An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0166
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim - pre-existing condition Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complaint relates to a travel insurance policy and the Provider's refusal to indemnify the Complainants under their travel insurance policy and alleged mis-selling of the policy.

The Complainants' Case

The Complainants held a travel insurance policy which was underwritten by the Provider. They state that on 10 March 2016 they booked a holiday for the family to travel to France from Ireland for the period 13 August 2016 to 23 August 2016. The Complainants state that they booked the complete package holiday with the travel Provider and that included the campsite, travel by ferry and holiday insurance. The Complainant paid a deposit on 10 March 2016 and paid the balance in full on 31 March 2016. The entire cost of the package was €2,368.50. On 20 July 2016, the First Named Complainant contacted the travel Provider to advise that the family was no longer able to travel due to the news that her mother had a terminal illness. The First Named Complainant states that she was advised that cancellation documents would be sent out and once completed and returned, a refund would be processed. Unfortunately, the First Named Complainant's mother passed away on 29 July 2016. When she received the cancellation form, the First Named Complainant states that she completed the forms and returned them to the Provider on 3 August 2016 along with the letter from a GP advising of the date of death. The First Named Complainant stated that she then received a letter on behalf of the Provider stating that the GP letter was insufficient and that a death certificate was required.

Following the submission of the death certificate, the Complainants were informed that the Provider would be declining the claim and following a requested review by the Complainants, on 23 September 2016 the declinature was confirmed by the Provider.

The claim was declined because the Provider has asserted that the claim had arisen due to a pre-existing condition of breast cancer affecting the First Named Complainant's mother which the Provider asserts was not disclosed prior to inception of the policy and claims in relation to this are specifically excluded under the terms and conditions of the policy.

The Complainants stated that the First Named Complainant's mother was diagnosed with breast cancer 1995 and that this re-occurred in 2011 and treatment had been ongoing since then. They state that they were unaware that the condition was terminal at the time of booking the holiday. The Complainant states that they were never asked about any pre-existing medical conditions within their extended family at the time they were being quoted for the policy and they feel that they have been mis-sold the policy. The Complainants are looking for the claim in question to be paid.

The Provider's Case

The Provider's position is that the terms and conditions of the policy provide that cover provided under the cancellation section of the policy specifically excluded any claims arising from a pre-existing medical condition affecting any close relative of the Complainants, if that condition had required any form of treatment more than one prescribed medication in the 90 days prior to the start date of the policy. The Provider states that as the claim had arisen as a result of the pre-existing condition of breast cancer, and the deceased had both been receiving treatment and prescribed multiple medications in the 90 days prior to the inception date of the insurance policy on 10 March 2016, the claim was therefore excluded from cover. The Provider states that any pre-existing condition being suffered by a close relative significantly increases the risk of possible claim being made under the policy, and this increased risk is not something which insurers wish to cover.

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 Complainants were 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

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Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 13 November 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, I set out below my final determination.

The total cost of the holiday was €2,368.50, which can be broken down as follows:

Campsite accommodation – €1,302
Brittany ferries travel - €516
Irish ferries travel - €408
Family linen - €80
Holiday insurance - €49
Holiday tax - €13.50

The Complainants are seeking a refund of €2,319 which represents the cost of the holiday less the price of the holiday insurance.

I have been provided with a copy of the terms and conditions of the policy. The specific terms that the Provider relies upon are as follows:

> *"IMPORTANT LIMITATIONS – CANCELLATION AND CURTAILMENT COVER*
>
> *Important health requirements relating to You and Your immediate relatives*
>
> *This policy will NOT cover any claims under Sections 1 and 2 (Cancellation and Curtailment) arising directly or indirectly from any Pre-Existing Medical Condition known to You prior to the commencement of the Period of Insurance affecting any close relative or travelling companion who was not insured under this policy, or person with whom You intend to stay whilst on Your Trip if:*
>
> - *A terminal diagnosis had been received prior to the commencement of the Period of Insurance; or*
> - *if they were waiting on a waiting list for, or had knowledge of the need for, surgery, inpatient treatment or investigation at any hospital or clinic at the commencement of the Period of Insurance; or*
> - *if during the 90 days immediately prior to the commencement of the Period of Insurance they had:*

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i. *required surgery, inpatient treatment hospital consultations; or*

ii. *required any form of treatment or more than one prescribed medication."*

'Immediate Relative' is defined within the policy as "*spouse or common-law partner, parent, parent in law, step parent, legal guardian, children (including legally adopted, foster and stepchildren, and daughter/son-in-law), sibling (including step siblings and sister/brother in law), uncle, aunt, niece, nephew, grandparent, grandchild, or fiancé."*

Accordingly therefore, the terms and conditions of the policy, insofar as they relate to cover for cancellation of a holiday, explicitly exclude cover for a claim arising out of the cancellation of a holiday where the cancellation has arisen directly or indirectly from a pre-existing medical condition known to the insured that affected an immediate relative and that relative was requiring treatment more than one prescribed medication during the 90 days immediately prior to the commencement of the period of insurance.

It is not a disputed fact that the First Named Complainant's mother was suffering from breast cancer and had been receiving ongoing treatment since its re-occurrence in 2011 and that this treatment was ongoing at the time of inception of the policy.

The First Named Complainant makes the point that she was unaware the condition was terminal at the time that the policy was taken out. In addition, the Complainant states that they were never asked about any pre-existing medical conditions within their extended family at the time they were being quoted for the policy.

I have viewed a copy of the confirmation invoice dated 10 March 2016 which was issued by the travel company to the First Named Complainant. Amongst other things, this confirmation invoice states as follows in relation to insurance:

> *"If you have chosen to avail of our insurance please ensure that you have declared any pre-existing medical conditions of the people travelling and of anyone else on whose health your travel arrangements depend. (You may do this by telephoning medical screening – freephone – 1800 719976).*
>
> *NOTE: ALL INSURANCE POLICIES CONTAIN EXCLUSION CLAUSES/ACCESS FEES – PLEASE READ YOUR POLICY DOCUMENT CAREFULLY ESPECIALLY PAGES 3 &4*"

The booking conditions of that document go on to state, amongst other things, "*the consumer's attention is drawn to the exclusion clauses and excesses in the insurance policy arranged by the organiser*".

In addition to the foregoing, the booking form provided to the Complainants by the travel company, also dated 10 March 2016, provides, amongst other things, a declaration to be made on behalf of the named passengers in the following wording:

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> *"I/we understand that this policy excludes claims arising out of pre-existing medical conditions of people travelling or close family members not travelling".*

While it is the case that the First Named Complainant was not aware that her mother's condition was terminal at the time when the booking was made and the travel insurance policy was taken out on 10 March 2016, it is also the case that at that material time, the Complainants were aware that the First Named Complainant's mother, an immediate family member, had a pre-existing medical condition in the form of cancer for which she was undergoing treatment.

While I recognise the sad and tragic personal circumstances of this case, my decision is determined from a careful review of all documentation submitted and a consideration of all of the submissions made and evidence provided by and on behalf of both parties.

The Provider was entitled to decline cover in this particular case due to the fact that this type of cover was explicitly excluded under the terms and conditions of the policy. Furthermore, the documentation that was provided to the Complainants at the time of booking and taking out the policy made explicit reference to the fact that the policy excluded claims arising out of pre-existing medical conditions of close family or immediate family members who were not travelling on the holiday.

In light of all of the foregoing circumstances, I do not uphold this complaint.

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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

5 December 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.