An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0452
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim - cancellation Claim handling delays or issues Failure to advise on key product/service features
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a travel insurance policy.

The Complainant's Case

The Complainant states that *"on the date I purchased the travel insurance, I was of the belief that cover would immediately take effect and by virtue of that fact, I was a free agent to travel abroad on the premise that I had adequate cover"*. The Complainant states that, following medical advice that he should not travel received on **15 December 2018**, he did not travel on his planned trip on **17 December 2018**.

After making a cancellation claim on his travel insurance policy, the Provider did not pay the claim and the Complainant said that it was *"only then I discovered the insurance provider had not covered me from the date of purchase as had been my previous experience"*.

The Complainant attests that the Provider does not have sufficient checks and balances in its administration of the travel insurance policy, and that there was an absence of the *"cooling off period which the Insurer should provide the consumer with the requisite documentation pointing out the absence of cover for the consumer prior to the date of departure which was a prerequisite of all previous travel insurance policies I had secured prior"*.

The Complainant made further submissions to this Office dated **2 November 2020**. In these submissions, the Complainant stated that the caveat concerning the start date of the policy should have been *"significantly highlighted in a more pronounced manner"* and there should be a *"much more robust system"* in place to stop individuals like the Complainant making this error. The Complainant also identifies himself as a vulnerable individual and states that the Provider's online system *"fails to capture the vulnerabilities which are less likely to arise and perhaps possible would never arise where face to face contact in purchasing a product takes place"*. As proof of his vulnerable status, the Complainant attaches evidence to demonstrate that he suffers from a particular condition.

The Complainant states that the Provider has failed to comply with provisions 2.4 and 10.9 of the Consumer Protection Code 2012 (as amended) (**'the CPC 2012'**)

the Complainant wants the Provider to compensate him for the financial loss (€1,388.50) plus his premium (€86.48) *"plus restitution and loss of interest and purchasing power on the amount involved"*.

The Provider's Case

In its Final Response Letter dated **20 November 2019**, the Provider states that, when the Complainant made the policy purchase online on **29 November 2018**, he *"selected a date in the future for the policy to commence"* on **17 December 2018**. The Provider states that the Complainant received medical advice on **15 December 2018** to cancel a planned flight and that this *"arose prior to the effective cover dates of your policy and this is why the claim was denied"*.

The Provider states that, during a purchase of a policy, *"you select the date you wish the annual multi-trip travel insurance policy to start; if one enters a date in the future, be that one or several days later, our system automatically displays a caveat as follows: You will not be covered for holiday cancellation until your policy start date. Choose today's date if you want cover as soon as possible"*.

The Provider states that following an online purchase, the purchaser is furnished with an Insurance Product Information Document. The Provider states that this document includes a section that states *"All sections, including cancellation cover, start from the start date as specified on your validation certificate and will cease on the end of the specified period as shown on your validation certificate"*.

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The Provider further states that, in the policy terms and conditions, within the definition of period of insurance, it states that it is defined as *"the period for which we have accepted the premium as stated in the validation certificate"*.

The Provider states that there were delays in its responses to the Complainant, as it *"experienced a large volume of claims and queries throughout the months of August and September which coincided with some unexpected resourcing issues"*. The Provider also states that there were instances where emails from the Complainant had been overlooked. The Provider acknowledges that on **17 June 2019** the Complainant requested the Provider's data protection officer's names and requested further personal data and this email was overlooked until **9 July 2019**. A further similar request was sent by email on **9 August 2019** and was also overlooked until **01 October 2019**. Furthermore, on **11 November 2019** the Provider discovered a further email from the Complainant dated **06 October 2019** in which the Complainant requested that the matter escalate to a formal complaint. The Provider accepts that it should have acknowledged receipt of this complaint on or before **11 October 2019**. Due to the email from **6 October 2019** being missed, the Provider also failed to send the usual 20 day update letter in regards the Complainant's complaint within the stipulated time.

The Provider made submissions to this Office on **25 September 2020**. In these submissions, the Provider states that when a purchaser first selects his/her choice of cover, the date is automatically set at the date of purchase unless the purchaser manually changes the date. The Provider states that in the Complainant's case, although he purchased the policy on **29 November 2018**, he manually amended the start date to **17 December 2018**. The Provider states that when this manual amendment is made, a warning appears on the screen which states: *"You will not be covered for holiday cancellation until your policy start date. Chose today's date if you want cover as soon as possible"*.

The Provider further states that once the policy was purchased, a validation certificate was sent to the Complainant which clearly confirmed that the policy start date was **17 December 2018**.

The Provider states that *"as the cancellation became necessary before the start date and close to the expiry of the cooling off period, we are willing to offer, as a gesture of our goodwill, a refund of the policy premium in the amount of €86.48 on the understanding that the Complainant has not required to use the premium cover for the period of insurance"*.

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The Complaints for Adjudication

The complaints for adjudication are that the Provider:

- Mis-sold a travel insurance policy to the Complainant, with the result that he was unaware that his policy cover did not commence until his departure date;
- Incorrectly denied his claim for cancellation as a result of the above; and
- Proffered poor communication from **August 2019** to date.

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 2 November 2021 outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

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I note that the Complainant purchased a travel insurance policy from the Provider on **29 November 2018** and that he specifically amended the start date of the policy from the purchase date to **17 December 2018**. I note that the Complainant has not denied that when he amended the start date of the policy, a warning appeared advising him of the consequences of a future start date. Notwithstanding this warning, the Complainant continued to purchase the provision with a start date of **17 December 2018**.

Subsequent to purchasing the policy, the Complainant was provided with a validation certificate which I note states a start date for the policy of **17 December 2018**. I note that the policy cover summary attached with the validation certificate states that *"the period of insurance is the period shown on your insurance certificate"* and offers the Complainant a 14 day cooling-off period to cancel the policy.

I also note that the Insurance Product Information Document includes a section that states *"All sections, including cancellation cover, start from the start date as specified on your validation certificate and will cease on the end of the specified period as shown on your validation certificate"*. I further note that in the policy terms and conditions, within the definition of period of insurance on page 6, it states that the period of insurance is defined as *"the period for which we have accepted the premium as stated in the validation certificate"*. Based on the foregoing, I do not accept that the Provider mis-sold the travel insurance policy to the Complainant nor that the Complainant was unaware of the start date of his policy cover.

Unfortunately, between the date of purchase of his policy and the start date of the policy coverage, the Complainant's health caused his general practitioner to recommend the cancellation of his planned trip. I note that this medical advice arose two days prior to the start date of the policy coverage and therefore I accept that the Provider was entitled to deny his claim as the policy coverage had not yet begun.

I note that the Provider accepts that there were delays in its responses to the Complainant and blames these on a high number of claims being received and staffing issues. Furthermore, I note that the Provider accepts that:

- it overlooked an email from the Complainant dated **17 June 2019** until **9 July 2019**;
- it overlooked an email from the Complainant dated **9 August 2019** until **01 October 2019**; and
- it failed to acknowledge receipt of the Complainant's complaint dated **6 October 2019** and failed to send the usual 20 day update letter in regard to the complaint.

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I note that the above failings in customer service constitutes a breach of the obligation of the Provider to handle complaints speedily and efficiently pursuant to provision 2.8 of the CPC 2012 and also constitutes a breach of provision 10.9 of the CPC 2012 as the Provider did not acknowledge the Complainant's complaint within five days and failed to provide an update to the Complainant as to the progress of the investigation into the complaint within 20 days.

In the course of his complaint, the Complainant stresses that he is a vulnerable adult with diminished and limited capacity and asserts that the Provider should have taken this into account when selling him the insurance policy. While noting the medical evidence submitted by the Complainant, no evidence has been submitted which demonstrates that the Complainant made the Provider aware at the time he purchased his policy that he was a vulnerable person.

Therefore, the Provider could not have known it was dealing with a vulnerable person who may need extra support/guidance/protection when purchasing a policy of insurance.

In the interests of completeness, there is no evidence to support the Complainant's contention that the Provider has breached provision 2.4 of the CPC.

Based on the foregoing, while I do not accept that the Provider mis-sold the insurance policy to the Complainant nor do I accept that it incorrectly denied the Complainant's claim, I do accept that the Provider communicated poorly to the Complainant during the course of the complaint process and breached the provisions of the CPC. Therefore, I partially uphold this complaint and direct the Provider to make a payment of €200 (two hundred euro) to the Complainant, in addition to the reimbursement of the premium (€86.48) already offered by the Provider.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (b)*** and/or ***Section 60(2) (g)*** for its improper conduct.

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Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a payment of €200 (two hundred euro) to the Complainant, in addition to the reimbursement of the premium (€86.48) already offered by the Provider, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

26 November 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.