



<u>Decision Ref:</u>	2020-0066
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation Poor wording/ambiguity of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant held a travel insurance policy with the Provider. The Complainant was due to depart on a flight from Dublin airport on **1 October 2017**. The Complainant says that on the day of his flight, he became ill and did not travel on his departing flight. The Complainant made a claim under his policy in respect of his cancelled flight and obtained a certificate from his doctor on **3 October 2017** certifying that he had been unfit to fly on **1 October 2017**. The Provider declined the claim on the basis that the Complainant did not obtain medical advice prior to cancelling his trip.

The Complainant's Case

The Complainant states that he made a claim under his multi-trip insurance policy on **20 October 2017**. The Complainant was advised by letter dated **4 November 2017** that his claim was unsuccessful due to the fact that he did not seek medical attention prior to travelling. The Complainant submits:

"[t]he reason I did not seek medical attention on 1st October 2017 was that the 1st October fell on a Sunday and the practice was closed. I was also incapacitated on the 01/10/2017 and would not have been able to attend the practice even if it were open."

The Complainant states:

"[a]s my flight was due to depart at 7:30 on Sunday 1st October and the emergency doctor only commences at 10am. If I could have managed to attend the emergency doctor it still would have been post departure."

The Complainant advised that he did seek medical attention at the next available opportunity. The Complainant submits, referring to his doctor's certificate, that his doctor confirmed he had been unfit to fly on **1 October 2017**.

The Complainant states:

"Given the fact that I became ill in the early hours of the 1st October 2017 when my doctor was not available/surgery not open and due to the nature of the illness (gastroenteritis) I fail to see how I could have sought medical attention prior to the early morning departure of my flight.

As this was completely out of my control I am at a loss as to why the insurance company won't honour my claim. ..."

The Provider's Case

The Provider states that it is a standard requirement for a cancellation claim on a medical condition, for a medical certificate to be completed by the usual treating GP for the person whose ill health gives rise to the claim. The Provider points out that the Complainant's medical certificate indicated that the first consultation did not occur until **3 October 2017** which was two days after the original travel date. The Provider submits it was apparent from the claim form and supporting documentation that the Complainant had not complied with the policy condition covering cancellation due to a medical reason. Accordingly, the claim was declined.

The Provider explains that all claims are handled in accordance with the terms and conditions of the policy and it is a specific condition of the Complainant's policy cover that medical advice must be received advising of the necessity to cancel a trip, prior to the cancellation of the trip. The Provider submits that evidence of medical advice sought prior to a trip is the only way it has of validating a policy holder's claim that he or she cannot travel due to ill health. The Provider notes the view of the Complainant's doctor, that his ailments might well indicate that he was ill two days before the actual consultation, but in the absence of the Complainant presenting for examination prior to cancellation, the doctor's assertion that the ill health of the Complainant rendered him unfit to fly, is moot.

The Provider states that in cases of sudden onset of illness which may prohibit the possibility of obtaining supporting medical documentation prior to a scheduled departure and where it is satisfied that circumstances made it impossible for the customer to obtain medical advice prior to cancellation, it may exercise its discretion in the application of the relevant policy condition. However, such discretion could only be exercised where it is evident that the Complainant sought medical advice at the next available opportunity, generally within 24 hours. In this instance, the Provider submits, the Complainant did not obtain medical

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advice until two days after the onset of symptoms and he did not make any contact with any out of hours medical services in the intervening period. Consequently, the Provider states that it cannot overlook the Complainant's failure to comply with the clear policy condition and it cannot validate the circumstances giving rise to the cancellation.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or unreasonably declined the Complainant's claim, arising from him cancelling his trip in October 2017.

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 on 28 January 2020, 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, the final determination of this office is set out below.

The Policy

The Complainant's policy provided cover in the event of the cancellation of a trip. However, there are special conditions attaching to claims based on the cancellation provisions. In particular, special conditions 4 states:

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“Special Conditions Relating to Claims

...

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** ... to cancel a **Trip** prior to the cancellation of the **Trip**.”

The term *Medical Practitioner* is defined as:

*“means a registered practicing member of the medical professions ... who is not related to **You** or any person who **You** are travelling with.”*

Claim Form

The Complainant completed a claim form dated **9 October 2017**. The Complainant states on the form that *“I called the doctor on 02/10/2017.”* In answer to the question *“When did the patient first consult for this condition?”*, the Complainant’s doctor wrote **3 October 2017**.

The Complainant submitted a doctor’s certificate dated **3 October 2017** which states:

“This is to certify that [the Complainant] ... is, in my opinion, unfit for work/school/college

Due to: Abdominal related illness, was unfit to fly on 1/10/2017 ...”

Declinature of Claim

The Provider wrote to the Complainant on **4 November 2017** declining his claim. Referring to special condition 4 of Section A of the policy, the Provider informed the Complainant:

“We note from your claim documentation that your trip was due to begin on 01/10/2017, and you first sought medical advice on 02/10/2017. As detailed in the above policy quotation, it is a condition of your policy cover that medical advice must be received advising of the necessity to cancel your trip prior to the cancellation of your trip. As medical advice was not sought until the day after your trip was cancelled, it is with regret that we must confirm that we are unable to consider your claim for settlement on this occasion.”

The Complainant wrote to the Provider on **8 November 2017**, requesting a review of his claim stating as follows:

“The reason I did not seek medical advice on the 02/10/2017 is that on 01/10/2017 (a Sunday) the practice was closed. I was also incapacitated on the 01/10/2017 and would not have been able to attend the practice even if it were open. I did however seek medical advice at the next available opportunity and attended the practice.

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As you can see from the doctor's certificate which I posted on the 20/10/2017 he confirmed that I was unfit to fly on the 01/10/2017."

In response to the Complainant's letter, the Provider wrote to the Complainant on **17 November 2017** upholding its decision to decline the claim. Again, referring to special condition 4 of Section A of the policy, the Provider advised the Complainant:

"It is imperative that medical advice is sought prior to cancellation of a trip as this is the only valid means of substantiating that, on your proposed date of travel, inability to travel arose from an illness. Without consulting a medical practitioner prior or on the date of travel, you are unable to provide sufficient evidence to show that cancellation arose from a covered peril such as illness or injury."

Analysis

The Complainant says he became ill on **1 October 2017**. The Complainant was due to depart on a flight from Dublin airport on that date but he cancelled his trip, as he became ill prior to his flight.

The Complainant acknowledges that he did not obtain medical advice prior to cancelling his flight. The Complainant first made contact with a medical practitioner on **2 October 2017** when he contacted his doctor. The Complainant then attended his doctor on **3 October 2017** who retrospectively certified that he had been unfit to fly on **1 October 2017**.

The definition of *medical practitioner* in the Complainant's policy is quite broad. However, the evidence indicates that the Complainant only made attempts to contact and attend his doctor. While the Complainant states that his condition rendered him incapacitated, he has not submitted any evidence to demonstrate that he contacted a medical practitioner prior to or even on the day of his flight, whether by attending a hospital, an emergency department, availing of a call-out service or calling for an ambulance. Furthermore, the Complainant has submitted a copy of the clinic hours of the [out of hours general practitioner clinic] section of [named] Hospital which shows that the clinic was closed prior to and at the time of the Complainant's departing flight. However, on this document it also states:

"If [named clinic] is closed, the information about how to be seen will be on your own GP Practice's answering machine, or website."

The Complainant has not offered any evidence to show that he called or consulted his GP's website.

Special condition 4 is clear in that the Complainant was obliged to demonstrate

*"... that medical advice was sought and that advice was given by a **Medical Practitioner** ... to cancel a **Trip** prior to the cancellation of the **Trip**."*

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I am satisfied that the Complainant did not comply with this condition of the policy. In light of this, I accept that the Provider was entitled to decline the Complainant's claim. Whilst the Complainant may well have had his reasons for not making contact with a medical practitioner on the day of his flight, the Provider in such circumstances, was not obliged to admit his claim, given the absence of any contemporaneous medical opinion that on that very date, he was not fit to fly. Therefore, I do not consider it appropriate 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

19 February 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.