €558.00 due on **8 July 2018**. The *Payment Confirmation* appears to be in respect of the name change. This document acknowledges receipt of a payment of €135.00 in respect of the name change. However, while a refund of €558.00 is stated to have taken place on **27 June 2018**, the total amount due of the trip was €0.00. I also note that both the *Payment Confirmation* and *Cancellation Invoice* record the Complainant as one of the passengers on the trip. The Complainant also supplied the Provider with documentation regarding her friend's claim under her travel insurance policy and correspondence from the insurer in respect of the settlement of that claim.

Additional Documentation

The Provider wrote to the Complainant on **3 December 2018**, requesting the travel provider's booking terms and conditions and evidence of the payments made by the Complainant to the travel provider in respect of her contribution towards the cost of the trip. Under cover of letter dated **10 December 2018**, the Complainant furnished the Provider with the booking terms and conditions, statements from the Complainant and her friend in relation to payment, and evidence of a cash withdrawal from the Complainant's joint bank account.

The statement prepared by the Complainant's friend states as follows:

"Fee for name change from my husband ... to [the Complainant], paid by me to [the travel provider]

€135

*Half of holiday expense total (already paid by me to [travel provider]) = 958/2 = €479
Total paid in cash refunded by [the Complainant] to me at the above address on 8 August 2018 around 7.30pm."*

The Complainant's statement is in similar terms to that of her friend with the addition of a statement that the money used to pay the Complainant's friend was part of the money withdrawn from the Complainant's joint bank account on **15 May 2018**.

Declination of Claim

The Provider wrote to the Complainant by letter dated **19 December 2018**, to advise her that it was admitting her claim of €135.00 in respect of the change of name. However, the remainder of her claim was being declined because:

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“As the trip was paid for in full before the name change, and in the absence of any official money trail, we cannot confirm your financial loss in this instance. [The Complainant’s friend] should be able to submit the costs to her insurers. ...”

The Complainant wrote to the Provider on **20 December 2018** to make a formal complaint in respect of the Provider’s decision.

Final Response Letter

The Provider issued a Final Response letter dated **9 January 2019** maintaining its original decision to decline the Complainant’s claim and advised the Complainant as follows:

“... As you will no doubt appreciate all claims are handled in accordance with the terms and conditions of the policy as they form the basis of the contract. An insurance policy will not fully cover every eventuality and will contain specific provisions under which the benefit payable may be restricted.

...

You have submitted a cancellation claim due to the death of your travelling companion’s husband. We have received the original booking invoice for the trip, to the value of €958.00, which is in the name of your travelling companion and her late husband. This is shown as paid in full.

We have received a subsequent invoice, with a change fee of €135 outlined, which now shows the passengers as yourself (in lieu of your travelling companion’s husband) and your travelling companion. You informed us in writing that you paid a fee for the name change and agreed to share the remaining costs. As we require substantiation of your financial loss we requested evidence of the payments made by you to the travel agent for your portion of the booking. By way of response you submitted a letter from your travelling companion advising you paid her €479.

As the trip was already paid in full prior to the name change and without any evidence of a money trail it is impossible to verify that you are at a financial loss. Whilst we appreciate you have submitted personal handwritten receipts this is unfortunately unacceptable. We are sorry to note you have taken offence to this but we hope that you can somewhat see the rationale behind our inability to accept handwritten confirmation of the exchange of money between companions. Whilst we regret this fraud prevention measure may have befallen you to your frustration we are obliged to assess all claims fairly and consistently and against the same criteria.

For your information, as the original cost was paid in full in the name of your travelling companion and her late husband, your travelling companion would be entitled to submit a claim for his portion of the costs to her late husband’s travel insurer. ...”

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Analysis

The trip to Europe was originally booked in **June 2018** and paid for by the Complainant's travel companion and/or her husband prior to the Complainant's invitation to join the trip. This is not disputed. Following this, the travel companion's husband indicated that he did not wish to go on the trip and in **August 2018**, the Complainant was invited to take his place. The Complainant submits that she agreed to pay for the name change on the relevant tickets and that she would also split the cost of the trip with her travel companion.

The Complainant explains that she paid her share of the cost on **8 August 2018** from funds she withdrew from the bank the previous May. The travel companion's husband unfortunately passed away shortly before the trip which was understandably cancelled.

The Complainant made a claim under her travel insurance policy in respect of the cancellation of the trip by way of claim form dated **27 November 2018**. The reason given by the Complainant for the cancellation of the trip was the death of her travel companion's husband. The Provider declined the claim on the basis that the Complainant was unable to provide acceptable supporting documentation, which demonstrated an agreement or commitment to pay a contribution towards the cost of the trip.

The policy sets out the criteria that must be satisfied in order to make a successful claim following a cancellation. Having reviewed the relevant sections of the policy, which I have quoted above, and the evidence in this complaint, I am satisfied that the Provider was entitled to decline the Complainant's claim on the basis that cancellation arising from the death of the travel companion's husband is not covered under the cancellation terms of the policy. However, as acknowledged by the Provider, it decided not to decline the Complainant's claim on this basis.

This, however, did not mean that the Complainant was automatically entitled to the amount claimed for in her claim form. The policy makes clear that the Complainant will be covered only in respect of **financial loss**. Therefore, the Complainant must be in a position to demonstrate to the reasonable satisfaction of the Provider that she suffered financial loss as a result of the cancellation. In addition to this, the Provider is entitled, as provided for at **section 7.6** of the **Consumer Protection Code 2012**, to verify the validity of a claim. For the reasons set out above, the Provider was not satisfied, on the basis of the documentation supplied by the Complainant, that she suffered any financial loss. The policy, in that regard, requires that:

- *All claims relating to cancellation due to a medical reason must be supported by relevant documentation ..."*

The Provider was not satisfied with the documentation supplied by the Complainant. While not specifically requiring proof that the Complainant did in fact pay her share of the trip, it sought proof that the Complainant was liable to pay or contracted to pay a portion of the cost.

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However, even though the Complainant's name appears on the *Payment Confirmation* and *Cancellation Invoice*, these documents together with the *Confirmation Notice* clearly show that the trip was already paid for by the Complainant's travel companion and/or her husband. Furthermore, simply because the Complainant can prove she was a passenger on the trip does not necessarily mean that she paid for, or was obliged to pay for, half or any part of the trip.

The Complainant also sought to rely on a cash withdrawal from her bank as proof that she paid her travel companion for the trip, stating that she used a portion of this money to pay her share of the trip. However, as observed by the Provider, this withdrawal was made two months before the trip was booked, and three months before the Complainant was invited on the trip. Furthermore, I also note that the amount of the withdrawal was €1,600 whereas the Complainant was only required to pay €135 for the name change and potentially €458 for the trip. Taking these points into consideration, I am not satisfied that this withdrawal adequately proves or even suggests that the Complainant paid for, or committed to pay for, half or any part of the trip.

A statement from the Complainant's travel companion dated **10 December 2018** was also supplied to the Provider. In this statement, the travel companion declares that the Complainant paid her €479.00 in respect of the trip. The Provider was also unwilling to accept this as proof of the Complainant's claim. I note that this document was prepared in response to the Provider's request for additional information, which was approximately four months after the agreement was made between the parties. In such circumstances, there was no contemporaneous or reasonably contemporaneous written agreement or documentation evidencing or acknowledging any agreement.

Furthermore, in the context of the Complainant's payment to her travel companion, during the course of a telephone conversation with the Provider on **5 December 2018**, the Complainant mentioned that she paid her travel companion in cash. The Complainant was then asked if the travel companion lodged this money to a bank account to which the Complainant responded: *"I think she held on to the cash but I'm not so sure."* I note that the Complainant has not provided any evidence that her travel companion made a lodgement in an amount similar to the value of the Complainant's share of the trip in or around **8 August 2018**, being the date the exchange is said to have taken place.

The Complainant has raised certain points in respect of the Provider's response to her claim and her complaint. In respect of the suggestion that a claim be made under the travel companion's policy, it was reasonable to conclude on the basis of the documentation available to the Provider, that the Complainant's travel companion and her husband paid for the trip and that there was no evidence to prove the Complainant paid any part of the costs. Consequently, in my opinion, it was also reasonable for the Provider to indicate that the travel companion may have been able to claim for the totality of the cost of the trip under her own travel insurance policy. This is so, notwithstanding the fact that the Provider had been furnished with a copy of the travel companion's claim form where only half of the cost of the trip was claimed.

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While the travel companion's claim form would militate in favour of the Complainant's position, looking at claim documentation as a whole, I am not satisfied that the Provider acted unreasonably in deciding to decline the Complainant's claim. The Complainant has suggested that the Provider's response has called her integrity into question and infers that she and her travel companion were involved in some kind of fraud. The Complainant has also indicated that her age was a factor in the Provider's decision to decline her claim. Having considered the evidence in this complaint, I am not satisfied that there is any basis for these assertions. To the contrary, I take the view that the Provider adopted a very flexible and favourable position towards the Complainant's claim.

Furthermore, the Provider's requirements are not in any way suggestive of fraud, in my opinion. Rather they aim to prevent fraud through requiring objectively verifiable proof of a claimant's financial loss. This was not only clear from the Provider's letter declining the Complainant's claim but I am satisfied that it was also clear from its Final Response letter.

Finally, the Complainant has also taken issue with certain ambiguities arising from the policy and the lack of certain definitions. She points out in her submission dated **26 January 2020**, that

"... nowhere do [the Provider] define what 'acceptable documentation' is. The policy asks for receipts If [the Provider] sought to define receipt differently they should have done so in the policy."

I accept the Complainant's point regarding the absence of a policy definition of "*acceptable documentation*". That said, it is clear from the evidence that the Provider adopted what was in my opinion, a reasonable approach, in that it was open to receiving any documentation that would illustrate an "*official money trail*". Indeed, I note that the Provider went as far as to suggest that it would review the matter further if there was evidence to show that the Complainant's friend had lodged the monies received from the Complainant, towards the cost of the holiday; no such evidence was made available however to the Provider.

Whilst the Complainant takes a certain view regarding the absence of a definition of "receipt", which she believes should include her friend's handwritten letter, four months after the relevant date, I am not satisfied that the Provider acted unreasonably in forming the opinion that the handwritten receipt in question, was inadequate to illustrate an official money trail.

Accordingly, on the basis of the evidence available, including the submissions made by the Complainant, I am not satisfied that the Provider's decision in declining the claim was wrong or otherwise unreasonable.

Goodwill Gesture

The Provider acknowledges that:

"On reflection, given the unique circumstances of this claim, we have determined that a discretionary approach is warranted, and could have been applied at an earlier stage..."

/Cont'd...

As such, by way of seeking an amicable resolution we are willing to overlook the absence of evidence and wish to place, formally on record, a settlement proposal in the amount of **€737.20** calculated as follows:

Total cost of trip:	€958.00
Refunded by [travel provider]:	-€218.60
Reimbursed by [friend's Insurer]:	-€437.20 (50% of total cost less refund)
	€302.20
Name change fee:	€135.00 (already paid by us)
	€437.20 (50% of total cost less refund)
Gesture of Goodwill	€300.00
	€737.20 (less €135.00 already paid = €602.20)

The Gesture of Goodwill is made by us in recognition of the lack of clarity in communications with the Complainant, and the length of time it has taken to reach a resolution."

Whatever my views regarding the manner in which the Provider calculated this goodwill gesture, I consider it to be a reasonable gesture on its part. It will be a matter for the Complainant to contact the Provider directly if she wishes to accept that offer, and if she wishes to do so, she should make contact expeditiously, as the Provider cannot be expected to hold that offer open indefinitely.

On the basis however of the evidence made available to this office, I do not accept that the Provider acted wrongfully and accordingly there is no basis upon which it would be appropriate to uphold this complaint.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 August 2020

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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.

