

Before the Arbiter for Financial Services

Case ASF 197/2024

DO

(Complainant)

Vs

Gasamamo Insurance Limited

(Reg. No C 3143)

(Service Provider or GM)

Sitting of 14 February 2025

The Complaint¹

Having seen the complaint filed on 19 October 2024 whereby Complainant challenges the Service Provider's decision to refuse full payment of her claim under her Travel Policy for cancellation of her flight out of Tokyo in August 2024 due to bad weather conditions.

This involved her in additional expenses for one night extra accommodation and taxi charges amounting to €1,000.19 which she expects the Service Provider to settle in full in terms of Section P of her Travel Policy no. 387630T720001 issued by GM.

The Service Provider had offered to settle 50% of the claim as it resulted that the room was shared with a person that was not insured under the travel policy.

The Complainant argued:

¹ Page (p.) 1 – 6 and attached documents p. 7 - 62

'My claim pertains to accommodation expenses incurred as a result of a flight cancellation due to adverse weather conditions, as provided for under Section P, "Cancellation of Service". The relevant policy provision stipulates that in such circumstances, it will cover "reasonable additional travel and accommodation expenses necessarily incurred due to the forced extension of your journey." However, there is no provision within this section – or any other section of the policy – that states coverage should be reduced based on the number of occupants in a hotel room or adjusted if a travelling companion does not possess insurance with your company.

I have clearly demonstrated that the expenses claimed are both reasonable and necessary under the circumstances. It should be noted that the cost of a hotel room does not vary based on the number of occupants. The invoice submitted from the Shangri-La itemizes these costs, which were solely incurred by myself. The policy contains no requirement for the division of costs between insured and uninsured travellers. The lack of any such stipulation within the policy terms should not be to my detriment.

Accordingly, I hereby request that you either approve the full claim amount or provide a specific reference to the applicable policy terms that substantiate this reduction. I also request a formal explanation as to why I have not been provided with the requested documentation or explicit policy references to support this decision. Failure to resolve this matter to my satisfaction will necessitate the escalation of the issue to the Malta Financial Services Authority (MFSA).²

The Reply³

In their reply of 11 November 2024, the Service Provider stated:

'Our reply to this complaint is as follows:

- 1. [The Complainant] issued a travel policy with GasanMamo Insurance dated 9th July 2024 in her name only, with worldwide cover for 52 days with effect from 21st July 2024. (Doc JG1)***

² P. 7

³ P. 68 – 69 and attached documents p. 70 - 73

2. ***According to the claim documents submitted, [the Complainant] travelled with a travelling companion who was not insured with GasanMamo Insurance.***
3. ***[The Complainant] suffered a loss of 1 night accommodation expenses due to a flight cancellation in Japan resulting from adverse weather conditions.***
4. ***[The Complainant] submitted her claim with GasanMamo Insurance on 19th August 2024 whereby she claimed one night accommodation for 2 persons at a cost of €988.60 and taxi expenses for 2 persons at a cost of €11.59. The total amount claimed for two persons was therefore €1,000.19 (Doc JG2 & JG3).***
5. ***Her claim was covered and accepted by GasanMamo Insurance, and we agreed to pay her in full i.e. €500.10 representing her share. As stated previously, her travelling companion was not insured with GasanMamo Insurance.***
6. ***There is no subjective policy interpretation that is being used against [the Complainant] as is being alleged. The policy is clear and precise. It only insures [the Complainant], her claim is covered and we agreed to pay her share in full. No deductions were made. As far as GasanMamo Insurance are concerned there is no dispute except that [the Complainant] is attempting to claim the share of her travelling companion under her own travel policy, even though her travelling companion is not a named insured under the policy issued with GasanMamo Insurance.***

In conclusion, we reiterate that the claim is covered, it has been accepted and we are prepared to pay for [the Complainant's] share of the costs in full and without any deductions, i.e. €500.10. At the same time, we cannot be expected to cover an individual who does not have a policy with GasanMamo Insurance.⁴

⁴ P. 68 - 69

The Hearings

During the hearing of 08 January 2025, Complainant stated:

'Basically, my complaint is that with regard to GasanMamo being unable to provide documentation for the rationale of having my claim reduced by 50% even though I have asked them repeatedly if they can provide some documentation that would inform their customer of this technicality.

However, even though I've tried multiple times, they have failed to provide it. It is claiming that it is not a matter of policy. I honestly don't understand. If, I'm buying an insurance policy, I expect everything to be clearly outlined in the terms but, apparently, this technicality is not. So, I believe it to be very unfair since they're not providing any documentation to back up their reasoning.

So, I just want to make sure that if this is really the way the insurance goes about this, from my understanding, it should be on the claim policy. That's all I have to say really. I just want to see some documentation.

Additionally, this was not submitted in my original claim, but I did mention it on the previous phone call because I had not thought about doing this before but I contacted the hotel just to confirm whether the room rate would have changed for single or double occupancy, and they confirmed that my room rate would have been the same; that the only difference was just JPY 200, (which is about a dollar) between one person and two people. So, even then, my hotel fare should have been covered.

That's all I have to say.⁵

The Service Provider opted not to cross-examine and provided their evidence as follows:

'As I explained in my statement, this is not a question of interpretation of the policy; or reducing the claim; or saying that the policy does not cover this or only covers it partially.

The claim has been accepted. It has been accepted in full and we have agreed to pay for [the Complainant's] share in full. However, there were two people who are claiming there were two people who occupied the room. She was not

⁵ P. 74 - 75

on her own. She had a travelling companion, but only one person was insured with GasanMamo. And we have accepted to pay that claim in full.

With regards to the documentation, as I explained more than once to [the Complainant], the documentation is in fact the policy. And the policy covers only [the Complainant]. It's very straightforward and very simple. There is no named insured other than [the Complainant], and we are ready to pay her claim in full. Since there were two people, she is only legally responsible for her share and not for her travelling companion. It is not correct that she is trying to claim his share under her policy when he is not insured, and that is the reason why we are contesting what she is saying.

With regard to the room rate, with all due respect, we have to talk about the claim as it is. The facts of the matter are that there were two people occupying a room and they are both responsible for the expense. So, her share, legally, is 50%. We cannot talk about what would have happened if she were alone. We have to talk about the claim as it is, as presented: two people; the cost is approximately €1,000 and that covers two people, but we are only ensuring one person, and ready to pay her share in full without any deductions.⁶

In her closing arguments, the Complainant stated:

'The issue is: just think about it from a consumer's perspective: my flight got cancelled. I have 24 hours to rebook. I'm super stressed. I have to figure out how I'm going to get to the airport. Not only my flight got cancelled. Many people's flights got cancelled. There is only one seating. The typhoon is coming soon. The conditions are going to be horrible. I go to my travel insurance, I check what's covered, what's not covered, and I make a decision to book one room.

If it had been outlined, my decisions would have been different. That is the whole premise of it; like you cannot expect your customers to know this kind of 'legal share' if it's not explicitly mentioned. Then, my decisions would have been different.

I just believe your policy should be really clear. And I just think that you could prepare your customers better. That's all I have to say.⁷

⁶ P. 75

⁷ P. 76

The Arbiter asked the Complainant why she thinks that staying in a thousand euro a night hotel is a reasonable additional cost as defined in the policy. She replied:

'This is the type of hotel I stay in. We were staying at the Conrad before, but the Conrad was fully booked and there was the matter of how to travel now because we have luggages for the entire trip in Japan. So, you have to take either a train or a private shuttle to the airport or a private taxi. That's even more expensive to get there. So now, since we couldn't stay at the Conrad anymore, we were going to take the private shuttle to the airport. The ones that have the private shuttle were not available. So, now, I have to stay near the train station and the hotels which are near the train station are a little bit more expensive, but they're about the same price range that we were already paying. So, we just opted for the one that we could have the same level of comfort that we were currently having and the ease to get to the airport.

...

Also, I would like a ... note for a hotel because most of our bookings for the hotel were booked in advance. This was booked within 24 hours, which with spike rates of the monsoon, we were looking at high rates overall. It wasn't like, "Oh, let's just go with the most expensive hotel!"⁸

Following the hearing, the Complainant submitted evidence showing that her stay at Conrad Hotel was paid through loyalty points accumulated by a third party and confirmation from Shangri-La Hotel Tokyo that the room charge would have been the same whether for single or double occupancy.

Analysis and Considerations

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

The Arbiter has to decide whether the policy covers the cost of the room irrespective of the number of occupants on the basis that the rate agreed with the hotel was flat irrespective of whether the room was occupied by one or two

⁸ P. 76 - 77

⁹ Cap. 555, Art. 19(3)(b)

persons as argued by the Complainant; or whether the policy applies only to the insured's 50% share of the expense, with the remaining 50% being carried by the other occupant who was not insured under the policy, as argued by the Service Provider.

Section P of the travel policy states:

'If the service provided by the ship or aircraft in which you are booked to travel is cancelled due to adverse weather conditions or other natural disasters we will:

- 1. Pay for reasonable additional travel and accommodation expenses necessarily incurred due to the forced extension of your journey;***
- 2.'¹⁰***

There is no issue between the parties that the journey extension was caused by an insurable event as defined in the above-quoted section of the policy. The issue is whether ***'reasonable additional travel accommodation expenses'*** covers the whole room charge even if it was co-occupied by an uninsured person.

Given the circumstances of this case, the Arbiter has no doubt that the claim would have covered the full cost of the room if it were occupied solely by the insured. However, given that the economic benefit of the room booking was shared with an uninsured person, the Arbiter has sympathy with the Service Provider's arguments that they are only responsible for the insured's share of the expense.

The policy was meant to cover only the additional expense incurred by the insured and there is a fair possibility that the co-occupant who was not insured under the policy may have settled his share directly to the insured either at his expense or through his own travel insurance.

After all, the Arbiter cannot but note that the stay booked at the Conrad Hotel (prior to the insured events which forced extension of the journey and the additional one night booking at the Shangri-La Hotel) was settled through loyalty points belonging to a third party and not paid by the insured, thus, apparently

¹⁰ P. 30

permitting the Complainant to gain an economic benefit for which she was not charged.¹¹

This is indicative of a *quid pro quo* arrangement between Complainant and her co-occupant which delivered value to Complainant for the 50% of the claim being refused by the Service Provider.

Decision

For reasons above explained, the Arbiter dismisses this Complaint and orders each party to carry their share of the expenses.

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.

¹¹ P. 86

In accordance with established practice, the Arbitrator'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.
