

Before the Arbiter for Financial Services

Case ASF 058/2023

NI ('complainant')

vs

Cowen Insurance Company Ltd

(C 55905)

('service provider'/'insurer')

Sitting of 29 February 2024

The Arbiter,

Having seen the complaint, where the complainant disputes the insurer's decision to repudiate the claim, in respect of additional expenses incurred in addition to the flight which was lodged under his travel policy.

The complainant stated that on December 31, 2022, he had to cancel a return Ryanair flight which he had originally booked from France to Morocco due to his son becoming ill on the day before departure.

He explained that, when buying the flight tickets, he had, from the *Cover Genius* website, clicked on a link, available in French regarding the insurance cover offered. Stated that the available document stipulated that '*Cover will reimburse travel expenses, accommodation expenses and other unused prepaid travel expenses.*'

Considering this, he claimed for reimbursement of his paid, cancelled, non-refundable hotel stay together with the parking fees at Bordeaux airport which, as a result of the cancellation, he did not use. The insurer is, however, refusing to honour such claim, with the reason being that the applicable policy wording was updated in December 2022, and that the French version which the

complainant has viewed on the website was applicable for policies issued before December 2022.

The complainant however stated that the insurer '*... does not contradict the existence of this French version of the insurance, available on the website of its broker Cover Genius.*'¹

The complainant admits that he has the right to question himself on the bad faith or the dishonesty of the insurer when the latter fails to reimburse the additional travel expenses incurred and, this, when

'1/ Knowing that I took out this insurance contract on December 15, 2022;

2/ Knowing that the link to the French version of the contract was available on the Cover Genius website on December 15, 2022, the date of subscription of the insurance contract;

3/ Knowing that I informed in my email dated February 15, 2023 the claims department of the existence of this link to the French version of the insurance;

*4/ Knowing that following the insurer's final response on February 20, 2023, this link NO LONGER EXISTS.'*²

In this respect, the complainant stated that considering that he was not guilty of the content or the translations posted on the Cover Genius website on the day of purchasing the insurance cover, requests³ the insurer to reimburse him with the hotel expenses and the parking fees, amounting to €495 and €29.60 respectively.

Having seen the reply⁴ by the service provider which, submits that:

'Below we will provide a summary of the claim, documentation provided to the client, which we have attached, and also a breakdown of the claim payment offered to the client by our intermediary, CoverGenius.

¹ P. 3

² *Ibid.*

³ *Ibid.*

⁴ P. 88

Claim Summary:

The client purchased the policy on the 15th of December 2022 for a trip commencing on the 1st of January 2023 till the 6th of January 2023. The trip was cancelled due to the illness of one of the passengers. NI felt unsatisfied with the initial refund received by our intermediary, which was the “Trip Cancellation” benefit, found in the Certificate of Insurance attached, less the excess fee for the 3 insured passengers. After further review by our broker, it was noted that, the benefit limit was not accurate as the customer had spent more for his flights. This was discovered in the no-show letter from Ryanair. Therefore, CoverGenius, proceeded with the re-imburement of the actual cost of the flight without considering the extra additional fees applied to the booking, since as per the policy wording “You’re not covered: For additional fees and charges applied to your booking such as prepaid food and seat selection costs, airport services (e.g. baggage or flight delay services), airport surcharges, booking fees, agent fees, administration fees, credit card processing or foreign exchange fees. This exclusion does not apply to government taxes”, and after deducting the “Trip Cancellation” excess fee for the three covered passengers.

After receiving the email from CoverGenius, the client submitted a complaint to us stating that he did not receive the full price of the plane tickets, which is correct, since we had to deduct the excess and additional booking fees, NI also complained regarding the modification of the re-imburement amount, which is also correct since as mentioned above we noted that the client paid more for tickets therefore we offered a higher settlement. He also requested re-imburement of the hotel costs and parking fees, to which we explained that these are not covered by the policy, since as can be found in the policy wording, “We’ll reimburse you for your airfare booked through Ryanair”, therefore any other costs are excluded.

Whilst we trust that we have provided further clarifications on the matter, we would like to kindly advise you, that should you have any further questions, do not hesitate to contact us.’

Hearings

During the first hearing⁵ of the 12 September 2023, the complainant's wife declared that:

'On December 31, 2022, we had cancelled a return Ryanair flight from France to Morocco following an illness of our little boy the day before departure (double otitis). When we bought the plane tickets from the website of the insurer, Cover Genius, we expressly clicked on the link available in French with regard to the insurance coverage offered. In this version, (of which we have attached a PDF Policy French version), it was stipulated that "Cover will reimburse travel expenses, accommodation expenses and other unused prepaid travel expenses."

So, the ticket flights have been refunded, but we have a second dispute with the insurance for the reimbursement of what we paid, cancelled and non-refundable hotel stay as well as parking fees at Bordeaux airport linked with the parking we did not use.

We have a problem about the translation of the insurance because the insurance that we took in French specifically expressed that the fees will be covered, but in the English version they are not covered. The version on the website has been updated in December 2022, and we do not know exactly when, if it was prior or after we took the tickets. So, now we have a problem which is going to be covered for the fees and expenses.

From our point of view, in the French version, when we bought the tickets and the insurance that we took when we bought the tickets, they are covered.

We bought this insurance cover on 15 December 2022, when we bought the tickets.

This French version is the version that we took as a contract on 15 December 2022 (page 65): all the fees, travel, hotel and other fees, prepaid, non-used, will be covered.

We have emails between the insurance company and my husband, and they said that the new version was updated in December 2022, and we do not know

⁵ P. 110

exactly when, so we do not know if it applies to our tickets, or it doesn't. So, this is the problem.

On page 63 of the case file, there is written 'printed pdf dates from 01/10/23'; when we started to have the discussion with the insurance company, the link of the French version had been deleted. We printed it just before ... I do not know exactly when but after the booking of the flight.

The link to the French version was available on the website on December 15 when we booked the flight, the description of the insurance contract. My husband informed by email dated 15 February the Claims Department of the existence of the link to the French version of the insurance, and the insurance finally responds on February 20 that the link does no longer exist.

So, we updated in January after we bought the flight, and when we had the exchange with the insurance – and we have the email of 15 February – the link for the French translation was no longer on the website.

I confirm that we printed the document on page 63 on 10 January 2023.'

During the cross-examination, she stated that:

'Asked whether we received an email right after purchasing the insurance policy online on 15 December 2022, saying that we were now subscribed and that this is the Certificate of Insurance and the Policy Wording, I say, no, we did not receive an email.'⁶

During the second hearing of the 20 November 2023, Ms Glenda Bartolo, on behalf of the service provider, stated that,

'The service provider is focusing on the hotel expenses and the fees incurred rather than the flight costs which we agree have been reimbursed according to the Terms and Conditions.

We have reviewed the case, and concluded again that, in line with the Terms and Conditions that were available at the time of purchase of the policy which is the 15 December, the additional costs are not covered.

⁶ P. 112

Here is a situation where the complainant had viewed the Terms and Conditions from the website. However, there was a change in the Terms and Conditions on the 8 December which the client received at the date of purchase of the policy on the 15 December.

I have contacted, following our last meeting with the representative of the complainant, Cover Genius, who said that the Terms and Conditions of the 15 December had been opened. So, this is not a matter that maybe there was an oversight from the complainant, and he did not see the new Terms and Conditions. We have proof from the system that these were opened by the complainant himself upon purchase of the policy. When I say that they were opened, I mean that they were viewed.⁷

During the cross-examination, the complainant's wife declared⁸ that they had not received any emails after purchasing the insurance policy online and stated that they received the Certificate of Insurance on 15 December.

When cross-examined, the service provider's representative was asked to explain how the Terms and Conditions were changed on the 8 December but were still visible on 15 December, and this considering that the complainant had downloaded copies from the website, which copies show that the disputed expenses were covered.

Ms Glenda Bartolo confirmed that ***'I say that those Terms and Conditions were as downloaded from the website.'***

She continued that,

'The base of this policy was in accordance with the Terms and Conditions which the client could download at date of purchase of policy, the 15 December. He could have downloaded these from the link in the email received upon purchase of the policy where the Certificate of Insurance is automatically received, and from there one can download the Terms and Conditions. He should have received an email with a link to the new conditions. If he had received this email, and downloaded the Terms and Conditions, they would have shown different Terms and Conditions from those that were irrelevant and still on the website.'

⁷ P. 114

⁸ *Ibid.*

The complainant states that the Certificate of Insurance was on the Personal Space of the website and the Certificate of Insurance was in French.

She says that the documents sent on the 11 November 2023, were designed to explain everything they had. She says that the second dispute was not exactly settled the last time. Some of the expenses (taxis) were reimbursed but the complaint was also about the air tickets totalling to €541.⁹

During this hearing, the Arbiter pointed out that ***‘the remedy sought by the complainant in page 3 of his complaint is the reimbursement of the hotel expenses as well as the parking fees that he did not use. Therefore, the air tickets are not part of this complaint.’¹⁰***

The complainant presented his final submissions¹¹ for this case, whereby, in essence, he submitted that:

‘... If I had been informed, in the French version of the insurance terms and conditions, that all travel-related expenses would not be covered in case of illness and cancellation, I certainly would not have subscribed to this insurance, despite the elements of confirmation received by email when signing the contract ...’.

On the other hand, the service provider declared¹² that it had no further comments to make.

Having seen the statements by the complainant

Having seen the statements by the service provider

Considers

The complaint mainly revolves around the fact whether the expenses incurred by the complainant in addition to the flight tickets which he ended up not using as a result of cancellation of the trip due to his son being ill were, in fact, covered under the travel insurance policy or not.

⁹ P. 114 – 115

¹⁰ P. 115

¹¹ P. 129 – 130

¹² P. 131

The Arbitrator shall determine and adjudicate a complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.

Primarily, the Arbitrator notes that the service provider offered settlement, less the applicable excess, insurance premium, and taxes, in respect of the flight expenses.¹³ Hence the expenses in relation to the hotel stay and parking fees paid remain in dispute.

The complainant claimed that, after purchasing the flight tickets, he had, from the *Cover Genius's* website, *CoverGenius* being the broker of the service provider, expressly clicked on a link, available in French, in regard to the travel insurance coverage being offered. He argued that it was clearly noted in such policy, that the cover will reimburse the travel, accommodation and other unused prepaid travel expenses.

However, despite this, when submitting a claim following cancellation of the trip, the service provider advised¹⁴ the complainant that, as per policy wording, in case of cancellation of trip,

'We'll reimburse you for your airfare booked through Ryanair', and that

'With regards to the hotel and parking fees these are not covered by the policy since as I mentioned in my first point we only cover the airfare booked through Ryanair.'

In fact, the Arbitrator notes that the copy of the policy wording,¹⁵ printed on the 15 February 2023, does not make any reference to cover in respect of accommodation or any other incurred unused expenses.

During the hearings, the service provider argued that:

*'There was a change in the Terms and Conditions on the 8 December which the client received at the date of purchase of the policy on the 15 December.'*¹⁶

Its representative confirmed that despite such change, the version of the Terms and Conditions that was still on the website, were irrelevant.¹⁷

¹³ P. 10

¹⁴ *Ibid.*

¹⁵ P. 15 – 31

¹⁶ P. 114

¹⁷ P. 115

In fact, together with the complaint form, the complainant has submitted to the Arbiter a copy of the policy document in French, which he accessed and eventually printed from the *CoverGenius's* website on 10 January 2023. The Arbiter notes that such date together with the exact time this policy document was printed is noted¹⁸ in the upper part of the relevant pages, hence, cannot be disputed.

In simple terms, this implies that despite a new version of the Terms and Conditions, or otherwise, of the policy document, being issued on 8 December 2022, as noted by the service provider, the version on the website, which version could have been accessed by prospective clients, was not updated.

The service provider argued that after purchasing the travel insurance policy, the complainant

*'... could have downloaded these from the link in the email received upon purchase of the policy where the Certificate of Insurance is automatically received, and from there one can download the Terms and Conditions. He should have received an email with a link to the new conditions. If he had received this email, and downloaded the Terms and Conditions, they would have shown different Terms and Conditions from those that were irrelevant and still on the website.'*¹⁹

Ms Glenda Bartolo, the service provider's representative, also declared that:

*'I have contacted, following our last meeting with the representative of the complainant, Cover Genius, who said that the Terms and Conditions of the 15 December had been opened. So, this is not a matter that maybe there was an oversight from the complainant, and he did not see the new Terms and Conditions. We have proof from the system that these were opened by the complainant himself upon purchase of the policy. When I say that they were opened, I mean that they were viewed.'*²⁰

Copy of the emails exchanged between *CoverGenius* and the service provider's representative, show the latter's request²¹ for a copy of the email with the link to the terms and conditions which was sent to the complainant immediately following the purchase of the policy, the reason for such request being that:

¹⁸ P. 64 – P. 80

¹⁹ P. 114 – P. 115

²⁰ P. 114

²¹ P. 119

'The client has stated in today's hearing, that they did not receive an email following purchase of policy on the 15th December with certificate of insurance and terms and conditions.'

CoverGenius's reply includes reference to the dates and time that the complainant accessed or opened the email that he received. CoverGenius's representative stated that:

*'For your information, we also checked event logs related to this email and the customer definitely received it and opened it multiple time as you can see below ...'*²²

It is crucial to note that the Arbiter does not have any information on whether such logs show that the link to the terms and conditions has been accessed, or whether it was the email itself that has been opened at that particular time. However, CoverGenius's representative says it all. Contrary to what Ms Glenda Bartolo, on behalf of the service provider, declared, the former's declaration clearly implies that the event logs are

*'... related to this email and the customer definitely received it and opened it multiple times ...'*²³

The Arbiter cannot but also note that in the copy of the email²⁴ which the complainant received following the purchase of the insurance cover, the section entitled *Liens Utiles*, translated to *Useful Links*, is empty. He will not however look into whether the link with the updated version of the policy had actually been sent to the complainant or not, as, evidently, this is a matter of pure negligence by the service provider.

The policy wording was amended but as clearly admitted by the service provider's representative, the version on the website remained unchanged.

After purchasing the flight tickets, the complainant, who at the time was still a prospective client, accessed the terms and conditions that would apply to him in case he chose to purchase the travel insurance policy in question.

The online version he accessed, the one in French and, also, considering this being his main language, was the one he was ready to accept and, thus, opted to buy the policy.

²² P. 117

²³ *Ibid.*

²⁴ P. 124

The Arbiter feels that even if it were the case, as the service provider is saying, that the complainant received a link to the terms and conditions, he was not reasonably expected to think that a different version was then applicable to him, and that such version offers less coverage. This was not a case where, for example, the policy that the complainant accessed from the website before buying the policy was a general and brief summary of the applicable policy. It was a fully-fledged copy of the policy that the complainant had legitimate expectations that it would apply for the premium he paid.

Regardless of the fact whether the confirmation email included a link to the terms and conditions or not, the Arbiter reiterates that at no time the complainant was reasonably expected to think that, in one way or another, the policy version sent to him was different from the one accessed prior to purchasing the same policy.

This is a case where there is a discrepancy between two policies caused by negligence of the service provider. Worse than such negligence regarding the version of the policy available on the website not being updated despite the changes applicable to the terms and conditions, it remained unchanged even for a longer period of time.

The complainant stated²⁵ that it was just after February 2023, when he received the final reply about this case from the service provider saying that the original version, that is, the one he read in French, was no longer available on the website. This was never contested by the service provider.

Section of the Policy dealing with ‘*Cancellation of Trip*’, states:

‘We will reimburse you for unused travel expenses, accommodation fees and other pre-paid travel expenses.’²⁶

Decision

The Arbiter believes that it is fair and reasonable for the complainant to be reimbursed for the losses sustained and, in terms of **Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta**, is ordering **Cowen Insurance Company Limited to reimburse the complainant with the expenses incurred²⁷ less any**

²⁵ P. 3

²⁶ P. 65 - Translated from French

²⁷ €495 for hotel cancellation fees and €29.60 for parking cancellation fees

applicable excess in terms of the policy document known to complainant at the time of the contract on 15 December 2022.

With interest at the rate of 4.50% p.a.²⁸ from the date of this decision till the date of payment.²⁹

Costs of the proceedings are to be borne by the service provider.

**Alfred Mifsud
Arbiter for Financial Services**

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.

²⁸ Equivalent to the current Main Refinancing Operations (MRO) interest rate set by the European Central Bank.

²⁹ It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision.

Costs of the proceedings

In terms of article 26(3)(d) of Cap. 555 of the Laws of Malta ('the Act'), the Arbiter has adjudicated by whom the costs of the proceedings are borne and in what proportion, taking into consideration the particular circumstances of the case.

The costs of the proceedings are not limited to the payment of any applicable cost of filing the Complaint with the Office of the Arbiter for Financial Services (presently Eur25) but may also include any reasonable lawful professional and legal fees paid by the Complainant limited to the acts filed during the proceedings of the case. Such professional fees should not include any contingency judicial fees and charges.

The extent of tariffs and fees in respect of professional or consultancy services rendered to customers in relation to the claims or proceedings under the Act, that may be lawfully and reasonably requested as part of the said costs of proceedings, are not defined in the current provisions of the Act. However, the Arbiter expects these to be benchmarked on tariffs and fees as stipulated and applicable for Civil Court proceedings in Malta under the Code of Organization and Civil Procedure.