



<b><u>Decision Ref:</u></b>	2021-0385
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim – partial rejection Claim handling delays or issues Delayed or inadequate communication Dissatisfaction with customer service Failure to provide correct information Failure to process instructions in a timely manner Disagreement regarding Medical evidence submitted
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Complainants held a travel insurance policy with the Provider, valid from **23 August 2019** to **22 August 2020**. The complaint concerns the Provider's failure to indemnify in full the Complainants' travel insurance claim.

#### **The Complainants' Case**

The Complainants travelled abroad on holiday to a long haul destination on **30 August 2019**, with a return flight booked for **15 September 2019**.

The First Complainant had a fall on **11 September 2019** and was taken to hospital by ambulance, where an x-ray confirmed she had broken her right ankle and needed surgery.

The Complainants say that the Provider initially wanted them to fly home as scheduled on **15 September 2019**, with the First Complainant upgraded to business class, and for her to have the surgery upon her return to Ireland.

The Complainants then submitted to the Provider a letter from the Orthopaedic Registrar at the Hospital dated **13 September 2019** that advised:

*“[The First Complainant] is currently under the care of the Orthopaedic Service...We highly recommend that she should undergo surgery acutely and that this surgery should be done [here]. We feel that it would be detrimental and potentially dangerous for her to fly overseas prior to operative fixation of her ankle as this would put her at unnecessary increased risk of increased pain, swelling, compartment syndrome, and deep vein thrombosis. Also, she should not fly overseas for at least 72 hours after the operation”.*

The Complainants say that it was only after receipt of this letter that the Provider accepted that the First Complainant should undergo the surgery abroad and the Complainants then contacted the airline and changed their return flight to Ireland to **22 September 2019**.

The First Complainant underwent ORIF (open reduction and internal fixation) surgery on her right ankle on **16 September 2019** and was discharged from hospital on **18 September 2019** as fit to fly to Ireland. In this regard, a letter from the Hospital dated **17 September 2019** advised:

*“[The First Complainant] is fit to travel by flight following her ankle surgery on 16<sup>th</sup> September 2019. Given her reduced mobility and the nature of the surgery, her foot needs to be elevated for the duration of the flight, requiring business class seating.*

*She requires the assistance of her travelling companion for the duration of the flight – [the Second Complainant] to be seated in business class with her”.*

As a result, the Complainants upgraded each of their flight tickets to Ireland to business class seating, departing **22 September 2019** and arriving home on **23 September 2019**.

The First Complainant completed a **Medical & Associated Expenses Claim Form** to the Provider in **October 2019** in the amount of **[local currency]\$9,580.32**.

Following its assessment, the Provider wrote to the First Complainant on **15 November 2019** offering a claim settlement amount of **€3,151.46**.

The Complainants emailed the Provider on **24 November 2019** to complain about this claim settlement amount, as follows:

*“We believe that the cost of flight upgrade for [the Second Complainant], the non-medical escort, should be covered as this person was insured under the same policy and both the airline and doctors had provisos for [the First Complainant] [to] fly, including non-medical escort.*

*After the stress and unnecessary complications brought about by the sheer lack of professionalism on behalf of [the Provider]...we ask that you reconsider the*

*settlement to include the full flight upgrade of [the Second Complainant], the non-medical escort”.*

In its final response letter to the First Complainant dated **12 December 2019**, the Provider advised that whilst it agreed it was necessary for the First Complainant to be in business class seating for the flight home, it would not cover the costs of the Second Complainant travelling in business class as it had concluded that there was no medical justification for him to be upgraded. In addition, the Provider acknowledged and apologised for its oversights in dealing with the Complainants whilst they were abroad and offered, as a gesture of goodwill, an additional payment of **€500** (five hundred Euro) to compensate for its shortfalls in the matter.

The Complainants set out their complaint in their letter to this Office dated **17 January 2020**, as follows:

*“While in the emergency department, we reached out to [the Provider] immediately and were told we were covered and to keep them updated with any medical forms and information were received. We agreed and proceeded to deal with the doctors ...*

*While in the emergency department, [the First Complainant] received an x-ray, which indeed showed a broken ankle. This was a Weber C fracture and we were told she required a plate and screws to be inserted. Upon hearing this we had to decide whether to have surgery [abroad] or in Ireland. The advice from the medical team [abroad] was to have the surgery there as they advised it would be “detrimental and potentially dangerous to fly overseas prior to operative fixation”.*

*Based on the doctor’s advice we chose to have surgery [abroad], as to seriously consider any other alternative would be risking adverse outcomes. Given this decision, we were told to travel immediately [to] the nearest orthopaedic unit ...*

*We again contacted [the Provider] as agreed and sent the initial form [it] requested we complete, along with the initial doctor’s report from A&E.*

*The initial doctor’s letter advised the plan as:*

- *Backslab – NWB*
- *Repeat Xray*
- *Analgesia*
- *Choose to have ORIF [abroad] prior to travel*
- *Xrays [given] on CD*
- *[Hospital – orthopaedic unit] to call*

*Upon receiving the above information [the Provider] misinterpreted the plan and stated:*

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*“The medical report we have on file advises your treatment plan as a back-slab cast and anticoagulants before onward travel”.*

*By this point, [the First Complainant] had been seen by the fracture unit and orthopaedic surgical team in [the hospital] and had agreed to have the surgery prior to travel as the medical team advised of the potential risks associated with travel and also that surgery would be further delayed once we arrived home due to increased swelling from the flight, potentially leading to a more complex surgery and a more difficult recovery.*

*Per [the Provider] request we had to return to the hospital to get a letter from the orthopaedic team to satisfy [the Provider]. This [letter] is from [the doctor], dated 13/09/19. [The doctor] stated it was highly recommended that surgery take place ASAP...as it would be detrimental and potentially dangerous to fly overseas and would unnecessarily increase the risk of pain, swelling, compartment syndrome and DVT.*

*We sent this [letter] to [the Provider] for [its] medical team to review and after waiting for a couple of days [the Provider] agreed to surgery prior to travel. We also noted that our original flights were fast approaching and that they needed to be rebooked. [The Provider] advised us to call the airline ourselves and pay the cost of changing our booking. We changed the flights to 22/09/19.*

*Surgery took place on 16/09/2019 and went well, but required a two night hospital stay. Following this we began our journey from [the treating facility city] to [the international airport city] which we would have to break up over 3 days as [the First Complainant] could not travel by car for more than a few hours per day. We arrived in [the international airport city] on 20/09/19 in time for our rebooked flight on the 22/09/19.*

*Regarding the travel plan home, [the First Complainant] was cleared to fly with the following provisos:*

- *Air travel no sooner than 72 hours post-surgery*
- *Business class upgrade to allow elevation of the injured leg*
- *Non-Medical escort also in business class*
- *Wheelchair assistance in airport and boarding plane*
- *Enoxaparin injection and Aspirin*

*Before [the First Complainant] was discharged from the hospital, the medical team completed [the airline] fitness to fly certificate and sent it to the airline. We received confirmation from [the airline] that [the First Complainant] would be allowed to fly with the following provisos:*

- *Tolerate turbulence*
- *Travel with non-medical escort provided they are able to assist onboard*

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- Medication carried in hand luggage
- DVT prevention discussed with primary doctor
- Wheelchair assistance from check in to aircraft seat

*This was all arranged by us, our medical team and [the airline] with no assistance from [the Provider] ...*

*By this point [the Provider] were no longer acknowledging, responding or advising as we continued to provide them with updated information. We had to chase [the Provider] on a number of occasions regarding answers to questions and information regarding our return. We returned all information [the Provider] requested from us promptly, but we would then hear nothing further until repeatedly enquiring.*

*We made the decision to follow the advice of our medical team, in lieu of hearing any other advice from [the Provider]. We upgraded our flights to business class, arranged onward travel/accommodation and liaised with the airline regarding assistance. We felt confident in doing so as all our decisions were guided by the medical advice given to us by a team working directly with us with the need for each element being explained in full.*

*We were also conscious that our holiday had extended longer than planned, meaning we had to contact our employers and take additional leave. It was becoming vital that a decision on our return date was made. [The Provider] were aware of our concern in this regard but failed to acknowledge this.*

*We notified [the Provider] of the plans we had made and also expressed our dissatisfaction with the assistance we had received to that point. We had become dissatisfied as [the Provider] were no longer responding to our updates or concerns or acknowledging the medical advice we had received. [The Provider] were not, as far as we could see, making any plans for our return home or communicating any information to us regarding this. In short, we felt abandoned and we felt that rather than assisting with a difficult situation, [the Provider] instead added significant stress.*

*What we have outlined above is a narrative of events as they took place. We would like to now outline our specific complaints and ask that you consider these.*

1. *[The Provider] are refusing to cover the cost of a business class upgrade for [the Second Complainant], as they stated there was no medical justification for this, despite it being a condition of travel with [the airline]. [The Provider] stated "you told us you could walk on crutches for 30-40 steps". This quote is taken from the mobility questionnaire we completed after seeing a physio but [the Provider] fail to acknowledge that it in fact stated "30-40 steps with the aid of crutches and supervised". This is taken out of context. Not only was this a condition of travel with [the airline], it was decided to be necessary by [the First Complainant's] medical team [abroad] whose reports [the Provider's] decision claims to be made.*
2. *The initial medical report was also taken out of context. [The Provider] failed to acknowledge the plan outlined in the doctor's initial letter, and as a result advised travel home without surgery. The unhelpful and accusatory attitude of the customer service agent dealing with this confusion greatly increased the stress*

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*we were feeling, as did needing to return to the hospital for further documents to satisfy [the Provider].*

- 3. While we acknowledge that medical opinion can differ, it is of significant concern to us that [the Provider's] medical teams' advice could fail so completely to recognise the potential risks associated with long distance air travel with a fractured limb. Our medical team were diligent in advising of the risks including increased pain, swelling, compartment syndrome and DVT, as well as the complication associated with delaying the surgery. To not advise of such risks is nothing short of medical negligence and endangers not only the patient but other passengers.*

*[The Provider] have advised us that [its] medical team make decisions based on medical report from our doctors and have the final say in all decisions. [The Provider's] given reason for this is that [its] medical team have training in aviation medicine. It is my understanding that [the airline's] medical team also have training in aviation medicine and they reached the same recommendation as our treating medical team.*

*If [the Provider's] medical team make recommendations based on the medical reports we provided, we cannot fathom how it could differ so completely. This would suggest to us that [the Provider] are negligent in not putting the [safety] and wellbeing of [its] clients first.*

- 4. Upon leaving the hospital we had to immediately begin our journey to [the international airport city]. This is a 10 hour drive on some very bad roads. We made a decision, following the advice of our doctors and physiotherapists to split the journey over 3 days. Breaking up the journey gave [the First Complainant] the best chance to rest the leg. We informed [the Provider] of the situation throughout. At no point did [the Provider] offer any assistance or advice in this regard, but have since noted there is an airport in [the treating facility city], and the flight time would have been only 75 minutes. [The Provider] have since acknowledged the error of [its] agent in this regard, however this was such a significant oversight, leading to increased stress, expense and pain that we feel it is nothing short of negligent and should be mentioned.*
- 5. We filed a freedom of information request with [the Provider] as we [were] confused by the advice of [its] medical team and concerned it was not properly communicated to us, as all communication had become so poor.*

*We were advised that a CD containing our data was sent to us. When this failed to arrive after 2 weeks, we contacted [the Provider] to query its whereabouts. [The Provider] responded with a tracking number for Royal Mail which showed an item dispatched on the 22/10/19, despite initially informing me the item was sent on the 7/10/19. I then received the traced item.*

*We contacted [the Provider] as we did not know if we had received the original item, if this was a replacement or even if an original had ever been sent. We received a reply from [the Provider's] complaints specialist telling us that the original was sent on the 7/10/19 and "the feeling is that the original item may have been lost in the post". We understand that these things happen but we feel that [the Provider] need to be more upfront in [its] communication with [its] customers regarding sensitive personal data.*

6. *We accepted a settlement from [the Provider] for the amount of €3,151.46. [The Provider] did not reimburse us for [the Second Complainant's] upgrade as non-medical escort...but they also did not reimburse us for the total accommodation costs. We have contacted [the Provider] regarding this to seek clarification but have received no response. We accepted the settlement only after [the Provider] advised us it would not impact our ability to refer the matter to [the FSPO].*

*... the treatment by [the Provider] was negligent, incompetent and very unprofessional. It added unnecessary stress during the whole ordeal as we were as far from home as could be. [The Provider's] incompetence in handling such a situation casts a poor light on [its] ability to manage travel emergencies and we would seriously question whether [the Provider] should be allowed to present [itself] as providing medical assistance overseas".*

In addition, in their letter to this Office dated 26 November 2020, the Complainants submit:

*"Since our first contact with [the Provider], 15 months ago, on the 11<sup>th</sup> September 2019, we have experienced nothing by way of assistance, rather, attempting to deal with [the Provider], particularly while [abroad], resulted in nothing but increased stress, frustration and upset. We are thankful that we had the support and care of an outstanding medical and surgical team [abroad] and for the competence and clarity provided by [the airline's] medical panel regarding repatriation. Had we followed the ill-conceived guidance which [the Provider] gave us and allowed [the First Complainant] to be transported home, a journey of over 27 hours and 3 flights, alone, without having undergone surgery, with not even a non-medical escort, this could have resulted in significant complications which subsequently needed to be outlined to [the Provider] by one of our doctors [in her letter dated 13 September 2019]. It is our belief that any medical panel should be held to a higher standard than what we experienced and should at least be aware of the risks associated with the course of action they advise. We feel [the Provider] should have to answer to this error to ensure such a mistake, which could endanger patients, is not made again.*

*The other issues we have outlined included the mismanagement of personal data including recordings, failure to reimburse the cost of an upgrade for non-medical escort which was deemed essential by treating doctors and [the airline], inadequate communication and assistance and a continuous level of poor customer service resulting in increased burden during an already painful and difficult time".*

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As a result, the Complainants are seeking for the Provider to pay them a further **€1,878.09** (one thousand eight hundred and seventy eight Euro and nine cent), comprising the cost of upgrading the Second Complainant's flight to a business class ticket (**€1,772.11**), so that he could accompany and assist the First Complainant throughout the flight, and the balance of accommodation expenses (**€105.98**) not included by the Provider in its initial claim settlement amount. In addition, the Complainants are also seeking for the Provider to compensate them further for the manner in which it dealt with them, whilst they were abroad.

### **The Provider's Case**

The Provider says that its records indicate that the First Complainant completed a **Medical & Associated Expenses Claim Form** to the Provider in **October 2019**, which it received on **30 October 2019**, in the amount of [local currency] **\$9,580.32**.

Separately, the First Complainant emailed a complaint to the Provider on **4 October 2019**, wherein she raised a number of concerns regarding the manner in which the Provider had dealt with the matter whilst the Complainants were aboard.

In its final response letter to the First Complainant dated **12 November 2019**, the Provider stated, among other things, as follows:

*"We understand that you were unhappy with the means we suggested for your repatriation to Ireland after breaking your ankle during a holiday [abroad] in September [2019] and with a general lack of communication on our part ...*

*When you were injured, the first report we received said you would be 'more comfortable' travelling home to Ireland if you had surgery [abroad] first. That was not exactly definitive medical justification for having surgery in resort. We thought at that point we might curtail your holiday and repatriate you to Ireland for further treatment and we do not find any fault with that logic.*

*It was after we received the second report that we re-evaluated the situation. This time, your doctor was quite compelling about the need for you having surgery locally and so we acquiesced. Again, we do not find fault with that.*

*You should know that our medical advisers are experienced in the field of aviation medicine and always consider a patient's age, injury, treatment received, general mobility, travelling companions and global location into consideration before suggesting a means of onward travel in line with International Air Transport Association (IATA) and individual airline guidelines.*

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*People can fly with fractures in situ. We would have ensured that your cast was split to allow for any potential swelling on the flight. We would have upgraded your seat on the aircraft so you could lie flat for the majority of the journey and we would have requested that you be supplied with sufficient anticoagulant medication to help prevent clotting around the wound. We would have arranged your transfers to and from the airports of departure and destination.*

*After you had the surgery, we believe it fair to say we told you we would look at getting you home when we had received more up to date medical information from the hospital. You were made aware as early as on the 13<sup>th</sup> September 2019 that we might not upgrade your partner's seat if we did not think it medically necessary to do so. Your policy covers only those costs we deem to have been incurred as a necessity. After reviewing the most up-to-date report and gauging your mobility, we agreed it was necessary for you to be in business-class seating but there was no medical justification for your partner to be upgraded. We maintain that position and are sorry to say we will not cover the costs your partner incurred travelling in that class of seating on your return journey ...*

*It is not uncommon for the opinions of our medical advisers and hospital doctors to differ. We cover only those medical costs we believe incurred in an emergency. You will note from the policy stipulations...that if you wish for any of your medical costs to be covered, you must follow the advice of our medical advisers. Cover is not afforded for customers to simply proceed on the advice of doctors who treat them overseas. Your policy is not private health insurance, it is a travel policy with an element of emergency medical cover.*

*We respectfully disagree that we took any [medical] notes out of context. The first doctor's notes merely said that you would be 'more comfortable if you had surgery prior to travel' and further indicates that an option for surgery at travel versus surgery at home was given and that you opted for the former "Choose (sic) to have ORIF [abroad] prior to travel". The notes do not say it was necessary for you to do so. Upon receipt and review of the second report, on which your doctor was more definitive, we changed our plans and agreed to cover the surgery in resort.*

*... We often face situations where patients undergo unnecessary diagnostics and treatment overseas, thus pushing up our costs and limiting our ability to offer low-cost premiums to future customers. This is why your policy offers cover for costs we deem to be incurred as an emergency. Our medical advisers are all trained doctors and nurses who have experience in aviation medicine and make the most-informed decisions about how we should proceed based on the information in patients' Medical Reports. We would reiterate the first Medical Report presented did not indicate that surgery at travel was a necessity, again, it suggested that a choice was given for surgery at travel or at home. We bowed to the opinion received in the second Medical Report and authorised surgery when the necessity to have surgery at travel became evident.*

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*... We are sorry to note the times you had to chase us for a response. It is our responsibility to address all customer correspondence in a timely manner and we regret not having done so on your case on more than one occasion. We assure you feedback has been provided to all agents involved in the handling of your case ...*

*... We asked you our mobility questions so we could gauge what assistance you needed on the flight, if any. You told us you could walk on the crutches for 30 – 40 steps. This means you could mobilise between the door of the aircraft and your seat, and from your seat to the aircraft toilet. You also had a good sitting tolerance so you could sit upright for take-off and landing. Medically speaking, there was no need for anyone to be with you at the front of the plane and so any such costs would not be covered by the policy.*

*... we believe we outlined our plan to you. The difficulty at the beginning was the airline could not alter your tickets without a confirmed date of travel. We should have advised you better here. If we told you to simply tell the airline you did not yet have a confirmed return date, they would/should have left the ticket as 'open', thus allowing you to call them later when you were pronounced fit to fly. Our intention was to see how you were after the operation, gauge your mobility and then make arrangements when we were satisfied it was safe for you to travel, and we believe we relayed these intentions adequately. You were aware we were looking for some information after your surgery and that we would not make any decisions without getting it. You were aware we might not cover the cost of your partner's upgrade at that point but you both booked the ticket anyway – we do not believe it reasonable for us to be held accountable for costs you incurred in the knowledge we might not cover them. Notwithstanding the above however, we acknowledge that our performance should have been better.*

*We acknowledged that we did not offer any help to your partner while you were hospitalised. The policy covers, as you likely now know, reasonable, additional accommodation and transportation costs incurred for one individual to remain in resort with you until you are fit to fly. You were due to fly home on 15 September but, after that date passed, we made no effort to look for a hotel in the area for your partner and we should have.*

*We are also sorry to note you had to chase us for a response on more than one occasion. Your file shows we tried to call you on your mobile a few times but could not get through. We consider it acceptable to email in such circumstances but our team made no effort to call you at the hospital. There may have been a phone in your room or on the ward and we may have spoken with you directly if that was the case. As it was, we agree we should have responded to all your correspondence in a timely manner and we sincerely regret not having done so.*

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*Finally, we believe it indicative of a lack of experience on the part of some of our operators who did not intervene when you said you would drive from [the treating facility city] back to [the international airport city] to catch your flight. There is an airport in [the treating facility city] and we should have booked you on a flight from there to [the international airport city]. It is not a given that you would have been able to have your leg raised for that flight as most domestic flights in [that country] are operated by smaller aircraft and might not have had rows of 3 seats. The flight time, however, is approximately 75 minutes and it would have been wholly sensible to try to get you on one instead of you having to drive for hours.*

*There is no excuse for these kinds of oversights and we hope you will accept our sincere apologies for any undue confusion or inconvenience caused. We realise the entire situation must have been quite trying for you and we realise the significance of your injury. We appreciate the last thing you would have wanted at such a time was any subsequent issues with your insurers and we are truly sorry if you felt in any way let down by us during your time of need.*

*As a token of our apology for the issues identified herein and as a gesture of our goodwill, we hope you will accept payment of €500 to compensate you for these shortfalls. This amount will be issued into your nominated back account in the coming days and is independent of your outstanding claim assessment for out of pocket expenses ...”*

The Provider says that it paid the First Complainant the goodwill payment of **€500** on **14 November 2019**. It says that following the completion of its assessment of the claim, the Provider wrote to the First Complainant on **15 November 2019** offering a claim settlement amount of **€3,151.46**.

The Provider says it received an email from the Complainants on **24 November 2019** in which they expressed their dissatisfaction with this claim settlement amount and asked that the Provider reconsider the claim settlement amount to include the flight upgrade for the Second Complainant.

The Provider says that it assesses all claims in accordance with the applicable policy terms and conditions. In this regard, the Provider notes that the ‘What to do in the Event of an Emergency’ section at pg. 5 of the **Travel Insurance Policy Document** states:

*“ ... To comply with the terms and conditions of this cover You must obtain the prior consent of [the Provider] before incurring any expenses over €500, curtailing or extending Your trip due to Your bodily injury or illness. In the case of an emergency where You are physically prevented from contacting Us immediately, You or someone designated by You must contact us within 48 hours, otherwise We may not pay Your claim.*

### **Repatriation of patients**

*If, in the opinion of Our senior medical officer, it would be preferable to repatriate a patient to Ireland, We will organise the repatriation. If You do not comply with this decision We reserve the right to withdraw cover with immediate effect.*

*The decision on the method of repatriation will be at the discretion of Our Senior medical officer subject to consultation with the doctor in attendance”.*

In addition, the Provider refers to ‘Section 2 - Medical and Other Expenses incurred abroad’, at pgs. 10-11 of the **Policy Document** which states:

**“You are covered for: ...**

- *Additional travelling costs to repatriate You Home where recommended by Our Senior medical officer. We will pay the additional travelling and accommodation costs for one person to remain with You if it is medically necessary for You to stay beyond Your scheduled return date. If You are travelling alone, We will cover the cost of one person to travel to stay with You if it is medically necessary for You to be accompanied as recommended by Our Senior medical officer”.*

The Provider says that it is satisfied that the element of the Complainants’ claim relating to the Second Complainant’s upgrade to business class was repudiated in accordance with the policy terms and conditions, based on the information available, and taking into account the opinion of its medical panel who are specialists in aviation medicine. The Provider notes that there is a difference of opinion as to the need for the Second Complainant to upgrade to business class and in that regard, the Provider followed the recommendation of its medical panel.

The Provider says it received the airline’s **MEDIF – Medical Information for Fitness to Travel or Special Assistance** form dated **17 September 2019** on that date, in which it was stated that the First Complainant:

*“Needs to travel business class – so can have leg elevated during flight”*

After receiving the **MEDIF**, the Provider says that its medical team sought some additional medical results and the opportunity to discuss the medical requirements for the repatriation with a treating doctor, in order to proceed with the repatriation arrangements.

However, in the meantime, the First Complainant was discharged from hospital on 18 September 2019 and emailed the Provider to advise that as the Second Complainant needed to return to work and she to work and study, they had already made the decision to amend and upgrade the return flight seats for **22 September 2019** to business class, with a view to seeking reimbursement of these costs from the Provider by submitting the claim following their return to Ireland. The Provider says that it was only after assessing the claim and the evidence presented, that some of these costs were not retrospectively authorised.

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The Provider says that when assessing the original claim, it was determined, based on the evidence available, and after consultation with its medical panel, that it was not medically necessary for the Second Complainant to upgrade his return ticket to business class and that these costs were outside the method of repatriation that would have been recommended by the Provider's senior medical officer.

The Provider says that based on the information it has reviewed to date, it accepts that it was the opinion of the treating facility abroad that the First Complainant *"Travel with a non-medical escort provided they are able to assist on-board"*. The Provider notes, however, that its medical panel did not necessarily concur with this decision. The Provider says that because the Complainants chose to upgrade both of their tickets for the flight and to claim for the costs on their return home, the usual conversations that would normally have ensued between its medical advisors and the treating facility, about the Complainant's repatriation needs, did not take place.

The Provider notes that during a telephone call on **17 September 2019**, its Agent asked how the Complainants intended to get from the treating facility city to the international airport city. The First Complainant advised that they had a rental car which they needed to drop off and that they intended to make this journey over 2 days. The Agent was also advised that the First Complainant was able to look after her toilet needs and was able to walk with crutches.

In its final response letter of **12 November 2019**, the Provider acknowledged that it would have been prudent of it, to try to arrange a flight from the treating facility city to the international airport city to enable the First Complainant catch her flight home. As advised therein, the Provider believes that this may have been due to a lack of experience on the part of some of its operators who did not intervene when the First Complainant advised that they would be driving to the international airport city. The Provider offered the Complainants its sincere apologies for this and issued a gesture of goodwill payment in the amount of **€500** on **14 November 2019**.

In addition, the Provider also notes that when the Complainants returned to Ireland, they requested a copy of the medical information held and advised by the Provider. The Provider posted the original Data Subject Access Request CD to the Complainants on **7 October 2019**, however the Complainants contacted the Provider on **21 October 2019** as they had not received it. The Provider notes that the CD had been posted without tracking, as the data was encrypted on the CD and the password to decrypt was sent to the Complainants separately by email. The Provider posted a second copy of the CD on **22 October 2019**, this time with tracking, again with the data encrypted, and this was received by the Complainants.

The Provider notes that the total sum reimbursed to the Complainants to date amount to **€3,651.46** (three thousand six hundred and fifty one Euro and forty six Cent) - **€3,151.46** in respect of the claim settlement paid on **2 December 2019** and, in light of its shortfalls in service, a **€500** gesture of goodwill paid on **14 November 2019**.

The Provider notes that in their FSPO Complaint Form, the Complainants say that they had accepted a partial claim settlement figure of **€3,151.46** from the Provider but that the Provider had not reimbursed them the costs incurred by the upgrade to a business class ticket for the Second Complainant, or the full accommodation expenses submitted and in that regard, they are seeking a balancing repayment from the Provider in the sum of **€1,878.09**.

Having reviewing the file, the Provider, in its response of **29 October 2020** to the formal investigation by this Office, offered the Complainants the sum of **€1,878.09**, as per their request. In addition, the Provider also offered the Complainants a further gesture of goodwill in the sum of **€250** (two hundred and fifty Euro).

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully or unfairly declined in late 2019, to pay the Complainants' travel insurance claim in full and provided the Complainants with poor customer service whilst they were abroad.

### **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 Complainants were 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 2021**, 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.

/Cont'd...

It is not the role of this Office to adjudicate in conflicts of medical evidence. Rather, it is the role of this Office to examine the totality of the medical evidence which was before the Provider at the relevant time to determine whether the decisions made by the Provider in this matter were reasonable decisions, based upon the medical evidence that was available to it at the time when it made those decisions, now complained of by the Complainants.

I am satisfied that this approach is in accordance with the views of the High Court in *Baskaran v. FSPO* [2016/149MCA], where the Court confirmed that:

*“The function of the [Financial Services and Pensions Ombudsman] in considering the...complaint was, in general terms, to assess whether or not [the Provider] acted reasonably, properly and lawfully in declining the claim of the Appellant”.*

I note the First Complainant had a fall on **11 September 2019** whilst the Complainants were holidaying aboard and she was taken to hospital by ambulance, where an x-ray confirmed she had broken her right ankle and needed surgery.

Recordings of telephone calls have been furnished in evidence and I have considered the content of these calls.

#### 11 September 2019

The First Complainant telephoned the Provider on Wednesday **11 September 2019** to advise of her accident and having listened to the recording of this call, I note the following exchanges:

Agent: *... The policy does provide provisions for extended accommodation costs and flights home, when you are considered fit to fly ... and I would say to call the airline when you get a chance before the flights depart and sort of explain the situation a bit and just ask them to put the tickets on hold, and make it, and sometimes they can effectively put your tickets into like a limbo status until you are ready to fly home and then we can use those tickets at a later point -*

First Complainant: *Ok – I’ll ring them and do that ...*

Agent: *... the difficulty with [the country]...their data protection laws are so strict with third parties and medical information, we can’t really do much to help you in getting hold of the medical reports and they tend to only give you a medical report when you are discharged, so our medical team are a bit sort of blind until you are ready to discharge ... but it just means that we’re a bit sort of stuck until we get the actual medical reports to review, can’t advise on your fitness to fly and any sort of special repatriation means you would need to fly...it may be*

/Cont’d...

*business class seating or extra seating to put your leg up and wheelchair assistance and so on, we'll come to that later, when we get to that ...*

First Complainant: ... [following confirmation of her mobile telephone number]  
*The only thing I would say is the reception can be spotty here sometimes, you might need to email me to call you, that might sometimes work better*

Agent: *That's fine, yeah, that's ok, we can communicate through email*

First Complainant: *Thank you ...*

*... can I ask you as well, my partner, my fiancé, is on that policy as well and he's with me, how is it work with him? Like obviously he is staying with me through the surgery, he'll miss his flight as well, is he covered for that?*

Agent: *So there are provisions on the policy for a plus one, and that means that the extended accommodation costs and the flights and so on would include that plus one on a medical justification basis, generally it's just for anything that's a bit more serious, and obviously a break is quite serious, that should be fine, we will most likely cover that, but I need to wait for the medical team to [indecipherable] ...*

The Complainants' travel insurance policy with the Provider, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

In this regard, I note that the 'What to do in the Event of an Emergency' section at pg. 5 of the applicable **Travel Insurance Policy Document** states:

***"Repatriation of patients***

*If, in the opinion of Our senior medical officer, it would be preferable to repatriate a patient to Ireland, We will organise the repatriation. If You do not comply with this decision We reserve the right to withdraw cover with immediate effect.*

*The decision on the method of repatriation will be at the discretion of Our Senior medical officer subject to consultation with the doctor in attendance".*

I note from the documentary evidence before me that the first medical report the Provider received from the Complainants was the **Emergency Department Clinical Sheet** dated **11 September 2019**, which stated, among other things, as follows:

*"From Ireland on holiday, due to return 4 days ...*

/Cont'd...



*Weber C fracture, some posterior displacement of fibula*

*D/W Ortho Reg – needs ORIF, would be more comfortable if had prior to travel*

*Plan*

*Backslab – NWB*

*Re xray*

*Anlgesia*

*Choose to have ORIF [abroad] prior to travel"*.

[underscoring added for emphasis]

I am of the opinion that it was reasonable for the Provider to determine from this report that surgery was not deemed an urgent necessity, in that the wording suggested that a choice was given for surgery prior to travel, or alternatively at home. As a result, I take the view that at that time it was reasonable for the Provider, based on that medical evidence made available to it, to consider repatriating the First Complainant, with an upgrade to business class, and that such a decision was in accordance with the above travel insurance policy terms and conditions.

In this regard, the Provider emailed the First Complainant on **13 September 2019** to advise, as follows:

*"The medical team are advising curtailment home early, with business class seating, wheelchair assistance, luggage assistance alongside suitable anticoagulation and a fitness to fly certificate.*

*We will arrange the flights and repatriation means for you ...*

*I need to double check regarding your partner's seating, if the medical team advise non medical escort for your needs he will be in business class with you, otherwise we would arrange economy seating, will update on this ASAP".*

13 September 2019

I note that the next medical report the Provider received from the Complainants was a letter from the Orthopaedic Registrar at the Hospital dated Friday **13 September 2019** that advised:

*"[The First Complainant] is currently under the care of the Orthopaedic Service...We highly recommend that she should undergo surgery acutely and that this surgery should be done [here]. We feel that it would be detrimental and potentially dangerous for her to fly overseas prior to operative fixation of her ankle as this would put her at unnecessary increased risk of increased pain, swelling, compartment syndrome, and deep vein thrombosis. Also, she should not fly overseas for at least 72 hours after the operation".*

/Cont'd...

I note that following receipt of this medical report, the Provider agreed that the First Complainant should undergo the surgery prior to her travelling home to Ireland.

14 September 2019

I note the First Complainant emailed the Provider on **14 September 2019**, as follows:

*“Just to confirm, I am changing my flight due today, to next Sunday 22/9 and also upgrading to business class. Can you advise if my fiancé will also be covered to upgrade to business class? I discussed this with [Name redacted] but did not receive a definitive answer to this? As I said, I do not feel I would cope after surgery without an escort on such a long haul flight Can you advise if I can also upgrade him to business class with me?”*

*I will call the airline and make arrangements as soon as I hear from you. They advised changes can be made up to 6 hours before the original flight so I have approx an hour to contact them?”*

15 September 2019

The First Complainant then telephoned the Provider the following day on **15 September 2019** and having listened to the recording of this call, I note the following exchanges:

First Complainant: *... So I just sent a wee query there just to confirm that I changed my flight, I will change it to next Sunday, 22<sup>nd</sup>, and upgrade it to business class, like [the Agent] advised. But the other query I had, and I didn't get an answer to this yet, was my fiancé who's with me, can I upgrade him to business class? [The Agent] said he'd look into that as well but I'm just not sure –*

Agent: *Bear with me, no, no, no, no, what I would advise you at the moment, don't upgrade even business class for yourself, because at the moment we have advised business class when we were curtailing you back home, so we have to reassess, at the moment, don't upgrade it, because, just keep the flight as a standard, because first of all we don't know if you're going to be fit to fly on the 22<sup>nd</sup> because, when are they looking to do the surgery or the procedure?*

First Complainant: *They're hoping to do it tomorrow, it all just depends on how the swelling is, but hopefully tomorrow -*

Agent: *Exactly, so if, for example, they will say that the procedure will go ahead Tuesday / Wednesday, then you most likely won't be fit to fly on Sunday, so then we have to rearrange those flights again for the later date if that makes sense, because at the moment it's just a grey area, kind of catch-22, if, if you gonna*

/Cont'd...

*upgrade yourself and whatnot to, so that's a money that you spent, when it comes to upgrades we can ask our travel agents to do them when medical panel will authorise it, but if you're not, because we authorised the business class when we thought we just going to bring you home, right, for the further management, but now we authorising surgery, now we don't know how long the recovery process will take and what repatriation recommendations you will require, such as leg elevation, wheelchair assistance, you may even require based on how severe is your condition and if there is any complications, you may require medical escort, so we never know until the procedure is done and then you are in a recovery period, then we will be able to establish how we going to proceed further, so at the moment, just move your flights –*

First Complainant: *- change the dates -*

Agent: *- yes, just the change of days and then if you're fit to fly on that 22<sup>nd</sup>, we will advise and we will then be able to upgrade your flight if and when require it, and then we will be able to review if your partner will be acting as a class 1. Class 1 is a person that will be assisting you with luggage, with toilet, with moving here, there and about, so that's the person classed as a class 1, then if you are upgraded, then class 1 is upgraded with you to be with you in that area, for example, business class or first class...but if, for example, if we decide that post - so I'm going to give you both options and I'm going to be brutally honest with you, so, for example, post-surgery your recover, your recovery is brilliant and for example you will stay two weeks more rather than only one week post recovery, than there is a chance that we will just send you in an economy flight as per normal, but that's the only - I'm just giving you options, so we don't know how it's going to go so I'm just giving you, you know, making you aware that it could be that way or this way, so business class or economy seat, but it depends on the recovery, the follow-up assessments, and on your mobility as well, so all the aspects post-surgery will go into play once you got the procedure done, ok, so at the moment it's too early to do that...because if you spend money and then we all say 'oh you should not do that and just fly in economy and stuff like that', then it would be causing you more problems and financial loss, so we don't want that, just move your flights*

First Complainant: *No, that makes sense, just change the dates.*

/Cont'd...

I note the Complainants then contacted the airline and changed their return flight to Ireland to **22 September 2019**.

16 September 2019

The First Complainant underwent ORIF (open reduction and internal fixation) surgery on her right ankle on **16 September 2019**.

17 September 2019

I note that the First Complainant spoke with the Provider on Tuesday **17 September 2019** and having listened to the recording of this call, I note the following exchanges:

Agent: *... so listen, what we will need is the discharge report from tomorrow ... if you can ask the doctor to also provide your vital signs, which is blood pressure, I think it's heart rate and something else, and your comments on fitness to fly ...*

*... we will pass that to medical team, but before you going to be discharged, we need the discharge report to be sent to us, this discharge report will include what procedure has been performed, what other medical information that our medical panel will need, but I will pop you email with, advising to ask for the vitals and, you know, your blood pressure, your oxygen saturation on room air, so it's just vitals that the doctors will know what to do with you. Now in relation to providing the upgrade, I will have to pass all that information to the medical team for them to review all that, because as I explained to you last time, do you remember that the medical panel authorises everything, although we moved the flights to Sunday, but if the medical panel will say that you're still not fit to fly for Sunday or your mobility is not good enough etc. etc., then they will be able to advise, but they are the medical panel trained in aviation medicine, so it's not myself, its them –*

First Complainant: *- yeah, but would that not be up to my doctors that actually see me rather than a team that hasn't seen me?*

Agent: *No, the decision is last and final of our medical team, and the doctors, for example, the doctors who signing you off, I can't vouch that they are aviation medicine trained specialists, so I can't advise and vouch for the doctors in the current hospital that you undergo the procedure, that they know how your body and how your injury will act in a cabin pressure on a high altitude, so our doctors have those qualifications, they are able to advise what you would require, but listen, I am not saying*

/Cont'd...

*that they will dispute or disagree with what your doctors say, they just have to review the information that you send us with that discharge report, that will happen tomorrow ...*

*Can you give me a favour and, for example, do mobility with the physio, so for example, how many steps can you do with or without any help, how long you can sit in a sitting position, because although the doctors advise that you've got a business class, you should have, you require business class upgrade, ok, you have to be able to sit in a sitting position with both feet on the ground, knees bent, for up to, for example, 30 minutes up to a hour, because, if you, imagine yourself, you're sitting in the business bit, business class, but then there is a delay in your plane, you are unable to recline the seat until the pilot authorises to do so, so then you have to be in that sitting position, like you sit in a chair, you have to be in that position until the pilot will say is safe to do so, so if you are unable to do that, then we have to re-evaluate your current situation, so if you can maybe even now, or maybe later on today, can try and sit in a chair and see how long you're comfortable to sit for, without your legs getting pounding sensation and you're not getting, I don't know, any pains, so how long you can sit for in a chair position and how many steps you can do.*

**First Complainant:** *Ok, well, I'm on crutches for steps obviously, like I can't put my foot on the ground at all yet*

**Agent:** *No weight-bearing, I understand*

**First Complainant:** *No, no weight-bearing*

**Agent:** *So how comfortable do you feel on crutches? Are you fairly ok or this is something that you are going to be training also tomorrow?*

**First Complainant:** *No, I'm fine on crutches.*

**Agent:** *Ok, and you would be ok to look after your own toilet needs?*

**First Complainant:** *No, probably not really, I can't manage, like, on the crutches, I can't manage, like, I have, my hands are holding me up on the crutches –*

**Agent:** *No, no, no, but when you are in a toilet, the toilets are fairly small so you can support yourself by holding -*

/Cont'd...

First Complainant: *Oh yeah, no, I can manage then, but I need someone to help me get there*

Agent: *No, no, no, that's fine, so understandable that you, when you're in a plane, you can support yourself by using the seats on each side and when you're in the toilet, the toilets, the toilets are not huge, they are small, so you will be able to support yourself holding the walls or holding the sink, to support yourself with the balance there. In the actual, you know, to go to the toilet and use the toilet, you're ok to look after your own toileting needs, right? So there is no problem?*

First Complainant: *Yeah, no ...*

Agent: *... so how would you get from where you currently are to [the international airport city]?*

First Complainant: *So we're driving but we'll have to break it up over a couple of days*

Agent: *Ok. So if you are going to be discharged tomorrow, you mean Wednesday, right?*

First Complainant: *Yeah*

Agent: *Ok, that's fine, so then Thursday, Friday, Saturday, Sunday, the flight is transferred till Sunday, ok, and in relation to your partner accommodation, is he, is he booked himself somewhere or is he staying in a hospital accommodation with you?*

First Complainant: *No, there's no hospital accommodation for him, he's in a hotel ...*

Agent: *... so you guys have a rental car, right?*

First Complainant: *Yeah*

Agent: *And the rental car was from [the international airport city], so then you're just bringing the car back there?*

First Complainant: *Yeah, well we actually picked it up in [a different city] and we have to bring it back to [the international airport city]*

Agent: *Ok, that's fine, so you've got a different pick-up and a different drop-off point?*

/Cont'd...

First Complainant: *Yeah, yeah.*

Agent: *Oh that's fine, that's fine. Ok. Brilliant. So listen, that's fine, make the doctor or whomever is going to be discharging you, make them also aware of that, that you will be making your way in a car to get to [the international airport city] for the flight etc.*

First Complainant: *They are aware of that*

### 18 September 2019

The First Complainant was discharged from hospital on Wednesday **18 September 2019** as fit to fly to Ireland. The Complainants emailed the Provider that day to advise, among other things, as follows:

*"... I have been discharged from hospital following surgery on Monday. Attached are the further documents requested: mobility document is completed and I have attached the discharge report. I did ask for my vital signs to be recorded as requested but the nursing team thought this was unusual. They have given me a copy of their observations from my chart. All have been within normal limits. I hope this will suffice.*

*Sunday [22 September 2019] is now drawing very close and we are both conscious that if an upgrade is not arranged this could result in us needing to take a future flight. However this is not really possible as [the Second Complainant] needs to return to work and [the First Complainant] to work and study. The doctors here have assured us and you in writing that there is no need to delay our return home any further. It is safe to fly.*

*For these reasons, we have upgraded ourselves on the flight to business class as per recommendation from the doctor. We expect that upon our return we will be reimbursed for this bill along with the other expenses as part of our claim ..."*

In this regard, I note that the 'What to do in the Event of an Emergency' section at pg. 5 of the applicable **Travel Insurance Policy Document** states:

*"... To comply with the terms and conditions of this cover You must obtain the prior consent of [the Provider] before incurring any expenses over €500, curtailing or extending Your trip due to Your bodily injury or illness. In the case of an emergency where You are physically prevented from contacting Us immediately, You or someone designated by You must contact us within 48 hours, otherwise We may not pay Your claim".*

/Cont'd...

In addition, '**Section 2 - Medical and Other Expenses incurred abroad**', at pgs. 10-11 of the **Policy Document** states:

***"You are covered for: ...***

- *Additional travelling costs to repatriate You Home where recommended by Our Senior medical officer. We will pay the additional travelling and accommodation costs for one person to remain with You if it is medically necessary for You to stay beyond Your scheduled return date. If You are travelling alone, We will cover the cost of one person to travel to stay with You if it is medically necessary for You to be accompanied as recommended by Our Senior medical officer".*

I note that on **18 September 2019**, the Complainants upgraded their flight tickets home for **22 September 2019** to business class, without the prior consent of the Provider.

I appreciate that the First Complainant breaking her ankle and undergoing surgery abroad was a stressful situation for the Complainants and that they were eager to return home post-surgery.

Nevertheless, I note that the Complainants upgraded their flight tickets without waiting to learn if the Provider had determined that the First Complainant was fit to fly following her surgery, or what her repatriation needs might be.

In this regard, I note that in its final response letter to the First Complainant dated **12 November 2019**, the Provider stated, among other things, as follows:

*" ... After you had the surgery, we believe it fair to say we told you we would look at getting you home when we had received more up to date medical information from the hospital. You were made aware as early on as the 13<sup>th</sup> September 2019 that we might not upgrade your partner's seat if we did not think it medically necessary to do so. Your policy covers only those costs we deem to have been incurred as a necessity. After reviewing the most up-to-date report and gauging your mobility, we agreed it was necessary for you to be in business-class seating but there was no medical justification for your partner to be upgraded. We maintain that position and are sorry to say we will not cover the costs your partner incurred travelling in that class of seating on your return journey ...*

*It is not uncommon for the opinions of our medical advisers and hospital doctors to differ. We cover only those medical costs we believe incurred in an emergency. You will note from the policy stipulations...that if you wish for any of your medical costs to be covered, you must follow the advice of our medical advisers. Cover is not afforded for customers to simply proceed on the advice of doctors who treat them overseas. Your policy is not private health insurance, it is a travel policy with an element of emergency medical cover ... "*

/Cont'd...



I note as part of its original claim settlement in **November 2019**, the Provider retrospectively authorised that First Complainant's upgrade to business class and approved benefit for this. I am satisfied that this was a reasonable position for the Provider to take, based on the medical information before it at the time of its claim assessment.

I note, however, the Provider says it had determined, based on the evidence available, and after consultation with its medical panel, that it was not medically necessary for the Second Complainant to upgrade his return ticket to business class and that this cost was outside the method of repatriation that would have been recommended by its senior medical officer, and thus the Provider did not provide benefit for the Second Complainant's upgrade as part of its original claim settlement. In this regard, I note from the documentary evidence before me the letter from the Hospital dated **17 September 2019**, which stated:

*"[The First Complainant] is fit to travel by flight following her ankle surgery on 16<sup>th</sup> September 2019. Given her reduced mobility and the nature of the surgery, her foot needs to be elevated for the duration of the flight, requiring business class seating.*

*She requires the assistance of her travelling companion for the duration of the flight – [the Second Complainant] to be seated in business class with her".*

I note the airline's **MEDIF – Medical Information for Fitness to Travel or Special Assistance** document dated **17 September 2019** stated that the First Complainant:

*"Needs to travel business class – so can have leg elevated during flight"*

In addition, this document also noted the Second Complainant's name in the *"Intended Escort Details"*, and the medical qualification of the escort was listed as *"Travel Companion"*.

Furthermore, I note the airline emailed the First Complainant on **19 September 2019**, as follows:

*"We are pleased to advise our medical team have approved your case. You may travel with the provisos noted below:*

*... PASSENGER IS FIT TO TRAVEL BY AIR PROVIDED THAT CONDITION REMAINS STABLE WITH MEDICATIONS AND PAX ABLE TO TOLERATE UNEXPECTED TURBULENCE//MAY TRAVEL WITH A NON MEDICAL ESCORT PROVIDED THAT TCP IS ABLE TO ASSIST PAX'S NEEDS WHILE ONBOARD. PLEASE ENSURE THAT PASSENGER'S NECESSARY MEDICATIONS ARE CARRIED IN HAND LUGGAGE WITH PRESCRIPTION. DVT PREVENTION SHOULD BE DISCUSSED WITH PRIMARY DOCTOR".*

While I am of the opinion that these documents indicate that there was a need to upgrade the First Complainant to business class for her journey home and that she required the assistance of a non-medical escort (the Second Complainant) throughout, I am mindful that the Complainants incurred the cost of upgrading both their seats without the prior consent of the Provider.

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The Complainants' decision to proceed in that way was in breach of their obligations per the insurance contract in place between the parties, and they did so without firstly giving the Provider's medical panel the opportunity to assess what the First Complainant's repatriation needs would be, in the particular circumstances of her discharge.

I note, however, that the Provider, as part of its response of **29 October 2020** to the formal investigation by this Office, offered the Complainants a further claim settlement amount of **€1,878.09** (one thousand eight hundred and seventy-eight Euro and nine cent), which includes the cost of the upgrade for the Second Complainant.

In my opinion, it would have been helpful if the Provider had made this additional payment to the Complainants at an earlier time, taking account of the airline's requirements to permit the First Complainant to board the flight, to travel home. It is also clear however that the Complainants breached the terms and conditions of their travel policy, notwithstanding that the Provider had explained clearly to them that they should wait until the Provider had assessed the First Complainant's repatriation needs, after it received the hospital discharge report from the Complainants. The Complainants' decision to proceed to incur the upgrade cost, without further consultation with the Provider, took the decision out of the Provider's hands. In all of those circumstances, I take the view that the offer made by the Provider in October 2020, was overall a fair and reasonable approach.

I note that the Complainants also say that the Provider provided them with poor customer service whilst they were abroad. This element of the Complainants' complaint has been set out in detail above. Email chains and recordings of telephone calls have been supplied in evidence and I have considered the contents.

The Provider has acknowledged and apologised for its shortfalls in the service it provided to the Complainants whilst they were abroad and as part of its response of **29 October 2020** to the formal investigation by this Office, it offered the Complainants a gesture of goodwill in the sum of **€250**. This offer was in addition to the gesture of goodwill payment in the amount of **€500** that the Provider previously paid to the Complainants in **November 2019**, shortly after the First Complainant emailed a complaint to the Provider on **4 October 2019** raising a number of concerns regarding the manner in which the Provider had dealt with them whilst they were aboard. I am of the opinion that the total sum of **€750** (seven hundred and fifty Euro), that is **€500 + €250**, is, having due regard to the content and context of the emails and telephone calls, a fair and reasonable customer service payment in this matter.

I note that the Complainants, in their email to this Office on **9 November 2020**, declined the Provider's offer of an additional claim settlement amount of **€1,878.09**, which includes the cost of the upgrade for the Second Complainant, and the additional gesture of goodwill in the sum of **€250**.

Having regard to all of the above, I am satisfied that the Provider's offer of **29 October 2020** of **€2,128.90** (two thousand one hundred and twenty-eight Euro and ninety Cent), that is **€1,878.09 + €250**, in the circumstances is reasonable and was offered in reasonable time, when responding to the formal investigation of this complaint by this Office.

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As the offer remains open to the Complainants to accept, I don't believe that it is necessary or appropriate to make any direction to the Provider or indeed to uphold the complaint, and it will be a matter instead for the Complainants to advise the Provider if they wish to accept those monies.

I note that acceptance of this offer would bring the Provider's total payment to the Complainants in respect of the claim and complaint, to **€5,780.36** (five thousand seven hundred and eight Euro and thirty-six cent). Indeed, I note that since the preliminary decision of this Office was issued to the parties on 16 September 2021, the Complainants have indicated their intention to engage directly with the Provider to facilitate that payment and the Provider has sought IBAN details to arrange for the payment in question.

It is my Decision therefore, on the evidence before me that this complaint is not 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

29 October 2021

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.