



<u>Decision Ref:</u>	2018-0171
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants purchased a travel insurance policy with the Company on **17 February 2016**, which provided them with cover from 23 December 2016 to 6 January 2017, when they were scheduled to holiday in Tenerife, Spain. The Second Complainant, the husband of the First Complainant, later died on 6 June 2017.

The Complainants' Case

The Complainants were due to travel on 23 December 2016 to Tenerife, Spain, however the First Complainant states that *“unfortunately due to [the Second Complainant’s] ill health in December 2016 they had to cancel their holiday on day of travel – 23 Dec 2016. The holiday was booked on 17th February 2016...It was not known at that time of booking the holiday [that the Second Complainant] had cancer”*.

In this regard, in her correspondence to this Office dated 30 May 2017, the First Complainant advises, as follows:

“My husband [the Second Complainant] has been diagnosed with Terminal Cancer. He underwent an operation in June 2016 to remove a tumour from his face which has left him disfigured. He had been recovering from this but his wound had not fully healed and we hoped he would have been fit to enjoy the holiday in December 2016

...

I have kept the insurance company updated when we were presented with health information in relation to [the Second Complainant's] health".

The First Complainant seeks "a full refund of [the] holiday [GBP]£3,372.72".

The First Complainant's complaint is that the Company wrongly or unfairly declined the Complainants' travel insurance claim.

The Provider's Case

Company records indicate that the Complainants purchased a travel insurance policy with the Company on 17 February 2016, which provided them with cover from 23 December 2016 to 6 January 2017, when they were scheduled to holiday in Tenerife, Spain. The Second Complainant, the husband of the First Complainant, later died on 6 June 2017.

The Company notes that the Complainants cancelled their holiday as a result of the Second Complainant's health issues. The Complainants registered a claim with the Company on 29 December 2016 seeking a refund of their holiday costs, having informed the travel agent of the need to cancel their trip on 23 December 2016, the day they were scheduled to travel.

The First Complainant considers that the cancellation was as a result of the Second Complainant's diagnosis of cancer, however the Company notes that the Second Complainant's GP, Dr J. S., completed the medical claim form on 4 January 2017, as follows:

*"Please state the precise nature of the medical condition/illness or injury that gives rise to the claim: **LOW MOOD + ANXIETY***

*If more than one condition, please confirm the main condition: **[left blank]***

*Please confirm the exact date that you were first consulted concerning this condition/illness or injury: **28/12/16 – symptoms since 23/12/16***

*Please confirm the exact date of diagnosis for this condition/illness or injury: **28/12/16***

*If claiming for Cancellation/Curtailment, are you prepared to certify that solely due to the condition(s) described above, that the claimant is compelled to cancel/curtail their booked trip? **Yes***

*If so, please confirm the date you advised your patient of the necessity to cancel: **was symptomatic 23/12/16, though practice closed till 28/12/16"***

The Company is satisfied that it is clear from the medical evidence provided that the reason for the cancellation of the Complainants' trip was due to the Second Complainant's low mood and anxiety.

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In this regard, the Company notes that the 'General exclusions applicable to all sections of the policy' of the Complainants' Travel Insurance Policy document states at pg. 15:

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

17. Your stress, anxiety, depression or any other medical or nervous disorder".

As a result, the Company declined the Complainants' travel insurance claim by way of correspondence dated 24 January 2017.

The Company notes that in her correspondence dated 23 February 2017, the First Complainant advised the Company that the Second Complainant *"underwent an operation in June 2016 to remove a tumour from his face which has left him disfigured. He had been recovering from this but his wound had not fully healed and we hoped he would have been fit to enjoy the holiday in December 2016"*. As the Complainants' policy had been incepted on 17 February 2016, for completeness the Company assessed the possibility of there being a valid claim for cancellation as a result of the Second Complainant's tumour.

Company records confirm that the First Complainant contacted its medical screening telephone line on 27 October 2016 to advise that the Second Complainant had had a tumour removed from his cheek and that he had undergone radiotherapy. The First Complainant was asked when her husband's tumour had been diagnosed and she explained that it was diagnosed in June 2016. The First Complainant was advised that this condition would be covered if, in the event of a claim, the Second Complainant's medical records confirmed that he first consulted a medical practitioner after the inception of their travel insurance policy, that is, after 17 February 2016.

However, having reviewed this claim and the supporting documentation, the Company notes that the Second Complainant's GP, Dr J. S. has confirmed that the Second Complainant was first seen in relation to the parotid tumour on 11 February 2016, 6 days prior to the inception of the Complainant's travel insurance policy on 17 February 2016. In this regard, whilst the parotid tumour was undiagnosed at that time and was not diagnosed until 29 April 2016, the medical evidence confirms that the Second Complainant presented on 11 February 2016 with *"sore l ear but clearly distended L parotid, present 2 weeks or so"* and his GP sent an urgent referral to an oral surgeon the following day, on 12 February 2016.

The Company therefore notes that if the reason for the cancellation of the Complainants' trip on 23 December 2016 had been due to the Second Complainant's diagnosis of parotid tumour, the claim would have been excluded as this condition was an existing medical condition, when the Complainants' incepted their travel insurance policy. The Company advised the Second Complainant of same by way of correspondence dated 28 February 2017.

Accordingly, the Company is satisfied that it declined the Complainants' claim in accordance with the terms and conditions of their travel insurance policy.

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

A Preliminary Decision was issued to the parties 7 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, the final determination of this office is set out below.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the Complainants' travel insurance claim. In this regard, the Complainants purchased a travel insurance policy with the Company on 17 February 2016, which provided them with cover from 23 December 2016 to 6 January 2017, when they were scheduled to holiday in Tenerife, Spain. However, the First Complainant states that *"unfortunately due to [the Second Complainant's] ill health in December 2016 they had to cancel their holiday on day of travel – 23 Dec 2016. The holiday was booked on 17th February 2016...It was not known at that time of booking the holiday [that the Second Complainant] had cancer"*.

In this regard, in her correspondence to this Office dated 30 May 2017, the First Complainant advises, as follows:

"My husband [the Second Complainant] has been diagnosed with Terminal Cancer. He underwent an operation in June 2016 to remove a tumour from his face which has left him disfigured. He had been recovering from this but his wound had not fully healed and we hoped he would have been fit to enjoy the holiday in December 2016

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I have kept the insurance company updated when we were presented with health information in relation to [the Second Complainant's] health". "

The Company, however, based on the information supplied by the Second Complainant's GP, declined the Complainants' claim as there is a general exclusion in the Complainants' policy terms and conditions which specifically excludes claims arising directly or indirectly from stress, anxiety, depression or any other mental or nervous disorder. In addition, the Company also declined the claim as the medical evidence confirms that the Second Complainant presented on 11 February 2016 with "sore l ear but clearly distended L parotid, present 2 weeks or so" and his GP sent an urgent referral to an oral surgeon the following day, on 12 February 2016, therefore the Second Complainant's diagnosis of parotid tumour was an existing medical condition at the time when the Complainants inceptioned their travel insurance policy on 17 February 2016.

In this regard, I note that the Second Complainant's GP, Dr J. S., completed the medical claim form on 4 January 2017, as follows:

*"Please state the precise nature of the medical condition/illness or injury that gives rise to the claim: **LOW MOOD + ANXIETY***

If more than one condition, please confirm the main condition: [left blank]

*Please confirm the exact date that you were first consulted concerning this condition/illness or injury: **28/12/16 – symptoms since 23/12/16***

*Please confirm the exact date of diagnosis for this condition/illness or injury: **28/12/16***

*If claiming for Cancellation/Curtailment, are you prepared to certify that solely due to the condition(s) described above, that the claimant is compelled to cancel/curtail their booked trip? **Yes***

*If so, please confirm the date you advised your patient of the necessity to cancel: **was symptomatic 23/12/16, though practice closed till 28/12/16"***

Travel insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, the 'General Exclusions Applicable to all Sections of the Policy' of the Complainants' Travel Insurance Policy document states at pg. 15, as follows:

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

17. Your stress, anxiety, depression or any other medical or nervous disorder".

As his GP, Dr J. S. advised the Company in the medical claim form dated 4 January 2017 that the Second Complainant was not fit to travel due to the sole condition of "**LOW MOOD +**

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ANXIETY", I am satisfied therefore that the Company declined the Complainants' claim in accordance with the terms and conditions of their travel insurance policy.

In addition, I note that in her correspondence dated 23 February 2017, the First Complainant advised the Company, as follows:

"[The Second Complainant] underwent an operation in June 2016 to remove a tumour from his face which has left him disfigured. He had been recovering from this but his wound had not fully healed and we hoped he would have been fit to enjoy the holiday in December 2016 ...

I have kept the insurance company updated when we were presented with health information in relation to [the Second Complainant's] health".

I note that the Company, for completeness, then assessed the possibility of there being a valid claim for cancellation as a result of the Second Complainant's tumour, notwithstanding that this was not the reason or diagnosis provided for the cancellation of the trip on the medical claim form completed by the Second Complainant's GP on 4 January 2017.

In this regard, the 'Important Conditions Relating to Health' section of the Complainants' Travel Insurance Policy document states at pg. 14, as follows:

" It is a condition of this policy that You will not be covered under section A – Cancellation or curtailment charges...for any claims arising directly or indirectly from:

a) At the time of taking out this policy:

- i) *Any Existing Medical Condition falling into one, two or all three of the following categories unless You have contacted Us...and We have agreed to provide cover.*

Existing Medical Condition means

1. *Any: ...*

- e) *cancer*

for which You have received surgery, treatment or investigations by Your doctor or a consultant / specialist, or prescribed drugs or medication) ...

- ii) *Any Medical Condition You are aware of but of which You have not had a diagnosis ...*

Please note:

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If this insurance is extended to include any Existing Medical Conditions an endorsement will be issued confirming the terms under which cover has been provided”.

The Complainants incepted their travel insurance policy with the Company on 17 February 2016. I note from the documentation before me that the Second Complainant’s GP, Dr J. S. has confirmed that the Second Complainant was first seen (in relation to what was subsequently diagnosed as a parotid tumour) on 11 February 2016, 6 days prior to the inception of the Complainants’ travel insurance policy on 17 February 2016.

In this regard, whilst the parotid tumour was undiagnosed at that time, the medical evidence confirms that the Second Complainant presented on 11 February 2016 with symptoms of same, that is, *“sore l ear but clearly distended L parotid, present 2 weeks or so”* and arising from these symptoms, his GP sent an urgent referral to an oral surgeon the following day, on 12 February 2016. I note that the Complainants did not advise the Company of the Second Complainant’s attendance at his GP on 11 February 2016, or his subsequent referral to an oral surgeon, prior to incepting their insurance policy.

As a result, I am satisfied with the Company’s position that if the reason for the cancellation of the Complainants’ trip on 23 December 2016 had been due to the Second Complainant’s diagnosis of a parotid tumour, the claim would have been excluded from cover, as this condition was an existing medical condition at the time when the Complainants incepted their travel insurance policy and which they had not advised the Company of, prior to incepting cover.

Accordingly, I am satisfied that the Company declined the Complainants’ claim in accordance with the terms and conditions of their travel insurance policy. I am also satisfied that the Company acted reasonably when the claim was originally declined, in assessing the claim again on the basis of the Second Complainant’s tumour, notwithstanding that the Complainants’ claim form identified “Low Mood and Anxiety” as the reason for the cancellation of the holiday.

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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

3 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.