



<u>Decision Ref:</u>	2019-0262
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

On **18 October 2017**, the Complainants purchased a travel insurance policy online for €177.00 for the purposes of a trip to America on **15 November 2017**. The travel insurance policy contained a clause which covered the expense associated with returning back to Ireland if the trip had to be cut short due to a death, serious illness or injury.

On **17 November 2017**, the Complainants received a notice from the local Department of Health, which was delivered to their hotel, which advised that two guests of the hotel had been reported sick with Legionnaires' disease within the previous 12 months. The Department of Health had conducted tests that had previously revealed the presence of bacteria in the water supply linked to Legionnaires' disease.

On **19 November 2017**, on account of fears of contracting the disease, the Complainants returned back to Ireland having booked flights for €559.06. The Complainants sent in a claim form to the Provider seeking repayment of that sum in addition to a sum of €267.33 not refunded by their hotel.

On **5 December 2017**, the Provider's representative sent a final response letter declining coverage.

The Complainants' Case

The Complainants say that the local Department of Health letter warned that individuals over 50 with breathing difficulties have a higher risk of contracting Legionnaires' disease from a water supply. Both of the Complainants are over 50, and one of the Complainants has COPD, which is a lung disease.

The Complainants further say that they had a fear of becoming subject to hospital bills in America if they became ill and had to receive medical treatment.

The letter from the Department of Health received by the Complainants included a list of extra precautions to be taken if a guest of the hotel was suffering from one of the listed health issues, one of these issues was to use a bath and not a shower. The Complainants submit that, as it was close to Thanksgiving Day in America, all of the rooms in the hotels with baths were occupied. They submit that for them, the hotel was therefore uninhabitable.

Furthermore, the Complainants say that there was no option to select an alternative product when purchasing the insurance policy online, and that they, therefore, were forced to accept whatever terms were offered by the Provider.

The Complainants also state that they tried to contact the 24 hour medical assistance helpline operated by the Provider in order to obtain further information, but that they were unable to do so. The Complainants state that it is their belief that the Provider would have approved the Complainants to return to Ireland in light of the circumstances.

The Provider's Case

The Provider outlines the particular terms of the travel insurance policy incepted by the Complainants. The Provider asserts that as per the section of the policy entitled "Cutting Your Trip Short", the Complainants must actually be diagnosed or treated with a serious illness in order to be indemnified under the policy of insurance as it states;

"Cutting Your Trip Short;

We will provide this cover if the cutting short of your trip is necessary and unavoidable as a result of the following;

1. *You dying, becoming seriously ill or being injured*
2. *The death, serious illness or injury of a relative or friend living abroad who you are staying with..."*

The Provider asserts that the Complainants accept that they did not become ill. The Provider therefore submits that the policy terms do not provide cover for the circumstances around which the Complainants cut their holiday short.

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The Provider states that it has no record of the Complainants attempting to contact the medical assistance company nor the Provider prior to returning home. The Provider says that, if contacted, its representatives would have informed the Complainants that the policy only covers them when an injury/illness is actually diagnosed.

The Provider says that the terms of the insurance policy specify that the medical emergency assistance company are to be contacted immediately if the holder of the policy needs to return home earlier than planned.

The Provider states that it did not operate unfairly or unreasonably in that the Complainants made a unilateral decision to end their holiday upon receiving the letter from the Department of Health in America.

The Provider draws attention to certain portions of the letter sent by the Department of Health. The letter says that it is still safe to remain in the hotel, and that the risk of getting sick from the hotel's water supply was 'very low'. The letter, the Provider submits, did not advise of the "probability" of illness, but gave advice as to what actions guests should take if they began to show symptoms of Legionnaires disease. The Provider also says that the letter only identified two instances of the disease being contracted within the last 12 months. The Provider states that the decision to end the Complainants' holiday was not "necessary and unavoidable".

The Complaint for Adjudication

The complaint for adjudication is that the Provider wrongly refused to admit the claim made by the Complainants under their travel insurance 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

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Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 12 July 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, within the period permitted, I set out below my final determination.

The terms of the policy require a policyholder to become seriously ill or be injured before the policy becomes operative as stated in Section C of the policy entitled "*Cutting Your Trip Short*";

"Cutting Your Trip Short;

We will provide this cover if the cutting short of your trip is necessary and unavoidable as a result of the following;

1. *You dying, becoming seriously ill or being injured*
2. *The death, serious illness or injury of a relative or friend living abroad who you are staying with..."*

I note that the Provider submits that this requires that the policyholder be diagnosed or treated with a serious illness for the claim to be accepted. As an observation, I note that the terms of the policy do not refer to the requirement for diagnosis and/or treatment, however in any event, it is accepted by the Complainants that there was no injury suffered by the Complainants nor had they become seriously ill, and that they left the hotel and returned back to Ireland on precautionary grounds. In light of the age of the Complainants and the fact that one of them suffered from a chronic lung condition, I understand why they were alarmed upon receiving the letter sent by the department of health to their hotel room and their reticence about continuing their stay at the hotel as they were in the higher risk group of contracting the disease due to these factors. That said, I note that precautionary measures were suggested in the letter from the department of health and the letter advised that it was not unsafe to stay in the hotel. In any event, it is clear that the Complainants' claim does not fall within the terms of the policy, which are in clear language. Further, from the evidence made available to me, it is clear that the Complainants were on notice of the terms of the policy and would have been entitled not to proceed with the inception of the policy if they were not satisfied with the terms or felt that they were unreasonable or unacceptable to them. The Complainants did not do so and proceeded to take out the policy.

I also note that the policy document states, under the “Cutting your trip short” heading, that “*If you need to return home to the Republic of Ireland earlier than planned, you must contact the Medical Emergency Assistance Company immediately*” (emphasis added). The Complainants state that they tried to contact the 24 hour medical assistance helpline without success.

The Provider advises that it has no record of the Complainants attempting to contact the medical assistance company nor the Provider prior to returning home. No evidence has been furnished to this office in respect of the Complainants’ attempt to contact the Medical Emergency Assistance Company and so it is not possible for me to make a finding as to whether these attempts to call took place. Further, this term in the policy does not override the provision that cover would be provided “*if the cutting short of your trip is necessary and unavoidable as a result of the following;*

1. *You dying, becoming seriously ill or being injured*
2. *The death, serious illness or injury of a relative or friend living abroad who you are staying with...*”

In light of the above, I find that the Provider was entitled to refuse to admit the claim in accordance with the terms of the policy.

For the above reasons, I do not 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

6 August 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.

