



<u>Decision Ref:</u>	2018-0055
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation Rejection of claim - pre-existing condition
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint is that the Provider has incorrectly or unreasonably declined the Complainant's claim under his Annual Multi Trip Travel Insurance Policy, which is underwritten by the Provider, for the cost of a cancelled family holiday to Egypt.

The Complainant's Case

The Complainant booked a holiday to Egypt for himself and his family on 27 February 2016. The planned travel date was 16 June 2016.

The Complainant states that his wife became ill with chicken pox on 4 June 2016, although he states that she did not attend her GP at the time, and that she was unwell until 12 June 2016.

The Complainant states that he bought a Multi Trip Travel Insurance Policy, underwritten by the Provider, at 2pm on 14 June 2016, by which time his wife had recovered from chicken pox and was well again.

The Complainant submits that later that day, 14 June 2016, his daughter developed a temperature. The Complainant states that he took her to the GP at 4pm, and that the GP was of the opinion that it might be the chicken pox and recommended that the Complainant cancel their family trip to Egypt.

The Complainant cancelled the holiday the following day, 15 June 2016.

The Complainant acknowledges that the incident happened very soon after purchasing the travel insurance policy but submits that the circumstances surrounding the cancellation of his family's holiday were out of his hands.

The Complainant states that he and his wife never expected that any of their children would develop chicken pox after their mother had recovered from the virus. The Complainant states that it was difficult, even for their GP, to predict whether any of the children were going to develop the virus or not, and that they had no symptoms of the illness until 23 June 2016.

In response to the Provider's contention that his wife's illness constituted a pre-existing condition which should have been declared to the Provider at the time of purchasing the travel insurance, the Complainant submits that the policy terms did not require the declaration of certain listed medical conditions, one of them being "*chicken pox (fully resolved)*".

The Complainant seeks payment of his cancellation claim, less policy excess, in the sum €1,300.00.

The Provider's Case

The Provider states that the Complainant purchased his travel insurance policy on 14 June 2016, and cancelled his holiday the following day, 15 June 2016.

The Provider states that the medical information supplied by the Complainant's GP Practice indicates that his wife had developed shingles/chickenpox on 4 June 2016, and that she had consulted her GP on that date. The Provider states that the GP confirmed that the expected recovery time would be 14 days. The Provider notes that the GP advised that, in his opinion, as the Complainant's children had been exposed to the infection, were not vaccinated, and were experiencing fever, it was likely that they too would develop chicken pox.

The Provider notes that the Complainant attended the GP on 14 June 2016, with one of his children who was suffering from a fever, and that chicken pox was subsequently confirmed on 23 June 2016. The trip was cancelled on 15 June 2016.

The Provider states that initially the reason provided for the cancellation claim was the illness of the Complainant's wife. The Provider states that, subsequently, the Complainant provided a further medical certificate, citing his daughter's chicken pox as the reason for cancellation.

The Provider submits that, as the Complainant's wife had the condition at the date of purchase of the travel insurance, this constituted a pre-existing condition, the circumstances of which the Complainant was aware would be likely to give rise to a claim, either as a result of his wife's illness or that of one of his children.

The Provider submits that, in these circumstances, the Complainant's cancellation claim is not covered under the terms of his travel insurance 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 16 April 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.

The Complainant made an additional submission, dated 25 April 2018, which was exchanged with the Provider in the normal way. The Provider did not make a further submission in response.

Following the consideration of the additional submission from the Complainant, dated 25 April 2018, the final determination of this office is set out below.

The issue to be determined is whether the Provider incorrectly or unreasonably declined the Complainant's claim under his Multi Trip Travel Insurance Policy for the cost of his family's cancelled holiday.

The Complainant purchased an Annual Multi Trip Travel Insurance Policy, underwritten by the Provider, on 14 June 2016. The Complainant planned to travel with his wife and children to Egypt on 16 June 2016, a holiday that he had booked some four months earlier.

The Complainant has submitted that his wife had become ill with chicken pox on 4 June 2016, but that she had recovered by 12 June 2016, a number of days prior to purchasing travel insurance on 14 June 2016. The Complainant submits, however, that a few hours

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after purchasing the travel insurance on 14 June 2016, his six year old daughter became unwell with a temperature and that, when he took her to see the GP, the GP advised that it was probable that she too had contracted chicken pox and that it would be advisable to cancel the family's travel plans.

The Complainant cancelled the family's holiday on 15 June 2016, and completed a Cancellation Claim Form the following day. The Cancellation Claim Form was received by the Provider on 21 June 2016.

I note that, in the Claim Form, the Complainant advised the Provider that the reason for the cancellation of the holiday was "illness", and he detailed the reason for the cancellation as follows:

"GP advised the kids still under high risk to get infected and we will not be able to get in the flight if they developed chicken pox and most likely they picked it, specially they not immune (sic)".

In support of his cancellation claim, the Complainant submitted a Medical Certificate from his family's GP, dated 16 June 2016. This Medical Certificate identified that the person whose medical condition "*has given rise to the claim*" was the Complainant's wife, and that the condition giving rise to the claim was "*varicella*". I note that the Medical Certificate records the date of onset of the condition as "*4.6.2016*". The Medical Certificate also records that the date the GP was first consulted in relation to the condition was "*4.6.2016*".

The Medical Certificate contained certain questions for completion by the GP, including the following:

"7. What ongoing medical condition (or any medical complication directly attributable to that condition) investigated by a registered medical practitioner did the person above suffer at the date the holiday insurance was purchased?"

The Complainant's GP gave the following response:

"Resolving varicella. Family are not immune and will develop varicella over the next week when they are due to travel. Advised against travel."

In response to the question, "*Please provide details of patient's state of health at the time the insurance was purchased*", the GP replied that "*To my knowledge she was well*".

The Complainant's GP was asked to state the "*exact reason for the cancellation*", and he responded: "*Varicella. All family exposed.*"

The Complainant has submitted, in his additional submission dated 25 April 2018, that as his cancellation claim had arisen on foot of the medical condition of his child, he submitted a second Medical Certificate to the Provider, dated 7 July 2016, in respect of his daughter.

I note that the second Medical Certificate from the Complainant's family's GP Practice, dated 7 July 2016, referred to above, indicates that the person whose condition had given rise to the claim was the Complainant's six year old daughter, and that the medical condition giving rise to the claim was "*varicella*", the onset date of which was "*16.6.2016*". The second Medical Certificate indicated that the Complainant's daughter had not suffered from this condition prior to, or at the date of, purchase of the holiday insurance. The Medical Certificate noted that the Complainant had consulted the surgery prior to the journey, on "*14.06.2016*", "*as to the advisability of undertaking the holiday*" and that it had been the GP's opinion that the Complainant's daughter was not fit to travel.

In response to the following question in the second Medical Certificate, "*Please provide details of patient's state of health at the time the insurance was purchased*", the GP replied as follows:

"Healthy but her mother had chicken pox. Children might be in prodromal phase".

The Complainant's GP advised that the "*exact reason for the cancellation*" was "*chicken pox in the family*".

The Medical Certificate advised that it became apparent that the holiday should be cancelled on "*16.06.2016*" and that the Complainant's GP advised of the need to cancel on "*16.6.2016*".

From a review of the submissions made by the parties, I note that following consideration of the Complainant's claim, the Provider declined the claim in a letter to the Complainant, dated 8 August 2016, in the following terms:

"Your insurance was purchased on 14 June 2016. Your children developed a high temperature and had been seen by your GP that same day. Your wife was diagnosed with the same condition on 4 June 2016 and the GP confirmed the period of recovery of this condition could last up to 2 weeks. Your GP has also advised us that he informed you that your children were likely to develop this condition as they had not been vaccinated. Therefore at the time of taking out the insurance you were aware of a potential claim that could be made.

Unfortunately, therefore, we are unable to assist you on this occasion..."

Following a further investigation and review of the claim, and in light of the Complainant's dissatisfaction with the outcome of the Provider's assessment, the Provider wrote to the Complainant on 29 September 2016, advising of its decision that his claim had been correctly declined. In its letter of that date, the Provider referred the Complainant to "*the relevant terms of your policy*". The Provider has referred to the following terms (at page 25 of the policy document):

"Section A – Cancellation or Curtailment Charges

What Is NOT Covered

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...

2. Any claim arising directly or indirectly from any pre-existing medical condition affecting you unless you have declared ALL pre-existing medical conditions to us and we have written to you accepting them for insurance.

...

4. Any claims arising directly or indirectly from circumstances known to **you** prior to the date this insurance is purchased by **you** or the time of booking any **trip** (whichever is the earlier) which could reasonably have been expected to give rise to cancellation or **curtailment** of the **trip**.

..."

The Provider has also referred to the following requirements, set out at page 17 of the policy document:

"Important Health Requirements – For All Insured Persons

You must comply with the following conditions in order to have full protection under this policy. If **you** do not comply **we** may refuse to deal with **your** claim or reduce the amount of any claim payment.

...

No claim arising directly or indirectly from a **pre-existing medical condition** affecting **you** will be covered unless:

- **You** have declared ALL **pre-existing medical conditions** to us; and
- **You** have declared any changes in **your** health or prescribed medication; and
- **We** have accepted the condition(s) for insurance in writing.

Each **insured person** who has a **pre-existing medical condition** must make a **Medical Health Declaration**.

...

Failure to declare **pre-existing medical conditions** that are relevant to this insurance may invalidate **your** claim."

In its letter to the Complainant, dated 29 September 2016, the Provider came to the following conclusion on the Complainant's claim:

"As your wife had the condition at the time of purchase, this is a pre-existing condition and you were aware that the circumstances were likely to give rise to a claim, be this from her condition or that of the children. I am therefore unable to uphold your complaint."

Essentially, the Provider has declined the Complainant's claim on two grounds. Firstly, that the claim arose either directly or indirectly from the pre-existing medical condition of the Complainant's wife, which had not been disclosed to the Provider when purchasing the policy and, secondly, that the claim arose either directly or indirectly from circumstances of which the Complainant was aware prior to the date the insurance was purchased, which could reasonably have been expected to give rise to a claim.

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(i) **Pre-Existing Medical Condition**

The Complainant's policy defines the term "*pre-existing medical condition*" as follows:

Definitions (at page 15):

"Pre-existing medical condition(s)

1. Any past or current **medical condition** that has given rise to symptoms or for which any form of treatment or prescribed medication, medical consultation, investigation or follow-up/check-up has been required or received during the 2 years prior to the commencement of cover under this policy and/or prior to any **trip**: and
2. any cardiovascular or circulatory condition (e.g. heart condition, hypertension, blood clots, raised cholesterol, stroke, aneurysm) that has occurred at any time prior to the commencement of cover under this policy and/or prior to any **trip**."

I note that the Complainant's policy contains the following provisions in relation to "*waived conditions*", at page 18 of the policy booklet:

"Waived Conditions:

The following **medical conditions** are covered FREE of charge and subject to the normal terms and conditions of this insurance, provided:

- the **insured person** is not awaiting surgery for the condition; and
- the **insured person** has been fully discharged from any post-operative follow-up.

You do not need to declare any of these conditions to **us** provided ALL criteria are met.

- ...
- *Chicken pox (fully resolved)*
- ..."

The Complainant does not dispute that his wife became ill with chicken pox on 4 June 2016, prior to purchasing the travel insurance, and that this medical condition was not declared to the Provider when he purchased the policy on 14 June 2016. The Complainant states, however, that his wife had fully recovered from chicken pox by 12 June 2016, a number of days before he purchased the travel insurance, and that in these circumstances there was no obligation to declare his wife's medical condition to the Provider when he purchased the insurance on 14 June 2016, on the grounds that "*chicken pox – fully resolved*" was listed as a "*waived condition*", as set out on page 19 of his policy booklet.

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The medical evidence furnished to the Provider in respect of the Complainant's wife, in the form of a Medical Certificate completed by her GP on 16 June 2016, indicates that, at the time the insurance was purchased, the Complainant's wife was suffering from "*resolving varicella*". I accept that, even if the Complainant's wife was feeling better at the date the insurance was purchased, and I note that the GP commented in the Medical Certificate that she was to his knowledge "well" at that date, the medical evidence is that she was still suffering from "*resolving varicella*".

In these circumstances, I accept on the basis of the medical evidence submitted, that, at the date of purchasing the travel insurance policy on 14 June 2016, the Complainant's wife was suffering from a pre-existing medical condition (varicella), which was not yet fully resolved.

This medical condition was not, therefore, one of the "waived conditions" set out on page 18 of the Complainant's policy booklet and, consequently, I accept that it should have been declared to the Provider upon purchase of the travel insurance policy.

The Complainant's additional submission dated 25 April 2018 indicates that it was not clear to him how to declare a medical condition to the Provider. I note, however, that the designated Medical Screening Line telephone number, which is separate to the general customer services number, is provided at page 2 of the Complainant's policy booklet. In addition, the following instructions are set out at page 18 of the Complainant's policy booklet, under "Important Health Requirements – For All Insured Persons":

"To declare a pre-existing medical condition or to update your Medical Health Declaration following a change in your state of health or professional medication, you should telephone: 1890 xxx xxx.

Medical Screening Lines Opening Hours: Monday to Friday 9am to 5pm and Saturday 10am to 3pm...."

In circumstances where the Complainant's wife's medical condition was not so declared, I accept that the Provider was entitled under the terms of the policy to decline a cancellation claim arising in respect of the Complainant's wife's medical condition.

(ii) Circumstances of which the Complainant was aware which could reasonably have been expected to give rise to a claim.

The Complainant's policy excludes cancellation cover for any claims arising directly or indirectly from circumstances known to the insured prior to the date the insurance was purchased which could reasonably have been expected to give rise to cancellation or curtailment of the trip.

In this context, I note that the Complainant's policy also contains the following General Exclusion (which is applicable to the whole policy), at page 65 of the policy booklet:

"We will not pay for claims arising directly or indirectly from:

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...

20. Any circumstances you are aware of that could reasonably be expected to give rise to a claim on this policy."

The Medical Certificate submitted in relation to the Complainant's daughter, dated 7 July 2016, indicates that the Complainant attended the GP with his daughter on 14 June 2016. The Complainant has stated that she was suffering from a temperature. The GP reported in the Medical Certificate that the Complainant's daughter was "*healthy but her mother had chicken pox. Children might be in prodromal phase*". The Medical Certificate indicates that the GP advised the Complainant, on 16 June 2016, against travelling.

The Complainant states that he and his wife never expected that their children would develop chicken pox after their mother had recovered from the virus. The Complainant states that it was difficult, even for their GP, to predict whether the children were going to develop chicken pox or not, and that they had no symptoms of the illness until it was diagnosed by the GP on 23 June 2016.

I have carefully considered the medical evidence submitted, the terms of the policy, and the circumstances of the Complainant's claim. I note that in the Medical Certificate in respect of the Complainant's wife, dated 16 June 2016, the GP stated that "*all family exposed*" and that the "*family are not immune and will develop varicella over the next week when they are due to travel. Advised against travel.*"

Whilst the events surrounding the Complainant's claim were most unfortunate, I accept that, as the Complainant's wife was suffering from "*resolving varicella*" at the date of purchase of the insurance policy, which should have been declared to the Provider, and as their young children had been exposed to the infection, and were not immune to it, the Provider was entitled to conclude that these constituted circumstances which the Complainant was aware could reasonably be expected to give rise to a claim on the policy, either on account of his wife's condition or that of one of his children. Consequently, I accept any claim arising directly or indirectly from this set of circumstances is not covered under the terms of the policy.

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**

23 May 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) in accordance with the Data Protection Acts 1988 and 2003.