An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0204
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Claim handling delays or issues Rejection of claim
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint concerns the Complainants' travel insurance policy with the Provider.

The Complainants purchased an annual travel insurance policy with the Provider on **15 September 2015**, with the policy insurance period effective from **15 October 2015** to **14 October 2016**.

The Complainants' Case

The first Complainant submits that on **15 January 2016**, she and her husband purchased business class airline tickets to visit family abroad and were scheduled to travel on **21 July 2016** for a duration of four days.

The first Complainant submits that in **February 2016**, her sister was diagnosed with a terminal illness and the medical doctors advised at that time, that she had a number of years to live.

The first Complainant submits that a couple of days prior to their travel date, her sister's condition deteriorated, so she telephoned the Provider to enquire about the cover on the policy. The first Complainant submits that the Provider advised her that the airline tickets would be covered if they travelled, however curtailment costs would not be covered and the

decision was subsequently made by the Complainants, to proceed with the trip. The first Complainant submits that during this telephone conversation, the Provider did not advise her that, if they travelled and needed to make an immediate return to Ireland, the cost of the airline tickets would not be covered under the scope of the policy.

The first Complainant submits that upon arriving at their destination, she and her husband were informed of her sister's passing, and upon hearing the sad news they immediately returned to Ireland. The first Complainant submits that as the Provider had previously informed her that curtailment costs would not be covered under the policy, the airline company instead covered the cost of their return flight to Ireland.

The first Complainant submits that in the days following their return home, she contacted the Provider seeking advice on how to recover the cost of their airline tickets and she submits that the Provider advised her that, given the circumstances, it would fully cover the cost of their tickets and it requested her to submit the claim documentation, including her deceased sister's medical reports.

The first Complainant submits that upon the Provider's advice she submitted her claim documentation, which included but was not limited to, a medical letter from her sister's doctor and her sister's death certificate. The first Complainant submits that on 29 August 2016 the Provider wrote to her to advise that her claim had not been admitted. The first Complainant submits that the Provider appears to be using a 'technicality' (that their tickets were used) in order to decline the claim.

The Complainants are seeking for the Provider to admit the claim and reimburse them for the full cost of the airline tickets, which totalled €2,160.02.

The Provider's Case

The Provider submits that it received a telephone call from the first Complainant on **20 July 2016**, at which time the first Complainant described to the Provider the severity of her sister's diagnosis and her prognosis as well as the reason for the Complainants' requirement to travel abroad the following day.

The Provider submits that during this telephone call, it advised the first Complainant that, if they flew out and had to return home early, the cost of the flight would not be covered under the '*Curtailment*' provision of the policy, as they had been aware of her sister's condition prior to their departure date.

The Provider submits that it explained to the first Complainant during this telephone call, that she could claim under the '*Cancellation*' provision of the policy if she decided not to travel. The Provider submits that the telephone call ended with the first Complainant undecided on how they would proceed with their travel plans.

The Provider submits that it received two telephone calls from the first Complainant on **22 July 2016**, at which time the first Complainant explained that she and her husband had

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chosen to travel, as scheduled, however, due to the death of her sister they had to take the next flight back to Ireland. The Provider submits that during the call, its representative initially advised the first Complainant that the claim would not be covered, but upon checking with a team member, its representative subsequently advised her that the Provider would consider the claim under the circumstances and requested her to submit the claim documentation as required.

The Provider submits that when it assessed the claim, it noted that the Complainants had chosen to travel and thereby had used their airline tickets, and therefore it did not admit the claim.

The Provider's position remains that since it advised the first Complainant, prior to the scheduled flight, that it would only cover the cost of the airline tickets in the event of the trip being cancelled, and the Complainants nevertheless went ahead and used their airline tickets, that it was unable to admit the claim.

The Complaint for Adjudication

The complaint is that the Provider has wrongfully and/or unreasonably repudiated the claim under the policy.

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 **17 June 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

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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, within the period permitted, the final determination of this office is set out below.

The issue to be determined is whether the Provider wrongfully and/or unreasonably refused to admit the Complainants' claim and reimburse the Complainants the sum of €2,160.02 for the cost of the airline tickets.

The first Complainant submits that prior to their travel date on **21 July 2016**, the Provider advised her that *"[their] tickets were covered, because [their] trip was booked before [her] sister was diagnosed with cancer*" and that "*[the Provider] never at this point mentioned that if [they] travelled and had to immediately return that [their] tickets would not be covered*".

The first Complainant submits that following her return from the trip she contacted the Provider, which "*informed [her] that under the circumstances, that [it] would fully cover [the cost of the] tickets. [She] was told to obtain [her] sister's death certificate, a letter from [her sister's] doctor…, all necessary documentation, and fill out the necessary [claim] form, which [she] did*".

The first Complainant submits that on **29 August 2016** the Provider informed them that it would not admit the claim. The first Complainant submits that the Provider noted in its claim declinature letter the following condition within the policy booklet, as the reason for the decline:

> *"Period of Insurance for [relevant] policy-*
> *Cover under the cancellation section of the policy starts [from] the later of either:*
> *a) The date of inception or b) the time your trip was booked and ends at which ever happens first;*
> *a)* ***the start of your trip*** *or b) the expiry of the policy"*
> *"Whilst we do not wish to appear unsympathetic, the circumstances surrounding your claim do not fall within the scope of cover provided as your trip had commenced, and cancellation cover is for unused travel and accommodation costs, therefore no settlement can be offered to you on this occasion…"*

The first Complainant states that "*when I rang the [Provider] after my sister died, [it] told me that [it] would cover the weekend break as I had booked it before my sister was diagnosed with cancer*" and also states that "*[the Provider] informed me that under the circumstances, [it] would cover my claim*".

The Provider submits that it has listened to the telephone conversation with the first Complainant dated **20 July 2016**, which was one day prior to the Complainants' travel date and it is satisfied that it advised the first Complainant during this call that they would not be covered under the '*Curtailment*' provision of the policy as they were aware that the first Complainant's sister was seriously unwell, but they would be covered if they cancelled their trip.

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The Provider submits that it has listened to two telephone calls between the first Complainant and the Provider on **22 July 2016**. The Provider submits that during these calls the first Complainant advised that they had returned home earlier from their trip than scheduled, due to the death of her sister.

The Provider submits that during one of the calls on **22 July 2016**, its representative initially advised the first Complainant, that the claim would not be covered, but upon checking with a team member subsequently advised her that it would consider the claim under the circumstances. The Provider submits that it maintains its position to not admit the claim as it clearly stated during the first call dated **20 July 2016** "*that there is no cover if they take the flight based on the diagnosis her sister had unfortunately received*".

In its Final Response correspondence dated **4 October 2016**, when setting out its reason for declining the Complainants' claim, the Provider submits that it is unable to "*consider*" the claim for the costs of the airline tickets "*as [the Complainants] had used [their] tickets and [it] had advised that [it] would only cover [the Complainants' claim] in the event of [them] cancelling [the trip]*".

The Complainants' travel insurance policy provides cover against certain specified events, which are set out in the policy wording, along with any conditions, restrictions, or exclusions which might apply to the cover put in place.

The travel insurance policy pertaining to this complaint was purchased online by the Complainant, on **15 September 2015**, for the policy period **15 October 2015** to **14 October 2016**. The Provider has submitted a copy of the policy booklet, which is valid when it is issued in conjunction with a validation certificate issued between **01/09/2014** and **30/09/2015**, which is the relevant policy booklet pertaining to this complaint.

During the investigation of this complaint the first Complainant furnished this Office with details of two telephone calls and as advised by the first Complainant "*both calls were made [to the Provider] on … the **22nd of July** and the times were, 12.46pm for 18 seconds and 13.11pm for 51 seconds*." The Provider's position is that the call dated **22 July 2016** at 12:46pm would not have had sufficient time to clear its recorded message, which it submits takes about 15-20 seconds to complete, and consequently the first Complainant would not have been transferred to one of its representative during this call. For this reason the Provider is unable to furnish this Office with a recording of this call. I am satisfied to accept the Provider's explanation that due to the short length of the call, there was no discussion between the Provider and the Complainants regarding the details of the claim during this particular telephone call.

The Provider has furnished this Office with a recording of the call dated **22 July 2016** at 13:11pm. I have listened to this call recording which lasted 31 of the 51 seconds and I am satisfied that there was no discussion between the Provider's representative and the first Complainant within the call as the first Complainant advised the following on the call: "*sorry can I ring [the Provider] back? I have another call coming through*", at which time the Provider agreed and the call ended.

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The Provider has also submitted four further telephone call recordings which took place between it and the first Complainant in relation to the subject matter of the complaint. The calls were dated **20 July 2016**, **5 August 2016** and two calls were dated **22 July 2016**.

I have listened to the recording of the initial telephone call dated **20 July 2016** as supplied by the Provider to this office on **20 April 2018** and I am satisfied that the Provider advised the first Complainant that her claim would be covered if she decided to cancel the trip as it was stated that "*you could claim for cancellation there and you would be reimbursed for the business class trips*", and it advised that if the trip was cut short and they had to return early, it would not be covered under the '*Curtailment*' provision of the policy.
The Provider advised the first Complainant on the call that "*I think that if she is that ill now [the Provider] won't cover curtailment of the trip, [it] cover[s], [it] may cover cancellation but not curtailment*".

When asked by the first Complainant to confirm the definition of "Curtailment" the Provider's representative answered "*so it would be to cut your trip short to come home early*" and went on to state that "*you wouldn't be able to claim [for] curtailment if you needed to curtail your trip if [your] sister was to pass away but you could claim for cancellation there and you would be reimbursed [for] the business class tickets…we don't refund the airline taxes, the airline would do that*".

The Provider proceeded to advise the first Complainant during the call, of the manner in which she could cancel the trip, by stating "*if you have decided to cancel, [the Provider's representative] can take some details and [send] out a claim form to you and you'll have to [get] onto your airline and cancel, they'll need to issue you a cancellation invoice…you would be better off to cancel it because if you reschedule it and something else happens you would be covered to cancel it".*

During the investigation of the complaint, this office asked the Provider to confirm the terms of the policy that it was relying on, when it informed the first Complainant during the telephone call dated **20 July 2016**, that they "*would not be able to claim [for curtailment] if [they] needed to curtail [their] trip if [her] sister was to pass away*…" In its response to this query the Provider referred to page 34 of the policy document, which states as follows:

> *"**GENERAL CONDITIONS WHICH APPLY TO ALL SECTIONS OF THE INSURANCE***
> *…*
> *5 In the event of any occurrence which may give rise to a claim under this insurance, the **Insured** shall take all reasonable steps to minimise any loss arising out of such claim."*

It is noted that the reason for the Complainants' claim was the death of the first Complainant's sister, which required them to return home early from their trip. I note that upon hearing of the passing of the first Complainant's sister, they took reasonable steps to minimise the cost of the claim by arranging with their airline company, to bring forward the return date of their original flight ticket, rather than purchasing new airline tickets for their return.

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However, I accept that prior to undertaking their trip, the Complainants were aware of her sister's terminal illness and that she had days to live. I also accept that upon taking the advice of the Provider during the telephone call dated **20 July 2016**, they chose to continue with their planned trip.

The Provider also responded that on page 16 of the policy booklet it is stated as follows:

> *"**Curtailment Costs***
> *Travel costs necessary to return **you home** before the booked return date and a pro-rata amount representing the total pre-paid or contracted costs of accommodation, car hire and excursions attributable to each complete day of **your trip** which **you** have not used.*
>
> *The following are not included in the definition:*
> *• all costs attributable to the outward and return travel tickets, whether used or unused.*

I note that '*Curtailment*' under the policy terms and conditions was not applicable to the claim as the definition of '*Curtailment*' within the policy documentation clearly states "*The following are not included in the definition: all costs attributable to the outward and return travel tickets, whether used or unused*". Furthermore, as the first Complainant has stated that they did not incur any additional costs for their return trip, I am satisfied that as a result of curtailing their trip abroad, the Provider was entitled to apply condition 7 of the general exclusion within page 33 of the policy document in this regard.

The Provider responded that on page 10 of the policy booklet it is stated as follows:

> *"**IMPORTANT CONDITIONS RELATING TO HEALTH***
> *"**You** must comply with the following conditions to have the 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.*
> *…*
>
> *"Do **you** have any concerns relating to the health of any non-travellers whose state of health is likely to **cause** you to cancel or amend **your** travel plans? If so, please contact [name redacted]..."*

I note that the first Complainant did ring the Provider one day prior to their scheduled trip to advise of her sister's health condition and to seek advice from the Provider, and upon hearing this advice, they chose to continue with their trip.

I have listened to the recording of the first telephone call dated **22 July 2016** as supplied by the Provider to this office on **20 April 2018** and I am satisfied that the Provider advised the first Complainant that "*under the circumstances*" it would "*consider*" the claim once it was received, but it did not advise her that the claim would be covered under the policy. I note the relevant details of the call as follows: The first Complainant states on the call that "*I am just wondering if we can claim the original [cost of the flight]*". The Provider responds as

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follows: "*We can*" and it further stated "*what we can do for you is when…you do have your policy number and your policy dates and that if you ring us up, we can set up the claim for [you] and get a claim form out to [you]. We can consider the cost of the curtailment and we can consider the cost of the cancellation and due to the circumstance we will consider your claim*".

I also note that during this telephone conversation, the first Complainant advised the Provider that "*someone paid for us getting home so I'm not worried about that*" and for this reason she was not seeking reimbursement for the cost of the subsequent flight home.

I have listened to the recording of the second telephone call dated **22 July 2016** and I note the relevant details of the call as follows: The Provider's representative stated "*You just need to get a letter then from your sister's treating doctor confirming that it advised you that it was OK to travel...we also just need…your original booking and confirmation for the trip...we would also need [the] death certificate whenever you have received that...a copy of your policy certificate as well*". I am satisfied that the Provider did not advise the first Complainant that the claim would be covered under the policy and I accept that it was providing instructions to her on how to make a claim in this instance.

I have listened to the recording of the call dated **5 August 2016** and I am satisfied that the Provider did not advise the first Complainant that the claim would be covered on the policy and I accept that it was providing further assistance to her on how to make a claim. I note the relevant details of this call as follows: The first Complainant states *"[I] just wanted to make an enquiry, my sister passed away while I was travelling and I came home and I contacted [the Provider] and [the Provider's representative] said it would cover the claim but I can't remember did [the representative] say I needed a copy of the death cert or the original*", and the Provider responded "*the original if possible*".

The Provider is entitled under the terms of the policy, to request the Complainants to submit all the relevant documentation, such as medical and clinic reports, when submitting a claim as part of its claims assessment process.

The Provider has submitted a copy of the policy documentation. I note that under the heading "*Definitions*" on page 16 of the policy document, it sets out among other things the following:

> ***"DEFINITIONS***
> *…*
>
> ***Cancellation costs***
> *Travel, accommodation, car hire and excursions paid or contracted to be paid by you in respect of your own trip (prior to any occurrence giving rise to a claim under this section) which are not recoverable.*
> *…*
>
> ***Curtailment Costs***

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*Travel costs necessary to return **you home** before the booked return date and a pro-rata amount representing the total pre-paid or contracted costs of accommodation, car hire and excursions attributable to each complete day of **your trip** which **you** have not used.*
The following are not included in the definition:
• all costs attributable to the outward and return travel tickets, whether used or unused.

Period of insurance for an annual multi trip policy –
*The period starting and ending on those dates shown on your validation **certificate**.*

*Cover under the cancellation section of **your policy** (other than for **pre-existing medical conditions** as stated above), starts from the later of either:*
*(a) the date of inception of **your** validation **certificate***
or
*(b) the time at which the **trip** is booked*

and ends at which ever happens first:
*(a) the start of **your trip** or;*
*(b) the expiry of the **policy***
…"

I note that under the heading "***The Insurance***" on page 19 of the policy document, the Insurer shall not be responsible for:

"Cancellation and Curtailment
What you Are covered For:
*If **your trip** is cancelled or curtailed due to any one of the reasons listed below during the **period of insurance**, the Insurer will pay **you** up to the amount shown in the Schedule of Benefits:*

Cancellation
*for travel, accommodation, car hire and excursions paid or contracted to be paid by **you** in respect of **your** own **trip** (prior to any occurrence giving rise to a claim under this section) which are not recoverable.*

Curtailment
*for travel costs necessary to return **you home** before the booked return date and a pro-rata amount representing the total pre-paid or contracted costs of accommodation, car hire and excursions attributable to each complete day of **your trip** which **you** have not used.*

Reasons for Cancellation and Curtailment:
*(a) death, **accidental bodily injury** or unexpected **illness** during the **period of insurance** of **you, your travelling companion**, or the person with whom you have arranged to stay whilst on the **trip** or **your relative** or **close business associate;***
…"

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I note that underneath the heading *"**EXCLUSIONS WHICH APPLY TO ALL SECTIONS OF THE POLICY**"* on page 32 of the policy document, it sets out the following:

> *"The **Insurer** shall not be responsible for claims which are directly or indirectly caused by, occasioned by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the claim;*
> *…*
> *7 which but for the existence of this insurance, would be covered under any other insurance policy(ies), including any amounts recovered by **you** from private health insurance, EHIC Card payments, any reciprocal health agreements, airlines, hotels, home contents Insurers or any other recovery by **you** which is the basis of a claim;*
> *…"*

I note that, in the Claim Form, in response to the question *"Were you able to use your original return tickets?"* the following response is recorded by the Complainants:

> *"We used the same Tickets but [the airline] just changed the booking date to come back the same Day we Arrived"*

I note that the first Complainant stated during the telephone call dated **22 July 2016** that *"someone paid for us getting home".* In this regard, I must accept that the Complainants did not incur any additional costs upon returning early from their trip.

I am satisfied that '*Cancellation*' under the policy terms and conditions did not apply as the policy clearly states that "*Cover under the cancellation section of **your policy** (other than for **pre-existing medical conditions** as stated above), starts from …. and ends at which ever happens first: (a) the start of* **your trip**". The policy booklet further states that the definition of *'Cancellation'* is that *"[cancellation] starts from...the start of your trip*". Consequently, once the trip had started, it was no longer possible to "cancel" it, and therefore no cancellation cover was relevant any longer.

While I understand the frustrations of the Complainants, that they believe the Provider had advised them that it would cover the claim, I must accept from the evidence before me that the Provider had advised the first Complainant during the telephone call dated **22 July 2016** that it would "*consider*" the claim due to the circumstances and it had requested the Complainants to submit the necessary documentation to assess the claim, however, it did not advise the first Complainant that the claim would be covered under the policy.

Furthermore, I must accept from the evidence before me, that the Provider had advised the first Complainant during the telephone call dated **20 July 2016**, which was one day prior to their travel date, that firstly, given her sister's prognosis, they would not be covered for '*Curtailment*', if they decided in the circumstance to travel, and secondly, if they proceeded to travel **on 21 June 2016**, a claim under the '*Cancellation*' provision of the policy, would not be possible.

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Therefore, having carefully considered the evidence before me, I must accept that the Provider's decision to decline the Complainants' claim was in accordance with the terms of the policy and it was reasonably entitled not to admit the claim based on the evidence provided.

Consequently, this complaint is not 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

9 July 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.