An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0063
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim - pre-existing condition
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants are husband and wife. The Second Complainant booked a holiday to Spain, and incepted a Policy of Travel Insurance, with a local travel insurance agency on **03rd February 2016**, on behalf of herself, her husband and their two friends.

The Complainants and their friends were due to travel to Spain on **21st May 2016** and return on **28th May 2016**. However due to the illness of the First Complainant, they were obliged to cancel the holiday. A claim form was submitted to the Provider, on **30th May 2016**, in this regard by the Complainants. The claim was assessed and subsequently declined by the Provider, on **02nd June 2016**.

The Complainants dispute this decision and are seeking payment from the Provider of the monies claimed, in the sum of €1,285.00.

The Complainants' Case

The Complainants submitted a claim form on **21st May 2016** seeking the sum of €1,285.00 in respect of the cost of the cancelled trip.

The Provider has declined to make payment pursuant to the claim. The Complainants disagree with this decision.

The Complainants submit that, for a number of years, they have travelled on holiday with friends of theirs, who live in a different part of the country. The Complainants submit that, each year, over the Christmas period, they discuss holiday plans with each other, in respect of the forthcoming year, and agree upon the details of the trip that that they will make. The Complainants submit that the Second Complainant was tasked with booking the holiday, on behalf of the four of them, which she proceed to do, with their local Travel Agent, on the **03rd February 2016**.

The Complainants submit that, a month earlier, on **04th January 2016**, the First Complainant attended at his local doctor, to undergo routine blood tests. They submit that, at this time, and in the course of a conversation with the doctor, the First Complainant mentioned a small lump, which was present on his right forearm. The Complainants submit that the First Complainant's doctor decided to refer him to a Vascular Consultant in this regard, whom he attended on the **15th January 2016**.

The First Complainant submits that when he saw the Vascular Consultant, he was recommended to undergo an MRI. The First Complainant underwent this on the **18th February 2016**.

The Complainants submit that the Vascular Surgeon then contacted the First Complainant, in or about **late March/early April 2016**, to advise that the MRI results were inconclusive in respect of the lump and that he recommended having the lump removed and analysed.

The Complainants submit that the First Complainant underwent a procedure to have the lump removed on the **13th April 2016.**

The Complainants submit that the Vascular Surgeon subsequently contacted them, on the **04th May 2016** and arranged to see the First Complainant, on the **06th May 2016**.

The Complainants submit that during this consultation, on the **06th May 2016**, the First Complainant was advised that the lump was a malignant sarcoma, and that the Consultant arranged for him to see a specialist Surgeon about it.

The First Complainant submits that he attended with the Surgeon, on the **13th May 2016**, and on that date he was booked in for an operation, on the **23rd May 2016**.

The Complainants submit that, on the **13th May 2016**, when they informed the Surgeon about their forthcoming trip, he advised them that it they would have to cancel. The First Complainant submits that, "*the analysis showed that what I had was a stage 3 aggressive myxofibrosarcoma, which could spread fast once it was opened – if it touched a bone in my forearm it would mean amputation at the elbow, and if it passed the elbow there was nothing else could be done.*"

The Complainants submit that this was the reason that the holiday was cancelled, which they proceeded to do, after the consultation with the Surgeon, on the **14th May 2016**. The Complainants submit that at no stage up until the **13th May 2016** did they envisage having

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to cancel their holiday and they had been of the opinion, prior to this Consultation with the Surgeon, that the operation could wait until their return, but they were advised that leaving the operation for a further 2 weeks might prove too late.

The Complainants submit that they are entitled to full payment in the sum of €1,285.00, on the basis that no investigation/diagnosis occurred until the lump was removed, on the **13th April 2016**, and sent for analysis.

The Provider's Case

The Provider notes that the Complainants purchased a single trip policy of travel insurance on the **03rd February 2016**, in respect of a trip to Spain, from **21st May 2016** until the **28th May 2016.**

The Provider, in support of its decision to decline to make payment pursuant to the claim, points to the "*Important Conditions relating to Health*", detailed in the Policy terms and conditions, which the Provider says would have been provided to the Complainants at the point of sale (the Provider did not sell the product to the Complainants), as follows:

> ***Important Conditions Relating to Health***
> ***…***
> ***You*** *must comply with the following conditions to have full protection of* ***Your*** *policy. If* ***You*** *do not comply* ***We*** *may at* ***Our*** *option cancel the policy or refuse to deal with* ***Your*** *claim or reduce the amount of any claim payment.*
>
> *At the time of taking out this policy:*
> *Do* ***You*** *have or have* ***You*** *had any* ***Medical Conditions(s)*** *for which* ***You*** *are taking or have taken prescribed medication or are waiting to receive, or have received treatment (Including surgery tests or investigations) within the last 2 years?*
>
> *If No (including if* ***You*** *have had no* ***Medical Conditions****)*
> *Please read the conditions below to see if they apply to* ***You****.*
> *(If none of them apply then* ***Your Medical Condition(s)*** *will be covered)*
>
> *If Yes*
> *It is a condition of this policy that* ***You*** *will not be covered under Section A — Cancellation or curtailment Charges, Section B — Emergency Medical and Other Expenses Section C - Hospital Benefit, and Section D — Personal Accident for any claims arising directly or indirectly from this* ***Medical Condition(s)*** *unless you contact Us on* ***xxxx xxxxxx*** *and* ***We*** *have agreed in writing to cover* ***Your Medical Condition(s).***
>
> *If* ***You*** *have only one* ***Medical Condition*** *and it is one of those shown in the table of No screen conditions on the following page then this will be covered under the policy without the need to contact* ***Us.***

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If you hold a valid private health Insurance that covers you and any medical condition you may have for the duration of any trip you take, with a minimum of €55,000 of inpatient medical cover abroad, and have declared your private health insurance details to us (Annual Multi Trip and Single Trip policies only), then you do not need to contact the medical screening line as detailed above. This does not apply to Backpacker policies in which case contact the medical screening Line as detailed above.

In Either Circumstances:
It is a condition of this policy that ***You*** *will not be under Section A — Cancellation or curtailment Charges, Section B — Emergency Medical and Other Expenses, Section C - Hospital Benefit, and Section D — Personal Accident for any claims arising directly or indirectly from:*

A. At the time of taking out this policy:
i) Any ***Medical Condition*** *for which* ***You*** *or a* ***Close Relative*** *or a* ***Travelling Companion*** *are aware of but have not had a diagnosis.*
ii) Any ***Medical Condition*** *for which* ***You*** *or a* ***Close Relative*** *or a* ***Travelling Companion*** *have received a terminal prognosis.*
iii) Any ***Medical Condition*** *for which* ***You*** *or a* ***Close Relative*** *or a* ***Travelling Companion*** *are on a waiting list for or have the knowledge or need for surgery, treatment or investigation at a hospital, clinic or nursing home.*

B. At any time
i) Any ***Medical Condition You*** *have in respect of which a Medical Practitioner has advised* ***You*** *not to travel or would have done so had* ***You*** *sought his/her advice but despite this* ***You*** *still travel.*
ii) Any surgery, treatment or investigations for which ***You*** *Intend to travel outside of* ***Ireland*** *to receive (including any expenses incurred due to the discovery of other Medical Conditions during and/or complications arising from these procedures).*
iii) Any ***Medical Condition*** *for which* ***You*** *are not taking the recommended treatment or prescribed medication as directed by a* ***Medical Practitioner****.*
iv) ***Your*** *travel against any heath requirements stipulated by the carrier, their handling agents or any other* ***Public Transport*** *provider.*

The Provider submits that, from the medical information available to it, it was clear that the First Complainant had been referred to a consultant in relation to his condition, on the **04th January 2016**. It submits that, as the Insurance Policy was purchased on the **03rd February 2016**, after the First Complainant was referred to a consultant, the claim was correctly declined by it, in accordance with the above wording.

The Complaint for Adjudication

The Complainants' complaint is that the Provider has wrongfully and/or unreasonably declined the Complainants' claim for benefit under the policy of travel insurance.

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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 on **20 February 2019**, 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 substantive submissions from the parties, the final determination of this office is set out below.

Provider's Decision to Decline the Claim

A cancellation-claim form was submitted to the Provider by the Complainants, dated **21st May 2016**, in respect of their cancelled trip.

The Claims Handling Company acting on behalf of the Provider wrote to the Complainants, by letter dated **02nd June 2016**, advising that their claim had been declined. The letter stated that the claim, "*has been assessed in line with the terms and conditions of your policy wording*." It went on to say:

> *Please note the following within your policy wording should you have a condition to declare when purchasing your policy:*
>
> *At the time of taking out this policy:*
> *Do You have or have You had any Medical Condition(s) for which You are taking or have taken prescribed medication or are waiting to receive, or have received treatment (including surgery, tests, or investigations) within the last 2 years?*

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If Yes
It is a condition of this policy that You will not be covered under Section A - Cancellation or curtailment Charges, Section B - Emergency Medical and Other Expenses, Section C - Hospital Benefit, and Section D - Personal Accident for any claims arising directly or indirectly from this Medical Condition(s)unless You contact Us on 0818 286 541and We have agreed in writing to cover Your Medical Condition(s)

We note that you did not contact Healthcheck to declare your condition.

Your policy goes on further to state:

In Either Circumstances:

It is a condition of this policy that You will not be covered under Section A - Cancellation or curtailment Charges, Section B - Emergency Medical and Other Expenses, Section C - Hospital Benefit, and Section D - Personal Accident for any claims arising directly or indirectly from: A. At the time of taking out this policy: iii) Any Medical Condition for which You or a Close Relative or a Travelling Companion are on a waiting list for or have the knowledge of the need for surgery, treatment or investigation at a hospital, clinic or nursing home.

On reviewing your claim we can see that you are claiming for the cancellation of your trip due to needing a medical operation on the 23/05/2016.

We note that you purchased your travel insurance policy on the 03/02/2016 and from the medical certificate submitted we can see that you were referred to a specialist for investigation on the 04/01/2016. This has also been verified by [GP] via telephone.

Kindly note as outlined above, your policy does not extend to consider the circumstances of your claim and we regret to advise that the Insurers are not in a position to be of financial assistance in this instance.

In examining this complaint, I have had regard to the claim form which was submitted by the Complainants to the Provider, the relevant medical history of the First Complainant, and to the Terms and Conditions of the policy of insurance, which governed the agreement between the parties.

The Cancellation Claim Form

The Claim Form which was submitted by the Complainant identified the *"incident date*" and the "*date of cancellation"* as the **14th May 2016**.

I note that this was the day after the Complainants met with the Surgeon, who advised that they would need to cancel their planned holiday.

The claim form asks as to the "*Condition which resulted in the cancellation*", the Complainants have filled in "*myxofibrosarcoma".*

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The Complainants explained within the form that the trip had been cancelled, "*due to medical advice. Undergoing operation on 23.05.2016.*"

Page 4 of the Cancellation Claim Form is headed "*Medical Certificate – Cancellation*", which was completed by the Claimant's GP and signed and dated **17 May 2016**.

In response to the question "*was your patient placed on a waiting list, either for treatment or investigation within 12 months of the purchase of insurance or the booking of the trip*", the GP answered "*Yes*", writing, "*see initial referral letter 04/01/2016".*
[my emphasis]

In order to more fully understand the details set out in the claim form, I have had detailed regard to the First Complainant's Medical History in this regard.

Medical History

The evidence before me shows that the First Complainant attended at his GP on **04th January 2016** and spoke about a small lump which was present on his arm.

The Complainant's GP referred him to a Consultant Vascular Surgeon as a result.

Following this consultation with the Vascular Surgeon, a letter issued to the Complainant's GP, dated **19th January 2016** which stated:
"…

> *On examination, on his right medial forearm he has a fixed mass of about 4 x 3 cm. There is no evidence of any nodes at the elbow. Nil to suggest this is vascular. Pulses are normal. Abdominal exam is normal. Lower limb pulses are normal.*
>
> *I had a full discussion with the above named today. Given his age, he is really not keen for any form of excision of this, as I have given him this as a primary option. He would like to know what it is, given that it hasn't reduced in size and, as such, I have booked him in for an MRI to further assess. Once the MRI results are to hand I will call him with the results and we will make a decision whether or not to proceed from there.*

An MRI was performed upon the First Complainant, on **18th February 2016**. The subsequent Radiology Report, dated **22nd February 2016** stated as follows:

> ***Summary:***
> *Irregular poorly enhancing mass anterior to the superficial surface of the extensor carpi ulnaris muscle but probably more likely to be rising the subcutaneous fat.*
>
> *Imaging appearances are indeterminate but sufficiently sinister to warrant biopsy. The mass must be assumed to be malignant until proven otherwise. I would be interested in the final diagnosis."*

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By subsequent letter to the First Complainant's GP, dated **15th March 2016**, the Consultant Vascular Surgeon wrote that:

> "*The MRI has suggested a biopsy of this right forearm lesion… I will keep you informed of how he gets on and the pathology of same. He has been booked in for a day case for the 13th April 2016."*

The First Complainant underwent this procedure on the **13th April 2016**. By letter to his GP, dated **18th April 2016**, the Consultant Vascular Surgeon, stated:

"The above named attended today and had a forearm lesion excised. While it appear to be consisted [sic] with a lipoma the borders were poorly defined and it was hard in the centre. As such it has been sent for pathology. I will phone [the First Complainant] with the results of same and will touch base with you also.

(The Complainant, in the cover letter enclosing the report, clarified that whilst the report stated that he had a "*large mass in his forearm*" the Complainant clarified that it was small, describing it as being "*about the size of a grape".*)

By letter to the First Complainant's GP, dated **06th May 2016**, the Consultant Vascular Surgeon stated:

> *" The above named attended today.*
>
> *As you are aware, he had excision of this forearm mass. Interestingly, this has turned out to be a sarcoma. I brought [the First Complainant] back today and had a full discussion with him with regards to this. I have advised him of the diagnosis. I have advised him of the need for a further wide local excision. I have also advised him that I am going to refer him on to Mr [Name] who has a particular interest in this type of cancer."*

There is a letter from this Specialist, to the First Complainant's GP, dated **13th May 2016** (being the date that the Complainants have identified within the claim form submitted to the Provider as being the date that "*cancellation was recommended*") which states:

> *"I have given a provisional dated for an operation under general anaesthetic which will be done on Monday 23rd May…He has raised the fact that he had a holiday booked on the 20th May for one week in Spain. Unfortunately I have told him to cancel this as I feel with his incompletely excised high grade sarcoma it is imperative that we proceed with definitive treatment as soon as possible."*

Analysis

From the timeline of events identified above, it is clear that the **13th of May** was the date upon which the Complainants were became aware of the fact they would have to cancel their holiday, based on medical advice.

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The Complainants submit that this the relevant date for the purpose of considering their claim under the policy of travel insurance.

However, the Provider's position is that it was the date upon which the Complainant was first referred for investigation, and not the date upon which the Complainants became aware that they would need to cancel their holiday, that is of relevance in determining the cover available under the policy.

The Policy

I note that the following notice appears on the front page of the insurance policy:

Health Notice

If **You** or any person who is travelling has a **Medical Condition** then **You** must declare that condition to the Medical Screening Line [telephone number].

I further note that there is a section within the Policy which is headed "*Important Conditions Relating to Health":*

In examining this issue, I would note that exclusion clauses are, generally speaking, included in a Policy of Insurance to define the risk which the Insurer is prepared to accept/not to accept, under the contract of insurance. Insurance policies are built around the concept of insurance risk – in other words, the likelihood that an insured event will occur, which will require the insurer to pay a claim. Underwriters determine the cost of insurance premiums with reference to how great the risk is, of an insured peril occurring. If a person is undergoing treatment, or awaiting treatment, including medical investigation, then this will increase the risk that a person may have to cancel a trip due to health related issues.

Within this section, it is asked:

> "*At the time of taking out this policy:*
>
> *Do **You** have or have **You** had any **Medical Condition** for which **You** are taking or have taken prescribed medication or are waiting to receive or have received treatment (including surgery, tests or investigation) within the last two years?"*

And the subsequent paragraph which states:

> *If Yes. It is a condition of this policy that **You** will not be covered under Section A – Cancellation or curtailment Charges, Section B – Emergency Medical and Other Expenses, Section C – Hospital Benefit, and Section D – Personal Accident from any claim arising directly or indirectly from this **Medical Condition(s)** unless **You** contact **Us** on [telephone number] and we have agreed in writing to cover **Your Medical Condition(s).***

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It further states that:

In Either Circumstances: [sic]

*It is a condition of this Policy that **You** will not be covered under Section A – cancellation or curtailment Charges, Section B – Emergency Medical and Other Expenses, Section C – Hospital Benefit and Section D – Personal Accident for any claims arising directly or indirectly from:*

A. At the time of taking out the Policy:

...

*iii) Any **Medical Condition** for which **You** or a **Close Relative** or a **Travelling Companion** are on a waiting list or have the knowledge of the need for surgery, treatment or investigation at a hospital, clinic or nursing home.*

The Claim Form

The Complainants contend that "*the investigation commenced on the 13th April when [the Consultant] removed the small lump from my arm and sent it off for analysis"*

The Complainants have stated that, "a*t the time of taking out the policy we had no knowledge of the need for any surgery, treatment or investigation at a Hospital, Clinic or Nursing Home*" and that, "*...the date of diagnosis was 13th April 2016 – the date on which material was removed from my arm to be sent for analysis – the result of this analysis did not come back until the 1st week of May 2016*."

I consider it noteworthy that the GP in the completed Claim Form responded to the question:

"*Was your patient placed on a waiting list, either for treatment or investigation within 12 months of the purchase of insurance or the booking of the trip?"*

by answering, *"Yes"* and "*see initial referral letter 04/01/2016*".

I am also of the view that "*investigation*" refers to the general diagnostic process – which, in the First Complainant's situation, began on **04th January 2016**, when his GP referred him to a Consultant about the lump on his arm.

I accept therefore that the referral to a Consultant, by the Complainant's GP, on the 04th January 2016 was sufficient to 'trigger' the above exclusion clause, because the Complainant's condition was not notified to the Provider's Medical Screening function in order to give the Provider the opportunity to consider whether it was willing to insure the risk, and in that event, the level of premium payable.

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Whilst I have the greatest sympathy for the Complainants and the situation which they found themselves in, having examined in detail, all of the evidence before me, I accept, for the reasons set out above, that the Provider did not act wrongfully or unreasonably in declining to make payment pursuant to the claim, and that this decision was in accordance with the Terms and Conditions of the policy in question.

I do not find, therefore, that this complaint can be 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES

14 March 2019

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.