



<u>Decision Ref:</u>	2020-0349
<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

The Complainant incepted a multi-trip travel insurance policy with the Provider on **21 March 2019**.

The Complainant's Case

Whilst holidaying abroad in **April 2019**, the Complainant advises, as follows:

"On 26/04/2019, c. 17:30, I was walking in [xxx] National Park and I missed a step, fell over a stone & then fell onto the beach from the stone I was on. Various contents I was carrying in my bag and pockets fell out and then a wave came in and took some contents which I was able to retrieve bar [a third party's] iPhone X ...

I reported the loss of the phone to [named] police station on 29/04/2019, being the closest time I could get to a police station ...

I sustained bruising on my legs – I damaged [third party's] iPhone X from the impact of phone hitting ground, in addition to water damage – the iPhone X was subsequently lost in the ocean accidentally."

In this regard, the Complainant sets out her complaint in the Complaint Form she completed on 31 May 2019, as follows:

"I lost a third party's property [abroad] due to a fall caused by my negligence but [the Provider] had declined to pay compensation, even though I believe it is an insured

event per Section 7 [‘Personal Liability’] of my policy. [The Provider] has mishandled my claim due to its staff not being competent. Its staff has also continually ignored the facts of the incident & failed to respond to my queries in relation to their decisions”.

The Provider assessed the Complainant’s claim for the loss of the third party’s iPhone X under **Section 7, ‘Personal Liability’**, and **Section 12, ‘Personal Luggage’**, of her policy and concluded that there was no cover for the circumstances of her claim under either section.

The Complainant, however, is adamant that the loss of the third party’s iPhone X was as a direct result of her negligence and therefore is *“an insured event per Section 7 [‘Personal Liability’] of my policy”*. In this regard, in her email to the Provider on **15 May 2019**, the Complainant submits, *inter alia*, as follows:

“The fall was absolutely caused by my negligence as I missed a step whilst trekking on unsuitable ground due to not taking due care as I was not concentrating at the time and I should have been, particularly being responsible for other person’s valuable property – I have c. 20 witnesses of same and a police report was filed”.

Similarly, in her email to this Office on **4 December 2019**, the Complainant submits, *inter alia*, as follows:

“The cause of the accidental loss of the phone was due to my negligence...wherein I was acting without care by not concentrating and went on unsuitable ground together resulting in the fall and the accidental loss of the phone”.

In addition, the Complainant notes in this email that whilst Section 7, ‘Personal Liability’, of her travel insurance policy terms and conditions state, **“What is not covered ... b) Property belonging to, or held in trust by you or Your family, household or servant”**, the Provider instead advised her in its Final Response letter dated 29 May 2019 that *“Property belonging to you or entrusted to you is not covered”*. In this regard, the Complainant considers that the Provider is wrong to rely upon the word *“entrusted”*, which she notes is a word not even stated in the policy and *“is a completely different word and meaning to the actual words [in the policy]”*, that is, *“in trust”*.

As a result, the Complainant seeks the following from the Provider:

*“Full compensation of the loss of iPhone X...and replacement of it [to the third party]
...
Compensation of €40 to me due to me having to restate the facts of the incident via telephone twice to [the Provider] due to it not recording details from the first call on my file correctly. €40 = cost of second telephone call on 30/04/2019.*

Compensation (amount TBA) for the...time & stress incurred by me due to [the Provider’s] mishandling of claim”.

The Provider’s Case

Provider records indicate that the Complainant telephoned the Provider's Claims Team to register a claim on Saturday **27 April 2019**. The Complainant, who was travelling abroad, advised that she had fallen and an iPhone that she was carrying for a third party she had recently met on her tour, had fallen into the sea and was lost and she was seeking to claim for compensation to replace this mobile telephone. The Agent correctly advised the Complainant that there was no cover for items entrusted to her under **Section 12, 'Personal Luggage'** of her travel insurance policy, however the Complainant suggested that there should be cover under **Section 7, 'Personal Liability'**.

In this regard, the Agent advised that she would refer the matter to her Team Leader to check if the circumstances of the loss could be considered under Section 7, 'Personal Liability', and that she would revert to the Complainant by email on Monday 29 April 2019. In addition, the Agent also advised that claims could be assessed by telephone and the Complainant asked to book a telephone claim assessment appointment, prior to the Agent confirming by email if the claim was valid. The Agent booked a telephone claim assessment appointment for the Complainant for 11.30am (GMT) on Tuesday 30 April 2019 and advised her as to the documentation required as part of the claims assessment.

The Agent did then consult with the Claims Manager as to whether there would be cover for the loss reported by the Complainant under either Section 7, 'Personal Liability', or Section 12, 'Personal Luggage', of the Complainant's policy.

The Provider notes that the Complainant's travel insurance policy provides, *inter alia*, cover for her personal luggage but not for items belonging to other persons, as was the case in this claim. In this regard, **Section 12, 'Personal Luggage'**, of the applicable Travel Insurance Policy Booklet provides, as follows:

"What is covered

If, in the course of a Trip, Your Personal Luggage is damaged, stolen, destroyed or lost (and not recovered), We will cover You up to the amount shown on the Summary of Cover table per Insured Person in total under this Policy ...

What is not covered

a) Any item loaned, hired or entrusted to You".

The claim was also considered under Section 7, 'Personal Liability', of the Policy Booklet. The Complainant was claiming for a third party's iPhone, which is personal property that is not covered under **Section 7, 'Personal Liability'**, as follows:

"What is not covered ...

b) Property belonging to, or held in trust by you or Your Family, household or servant ...

g) Accidental injury or loss not caused through your negligence".

The Provider says, in this regard, that **Section 7, 'Personal Liability'**, does not cover personal property belonging to the Complainant or belonging to another person that she is holding

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in trust for them. In addition, the Provider also says that the Complainant was not negligent as she fell, dropped her bag and lost the third party's iPhone, which was an accident.

The Provider says that the Claims Assessor booked to contact the Complainant on 30 April 2019 advised her that there was no cover for the circumstances of her claim under Section 7, 'Personal Liability', or Section 12, 'Personal Luggage', of her policy.

The Complainant expressed dissatisfaction with this as she considered that the claim had not been reviewed correctly, and the Assessor agreed to ask a Manager to call her back.

The Provider says that the Claims Team Leader spoke with the Complainant by telephone later on 30 April 2019 and having reviewed the circumstances in more detail, agreed to refer the claim to the underwriters. Having done so, the Claims Team Leader advised the Complainant that the underwriters had agreed that she could submit a claim for consideration under Section 7, 'Personal Liability', by way of completing and submitting a Personal/Public Liability Claim Form.

The Provider acknowledges that it was not made clear to the Complainant during this telephone call that the issuing of the claim form was not a guarantee that the claim would be paid and it apologises that this was not explained.

Having reviewed the Personal/Public Liability Claim Form completed by the Complainant on **1 May 2019**, the Provider emailed the Complainant on **14 May 2019** to advise that the claim was declined as the circumstances of the loss were not covered by Section 7, 'Personal Liability', of the policy, as follows:

"We note from the information on your claim form that you were carrying a friend's mobile phone when you fell and lost the phone in the sea. We feel that you were taking due care of the mobile phone, that the fall was accidental and was not covered by negligent behaviour. Regrettably, this circumstance is not one of the insured events [in Section 7] and we are, therefore, unable to allow benefit on this occasion".

The Provider says that the Complainant was not satisfied with this decision and following a review of the claim in full, the Provider emailed a Final Response to the Complainant on **29 May 2019** advising that it was satisfied it had declined her travel insurance claim in accordance with the policy terms and conditions, as follows:

"I conclude the claim was declined correctly by the policy underwriters. Property belonging to you or 'entrusted' to you is not covered. I acknowledge that you admitted negligence and this was also considered by the Underwriters who did review the circumstances. In conclusion the 3rd party would have to submit a negligence claim against you via their own insurance provider, and given the circumstances [p]resented, the underwriters would not agree any negligence on your part".

In addition, the Provider acknowledged in this email to the Complainant that her customer journey had not been without errors. It says in that respect that the Complainant should

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have been advised that a decision would be made, once her Personal/Public Liability Claim Form had been submitted to the underwriters, as these claim types need to be reviewed by the underwriters before any decision is made. Nevertheless, the Provider is satisfied that in advising the Complainant that the circumstances of her loss would not be covered by Section 7, 'Personal Liability', of her travel insurance policy, prior to the underwriters reviewing her Personal/Public Liability Claim Form, this did not put her at a disadvantage, as the policy underwriters do not assess these claims in the first instance and the claim was correctly declined, in accordance with the policy terms and conditions.

Accordingly, the Provider says that it is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of her travel insurance policy.

The Complaint for Adjudication

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

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 **16 September 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

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The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's travel insurance claim. In this regard, the Complainant incepted a multi-trip travel insurance policy with the Provider on **21 March 2019**.

The Complainant telephoned the Provider's Claims Team on **27 April 2019** to advise that whilst holidaying abroad she had fallen and that an iPhone she was carrying for a third party she had recently met on her tour had fallen into the sea and was lost and she was seeking to claim for compensation to replace this mobile telephone.

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

I note that **Section 12, 'Personal Luggage'**, of the applicable Travel Insurance Policy Booklet provides, *inter alia*, at pgs. 25-26, as follows:

"What is covered

If, in the course of a Trip, Your Personal Luggage is damaged, stolen, destroyed or lost (and not recovered), We will cover You up to the amount shown on the Summary of Cover table per Insured Person in total under this Policy ...

What is not covered

a) Any item loaned, hired or entrusted to You".

Having listened to a recording of the telephone call between the Complainant and the Provider on **27 April 2019**, I am satisfied that the Agent correctly informed the Complainant during this call that there was no cover for items entrusted to her under Section 12, 'Personal Luggage', of her travel insurance policy.

I note that the Complainant then advised that she considered that the circumstances of her claim ought to be covered under **Section 7, 'Personal Liability'**.

Section 7, 'Personal Liability', of the applicable Travel Insurance Policy Booklet provides, *inter alia*, at pg. 21, as follows:

"What is covered

If in the course of a Trip You become legally liable for Accidental Bodily Injury to, or the death of, any person and/or accidental loss of or damage to their property, then: On condition that there is no other insurance in force covering the loss, material damage or Your liability, We will cover You (or in the event of Your death, Your legal personal representatives) against:

- *All sums which You shall become legally liable to pay as compensation; and*

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- *All law costs awarded to any claimant or incurred in the defence of ant claim that is contested by Us or with Our consent ...*

What is not covered ...

b) Property belonging to, or held in trust by you or Your Family, household or servant”.

Having listened to a recording of the telephone call between the Complainant and the Provider on **30 April 2019**, I note that the Complainant was minding an iPhone that belonged to a third party at the time she fell and lost the iPhone. I am satisfied therefore that the Agent correctly advised the Complainant during this call that the circumstances of her loss were not covered under Section 7, ‘Personal Liability’, of her travel insurance policy.

I note that the Provider acknowledges that the Complainant should have been advised that a decision regarding her claim under Section 7, ‘Personal Liability’, would not be made until her Personal/Public Liability Claim Form (that she completed on 1 May 2019) had been submitted to the underwriters, as these claim types need to be reviewed by the underwriters, before any decision is made.

Nevertheless, I accept that when the Provider advised the Complainant by telephone on 30 April 2019 that the circumstances of her loss would not be covered by Section 7, ‘Personal Liability’, prior to the underwriters reviewing her Personal/Public Liability Claim Form, this was not a disadvantage to her, as the policy underwriters do not assess these claims in the first instance and, in any event, the claim was correctly declined in accordance with the policy terms and conditions.

In addition, given that the Complainant was minding an iPhone that belonged to a third party when she fell and lost the iPhone, and as the policy wording states that property belonging to or held in trust by the policyholder is not covered by Section 7, ‘Personal Liability’, I am of the opinion that because it is clear that the loss is one which was not covered by Section 7, ‘Personal Liability’, as in this instance, it was reasonable for the Provider’s Claim Team to advise her that the loss was not covered.

I note from the documentary evidence before me that the Provider emailed a Final Response to the Complainant on **29 May 2019** advising that it was satisfied it had declined her travel insurance claim in accordance with the policy terms and conditions, as follows:

“I conclude the claim was declined correctly by the policy underwriters. Property belonging to you or ‘entrusted’ to you is not covered. I acknowledge that you admitted negligence and this was also considered by the Underwriters who did review the circumstances. In conclusion the 3rd party would have to submit a negligence claim against you via their own insurance provider, and given the circumstances [p]resented, the underwriters would not agree any negligence on your part”.

I note that in her email to this Office on **4 December 2019**, the Complainant submits, *inter alia*, as follows:

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*“The final response [email] from [the Provider] dated 29/05/2019...correctly states the policy wording “Property belonging to, or held **in trust** by you or Your family, household or servant”. The complaints team then states in the next paragraph of this final response email “Given the above I conclude the claim was declined correctly by the policy underwriters. Property belonging to you or ‘**entrusted**’ to you is not covered”.*

The decision of the complaints team was therefore made by it relying on the word “entrusted” which is not even stated in the policy docs as far as I can see, and is a completely different word and meaning to the actual words stated in Section 7 part b of its own policy documents being “in trust” which I believe evidences my complaint of [the Provider’s] staff’s lack of suitable competence to deal with my claim and interpret [it’s] own policy docs correctly resulting in its attempt to not pay compensation for the insured incident which is completely unacceptable”.

In addition, in her email to this Office dated **18 May 2020**, the Complainant submits, *inter alia*, as follows:

“I fail to understand how my claim could have been given proper and fair consideration in the absence of definitions for held in trust and/or negligence/negligent behaviour in the relevant policy docs ... I was responsible and had a duty and obligation to mind and to take good care of the third party’s phone at the time, which was implied when [the third party] asked me to mind her phone and I agreed to verbally thus being personally liable. I did not enter into a trust agreement transferring the title of the phone/property to me when I agreed to take care of the phone therefore I did not hold the phone/property in trust for [the third party] at the time as I did not have legal or equitable title of it per the definition of holding a property in trust. Therefore I believe my claim is cover[ed] under Section 7 Personal Liability”.

In this regard, I am satisfied that in its Final Response email on 29 May 2019, the Provider correctly states the relevant policy wording of Section 7, ‘Personal Liability’, as follows:

“What is not covered ...

b) Property belonging to, or held in trust by you or Your Family, household or servant”.

The Provider then stated in this email that *“Given the above I conclude the claim was declined correctly by the policy underwriters. Property belonging to you or ‘entrusted’ to you is not covered”*. It seems that the Provider was using the terms *“in trust”* and *“entrusted”* interchangeably to mean the same thing, that is, that the mobile telephone was owned by a third party who had given it to the policyholder to take care of, at the time of the loss. In that context, I note that the term *“in trust”* is used in Section 7, ‘Personal Liability’, and the term *“entrusted”* is used in Section 12, ‘Personal Luggage’, of the applicable Travel Insurance Policy Document, both of which were considered by the Provider. In this regard,

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I am of the opinion that in both sections these terms are used to designate property not owned by the policyholder, but that the owner had placed in the possession of the policyholder at the time of the loss. Furthermore, in using the term “*in trust*”, I don’t accept that the Provider was suggesting, as the Complainant contends, that she entered into a trust agreement with the third party transferring the title of the mobile telephone but not the beneficial ownership, from the third party to the Complainant – rather I take the view that it was stating that the Complainant was minding the mobile telephone for a third party and thus the circumstances of its loss were not covered by Section 7, ‘Personal Liability’.

I note that the Complainant submits that she had to “*restate the facts of the incident via telephone*” to the Provider. In this regard, having reported the facts of the loss to the Provider by telephone on 27 April 2019 and having booked a telephone claim assessment appointment for 30 April 2019, it is reasonable in my opinion, that part of the telephone claims assessment process would include the taking of the facts of the loss again, and in greater detail, and that the Complainant ought reasonably to have expected same.

Whilst I note that the Provider states that it was not made clear to the Complainant during the telephone call on 30 April 2019 that the issuing of the Personal/Public Liability Claim Form to her to complete was not a guarantee that the claim would be paid, I am of the opinion that in completing and submitting a Personal/Public Liability Claim Form, the Complainant was simply setting the claim process in motion and that an assessment of the claim still had to take place. In any event, having listened to a recording of the telephone calls before me, I note that at no time did the Agents suggest to the Complainant that the Provider would admit her claim or that by issuing her with a Personal/Public Liability Claim Form that her claim be admitted and settled.

Accordingly, I am satisfied that the Provider declined the Complainant’s claim in accordance with the terms and conditions of her travel insurance policy, and on the evidence before me 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 October 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.

