



<u>Decision Ref:</u>	2019-0299
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Disagreement regarding Settlement amount offered
<u>Outcome:</u>	Upheld

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

Background

The Complainant incepted a travel insurance policy with the Provider on **19 January 2016**, which included winter sports cover.

The Complainant's Case

The Complainant made a claim to the Provider, as her suitcase and its content were lost by the airline when she was flying from Dublin to Geneva, via Paris, on **19 March 2016** for a skiing trip in the French Alps.

In this regard, the Complainant sets out for complaint as follows:

“My claim is for compensation for my lost suitcase (and its contents) by Air xxx on Saturday 19 March 2016 when I was travelling from Dublin to Geneva via Charles de Gaulle airport on my way to a skiing holiday...My suitcase was never located. I found myself at the skiing resort at the commencement of my holiday without any clothes, ski boots, ski gear, toiletries etc. Not only did this impact on my enjoyment of my holiday but I was obliged to purchase replacement items in order that I could continue with my holiday. Furthermore, I had no alternative but to purchase the essential items required in the ski resort itself – where, as might imagine, prices are not cheap.”

On the 18th April 2016 I lodged all necessary papers with [the Provider] and made a formal claim under my travel insurance policy (which was a multi-trip policy and which included winter sports)...The insurance company's handling of my claim was very frustrating and the offers of compensation unacceptable".

The Complainant notes that the Provider initially advised her by email dated 7 June 2016 that her claim would be settled in the amount of €1,085.83. This amount was however reduced to €988 by email dated 10 June 2016, then increased to €1,010.49 by email dated 1 July 2016, increased further to €1,266.89 by email dated 25 July 2016, then reduced to €1,021.70 by email dated 14 October 2016, before being increased once again to €1,331.70 by email dated 3 November 2016. As a result, the Complainant submits that the Provider *"has dealt with my claim in a most inconsistent, unprofessional and confusing manner – not giving explanations/making omissions followed by revisions with different omissions"*.

In addition, in her letter to this Office dated 25 February 2019, the Complainant submits, *inter alia*, as follows:

"I recall that time and time again, my requests to the Provider were ignored, for example, requests that deductions made be explained with reference to policy provisions and that the explanation be put in writing; requests that the order of my itemised list be followed and that the Provider not phone me whilst I was at work ...

I also reject that the "discrepancies" and "confusion" [referred to by the Provider] were due to my unwillingness to co-operate on my part. I did everything that was asked of me by the Provider including searching through old photographs of past skiing trips for evidence of items claimed. Had the Provider dealt with my claim in a transparent and competent manner I believe that my claim could have been resolved long before now".

In this regard, the Complainant seeks *"to be compensated for my lost luggage and the cost of the replacement items I was obliged to purchase"*, which she calculates to be in the amount of €2,684.71 and which she notes *"does not include compensation for upset, distress, time expended by me in dealing with [the Provider]"*.

The Provider's Case

Provider records indicate that the Complainant telephoned on 31 March 2016 to register a claim for baggage delay, however she telephoned again on 4 April 2016 to advise that the baggage was permanently lost. The Provider's specialist claim handling team telephoned the Complainant on 5 April 2016 and advised what documents were needed in order to assess her claim. In this regard, the Provider notes that the Complainant was initially reporting a baggage delay before later reporting lost baggage. The Provider advised the Complainant that as the policy does not cover both, it was prepared to pay €200 for baggage delay initially and once evidence was provided that the luggage is irretrievably lost, it would then assess and pay the baggage claim, less the €200 for baggage delay.

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Having assessed the Complainant's claim, the Provider notes that its final claim settlement offer to the Complainant is €1,021.70. The Provider notes that there were a number of different claim settlement offers made, but it submits that as the Complainant was not willing to speak by telephone but instead only wanted to be dealt with in writing, that this caused a number of discrepancies that could have been cleared up a lot sooner, had she been willing to cooperate with its Claims Team. The Provider notes that the Complainant complained about the claim settlement offer after speaking with the claim handler on 19 October 2016 and that she confirmed that she did not accept the claim settlement offer on 27 October 2016. In this regard, the Complainant does not accept the proposed claim settlement offer made by the Company and is dissatisfied with the depreciation applied for age, wear and tear and lack of receipts and items that are not covered by the policy terms. As a result, the Provider has made no payments to date, as the Complainant did not want the Provider to process any.

The Provider is satisfied with the information it has provided and believes that the Complainant's claim has been dealt with in accordance with the terms and conditions of her travel insurance policy. In addition, the Provider also believes that the service it has provided to the Complainant has been of a high level and it has tried to communicate with her at all opportunities; however this was made difficult at times with her not wanting to have telephone conversations.

Accordingly, the Provider is satisfied that its claim settlement offer to the Complainant in the amount of €1,021.70 is final and correct. In this regard, the Provider is satisfied that the Complainant's claim has been assessed in accordance with the terms and conditions of her travel insurance policy and that the claim settlement offer put forward to her of €1,021.70 is fair and reasonable.

The Complaint for Adjudication

The complaint is that the Provider failed to fully, correctly and transparently assess 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.

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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 29 August 2019, 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.

The complaint at hand is that the Provider failed to fully and correctly assess the Complainant's travel insurance claim. In this regard, the Complainant submitted a claim to the Provider, as her suitcase and its content were lost by the airline, when she was flying from Dublin to Geneva, via Paris, on 19 March 2016 for a skiing trip in the French Alps. The Provider advises that its final claim settlement offer to the Complainant is €1,021.70. The Complainant does not accept this offer, and in noting that it has made a number of different claim settlement offers to her, submits that the Provider *"has dealt with my claim in a most inconsistent, unprofessional and confusing manner – not giving explanations/making omissions followed by revisions with different omissions"*.

Travel insurance policies, like all insurance policies, do 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. For example, Section E, 'Baggage, Baggage Delay and Passport' of the applicable Travel Insurance policy booklet provides, *inter alia*, at pg. 24, as follows:

"Baggage

We will pay you up to the amount as shown in the Schedule of Benefits for the accidental loss of, theft of or damage to baggage or valuables. The amount payable will be the value at the time of the loss, less a deduction for wear tear and depreciation, (or we may at our option replace, reinstate or repair the lost or damaged baggage or valuables).

The maximum we will pay for the following items is:

- a) For any single item as shown in the Schedule of Benefits*
- b) The total for all valuables is as shown in the Schedule of Benefits"*

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In this regard, I note that Section E, 'Baggage, Baggage Delay and Passport', of the Schedule of Benefits, Limits and Excesses at pg. 1 of the policy booklet, lists the single item limit as €150 (€250 for ski equipment) and the total for all valuables as €250. In addition, an unreceipted item limit of €150 applies (€300 for ski equipment), with an unreceipted single item limit of €50. Consequently, the policy only provides cover in the amount of €150 (€300 for ski equipment) for all unreceipted items, regardless of the total value of all such items lost. These limits apply to the Complainant's claim for lost baggage.

In addition, I note that the Complainant claimed for a number of items, the value of which the Provider is permitted by the policy terms and conditions to apply wear and tear and depreciation deductions to, and such deductions are typically based not on the usage but rather on the age of the item. I note too that the Complainant herself acknowledges that a small number of items that she initially claimed for, are specifically excluded from cover under the terms of her travel insurance policy, for example, contact lenses, mobile telephone charger and telephone calls made, as well as some food and cosmetic items.

I also note from the documentation before me that the Provider initially advised the Complainant by email dated 7 June 2016 that her claim would be settled in the amount of €1,085.83. This amount was reduced to €988 by email dated 10 June 2016, then increased to €1,010.49 by email dated 1 July 2016, increased further to €1,266.89 by email dated 25 July 2016, then reduced to €1,021.70 by email dated 14 October 2016, before being increased once again to €1,331.70 by email dated 3 November 2016.

In my opinion, these emails were not clear and consistent as to how the different offers were calculated, and it appears to me that certain items are covered in some offers but not in others, whilst the categorisation of certain items also appears to change from offer to offer. For example, some toiletry items that the Provider previously categorised as "*not covered under the policy*" are covered in the offer that was made by email on 3 November 2016.

The Provider recently advised this Office on 15 February 2019 that its final claim settlement offer to the Complainant is €1,021.70, which I note is the amount it previously offered the Complainant by email dated 14 October 2016. I note that this email provides no details as to how this claim settlement offer was calculated. Furthermore, I am uncertain as to when or why the more recent and higher claim settlement offer made by the Provider in its email dated 3 November 2016 in the amount of €1,331.70 was retracted. Indeed, it is my opinion that taken as a whole, the Provider's email correspondence to the Complainant throughout its claim assessment during the Summer of 2016, was confusing and lacking in detail and clarity.

Furthermore, I note that the Provider wrote to the Complainant on 21 November 2016 setting out its response to her complaint. However, not only does this letter fail to stipulate a claim settlement amount or take the opportunity to clearly detail how any such claim settlement offer was calculated, it also fails to set out in clear terms what it recognises to be the Complainant's actual complaint, that the Provider had taken the time to review.

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In addition, the Provider advised in this letter, *“We have explained to you that if the baggage is entirely lost we have to deduct the €200.00 for baggage delay from the settlement. This is because our policy only allows us to pay either the lost luggage or delayed luggage”*. However, the Provider has advised this Office that it did not pay the Complainant the baggage delay amount of €200, so I am unclear as to why it had repeatedly advised her in writing that this amount had to be, or had been deducted from the various claim settlement amounts offered.

Administrative errors and poor customer service are unsatisfactory and can cause considerable confusion and indeed significant frustration. The Complainant ought to be able to rely on the expertise and administration of the Provider and its Agents with regard to information concerning her policy cover and its assessment of her claim. Instead, I note, for example, that the Complainant had cause to correctly advise the Provider by email on 2 June 2016 that the single item limit under the winter sports element of her travel insurance policy was €250, not the €150 limit it had initially applied.

I considered the documentary evidence made available by the Provider. Despite this Office attempting to seek clarity by way of addressing specific questions to the Provider, it remains unclear to me from the brief responses furnished, how and why the Provider calculated a number of different claim settlement offers to the Complainant that increased, decreased, then increased and decreased again, or how the reason for these different offers can relate to difficulties that the Provider asserts it had, in having to deal with the Complainant in writing.

In this regard, in its email to this Office dated 15 February 2019, the Provider submits that the Complainant:-

“was not willing to speak with us and only would deal with us in writing. As such, this caused a lot of discrepancies that could have been cleared a lot sooner had the customer been willing to cooperate with the Claims Team. Ultimately this caused confusion with the settlement”.

Having read the email communication on file between the Complainant and the Provider, I do not share the Provider’s view that the Complainant had been uncooperative and instead it is my opinion that she made great efforts to furnish the Provider with the information and substantiation that it sought, and to understand the claim settlement offers that were being made to her. Whilst she did not want to receive telephone calls at work and thus preferred for her dealings with the Provider to be in writing (a not unreasonable request in my opinion) in that regard one would expect that communication by email would allow for greater amounts of information to be communicated with greater certainty and clarity.

I do not share the satisfaction expressed by the Provider with the information that it has furnished throughout its claims assessment or, for that matter, its handling of this complaint; nor do I share its view that the service that it and its agents made available to the Complainant, has been of a high level throughout.

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Indeed, having attempted to seek clarity by way of asking a number of very specific questions to the Provider in December 2018, this office, having received short reply, can understand how the Complainant felt frustrated in her own attempts to understand and resolve this matter with the Provider herself. Mindful of the aforementioned policy limits that apply to claims for lost baggage, I take the view that the Provider should honour the claim settlement amount it offered to the Complainant by email dated 3 November 2016 in the amount of €1,331.70, as this would appear from the documentary evidence before me to have been the most recent claim settlement amount offered by the Provider to her.

In addition, for the reasons I have already stated, I also believe that it is appropriate for the Provider to make a compensatory payment to the Complainant, as directed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(f) & (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to
 - rectify the conduct complained of by making payment to the Complainant of the settlement amount of €1,331.70, proposed in its email of 3 November 2016
 - make an additional compensatory payment to the Complainant in the sum of €750.
- I direct the Provider to make these payments (if not already paid) 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 and 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

23 September 2019

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

