An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0085
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Claim handling delays or issues
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants, a husband and wife, incepted a travel insurance policy with the Provider on **9 April 2017**.

The Complainants' Case

The Complainants were scheduled to fly overnight on **25 January 2018** from Dublin to Abu Dhabi, and then onwards to New Delhi on 26 January 2018 for a four week trip in India. In this regard, the Second Complainant states, as follows:

> *"On the 25th of January* [2018] *my husband and I boarded an overnight flight from Dublin to Abu Dhabi, this being the first leg of our journey to New Delhi and subsequent travels in Northern India.*
>
> *During the flight,* [the First Complainant]*, my husband felt extremely unwell with severe flu-like symptoms and, an hour or so before landing…collapsed and passed out on 3 separate occasions.*
>
> *Understandably we were frightened and alarmed by this turn of events. Upon landing, I explained the situation to the airline staff who immediately fast-tracked us through security and assisted us onto the medical centre at Abu Dhabi airport. The medical staff ran a series of tests on my husband…My husband continued to feel*

extremely unwell throughout these. The medical staff emphasised that complete rest and hydration were the key to my husband's recovery.
This was a very serious concern, given the nature of our upcoming trip to India. Following the tests and further discussion with the medical staff, we were advised not to continue our journey.

I then spent a number of very stressful hours going back and forth with the airline staff who eventually, as a direct result of the written report and advice from the medical centre, booked us onto the next available flight back to Dublin".

In addition, in her letter to the Provider dated 15 February 2018, the Second Complainant submits, as follows:

"To continue the trip in [the First Complainant]*'s condition would be extremely foolhardy and the strenuous nature of the trip, compounded with the anticipated sanitary situation in some of the destinations was a major concern…travelling into such high risk malaria and dengue fever areas (Assam) with a very reduced immune system…would clearly be incredibly reckless"*.

The Provider however declined the Complainants' ensuing claim by way of correspondence dated 8 February 2018 as it concluded (i) that the Complainants had failed to contact the Provider's Emergency Assistance Service prior to curtailing their trip, (ii) that the First Complainant's National Ambulance Patient Care Record obtained in Abu Dhabi submitted by the Complainants states that he was *"advised to miss next flight and rest, hydrate and eat before next flight"* and (iii) that no medical treatment was sought when the First Complainant returned to Ireland.

The Complainants are dissatisfied with the Provider's decision to decline their claim and in this regard submitted, as follows:

"It is correct to say that I did not call the [Provider's] *emergency service contact number whilst in Abu Dhabi, simply because it was an EXTREMELY stressful time and my mind was solely focussed on my husband's health. How could it not be? Further,* [the First Complainant] *was not being admitted to hospital, there was no medical operation to discuss and no medical expenses were being incurred. Repatriation was taken out of our hands, as it was all arranged between* [the airline] *and the medical centre …*

[The Provider] *seem to be suggesting that their remote 'real-time' panel would have been in a better position to judge my husband's fitness to continue the holiday, rather than me, my husband himself, or a 'live', hands-on Abu Dhabi medical service. Frankly, this seems an absurd suggestion to make. Are they really suggesting that my husband should leave a crucial decision on his health, to a bunch of people at the end of a phone, thousands of miles away? …*

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[The Provider] *refer to the medical document obtained which states "miss the next flight and rest hydrate and eat before the next flight". They suggest this is not sufficient evidence to curtail the trip.*

The trip was not by any stretch of the imagination a "restful holiday". This trip was a strenuous, full on adventure…By missing the next flight on medical advice, the trip was effectively over anyway, due to the tight scheduling…it could be argued that we could, with our travel company, have attempted to reschedule a flight and travelled on to Delhi in the hope of salvaging something. But again, even were that possible (highly unlikely with the tight scheduling), it would be ignoring the whole problem we faced, namely that we [were] *about to undertake an extremely strenuous adventure. Having been in Delhi before, we know it is no place to rest up for days on end and attempt to get well and, in any case, my husband had severe flu and was in no fit state to go anywhere but home …*

[The Provider] *say that* [the First Complainant] *did not seek further treatment or medical advice on arriving home.*

That simply is not true …

[The First Complainant] *was suffering from a severe case of the flu at the time of a severe flu outbreak across Ireland. We live in rural Ireland and the GPs were rushed off their feet. There was a national government campaign underway specifically advising people not to go to their GP with flu unless it was an emergency.*

Back home, I was worried about [the First Complainant] *and after hearing about it on the radio, referred to the government website www.undertheweather.ie. Here I was reassured that what I needed to do was to make sure* [the First Complainant] *had complete rest, stayed warm and was hydrated. The website said he should slowly recover over the course of a couple of weeks. This was reassuring, as this was exactly the advice given to us in Abu Dhabi.*

I noted on the website that it said if body temperature should rise above 37.8 then it was advisable to make urgent contact with GP. I kept a careful check on [the First Complainant] *and although I did get increasingly worried as* [his] *temperature hovered around 37.6 for over a week, it did thankfully slowly return to normal temperature. As it did not get as high as 37.8, I thankfully did not have to contact my GP.*

So, to say that we did not seek medical advice is incorrect, as we took medical advice from the government's own website and treated [the First Complainant] *exactly as advised by the Government (HSE), with rest, warmth and hydration …*

We have acted responsibly, ethically and are effectively being penalised for prioritising my husband's health…By implying that we had no medical reason to curtail the trip, [the Provider] *are either suggesting that our claim is somehow*

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> *fraudulent, or that we should have carried on, putting my husband's health in danger and risking further collapse …*
>
> *Surely insurance IS there to provide some recompense for exactly those type of things?"*

Similarly, in her email to this Office dated 3 July 2018, the Second Complainant submits, *inter alia*, as follows:

> *"I make no apology for putting my husband's health first and for concentrating on getting us home safely, rather than worrying about making pointless phone calls or the exact wording of doctors' reports …*
>
> *we feel that we are being penalised for being decent people who put more store on health and well-being, than obscure terms and conditions"*.

As a result, the Complainants seeks for the Provider to admit their claim into payment in the amount of GBP £8,554, the cost of their missed trip.

The Provider's Case

Provider records indicate that the Complainants, a husband and wife, incepted a travel insurance policy with the Provider on **9 April 2017**.

The Provider notes that the Complainants were scheduled to fly overnight on **25 January 2018** from Dublin to Abu Dhabi, and then onwards to New Delhi, on 26 January 2018 for a four week holiday in India. During the flight from Dublin to Abu Dhabi, the Second Complainant states, as follows:

> *"*[The First Complainant]*, my husband felt extremely unwell with severe flu-like symptoms and, an hour or so before landing…collapsed and passed out on 3 separate occasions.*
>
> *Understandably we were frightened and alarmed by this turn of events. Upon landing, I explained the situation to the airline staff who immediately fast-tracked us through security and assisted us onto the medical centre at Abu Dhabi airport.*
>
> *The medical staff ran a series of tests on my husband…My husband continued to feel extremely unwell throughout these. The medical staff emphasised that complete rest and hydration were the key to my husband's recovery. This was a very serious concern, given the nature of our upcoming trip to India. Following the tests and further discussion with the medical staff, we were advised not to continue our journey.*

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> *I then spent a number of very stressful hours going back and forth with the airline staff who eventually, as a direct result of the written report and advice from the medical centre, booked us onto the next available flight back to Dublin"*.

Following its assessment of Complainants' claim, the Provider wrote to the Complainants on **8 February 2018** to advise that in the absence of prior approval from the Emergency Assistance Service and confirmation that it was medically necessary to curtail their trip, it regretted that it had to decline their travel insurance claim.

In this regard, the Provider notes that the Complainants did not contact its Emergency Assistance Service prior to curtailing their trip. The Provider appreciates that the Second Complainant's main concern was her husband's well-being, however it is a condition of the travel insurance policy that this service is contacted prior to curtailing a trip.

The Provider notes that the Complainants arrived at the airport in Abu Dhabi at 6.40am on 26 January 2018 and returned home by flight to Dublin departing at 2.10am on 27 January 2018, spending the entire day on 26 January 2018 at the airport. The Second Complainant stated in her complaint that she did not call the Emergency Assistance Service whilst in Abu Dhabi *"simply because it was an EXTREMELY stressful time and my mind was solely focussed on my husband's health"*. However, the Provider notes that during this time the Second Complainant did manage to contact their travel agent to advise that they had not boarded the Delhi connecting flight and in her correspondence dated 15 February 2018, she advised that the travel agent *"would processing a cancellation invoice…for insurance purposes"*. The Provider sees no reason why the Second Complainant could not also have contacted the Emergency Assistance Service in like fashion, which would have been able to provide the Complainants with assistance.

Following receipt of the Complainants' appeal, the Provider sought advice from its medical panel to ensure that its initial decline of the Complainants' claim was justified. The medical panel noted that the First Complainant's diagnosis was vasovagal attack and that the National Ambulance Patient Care Record submitted by the Complainants advised that the First Complainant had been unwell 2 days before travel and then felt dizzy and sick on the flight and had loss of consciousness. The medical panel confirmed that the First Complainant was advised by the treating facility in Abu Dhabi to rest and keep hydrated and to miss the next flight in order to rest before taking another flight. The medical panel advised that there was no medical justification or advice to curtail the trip and that had the Complainants contacted the Emergency Assistance Service then *"we would have advised* [the First Complainant] *to rest and then be reassessed for Fit to Fly with a view to continue his trip"*.

The Provider submits that had the Emergency Assistance Service been involved in this case, it would have assessed the information provided by the treating facility in Abu Dhabi and would have authorised curtailment if it deemed it medically necessary for the First Complainant to return home to continue medical treatment. In this case, it appears that no medical treatment was obtained or required on the First Complainant's return home.

The Second Complainant states in her complaint that the medical staff in Abu Dhabi emphasised that complete rest and hydration were the key to her husband's recovery and

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that after discussion with them, they were advised not to continue their journey. The Provider notes that the only medical evidence submitted by the Complainants is the National Ambulance Patient Care Record. This document does not confirm the necessity for the Complainants to return home but states *"miss next flight and rest hydrate and eat before next flight"*. In this regard, the Provider is satisfied that the Complainants have submitted no medical evidence to justify curtailment of their trip.

In such cases, the Provider's medical panel needs to be able to review the full medical report in order to ensure that it agrees that it is actually safe for the insured to fly and that the insured it not at risk of further deterioration. The Provider also has its own network which can arrange flights, medical assistance, repatriation etc. In this instance, as the First Complainant had been advised to rest, hydrate and eat before his next flight, it is most likely that the Provider would have arranged 2 nights accommodation (26 and 27 January 2018) at a hotel close to the terminal to allow him to do so. Then, assuming that the medical panel deemed him fit to fly at that stage, the Provider could have arranged a flight for the Complainants on 28 January 2018 to Amritsar, also covering a hotel room in Amritsar on the night of 28 January, allowing the Complainants re-join their group on 29 January 2018 and resume their holiday.

In the absence of a medical report confirming the necessity to curtail the trip and with the Complainants' failure to contact the Emergency Assistance Service, in the interests of fairness the Provider was prepared to look at the medical treatment received by the First Complainant on his return home, in order to substantiate justification of the curtailment.

In this regard, the Second Complainant states that on returning home, the Complainants took medical advice from the government's website, www.undertheweather.ie, and treated the First Complainant with rest, warmth and hydration. However, as the First Complainant did not consult with any medical practitioner upon his return, the Provider remains without the medical justification necessary to validate the Complainants' claim.

As a gesture of its goodwill and in attempting to reach an amicable settlement on this matter, the Provider however offered the Complainants the sum of €820, as follows:

2 nights hotel accommodation in Abu Dhabi (€100 p.n)	€200
Transfer to Airport	€50
Flight from Abu Dhabi to Amritsar	€500
1 night hotel accommodation in Amritsar	€50
Transfer to Hotel from airport	€20
	€820

The Provider considers that the failure of the Complainants to contact its Emergency Assistance Service, as required by the terms and conditions of their travel insurance policy, deprived it of the opportunity to assess the claim relative to the circumstances pertaining at the time. The Provider believes that it has no reason to overlook the facts that (i) the Complainants did not contact it to confirm the necessity to return home prior to curtailment and (ii) that the First Complainant did not seek or appear to require medical treatment on

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his return home. From the circumstances outlined, the Provider cannot deem that the curtailment of the Complainants' trip was in any way necessary.

Having considered the full circumstances of the Complainants' claim, the Provider is satisfied that it declined this claim fairly and in accordance with the terms and conditions of their travel insurance policy. As a gesture of its goodwill and in attempting to reach an amicable settlement on this matter, the Provider however offered the Complainants the sum of €820.

The Complaint for Adjudication

The Complainants' complaint is that the Provider wrongfully or unfairly declined their 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 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 18 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.

Following the consideration of an additional substantive submission from the Provider, the final determination of this office is set out below.

The complaint is that the Provider wrongfully or unfairly declined the Complainants' travel insurance claim.

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In this regard, the Complainants, a husband and wife, incepted a travel insurance policy with the Provider on 9 April 2017. The Complainants were scheduled to fly overnight on 25 January 2018 from Dublin to Abu Dhabi, and then onwards to New Delhi, on 26 January 2018 for a four week trip in India. The Second Complainant has outlined in some detail what occurred during the flight from Dublin to Abu Dhabi, as set out above on the first page of this document.

The Provider however declined the Complainants' ensuing claim by way of correspondence dated 8 February 2018 as it concluded that the Complainants had failed to contact the Provider's Emergency Assistance Service prior to curtailing their trip, that the National Ambulance Patient Care Record obtained in Abu Dhabi simply states that the First Complainant was *"advised to miss next flight and rest, hydrate and eat before next flight"* and that no medical treatment was sought when the First Complainant returned to Ireland.

The Complainants' 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, the '**Emergency and Medical Service**' section of the applicable Travel Insurance policy document provides, *inter alia*, at pg. 7, as follows:

> *"In the event of Your Bodily Injury or Illness which may lead to in-patient treatment or incur expenses over €500 or before any arrangements are made to extend Your Trip or any arrangements are made for repatriation or in the event of Curtailment necessitating Your early return to Your Home area You must contact the Emergency Assistance Service. The service is available to You and operates 24 hours a day, 365 days a year for advice, assistance, making arrangements for hospital admission repatriation and authorisation of medical expenses. If this is not possible because the condition requires immediate emergency treatment You must contact the Emergency Assistance Service as soon as possible. Private medical treatment is not covered unless authorised specifically by the Emergency Assistance Service.*
>
> *Medical Assistance Abroad*
> *The Emergency Assistance Service has the medical expertise, contacts and facilities to help should You be injured in an accident or fall ill. The Emergency Assistance Service will also arrange transport to Your Home area when this is considered to be medically necessary"*.

In addition, **Section A**, '**Cancellation or Curtailment Charges'**, of the policy document provides, *inter alia*, at pg. 7, as follows:

> *"Special Conditions Relating to Claims*
>
> 1. *You must obtain a medical certificate from a Medical Practitioner and prior approval of the Emergency Assistance Service to confirm the necessity to return Home prior to Curtailment of the Trip due to death, Bodily Injury, illness or Complications of Pregnancy and Childbirth"*.

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I note that the Complainants did not telephone the Provider's Emergency Assistance Service prior to curtailing their trip, as clearly required by the terms and conditions of their travel insurance policy. In addition, I note from the documentary evidence before me that the only medical evidence submitted by the Complainants in support of their claim was the National Ambulance Patient Care Record, which states *"miss next flight and rest hydrate and eat before next flight"*. As a result, I accept the Provider's position that this National Ambulance Patient Care Record does not confirm the necessity for the Complainants to curtail their trip and return home.

In her email to this Office dated 3 July 2018, I note that the Second Complainant submits, *inter alia*, as follows:

> *"I make no apology for putting my husband's health first and for concentrating on getting us home safely, rather than worrying about making pointless phone calls or the exact wording of doctors' reports"*.

In addition, in her letter to the Provider dated 15 February 2018, I note that the Second Complainant submits, *inter alia*, as follows:

> *"To continue the trip in* [the First Complainant]*'s condition would be extremely foolhardy and the strenuous nature of the trip, compounded with the anticipated sanitary situation in some of the destinations was a major concern…travelling into such high risk malaria and dengue fever areas (Assam) with a very reduced immune system…would clearly be incredibly reckless"*.

Whilst it is understandable that the Second Complainant's first priority was the health of the First Complainant, nevertheless, the aforementioned terms and conditions of the Complainants' travel insurance policy clearly require that:-

> *"You must obtain a medical certificate from a Medical Practitioner and prior approval of the Emergency Assistance Service to confirm the necessity to return Home prior to Curtailment of the Trip due to death, Bodily Injury, illness or Complications of Pregnancy and Childbirth"*.

By incepting the travel insurance policy, the Complainants agreed to be bound by its terms, they thereby agreed to certain obligations which they were required to meet, under the policy.

Notwithstanding the Complainants' failure to contact the Emergency Assistance Service before curtailing their trip or to present a medical report confirming the necessity to curtail, I note that the Provider was prepared, as part of its claims assessment, to consider the medical treatment received by the First Complainant on his return home, in order to try and substantiate justification of the curtailment. In light of the Complainants' failure to satisfy the relevant policy terms, I consider this to be a fair and generous approach by the Provider to the matter. However, I note that as First Complainant did not consult with any medical practitioner upon his return, the Provider remained without evidence of the medical justification necessary to validate the Complainants' claim.

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I note that the Second Complainant submits that *"*[the Provider] *say that* [the First Complainant] *did not seek further treatment or medical advice on arriving home. That simply is not true"*. In this regard, she states that on returning home, the Complainants took medical advice from the government's website, www.undertheweather.ie, and treated the First Complainant with rest, warmth and hydration. As a result, the Second Complainant submits that for the Provider *"to say that we did not seek medical advice is incorrect, as we took medical advice from the government's own website and treated* [the First Complainant] *exactly as advised by the Government (HSE), with rest, warmth and hydration"*. Be that as it may, I accept the Provider's position that the First Complainant did not consult directly with any medical practitioner upon his return home and thus the Provider remained without any evidence of medical justification to validate the Complainants' claim.

Accordingly, I am satisfied that the Provider was entitled to decline the Complainants' claim in strict accordance with the terms and conditions of their travel insurance policy.

I note that as a goodwill gesture and in an attempt to reach an amicable settlement on this matter, the Provider offered the Complainants the sum of €820 in September 2018. The Complainants made a formal submission in response, advising of their decision to reluctantly accept the proposal to bring finality to the matter, and the Provider was furnished with a copy of this confirmation on 24 September 2018. It was noted in the Preliminary Decision that the Provider had not responded nor had it made the appropriate arrangements to transfer the funds it had offered.

By way of submission dated 19 February 2019, the Provider furnished this office with a copy of a letter sent by email to this office on 25 September 2018 which had noted the Complainants' position and requested clarification as to "*whether this matter is now resolved, in which case we can arrange for a cheque to issue to the Complainants, or if same still proceeds through the adjudication process*". The Provider's covering email with the letter dated 25 September 2018 requested an acknowledgement from the FSPO, of receipt of the said communication.

The email communication of 25 September 2018 was not received by the FSPO in the usual manner and could not be located by the FSPO, in February 2019, without the assistance of IT support; the said email, for reasons unknown, was noted by IT to not have been processed in the usual manner in September 2018, as it flowed through the email server of this office. As a result, this communication was not visible to the FSPO until released by IT in February 2019, when the missing email was alerted by the Provider.

The Complainants have understandably been frustrated by the ensuing delay and it is unfortunate that although the Complainants had made it clear that they agreed to reluctantly settle the matter, no payment was actioned, in order to bring the matter to finality at that earlier stage. Be that as it may, it seems that the Provider did not wish to issue payment without a specific direction from this office to do so, and it could not have been aware in September 2018, that the email it sent, had not been received by this office. It is notable however, that even now the settlement monies have not yet been paid, notwithstanding the Complainants' ongoing frustrations which have been made known to the Provider.

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In all of those circumstances, based upon the firm understanding of this office that the Provider will now arrange to make immediate payment to the Complainants of the goodwill gesture of €820 previously offered by the Provider, and previously accepted by the Complainants, I do not consider it necessary to uphold this complaint.

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

29 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.