



<b><u>Decision Ref:</u></b>	2020-0009
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim – cancellation/delay of transport
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant purchased an annual travel insurance policy online with the Provider, the underwriters, on **22 May 2018**, with a start date of **15 June 2018**.

**The Complainant's Case**

The Complainant and his wife, an insured person on his travel insurance policy, were scheduled to fly from Dublin to Bangkok, via Doha on 15 June 2018. As a result of the Complainant falling on 4 June 2018, the Complainant and his wife were unable to travel as planned and he submitted a claim to the Provider in respect of their cancelled trip. The Provider declined this claim and wrote to the Complainant on 26 October 2018 to advise, as follows:

*“As you did not effect your policy until 15<sup>th</sup> June 2018, there is no cover in place for anything occurring prior to this date. We note from your claim submission that the accident which gave rise to the claim occurred on 4<sup>th</sup> June 2018. As your policy was not effected on the date your trip cancellation became necessary we have no option but to repudiate your claim on this occasion”.*

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

*“I bought the policy on 22<sup>nd</sup> May 2018 and told the [Provider] I was flying out on the 15<sup>th</sup> June 2018 with my wife...because my accident happened on the 4<sup>th</sup> June 2018*

[the Provider] *will not pay out as I was not insured on this date but I was insured on the 15<sup>th</sup> June 2018. I am only looking for a refund of my flight tickets + doctors note + visa fees*".

### **The Complaint for Adjudication**

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

### **The Provider's Case**

Provider records indicate that the Complainant purchased an annual travel insurance policy with the Provider online on 22 May 2018 and that he requested a cover commencement date of 15 June 2018. The Complainant listed his wife as an insured person on his policy. As a result of the Complainant falling on 4 June 2018, the Complainant and his wife were unable to travel as planned and he submitted a travel insurance claim in respect of their cancelled trip. Following its assessment, the Provider declined this claim as the Complainant did not have an insurance policy in force with it, when the cancellation of the trip became necessary on 4 June 2018.

The Provider notes that as he chose, of his own volition, to postpone the start date of his policy to the intended date of travel when he was purchasing his travel insurance online on 22 May 2018, in this instance to 15 June 2018, the Complainant forfeited any cover which may have been applicable prior to that date, including cancellation cover. In this regard, the Provider confirms that the Complainant had no cover in place for anything occurring prior to 15 June 2018 and it notes that the fall which gave rise to the claim had occurred on 4 June 2018.

The Provider is satisfied that the website provided the Complainant with clear and appropriate notice as to the consequences of choosing a future start date for the policy. In this regard, when an annual multi-trip policy is purchased online, the system automatically warns the proposer that should they choose a future start date, cancellation cover will not come into effect until the date actually chosen and it reminds the purchaser to choose the purchase date if they wish cover to operate as soon as possible. The Provider also notes that the full policy terms and conditions are available online before and after purchase and that the customer also receives a confirmation email with the insurance documentation attached, which includes the applicable policy terms and conditions.

Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of his 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 r2Complainant was given the opportunity to see the Provider's

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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 10 December 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 a submission from the Complainant on 15 December 2019, a copy of which was exchanged with the Provider, 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 purchased an annual travel insurance policy with the Provider online on 22 May 2018. The Complainant listed his wife as an insured person on this policy.

I note that the Complainant fell on 4 June 2018, which in the Medical Claim Form later completed on 12 July 2018, his GP Dr P. advised necessitated an "operation on lumbar spine and fractured femur due to fall ... hospitalised in Ireland from 04 June till 27 June 2018". As a result, the Complainant was unable to travel as planned and he submitted a travel insurance claim to the Provider in respect of the cancelled trip. I note that following its assessment, the Provider wrote to the Complainant on 5 October 2018 to advise that it was declining his claim, as follows:

*"We note from your claim submission that the accident which gave rise to the claim occurred on 04/06/2018. We further note that you purchased your policy on the 22/05/2018 and selected a future start date of the 15/06/2018 which means your selected period of insurance is the 15/06/2018 – 14/06/2019.*

*The start date of your policy was the 15/06/18 which means that when your accident occurred there was no active cover in place and as a result your claim for cancellation has been declined".*

In this regard, I note that the Complainant sets out his complaint, as follows:

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*"I bought the policy on 22<sup>nd</sup> May 2018 and told the [Provider] I was flying out on the 15<sup>th</sup> June 2018 with my wife...because my accident happened on the 4<sup>th</sup> June 2018 [the Provider] will not pay out as I was not insured on this date but I was insured on the 15<sup>th</sup> June 2018. I am only looking for a refund of my flight tickets + doctors note + visa fees".*

I note from the documentary evidence before me that when the Complainant was purchasing his travel insurance policy online on 22 May 2018, he inserted the date he wished for his cover to commence on as 15 June 2018, the date he and his wife were scheduled to travel. In this regard, I note that when a customer selects an annual multi-trip policy and a future start date, as the Complainant did, the following warning appears directly below where the customer has inserted his or her future start date,

*"You will not be covered for holiday cancellation until your policy start date. Choose today's date if you want cover as soon as possible".*

I am satisfied that this wording is clear and unambiguous as to the consequences of choosing a future start date for the policy and that such wording was located appropriately on the website. Whilst the Complainants believe that the Provider ought to have been "*more clear*" about their entitlements, I am satisfied that the warning in question adequately clarified to the Complainants that they would not be covered for holiday cancellation until the policy start date selected.

Travel insurance policies, like all insurance policies, do 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. Section 1, '**Cancellation and Curtailment Charges**', of the applicable travel insurance policy document provides, *inter alia*, at pg. 9, as follows:

*"We will cover you up to the amount shown on Your Schedule of Cover per Insured Person in total under this Policy for financial loss suffered by You during the Period of Insurance, being non-refundable deposits and amounts You have paid (or have contracted to pay), for travel to/from Your holiday destination and accommodation You do not use because of Your inability to commence travel or You curtail the Trip as a result of any of the following events occurring after payment of the policy premium (and at the time of booking Your Trip in respect of an annual policy) and **occurring within the Period of Insurance**".*

**[Emphasis added]**

In this regard, I note that the Insurance Certificate dated 22 May 2018 that the Provider issued to the Complainant states, *inter alia*, as follows:

**"DETAILS OF COVER**

**Start date:** 15 June 2018

**End date:** 14 June 2019".

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A contract of insurance can only provide cover for losses which occur during the term of the policy. Whilst the loss in this instance is that the Complainant and his wife were unable to travel on 15 June 2018 as planned, the incident that gave rise to this loss, namely the Complainant's fall, took place on 4 June 2018, 11 days before the commencement date of the cover which the Complainant had selected. In this regard, as the Complainant had himself chosen to commence his travel insurance cover with the Provider from 15 June 2018, I am satisfied that he had no holiday cancellation cover in place with the Provider when he fell on 4 June 2018 as his policy was not in force at that time and did not commence until 15 June 2018.

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

As the evidence does not disclose any wrongdoing on the part of the Provider, in that respect, it is my Decision 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**

8 January 2020

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.