An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0119
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim - late notification
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant incepted a travel insurance policy with the Provider on 11 March 2017.

The Complainant's Case

The Complainant was due to travel to Transylvania on Wednesday **11 October 2017**. On the morning that she was scheduled to travel, the Complainant *"was suddenly struck with severe vertigo"* and cancelled her trip. The Provider declined her ensuing travel insurance claim by way of correspondence dated **15 November 2017** as the Complainant had not sought medical advice confirming that she was medically unfit to travel prior to cancelling her trip, in accordance with the policy terms and conditions.

In this regard, the Complainant sets out her complaint, as follows:

> *"This claim was declined on the basis that I did not contact my GP prior to cancellation of my trip, however due to the severity and timing of my illness this was not possible. I was due to fly to Transylvania….for a short trip on Wednesday 11th October. I was suddenly struck with severe vertigo on the morning of the 11th. This was so severe that I was unable to stand or walk without falling over. I was so sick there was no way I could have travelled to see my GP other than by ambulance. The nausea was so severe that I was unable to hold a proper conversation and would not have been*

> *physically able to read my insurance documentation which is all held online. I phoned the doctor's surgery as soon as I was able (on 13th) and got an appointment for the following week, when it would be likely that it would be safe for me to travel. I attended the appointment on 17 October and I was still unable to drive and needed a lift to the surgery … It seems really unfair to apply a rule due to the severity of my illness I was unable to comply with. I live alone and there was nobody with me who could read the policy rules for me"*.

In addition, in her email to this Office dated 12 September 2018, the Complainant further submits, *inter alia*, as follows:

> *"I accept that the* [policy] *rules and conditions quoted* [by the Provider] *are set out in the policy document but unfortunately these were all sent in electronic format and due to the severity of my vertigo I was unable to search/access these online.*
>
> *It was possible to call my travelling companion on the morning of our planned trip as her number was easily accessible on my phone, whereas the insurance details were not. I was not physically capable of looking for any online reference numbers or conditions in respect of either the holiday booking or my travel insurance policy. As I live alone there was nobody here who could access them on my devices for me. Severe vertigo is very debilitating. My travelling companion contacted the travel company to notify them that we would not be travelling.*
>
> *On a human level I took out this policy in good faith. I was genuinely too ill to travel – which my doctor has certified. I missed my holiday due to illness which occurred on the morning of my planned departure and I have never claimed against holiday insurance before. In addition, my travelling companion did not travel and received compensation from her insurance company. I would really appreciate for this claim to be reconsidered from a human perspective as I was far too ill to be able to notify* [the Provider] *or indeed to contact the doctor until the really severe symptoms of the vertigo receded after about 48 hrs. I note 24 hrs is quoted as the discretion period allowed but in my circumstances 48 hrs does not seem excessive"*.

The Complainant seeks for the Provider to admit her travel insurance claim in respect of her cancelled trip, which she calculates to be in the amount of €594, that is, €744 less the policy excess of €150.

<u>The Provider's Case</u>

Provider records indicate that the Complainant telephoned the Provider on 23 October 2017 to advise that she had cancelled her trip to Transylvania on 11 October 2017, the morning that she was due to travel, as she had been too ill to travel. The Provider later received a travel insurance claim form on 8 November 2017 detailing that the Complainant had to cancel her trip to Transylvania on 11 October 2017 due to *"acute vertigo on morning of trip"*. The Provider declined this claim by way of correspondence dated 15 November 2017 as the Complainant had not, as required by the policy terms and conditions, sought medical advice

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confirming that she was medically unfit to travel prior to cancelling her trip and *"as you did not seek medical advice prior to the cancellation of your trip you fall outside the scope of cover"*.

The Provider notes that the Complainant had intended to travel on 11 October 2017 but did not contact her GP until 13 October 2017 for an appointment on 17 October 2017. In this regard, the Complainant did not obtain medical advice prior to her cancelling her trip and is now asking the Provider to accept events that she presented to her GP, 7 days after the onset of her symptoms. In cases where it is satisfied that circumstances made it impossible for the policyholder to obtain medical advice prior to cancellation, the Provider may exercise certain discretion in the application of the relevant policy condition. However, such discretion could only be exercised where it is evident that the policyholder sought medical advice at the next available opportunity, generally within 24 hours.

The Provider acknowledges that the Complainant submits that on the morning of her intended travel on 11 October 2017 she could not walk, hold a conversation or read her insurance documentation. Nevertheless, the Provider sees no reason why the Complainant, or a person under her instruction, could not have contacted her GP or the Provider for advice prior to her cancelling her trip. Seeking such advice prior to the cancellation of any trip is the only way to support the assertion that such cancellation has resulted from an illness or injury and had the Complainant done so, her claim outcome would likely be different. In addition, the Provider notes that the Complainant or a person acting on her behalf contacted the travel agent to cancel her trip on 11 October 2017, however no attempt was made to make contact with the Provider or the GP on that date.

The Provider cannot overlook the Complainant's failure to comply with a clear policy condition which requires the policyholder to seek medical advice confirming that he or she is medically unfit to travel prior to cancelling a trip. In this regard, there is an onus on a policyholder to be familiar with the terms and conditions of his or her policy and in this case the Complainant's policy is quite clear as to the necessity to seek medical advice confirming a policyholder as being unfit to travel prior to cancelling a trip. There in also an equally important onus on the Provider to apply the policy terms and conditions fairly and consistently for all policyholders in processing all such claims. Accordingly, the Company is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of her travel insurance policy.

The Complaint for Adjudication

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

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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 Complainant 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 16 April 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 complaint at hand is that the Provider wrongly or unfairly declined the Complainant's travel insurance claim. In this regard, the Complainant was due to travel to Transylvania on 11 October 2017. On the morning that she was scheduled to travel, the Complainant *"was suddenly struck with severe vertigo"* and cancelled her trip, but she did not contact her GP until 13 October 2017 for an appointment on 17 October 2017.

The Provider declined her ensuing travel insurance claim by way of correspondence dated 15 November 2017 as the Complainant had not sought medical advice confirming that she was medically unfit to travel, prior to cancelling her trip, in accordance with the policy terms and conditions.

In this regard, the Complainant submits, *inter alia*, as follows:

> *"The nausea was so severe that I was unable to hold a proper conversation and would not have been physically able to read my insurance documentation which is all held online. I phoned the doctor's surgery as soon as I was able (on 13th) and got an appointment for the following week, when it would be likely that it would be safe for me to travel. I attended the appointment on 17 October"*.

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The Complainant's travel insurance policy, like all insurance policies, does not provide cover for every eventuality; rather the cover with be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. I note that Section A, 'Cancellation or Curtailment Charges', of the applicable travel insurance policy document provides, *inter alia*, as pg. 7, as follows:

> *"4. All claims relating to Cancellation due to a medical reason must be supported by relevant documentation confirming that medical advice was sought and that advice was given by a Medical Practitioner (in the case of stress, anxiety, depression or any other mental or nervous disorder a consultant specialising in the relevant field) to cancel a Trip prior to the cancellation of that Trip"*.

I am thus satisfied that it is clear from the policy document that in order to have a valid claim in respect of a cancelled trip that the policyholder must have sought medical advice before the cancellation of the trip in question and that such medical advice confirmed that the policyholder was to cancel the trip.

I note from the documentary evidence before me that the Complainant was scheduled to travel on Wednesday 11 October 2017 but cancelled her trip as she was too ill to travel and did not seek medical advice prior to her decision to cancel the trip and did not contact her GP until Friday 13 October 2017 for an appointment on Tuesday 17 October 2017.

In circumstances where the Complainant was too unwell to contact her GP or the Provider on the morning of 11 October 2017 to seek advice prior to her cancelling her trip, it would have been prudent of her to have instructed someone to have made such contact on her behalf, such as the person who rang the travel agent that day, to cancel the trip on her behalf.

It is understandable that with such severe vertigo, the Complainant most likely would not have been able to carry out those tasks herself, but it would have been reasonable for her friend who cancelled the trip, or for some other person, to have made contact with the Complainant's doctor on a priority basis, given how severe her condition was, in order to seek medical advice for the Complainant.

As no contact was made with the doctor until 48 hours later, and no medical consultation took place until 6 days after the Complainant had been due to travel, there is no contemporaneous evidence available to the Provider regarding the Complainant's medical condition on 11 October 2017. Accordingly, whilst it may seem harsh to the Complainant, I am satisfied that the Provider was entitled to decline the Complainant's claim in accordance with the terms and conditions of the travel insurance policy in place.

Accordingly, in circumstances where the evidence does not disclose any wrongful conduct on the part of the Provider, I take the view that this complaint cannot be upheld.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

10 May 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.