

Before the Arbiter for Financial Services

Case ASF 005/2023

FA

(‘the complainant’)

vs

Gasamamo Insurance Limited

(C 3143) (‘the service provider’)

Sitting of 12 May 2023

The Arbiter,

Having seen the complaint¹ whereby the complainant submits that he has an annual travel insurance with Gasamamo, including extra COVID-19 insurance. The complainant booked a mini holiday for his family which, unfortunately, had to be cancelled due to his son testing positive for COVID-19 shortly before leaving for the trip.

The insurance provider refused to refund the cost of the accommodation expenses claiming that the conditions for a refund were not met. The complainant argues that the insurance has made several written statements (via email), each time presenting different arguments regarding which conditions were to be met for their trip to be insured.

First, they stated that ‘*the trip must be abroad*’, then ‘*the trip must be taken with a plane or a boat*’, among other reasons. The complainant states that this is not

¹ Page 3 (P. 3)

evident in the actual wording of the travel insurance policy. There is no mention anywhere of '*abroad*' or the transportation method required.

As is evident from the comments in the Booking.com reservation, the complainant, who lives in the north of the island, had planned a mini holiday in the south, including, sightseeing and an overnight stay. The complainant argues that even though their trip was short (1 night) and within the Maltese Islands, all three conditions of '*a trip*' as defined in the GasanMamo annual travel policy were met.

The complainant insists that since the trip had to be cancelled because his son had contracted COVID-19, it should be refunded as not only did he book a worldwide insurance (which excludes USA/Canada, but NOT the Maltese Islands), but every other travel insurance provider worldwide also provides insurance cover for travel within the country.

The complainant expected to be insured while travelling within the Maltese Islands as well as for a weekend stay in Gozo, for example.

The complainant states that he has read the travel insurance policy front to back and believes that all conditions for reimbursement were met. He says that he has brought this to the attention of the insurance provider but the replies have always come down to false arguments: 1) the travel insurance is only valid for trips abroad via plane/boat (*quod non*, per their own terms); 2) they have been selling this travel insurance for so many years that they know that his claim is invalid (which is a strawman argument because the wording in the policy clearly indicates otherwise), and 3) that it is just his interpretation against theirs.

The complainant states that he has told the service provider that their policy clearly indicates that he is right and that words actually mean things especially in a legal policy but they held firm that this was his interpretation against theirs which, in the complainant's opinion, is not a valid argument.

The complainant argues that despite the losses sustained are minimal, as these amount to only €147.62 in respect of a non-refundable accommodation booking, he would like to pursue this claim because he firmly believes that the reason for this claim refusal is invalid.

He believes that the service provider should update the policy wording so to reflect the reality of the situation of what they claim to be non-refundable, or otherwise, they should abide by their own written policy and refund cancelled trips even within the Maltese Islands.

Having seen the reply by the service provider which states:²

FA and three other persons took out an Annual Travel Policy with GasanMamo Insurance Ltd for the period 26 February 2022 to 25 February 2023.

The application was completed online (please see attached copy of the online application form) and the policy was issued to cover trips not exceeding 15 days any one trip, undertaken by the insured persons during the period of insurance. The policy covers round trips starting and ending during the period of insurance. The areas of travel chosen by FA were 'Worldwide' but excluding USA and Canada.

The policy clearly states (please see the attached copy of the policy wording page 1) that cover operates only if all of the following conditions are satisfied:

1. *'All of the people entitled to benefit under this Policy are normally resident in Malta at the date of the issue of the Schedule; and*
2. *The trip is a conventional holiday or a business trip of a commercial nature; and*
3. *It is a round trip starting and ending in Malta during the period of insurance.'*

FA submitted a claim under the cancellation section of the policy. He claimed for the cancellation of one night accommodation in an apartment in Qrendi due to his son contracting COVID.

The insurance policy in question is a travel policy which is intended to cover holidays or business round trips which commence in Malta and eventually end in Malta (hence avoiding one-way trips or trips commencing or ending from countries other than Malta). It clearly does not cover travelling from one

² P. 84-85

Maltese village to another and the subsequent loss of local accommodation as being claimed.

Therefore, as stated above, the policy cover will only operate when there is a round trip starting and ending in Malta. FA's 'trip' was planned from Mellieha to Qrendi and they therefore were scheduled to remain in Malta. In our opinion, this clearly does not fulfil the condition(s) quoted above and the annual travel policy could not therefore be utilised to claim for a refund of the accommodation expenses.

Having seen the documents

Having heard the parties,

The Arbiter is presented with two different interpretations of an Annual Travel Policy taken out with GasanMamo Insurance Limited.

The Complainant's Version

The complainant stated that, on recommendation of the service provider, he had taken out an Annual Travel Policy, including extra COVID-19 cover due to his frequent travelling as this better suited his needs.

During the hearing of 28 March 2023, the Complainant stated:³

'I booked a year travel insurance policy which would be valid for a whole year as I travel quite a lot, especially before COVID, and I thought that it would be easier to have a policy which is valid year round rather than booking travel insurance policies for each trip specifically which I also used to do with GasanMamo, until they told me about this policy which better suited my needs.'

Considering the restrictions imposed due to COVID-19, travelling abroad was limited, so, together with his family, he booked various local trips, including trips to Gozo, hotels in St Julian's, amongst others. He explained how, in this particular case, they booked a so-called mini holiday to the south of Malta where they planned several activities, including sightseeing at Blue Grotto, having dinner and staying overnight. However, just two days before the

³ P. 117

commencement of this mini holiday, his son contracted COVID and as a result of the requirement to remain in quarantine, the holiday had to be cancelled.

Cancelling the hotel via Booking.com where it was originally booked for was not possible, and thus lodged a claim with the service provider for the losses sustained. The claim was refused '*... because they state that according to their policy, trips in Malta are not covered.*'⁴

The complainant reiterated that such arguments are not substantiated by the policy wording.

He stated:

*'Now, I have read the policy over and over and there is nothing in the policy that clearly states that trips or holidays in Malta are not covered in their policy. On the contrary, there is a lot of wording in the policy that says that trips in Malta are in fact covered just by saying that there is worldwide coverage only excluding USA and Canada, which was the policy that I booked.'*⁵

With regards to the three criteria contained in the policy document which the service provider insists that cover is dependent on, the complainant testified that such conditions were in fact satisfied:

'In the trip conditions – what is defined as a trip – there are three criteria which GasanMamo also listed. The conditions, according to me, are satisfied.

1. *'all of the people entitled to benefit under this Policy are normally resident in Malta at the date of the issue of the Schedule;'*

I have been living in Malta for fourteen years now, so that's a check.

2. *'the trip is a conventional holiday or a business trip of a commercial nature;'*

I had an overnight stay, so it's not like I was driving to the south and coming back and making a claim. It was a mini holiday in Malta so it was a conventional holiday.

⁴ P. 118

⁵ *Ibid.*

3. *'it is a round trip starting and ending in Malta during the period of insurance.'*

And this is where GasanMamo says something interesting because in their reply they stated that:

'The insurance policy in question is a travel policy which is intended to cover holidays or business round trips which commence in Malta and eventually end in Malta.'

*I totally agree with this part because my trip would have started and ended in Malta.'*⁶

The Service Provider's Version

On the other hand, Mr John Galdes, for the service provider, testified that:

*'this is a travel policy and it has to be looked at holistically, in its entirety. There are many references to overseas travel in our policy. We talk of outward journeys, we mention airlines, ships, cruises, hospital and doctors abroad, airline tickets, emergency medical expenses incurred outside Malta, skiing cover and so on.'*⁷

He adds that the policy does not include any reference to insurance cover for local travel. Based on the complainant's remarks that the policy does not include the word 'overseas', John Galdes commented that it does not include the words 'local travel' either, and reiterated that the policy has be considered in its entirety.

The witness concluded that *'a round trip starting and ending in Malta'* does not constitute a trip that effectively remains in Malta. It should be interpreted as being a round trip which starts in Malta and the traveler returns to Malta.

He stated that visiting a village in Malta, staying overnight, and returning to the usual residence *'is not the scope or the intention or the cover that we are providing under this travel policy.'*⁸

⁶ *Ibid.*

⁷ P. 119

⁸ *Ibid.*

Considers:

The Arbiter decides the case by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.⁹

The complaint mainly revolves around the fact that a claim for hotel/lodging expenses under an annual travel insurance was repudiated with the main reason given by the service provider being that local travel which, in this case, was travelling from the complainant's residence in Mellieha to Qrendi for sightseeing, dinner and spending the night there, does not constitute '*a round trip starting and ending in Malta*'.

It is noted that both parties are each giving a different interpretation to the policy and, considering that the Arbiter shall determine and adjudge a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case, will then decide on the best interpretation of the same travel insurance policy.

There is no dispute that the complainant's son, AAA, contracted COVID-19 as is evidenced in the Result of Point-of-Care Rapid Antigen Test for SARS-CoV-2 dated 24 June 2022,¹⁰ whereby he was ordered to remain in mandatory self-isolation for 10 days from the day he was swabbed.

The complainant and his family were insured for such an eventuality as they were covered under *Section R – COVID-19 Cover Extension* of GasanMamo's Annual Travel Insurance Policy as evidenced in the *Application Form*¹¹ dated 26 February 2022 and the subsequent *Confirmation of Cover/Receipt*¹² and *Policy Schedule*¹³ issued by the service provider.

A copy of the booking confirmation¹⁴ issued by Booking.com was presented by the complainant. It was a non-refundable booking of a two-bedroom apartment in Qrendi for one night. As stipulated in this document, until 20 June 2022 20:08 (CEST), the cancellation cost was €135. The complainant's son tested positive for

⁹ Chapter 555 of the Laws of Malta, Article 19(3)(b)

¹⁰ P. 37

¹¹ P. 51

¹² P. 44

¹³ P. 45

¹⁴ P. 32

COVID-19 on 24 June 2022 and, eventually, the booking was cancelled after the 20 June 2022 and, as a consequence, he was charged the total price of the reservation which with taxes amounted to €147.62.

According to the *Insurance Product Information Document* issued by the service provider for the *Annual Travel Insurance Policy*, a copy of which was provided by the complainant, in regard to cancellation, an insured is covered for the following:

‘Cancellation – up to €7,500 to refund your deposits and any other amount which you legally have to pay in respect of unused travel and accommodation, concert and sports tickets, holiday tours and excursions, if it is necessary for you to cancel or curtail your trip due to one of the reasons noted in the policy.’¹⁵

As previously noted, both in its communication with the complainant, and even in its reply to the complaint, the service provider insisted that such travel policy is intended to cover holidays or business trips commencing in Malta and eventually ending in Malta, avoiding one-way trips or trips commencing or ending from countries other than Malta, and clearly does not cover travelling from one Maltese village to another and the subsequent loss of local accommodation.

However, the Arbiter notes that the same *Insurance Product Information Document* referred to above, specifically under the section ***Are there any restrictions on cover?***, does not include any explicit wording which cites that travel in Malta is not covered by the policy, and this as shown hereunder:

‘Are there any restrictions on cover?’

- *Cover is limited to the limits noted in the policy document.*
- *Cover is available if you are normally resident in Malta.*
- *Cover can be purchased for a maximum period of 12 months.*
- *Cover only applies for round trips starting and ending in Malta.*
- *The policy is for travellers aged up to 75 years of age.*

¹⁵ P. 49

- *Cover applies for the maximum travel period shown on your policy schedule.*
- *An excess of €25 applies to some sections of the policy unless you have paid the additional premium for Excess Waiver.*
- *Certain restrictions apply for travellers aged 70 years and over when purchasing Optional Covid-19 cover extension.'*

In the *Annual Travel Insurance Application Form*,¹⁶ the wording related to the *Period of Insurance* states:

'The policy shall cover trips not exceeding 15 days any one trip, undertaken by the insured persons during the period 26/02/2022 to 25/02/2023. This policy covers round trips starting and ending during the period of insurance.'

And the *Area Covered* reads:

'Worldwide (excluding USA and Canada).'

Reference has been previously made to the complainant's statement in regard to the three criteria contained in the policy document which, in its reply to the same complainant, the service provider insisted that these should be met for cover to be in force.

These are contained in the policy document and are the following:

'The cover operates only if all of the following conditions are satisfied:

- 1. All of the people entitled to benefit under this Policy are normally resident in Malta at the date of the issue of the Schedule; and***
- 2. The trip is a conventional holiday or a business trip of a commercial nature; and***
- 3. It is a round trip starting and ending in Malta during the period of insurance.'*¹⁷**

These are in fact general conditions which apply to the whole contract of insurance between the service provider and the insured being the complainant.

¹⁶ P. 51

¹⁷ P. 56

Considering the various interpretations to the policy given by both parties to this complaint, the Arbiter notes that neither the *Insurance Product Information Document* nor the *Gasamamo Annual Travel Insurance Policy* clearly stipulate what a round trip constitutes.

However, under the *Definitions* section of the latter, the word '*Trip*' is defined as:

'A return journey that:

- 1. Starts and ends from your normal place of residence or place of business in Malta; and*
- 2. Occurs within the period of insurance; and*
- 3. Is of a maximum duration which does not exceed the number of days any one trip as specified in the schedule'.¹⁸*

In this case, the words '*normal place of residence*' is of utmost importance. The service provider insists that the trip has to take the insured out of the country of residence in order for the trip to be covered. But the definition in the policy document, which, together with the Policy Schedule, form the contract of insurance refers to the '*normal place of residence*'.

In this case, the trip that was meant to be undertaken by the complainant falls under the definition of a 'trip' as defined in the policy wording as it constituted of a return journey that starts and ends from his normal place of residence in Malta, occurring within the period of insurance, and is of a maximum duration that does not exceed the number of days any one trip as specified in the Schedule. In simple terms, based on such definition, since the insured has left his normal place of residence, a trip would thus have commenced.

Based on the particular circumstances of this case, the Arbiter believes that this is a matter of ambiguity whereby the parties to the contract can easily interpret the cover provided in various ways.

The Arbiter understands that the general orientation of the policy wording is towards international travel, however, considering that there is no specific exclusion as regards to domestic travel, and the trip that was meant to be

¹⁸ P. 56

undertaken by the complainant and his family falls within the definition of a 'trip' as noted in the policy document, in case of any ambiguity as noted above, the complainant will then be given the benefit of the doubt and be covered for the loss sustained. This is also particularly so as considering the restrictions imposed during the COVID-19 period, people could not travel or were travelling less and, consequently, the service provider was faced with less travel insurance claims being lodged, and domestic vacations (staycations) gained popularity.

Decision

For the reasons explained above, the Arbiter is upholding the complaint and orders settlement of the claim for €147.62.

Expenses are to be borne by the service provider.

Alfred Mifsud

Arbiter for Financial Services