



<u>Decision Ref:</u>	2019-0079
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Claim handling delays or issues
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant (who is sadly now deceased) incepted a travel insurance policy with the Provider online on **22 December 2017**. His wife was listed as an insured person on this policy. This complaint has been maintained by the Complainant's daughter, in accordance with **Section 45** of the **Financial Services and Pensions Ombudsman Act 2017**.

The Complainant's Case

The Complainant and his wife travelled to [location redacted] on 28 January 2018 on holiday. He later presented at hospital in [location redacted] on **9 February 2018** with "*acute pneumonia. It has since emerged that the results of the tests (bronchoscopy, PFTs, walk test, CT scan) show a diagnosis of idiopathic pulmonary fibrosis. This diagnosis was NOT known prior to travel*".

The Complainant's daughter advised the Provider shortly after the Complainant's admission to Hospiten [hospital name redacted] of the circumstances. Having assessed the matter, the Provider advised the Complainant's daughter by correspondence dated **22 February 2018**, as follows:

"From the information we have gathered, it would appear that [the Complainant] consulted with his GP [Dr P.] a few times in December 2017, who felt it was necessary to refer him to a specialist for further tests. [The Complainant] attended an appointment with consultant [Dr A.] on 04/01/2018, who after completing some

tests and examinations, made him aware of the potential diagnosis and treatment plan. This was not declared on the date you purchased the insurance on 22/12/2017 or prior to travel on the 28/01/2018.

As [the Complainant]'s current treatment is directly related to his undisclosed pre-existing condition we are unable to cover the cost of your medical or any associated additional expenses which occur as a direct result of his current treatment in [location redacted]".

Following receipt of this declination, the Complainant's daughter sought the assistance of the Provider to arrange her father's medical repatriation to Ireland, which included a flight from [location redacted] to Ireland for her father with doctor escort and in-flight oxygen, along with seats for her mother and aunt. The Complainant was transported by X. Air Ambulance from Hospiten [hospital name redacted] to University Hospital [location] on 27 February 2018, he commenced palliative care on [date redacted] 2018 and shortly after died on [date redacted] 2018.

In respect of the Provider's declination of the claim, the Complainant's daughter submits, as follows:

"Travel insurance policy was taken out in good faith...My father who was previously well, and was deemed 'fit to fly' by his GP [Dr P.], saw a respiratory consultant [Dr A.] on 4th January (arising from an episode of shortness of breath and chest infection), following referral by GP. He was sent for tests mid-January, with a plan to 'review in 10 weeks'. He had NEVER previously attended a Respiratory Physician and does NOT have a respiratory history. He was given a day to day management plan in the event of developing a cough, chest infection, pneumonia etc. in the interim period. Nor was he advised not to fly/travel".

In addition, in her email to this Office dated 28 September 2018, the late Complainant's daughter advises, as follows:

*"My active lively [age redacted] year old father was **well at the time of travel**, he was cutting timber and throwing logs in my shed the day before he went on holidays!*

*He walked the [holiday location] & thoroughly enjoyed the first twelve days of his two week holiday, before **walking** in the front door of Hospiten [hospital name redacted] on the morning of **Friday 9th February 2018** complaining of **shortness of breath**, and began treatment for pneumonia.*

*Referral to consultant from GP (December 2017) due to **breathlessness** which had already **improved greatly on 12th December**...referral to consultant due to **suspected** interstitial lung disease...xray showed changes **suggestive** of pulmonary fibrosis...etiology of cough was **unknown** at that time and he started inhaler for **presumption of underlying asthma***

*Repatriation by X. Air Ambulance on **Tuesday 27th February 2018**, to High Dependency Unit, University Hospital [location] (organized by the family – at short*

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notice and at huge expense)...Three crucial key things had to align. 1) a HDU bed at home, 2) Ireland was in LOCK DOWN due to STORM EMMA and there was a window in which he HAD to fly 3) [Dr S.], Hospiten [hospital name redacted] had also given medical clearance for Dad to fly, but this was also just a 'window' due to his rapid deterioration.

On [date redacted] 2018, [the Complainant] commenced palliative care at [hospital].

[The Complainant] died on [date redacted] 2018, 32 days after he walked in the front door of Hospiten [hospital name redacted] (with shortness of breath).

I cannot begin to explain the emotional rollercoaster we as a family endured during that period...it was a living nightmare. From the initial shock of the hospital admission, followed by the rapid decline in Dad's health, the huge financial cost of repatriation and the strain of that on my mother, who now finds herself a widow. It really was not how my parents set out on their fortnight's holidays to [location redacted] on 28th January 2018.

I hope you can appreciate that from our perspective, we did not feel the need to inform [the Provider] prior to travel...because as far as we were concerned, there was no perceived risk".

As a result, the Complainant seeks "to be reimbursed for the cost of the repatriation expenses with X. Air Ambulance Services [GBP £22,690], along with [the Complainant's wife]'s expenses in [location redacted] in the period following [the Complainant]'s admission as an inpatient on 9th February at Hospiten [hospital name redacted], up to his repatriation on 27th February". In this regard, the Complainant's daughter notes that the Complainant's wife "used her life's savings to cover the repatriation costs in the case. The travel insurance policy was taken out in good faith, and we believe that the duty of care to the patient in this case was not followed through effectively".

The Provider's Case

Provider records indicate that the Complainant incepted a travel insurance policy with the Provider online on **22 December 2017**. As part of the online sales path, the Provider notes that the customer must confirm that they understand and accept certain declarations before purchasing cover. One such declaration relates to their health status. Specifically, the customer must tick a box on the website to confirm that they understand and accept the following declaration:

"Medical Declaration

This insurance contains exclusions relating to pre-existing medical conditions which are detailed in exclusion 1 on page 7 of your Policy Document. I confirm that I have

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read and agree to these exclusions, and understand that I will not be covered for such conditions”.

Clicking on the [“Policy Document”](#) link redirects the customer to the following policy exclusion:

“General exclusions apply to all sections of this insurance. In addition to these general exclusions, please also refer to ‘What you are not covered for’ under each policy section as this sets out further exclusions which apply to certain sections. We will not cover the following:

1. *Any claim where at the time of taking out this insurance, the following apply.*

The claim relates to a medical condition or an illness or death related to a medical condition which you or any person who your trip depends on (this would include a relative or a business associate) knew about before you bought this insurance. You must make sure you tell us about any change in the state of health of yourself, anyone travelling with you, a relative or business associate occurring after you have bought this insurance but before you travel. Please refer to the Health conditions section on page 3 of this policy document for further details.

You or any person who your trip depends on are receiving or waiting for hospital investigation or treatment for any undiagnosed condition or set of symptoms”.

As part of the Complainant’s online travel policy purchase, the Provider is satisfied that the box confirming that this medical declaration was understood and accepted had been ticked.

The Provider is satisfied that it provides information on its online sales path to ensure a high level of disclosure and transparency of the terms and conditions. In addition, when a customer purchases a travel insurance policy online with the Provider, an email confirming cover is sent to the email address supplied and attached to this email is a pdf of the policy schedule and policy wording.

The Complainant and his wife travelled to [location redacted] on 28 January 2018 on holiday. The Provider’s Medical Assistance Service was advised by telephone on 9 February 2018 that the Complainant had been admitted to hospital in [location redacted] with shortness of breath and was to be kept in overnight for observation.

Based on the medical evidence then made available, the Provider determined that the Complainant knew of the medical condition following his visits to his GP, Dr P. on 8 December and 12 December 2017 due to shortness of breath, and in particular, after the results of his chest x-ray report on 15 December 2017. In addition, the Complainant had been referred to Dr A., Consultant Respiratory Physician for further investigations before the Complainant incepted his travel insurance policy with the Provider.

As a result, the Provider concluded that prior to incepting his travel insurance policy on 22 December 2017, the Complainant was receiving treatment and had begun the process of investigation into an undiagnosed condition or set of symptoms.

This set of circumstances is specifically excluded from cover under the terms and conditions of his travel insurance policy. In addition, the Complainant did not notify the Provider, as he was required to do under the terms and conditions of his policy, of changes to his health which were discussed with him by Dr A., Consultant Respiratory Physician, whom he attended on 4 January 2018, prior to the commencement of his holiday on 28 January 2018.

The Provider advised the Complainant's daughter in writing on 22 February 2018 that it had declined the Complainant's claim. Nonetheless, the Complainant's daughter sought Provider assistance to arrange her father's medical repatriation to Ireland, which included a flight from [location redacted] to Ireland for her father with doctor escort and in-flight oxygen, along with seats for her mother and aunt. In this regard, the Provider wrote to the Complainant's daughter on 22 February 2018, as follows:

"Thank you for your time on the phone earlier today.

As discussed, we will still treat you father's case with the upmost priority and make all of the logistical arrangements to bring your father home to Ireland. When payment is required, we will put you in direct contact with our service providers.

Please find attached the decline letter for your father's case".

The Provider declined the Complainant's claim under the following policy exclusions:

"General Exclusion

1a: *The claim relates to a medical condition or illness or death related to a medical condition which you or any person who your trip depends on (this would include a relative or a business associate) knew about before you bought this insurance. You must make sure you tell us about any change in the state of health of yourself, anyone travelling with you, a relative or business associate occurring after you have bought this insurance but before you travel ...*

1d: *You or any person who your trip depends on are receiving or waiting for hospital investigation or treatment for any undiagnosed condition or set of symptoms".*

In conclusion, it is the Provider position that the Complainant, prior to incepting his travel insurance policy on 22 December 2017, was receiving treatment and had begun the process of investigation into an undiagnosed condition or set of symptoms. This set of circumstance is specifically excluded from cover under the terms and conditions of his policy. In addition, the Complainant did not notify the Provider, as he was required to do by the policy terms

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and conditions, of changes to his health which were discussed with him by Dr A., Consultant Respiratory Physician, when the Complainant attended him on **4 January 2018**, which was prior to the commencement of his holiday on 28 January 2018.

Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his travel insurance policy.

The Complaint for Adjudication

The Complainant's complaint is that the Provider wrongly or unfairly declined his travel insurance claim.

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's daughter 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 7 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 submissions from the parties, the final determination of this office is set out below.

The Complainant, who is sadly now deceased, incepted a travel insurance policy with the Provider on 22 December 2017 and he and his wife travelled to [location redacted] on 28 January 2018 on holiday. The Complainant was admitted to Hospiten [hospital name

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redacted] on 9 February 2018 with shortness of breath and shortly after was diagnosed with acute pneumonia and idiopathic pulmonary fibrosis.

The Complainant's daughter made a claim on his behalf to the Provider in respect of the medical expenses for the Complainant's treatment in [location redacted] and his then impending medical repatriation to Ireland. Following its assessment, the Provider advised the Complainant's daughter in writing on 22 February 2018 that it had declined the claim.

Following receipt of this declinature, the Complainant's daughter sought the assistance of the Provider to arrange her father's medical repatriation to Ireland, which included a flight from [location redacted] for her father with doctor escort and in-flight oxygen, along with seats for her mother and aunt.

The Complainant was transported by X Air Ambulance from Hospiten [hospital name redacted] to University Hospital [location] on 27 February 2018, commenced palliative care on [date redacted] 2018 and shortly after died on [date redacted] 2018.

When assessing a travel insurance claim arising from a medical matter, it is standard industry practice for an insurer to request the medical records of the policyholder, once the policyholder has submitted a claim.

In this regard, I note from the documentary evidence before me that in his correspondence to the Complainant's GP, Dr P., dated 4 January 2018, Dr A., Consultant Respiratory Physician advised, as follows:

"Thank you for referring this very pleasant [age redacted] year old man to my rooms for his abnormal chest x-ray. As you recall the patient had no significant respiratory disease up until the last year when he has noticed progressive increased breathlessness on exertion. It is now occurring whenever he rushes himself, not at rest...He does have an ongoing cough with this in addition, minimally productive and some occasional wheezing, He had no exacerbations until recently when he did have one. He did require a course of antibiotics and steroids ...

I note his chest x-ray report demonstrating extensive reticular opacities throughout both lungs demonstrating an apex space gradient.

My impression is most likely the patient has interstitial lung disease. I will plan for a CT scan and bronchoscopy for him as well as full pulmonary function studies with a six minute walk test. He is for an autoimmune screen in addition ...

I plan to review him again in 10 weeks for the results of the above tests. The patient has been made aware of the potential diagnosis".

[My underlining for emphasis]

In his correspondence dated 19 February 2018, the Complainant's GP, Dr P. advises, as follows:

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"This is to confirm that [the Complainant] went on holiday to [location redacted] on the 28/01/18 following which he became actually unwell and I believe now has life-threatening pneumonia.

He had attended me for a few visits in December 2017 for shortness of breath. He had a chest x-ray which showed some tissue changes, and in view of this I decided to refer him to Dr A., Consultant Respiratory Physician, for further investigations and confirmation of diagnosis. I suspected that he may have some interstitial lung disease but this had not been confirmed and no diagnosis made prior to the trip to [location redacted].

He was quite well at the time of departure of the holiday and certainly was not advised by anybody not to travel. He had investigations performed by the Consultant Physician, the results of which were not available prior to going on holiday. He went on the trip in good faith not aware of any diagnosis and feeling very well.

It is unfortunate that he now has a critical illness and I believe the family are trying to get him back to Ireland for further management. I believe, in the circumstances that his insurance company should accept that he went abroad without any diagnosis and was unaware of any impending acute illness. Therefore, I would be grateful if the insurance company could find a way of arranging his transfer back to Ireland".

In addition, in his correspondence dated 8 March 2018, I also note that Dr A., Consultant Respiratory Physician advised, as follows:

"[The Complainant] was first reviewed by myself in my office on the 4th January 2018...He had presented at that time to me with complaints of increased breathlessness. He had no other significant respiratory history. He had some ongoing cough with this as well. He had no known diagnosis at this point.

At that time [the Complainant] was to undergo investigations to try and determine the etiology of his cough which was unknown at that time. The plan at that time was for [the Complainant] to have a CT scan and bronchoscopy performed, pulmonary function tests and blood tests. He was also started on inhaled medications for presumption of underlying asthma.

Subsequently the patient did go on to get some of the above mentioned investigations performed but no diagnosis was also given to [the Complainant] as these had not been obtained at the time of [his] travel. [The Complainant] was due back to be reviewed in my office in the latter part of March to review the results of the above investigations to help determine the etiology of his breathlessness.

At the initial visit the differential was extremely broad and no diagnosis was made at that point but was subsequently due to be determined. The patient was very stable clinically at that time and had normal oxygen saturation and was stable for any travel plans that he may have had in the near future".

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In his correspondence dated 13 April 2018, the Complainant's GP, Dr P. advises, as follows:

"[The Complainant] attended me on 08/12/2017 and was complaining of Dyspnoea ie breathlessness. He was treated with antibiotics, oral steroid and a salbutamol inhaler. I also referred him for a chest x-ray.

He was reviewed on 12/12/17 and had improved greatly. I advised him to return 3 days later for review again and to discuss his x-ray report.

On the 15/12/2017 I reviewed him and discussed his x-ray report which showed changes in his lungs, suggestive of pulmonary fibrosis. There was no evidence of a tumour or pneumonia. Because of these x-ray changes, I referred him to [Dr A.], Consultant Respiratory Physician, for further investigation and evaluation".

I note from the documentary evidence before me that the Complainant attended his GP on 8 December, 12 December and 15 December 2017, when the Complainant was advised that his x-ray report *"showed changes in his lungs, suggestive of pulmonary fibrosis"*. As a result, the GP referred the Complainant to a Consultant Respiratory Physician, who subsequently advised the Complainant's GP that *"My impression is most likely the patient has interstitial lung disease ... I plan to review him again in 10 weeks for the results of the above tests. The patient has been made aware of the potential diagnosis"*.

The Complainant's travel insurance policy, like all insurance policies, does 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, I note that the 'Important things you need to know about your insurance before you travel' section of the applicable Travel Insurance Policy Document provides, *inter alia*, at pg. 3:

"Health Conditions

This Insurance contains conditions relating to your health, the health of the people travelling with you and the health of others who might not be travelling with you, but on whose health the trip depends (this would include a relative or a business associate). In particular, we do not cover claims arising from medical problems which you or they had before the cover started. Please see general exclusion number 1 on pages 7-8 for further details.

If there is a change in the state of health of yourself, anyone travelling with you, a relative or business associate occurring after you have bought this insurance but before you travel, and upon whom your trip depends, you must contact [the Provider] Customer Service immediately on 1800 xxx xxx or email...We have the right to alter the terms of cover in line with the change in risk".

The 'General Exclusions' section of the applicable Travel Insurance Policy Document provides, *inter alia*, at pg. 7:

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“General exclusions apply to all sections of this insurance. In addition to these general exclusions, please also refer to ‘What you are not covered for’ under each policy section as this sets out further exclusions which apply to certain sections.

We will not cover the following.

1. Any claim where at the time of taking out this insurance, the following apply.

- a. The claim relates to a medical condition or illness or death related to a medical condition which you or any person who your trip depends on (this would include a relative or a business associate) knew about before you bought this insurance.*

You must make sure you tell us about any change in the state of health of yourself, anyone travelling with you, a relative or business associate occurring after you have bought this insurance but before you travel. Please refer to the Health conditions section on page 3 of this policy document for further details ...

- d. You or any person who your trip depends on are receiving or waiting for hospital investigation or treatment for any undiagnosed condition or set of symptoms”.*

I am satisfied that it was reasonable for the Provider to conclude from the documentary evidence before it, that the Complainant was receiving treatment and had begun the process of investigation into an undiagnosed condition or set of symptoms prior to him incepting the travel insurance policy with the Provider on 22 December 2017. In addition, I am further satisfied that it was reasonable for the Provider to conclude from the documentary evidence that the Complainant’s hospitalisation in [location redacted] on 9 February 2018 and subsequent diagnosis of acute pneumonia and bilateral pulmonary fibrosis were directly related to the condition that the Complainant had previously presented with to his GP on 8 December, 12 December and 15 December 2017, and for which he was referred to a Consultant Respiratory Physician, and which he failed to disclose when incepting his travel insurance policy with the Provider on 22 December 2017.

The Complainant did not disclose these recent developments regarding his health to the Provider at the time when he incepted the policy. If he had done so, the Provider would have had an opportunity to consider the additional risk, and could have made a decision as to whether it was willing to provide cover in those circumstances and, in that event, the level of any additional premium payable.

In the event however, the Complainant’s symptoms from early December 2017 were not disclosed to the Provider and I am satisfied that ultimately when the Complainant’s family sought to make a claim pursuant to the insurance policy in place, the Provider was entitled to form the opinion that the claim arose from a condition which the Complainant knew about before the insurance was purchased, but which had not been disclosed at the time of

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policy inception. It should be noted in this respect that a formal “*diagnosis*” was not required, i.e. it was not necessary for the Complainant to have had a particular term or condition, identified by reference to his symptoms. The medical evidence makes clear that he found it necessary to attend with his GP on three occasions in December 2017 regarding the symptoms in question, and this was prior to the inception of the policy. Accordingly, I take the view that there has been no wrongdoing on the part of the Provider and that the Provider declined the Complainant’s claim in strict accordance with the terms and conditions of his travel insurance policy.

Whilst one must sympathise with the Complainant’s family for the very difficult circumstances they found themselves in as a result of the absence of policy cover, nevertheless, for the reasons outlined above, it is my Decision on the evidence before me, that this complaint cannot 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

4 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

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(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

