



<u>Decision Ref:</u>	2018-0054
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint is that the Provider has wrongfully declined to pay the Complainant's claim under his travel insurance policy for the costs of a cancelled holiday.

The Complainant's Case

The Complainant states that his brother booked a holiday for his own family, and also for the Complainant, on 16 December 2015. The trip was scheduled for a period of one week, departing to Italy on 13 February 2016.

The Complainant states that the cost of his share of this holiday, including flights and accommodation, was in excess of €1,200.00.

The Complainant states that he purchased travel insurance, underwritten by the Provider, on 6 February 2016.

The Complainant states that a family member, who he states had suffered from lung disease "*for years*", was admitted to hospital with breathing difficulties on 29 January 2016, and was transferred to another hospital one week later. The Complainant states that the first indication he had that this individual's condition was serious was on 10 February 2016.

The Complainant states that he decided to cancel his trip the following day, on 11 February 2016, as his family member's condition had deteriorated to such an extent that the

palliative team was taking over his care. The Complainant states that his family member survived this health crisis, but that his condition sadly continued to decline, and that he passed away later in the year.

On 14 February 2016, the Complainant submitted a claim under his travel insurance policy for the cost of his cancelled flights and accommodation. The Complainant states that his claim has been declined by the Provider on the grounds that the Complainant had been aware of the illness of his family member, and the potential for an insurance claim, before he purchased his travel insurance policy.

The Complainant disputes this, submitting that he was not aware of how ill his family member was when he purchased the insurance. The Complainant states that at no point prior to taking out the insurance did any doctor, nurse or health professional give any indication that his family member's medical condition was likely to worsen or lead to his death in the near future.

The Complainant states that, when he took out the policy, he was asked to confirm whether he was aware of any reason why his holiday should be cancelled or curtailed. The Complainant states that he was not aware of any such reason at that time.

The Complainant seeks payment of his holiday cancellation claim.

The Provider's Case

The Provider states that the Complainant's claim was in relation to the cancellation of his trip due to the deterioration in health of a family member.

The Provider notes that the holiday was booked on 16 December 2015, that travel insurance was purchased by the Complainant on 6 February 2016, and that the Complainant was due to travel on 13 February 2016.

The Provider states that the completed claim form, medical certificate, and accompanying letter from the treating doctor, received by the Provider on 13 May 2016, indicated that the Complainant's family member had been hospitalised with a life threatening condition on 29 January 2016.

The Provider states that the Complainant's cancellation claim is excluded under the terms of his travel insurance policy, as the Complainant could reasonably have foreseen that he might have to cancel his trip when he purchased the insurance policy, since his family member had been admitted to hospital with a serious illness only a few days beforehand.

In addition, the Provider states that the Complainant's cancellation claim is excluded under the terms of the policy as the medical condition which led to the cancellation claim had been diagnosed before the commencement of the insurance policy on 6 February 2016.

The Provider states that the Complainant purchased his policy online and had the opportunity to review and consider the policy terms. The Provider states that the

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circumstances giving rise to the Complainant's claim are specifically excluded under the terms of the cancellation cover provided by the Policy.

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 23 May 2018, 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, the final determination of this office is set out below.

The complaint is that the Provider has wrongfully declined to pay the Complainant's claim under his single trip travel insurance policy for the costs of a cancelled holiday.

The evidence shows that the Complainant was covered under a single trip travel insurance policy underwritten by the Provider, purchased online on 6 February 2016. The Complainant was scheduled to depart on holiday to Italy with a group of family members on 13 February 2016. The Complainant cancelled his holiday on 11 February 2016, as a result of the poor medical condition of an elderly family member (who was not one of the travelling party), and subsequently notified the Provider of a cancellation claim under his travel insurance policy.

The Provider has submitted the claim form completed by the Complainant, dated 14 February 2016, the medical certificate completed by his family member's medical attendant, dated 29 February 2016, and an accompanying letter from the medical attendant in question, dated 10 May 2016.

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Upon review of this documentation, I note that the medical certificate completed by the Complainant's family member's medical attendant, states that the medical condition which gave rise to the claim was "LRTI/COPD" (lower respiratory tract infection and chronic obstructive pulmonary disease). The medical certificate states that the condition was diagnosed on 29 January 2016, and that the Complainant's family member received a terminal prognosis on 10 February 2016.

I note that, upon further inquiry by the Provider, the medical attendant confirmed in a letter dated 10 May 2016, that the Complainant's family member "*was in hospital from 29/01/2016 with a life threatening condition*".

The Complainant's travel insurance policy provides cover against certain specified events, which are set out clearly in the policy wording, along with any conditions, restrictions, or exclusions which might apply to the cover put in place.

For a valid claim to arise it must be shown that one of these specified events has resulted in the claim submitted, and is not subject to any condition, restriction or exclusion that may apply to the policy.

The Complainant has submitted that, when he purchased the policy, he was asked to confirm whether or not he was aware of any reason why his holiday should be cancelled or curtailed. It is the Complainant's position that, at the time of purchasing the policy, he was not aware that he would have to cancel his holiday due to family illness, or any other reason.

I note from the documentary submissions of both the Complainant and the Provider that, when the Complainant purchased the travel insurance policy online on 6 February 2016, he was asked to confirm certain statements, and that one of these statements was as follows:

"2. I am not aware of any reason why my holiday should be cancelled or curtailed".

The submissions show that the Complainant was issued with his policy schedule and policy booklet on 6 February 2016. I note that the provisions of the cancellation cover provided by the Complainant's policy are set out in "*Section 3, Cancellation, Curtailment and Rearrangement*", at page 14 of the policy booklet, as follows:

A. *Cover*

[The Provider] will pay either Cancellation, or Curtailment, or Rearrangement costs up to €3,000.00 if it becomes necessary to cancel, curtail or rearrange a Holiday due to:

...

- i. The death, serious injury, sudden illness, complications in pregnancy (as diagnosed by a doctor or specialist in obstetrics) of You or of Your Immediate Family..."*

The exclusions applying to the cancellation cover in place are set out on page 14 of the policy booklet, as follows:

- B. Exclusions (General Exclusions apply as well)*
[The Provider] will not pay:
- (i) ...
 - (ii) *Cancellation, Curtailment or Rearrangement Costs where such cancellation, curtailment or rearrangement results from a medical condition affecting You or Your Immediate Family if:*
 - (a) *The condition was diagnosed before you bought this Policy; and*
 - (b) *At the time you bought this policy, the diagnosed condition could reasonably have been expected to result in*
 - (i) *Death, serious illness or sudden illness;*
 - (ii) *Or a sudden deterioration in health;*
- ...
- (xi) *if You, or any other Person Insured, were aware of any reason, either at the time a Holiday was booked or at the time you purchased this Policy, why that Holiday might have to be cancelled..."*

Following a consideration of this policy wording, I consider that it clearly sets out that the policy provides cover in the event of cancellation of a holiday as a result of the death, serious injury or sudden illness of the insured or a member of his or her immediate family, a term which the policy explicitly defines (at page 7) as including the insured's "*parent in law*". I note that in this case the Complainant's cancellation claim was the result of a medical condition affecting his parent-in-law.

It is also clearly set out within the policy wording that the Provider will **not** pay any cancellation claim in the circumstances set out above, if the medical condition giving rise to the claim was diagnosed prior to the purchase of the policy, or if the insured was aware of any reason, either at the time the holiday was booked or at the time the insurance policy was purchased, why the holiday might have to be cancelled.

Having considered the submissions of both parties to this complaint, and the arguments raised, I must accept that the medical evidence submitted indicates that the medical condition of the Complainant's family member, which ultimately led the Complainant to cancel his holiday and submit a claim under his travel insurance policy, had been diagnosed prior to the date the Complainant purchased his travel insurance policy, on 6 February 2016.

In addition, while I acknowledge the Complainant's argument that the family member in question had suffered with lung disease for a number of years, and that the Complainant was not aware of the severity of the illness at the time he purchased the policy, the medical evidence indicates that the family member was hospitalised from 29 January 2016 onwards with a medical condition which was described by his medical attendant in a letter to the Provider dated 10 May 2016 as "*life threatening*".

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In conclusion, I accept that the Provider was entitled under the terms of Section 3B of the Complainant's travel insurance policy to decline the cancellation claim in question on the grounds that the medical condition giving rise to the claim had been diagnosed prior to the purchase of the policy.

I also accept, although I am aware that this remains an issue of contention between the parties, that the Provider was entitled to decline the Complainant's claim on the additional grounds that the hospitalisation of his family member on 29 January 2016 with a "*life threatening*" condition, as described above, constituted a reason why his holiday might have to be cancelled, and that the Complainant was, or ought reasonably to have been, aware of this when he purchased his travel insurance policy on 6 February 2016.

For these reasons, it is my Legally Binding Decision that this complaint is not upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

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**

20 June 2018

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***.