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| <u>Decision Ref:</u> | 2020-0068 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Mis-selling (insurance) Delayed or inadequate communication |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants were due to depart on a flight to Europe on Saturday **3 March 2018**. Prior to the Complainants' departure, the First Complainant purchased an annual multi trip travel insurance policy from the Provider (an insurance broker) over the telephone on Wednesday **28 February 2018**.

The Complainants say that they could not get to the airport due to snow. They say that they could not travel to the airport by bus on the day of their flight, because bus services were cancelled due to Storm Emma, and the Complainants missed their departing flight. They have also more recently suggested that the original plan was for their daughter to drive them to the airport but she was unable to do so, owing to the snow.

The Complainants made a claim under their policy as they were unable to go on their trip. The Complainants' claim was declined by the Underwriter. The Complainants submit that in the course of purchasing the policy, the First Complainant was misled by the Provider during the telephone conversation that took place on **28 February 2018**, 3 days before their intended trip.

The Complainants' Case

The Complainants state that they purchased an annual multi-trip travel insurance policy from the Provider on **27 February 2018**. The Complainants state that they were told by the Provider that they would be covered under the policy in respect of Storm Emma. Subsequent to this, the Complainants made a claim under the policy which was refused on the grounds that the Complainants "... *knew the storm was coming.*"

The Complainants submit that the Provider also knew a storm was coming “so why was it sold to me in the first place.” The Complainants further refute the Provider’s assertion that the policy was purchased on the day their flight to Europe was due to depart. In a further submission to this Office dated **9 July 2019** the First Complainant states that he was not aware that “... cancelling the policy was an option as I had paid in full at the time of purchase ...”.

In resolution of this complaint the Complainants are “... looking for [their] policy to be upheld and a full refund for [their] holiday minus the excess.”

The Provider’s Case

The Provider states that the Complainants’ travel insurance policy was placed on cover on **3 March 2018**. The Provider states that the policy was not sold face-to-face and was sold during a telephone call with the First Complainant which took place on Tuesday **28 February 2018**. The Provider further states that the First Complainant opted to call into its office to collect the relevant policy documentation.

The Provider submits that it went to great lengths during the telephone call to answer the First Complainant’s queries in respect of the various scenarios posed. This included details of what would and would not be covered in the event of certain situations specifically identified by the First Complainant arising from the severe weather warning that had recently issued. The Provider states that the main areas of discussion revolved around missed departures, flight cancellation and accommodation in the event of delayed departure. The Provider points out that none of these were the cause of the Complainants missing their flight.

The Provider states that the First Complainant was offered a summary of cover in advance of purchasing the policy but this was refused and the First Complainant instead arranged to attend the Provider’s office later that afternoon to collect the relevant paperwork.

The Provider states that no other market was available to it to provide the cover sought by the First Complainant and therefore there was no other relevant market research applicable in this instance. The Provider states that the First Complainant was provided with details of what the cover would entail. The Provider states that at no stage during the call did the First Complainant advise of or mention public transport as a means of getting to or from the airport. The Provider states that this would not be a question that would be asked when selling a travel insurance policy.

The Provider further submits that the First Complainant did not query if he would be covered if he could not make his way to the airport. The Provider states that if such a query was raised, it would have been answered or referred to the insurer, for clarification.

The Provider states that information was provided on missed departure/delay. The Provider points out that the policy being sold was based on an annual travel insurance policy but acknowledges that

“... the premium/query was also provided to the insured in relation to a single trip but during this section of the call, the client still had not advised of his departure date.”

The Provider queries whether the telephone call would have been different if the First Complainant was not interested in an annual trip policy and states it *“... can only assume that it would not have been, unless the client had divulged at the start of the phone call the dates he was travelling.”*

The Provider further considers, when missed departures were being discussed, whether the First Complainant could have meant missing public transport to get to the airport. The Provider does not believe this to be the case *“... but it is possible, however, it was impossible for [the Provider] to know this unless [the First Complainant] had mentioned public transport or his means of travel when discussing this section.”*

The Provider states that during the call it offered to send the First Complainant a summary of cover before placing cover. The Provider acknowledges that while it is required to advise customers of policy exclusions and the like, it is not possible to go through the entire policy whether over the phone or face-to-face. The Provider states that *“... at this time there were no IPID’s available which would also have offered further clarification to the insured. Instead, [the Provider] summarised the basis of cover.”*

The Provider states that the Complainants’ flight was not cancelled or delayed as a result of Storm Emma and it departed as scheduled. The Provider states that the Complainants did not travel to the airport due to the cancellation of public transport. The Provider submits that queries surrounding cancellation and delay were discussed with the First Complainant. The Provider states that *“[a]ll queries raised by the insured related to the possibility of flight cancellation and [the Provider] did its utmost to advise him accordingly in respect of possible scenarios in relation to cancellation of the flight itself.”*

The Provider states that it could not have anticipated the issue which arose with respect to the First Complainant’s mode of transport to the airport as he did not advise the Provider of this nor would it be normal for a customer to do so. The Provider submits that the First Complainant did not query circumstances relating to his journey to the airport and was provided with full policy documentation by email and by hand, which he then had the opportunity to review.

The Complaint for Adjudication

The complaint is that during the sale of an annual multi-trip policy of insurance, the Complainants were misled by the Provider in respect of the cover offered by the policy, regarding Storm Emma.

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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 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 13 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

At the outset, it should be noted that the Provider in this complaint is an insurance broker and is not responsible for underwriting the Complainants' insurance policy. The decision to decline the Complainants' claim was ultimately taken by the Underwriter. Therefore, the decision to decline the Complainants' claim is not a matter for this complaint.

Secondly, whilst the First Complainant states that he purchased the insurance policy on Tuesday **27 February 2018**, the evidence in this complaint, outlined above, which has not been contradicted, demonstrates that the policy was purchased on Wednesday **28 February 2018**.

The Telephone Conversation

The First Complainant contacted the Provider by telephone on **28 February 2018** to enquire about travel insurance. The Provider's agent explained what a multi trip travel insurance policy was and the type of cover that would be offered by such a policy of insurance. Following this, the First Complainant made a general enquiry about flight cancellation. The Provider's agent advised that these types of claims would usually be made against the tour operator or airline but a claim could be made under a travel insurance policy if a trip was cancelled.

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The agent advised that a cancellation arising from an event outside the First Complainant's control would be covered by the policy. The First Complainant was further advised that cover would not be available if he did not want to travel or decided not go on a particular trip. The Provider's agent stated that *"... you'd be covered in the event like if you can't travel because it's obviously snowing today and flights have actually been cancelled which means your trip has actually been cancelled you can indeed claim ..."*

During the call the First Complainant made a query about flight cancellation and the provision of accommodation in the event of such cancellation. The Provider's agent advised that there was cover for travel delay and disruption but

"... it doesn't cover you an awful lot for the travel delay ... if you want to claim under your travel policy you can do so but it's only very minimal ..."

Following the agent's explanation, the First Complainant advised that he would like to take out an annual travel insurance policy. The First Complainant confirmed that he was intending to travel that Saturday, and the Provider noted that this departure was *"that close"*, and moved to put the policy in place for the Complainant.

I note that the policy was then paid for over the phone, but that no point did the Complainant indicate that his pending travel plans with the second Complainant, were dependent on the availability of public transport, or dependent upon his daughter being able to negotiate the roadway system. Rather, he raised a number of queries regarding potential flight cancellations and delayed departures.

Policy Correspondence

By letter of the same date, **28 February 2018**, the Provider wrote to the First Complainant in the following terms:

"We refer to previous correspondence in relation to the above and now have the pleasure of enclosing herewith your policy document for your attention ..."

We would ask you to read this document carefully to ensure your full understanding of the cover, exemptions, definitions, conditions and endorsements of this contract of insurance and that this meets your specific requirements and expectations."

Policy Schedule

The period of cover under the policy as set out in the schedule ran from **3 March 2018** to **2 March 2019**. Further to this, on page 5 of the schedule it states:

"Period of Insurance

Subject to cancellation, the period of insurance in respect of any Policy held with [the Underwriter] will be the period specified by [the Underwriter] as such in the Policy Schedule and/or Renewal Notice."

On page 5 of the schedule the Complainants are provided with information regarding cooling-off periods and the right to withdraw. This section states:

“Cooling-off Period – right of Withdrawal

You may cancel this policy within 14 days of its issue (providing **you** have not commenced the **insured trip**) and, subject to **you** not having or intending to make a claim, a full refund of premium will be made.”

An identically worded provision is also contained in the policy booklet.

The Policy Booklet

Cancellation

Cancellation is dealt with in the *General policy conditions* section and Section 5 of the policy booklet. The *General policy conditions* state as follows:

“Cancelling the policy

You may cancel this policy within 14 days of its issue (provided **you** have not started an **insured trip**) and, subject to **you** not having or intending to make a claim, a full refund of premium will be made. If **you** choose to cancel and a claim has been made or the **insured trip** has started, **you** will not be entitled to any premium refund. ...

Start of cover

Cover for cancellation, (see Section 5) starts on the ‘Cover Start Date’ (issue date for single trip policies) shown on **your policy schedule** or from the date the **insured trip** is booked (whichever is later) and terminates with the start of the **insured trip**. ...”

Section 5 of the policy sets out the cover provided to the Complainants in the event of the “... necessary and unavoidable cancellation of an **insured trip**.” However, a number of exclusions apply in respect of section 5. The relevant exclusions are as follows:

“Exclusions applying to Section 5

A. What is not covered

1. ***Any cancellation arising from circumstances that could reasonably have been anticipated at the time **you** booked **your insured trip**.***
...
3. ***Any cancellation following **your** disinclination to travel or to continue with the **insured trip** or **your** loss of enjoyment of the **insured trip**. ...”***

Disinclination is defined as “unwillingness or refusal to travel.”

Insured trip is defined in the policy as:

*“A trip commenced and ended from or within the Republic of Ireland during the **policy period** and which includes pre-booked travel arrangements and overnight accommodation away from the **insured person’s** normal place of residence.”*

Travel delay and disruption

Section 7 of the policy deals with travel delay and disruption and states:

*“This section of the **policy** sets out the cover the **insurer** provides to each **insured person** in total per **insured trip** ...”*

Section 7B of the policy deals with missed departures and catching up with the scheduled itinerary. Section 7B of the policy states:

*“Disruption of an **insured person’s** scheduled travel itinerary due to the failure or delay of any pre-booked public transport, to the trip destination point.*

This section does not apply to trips within the Republic of Ireland. ...”

A number of exclusions apply to section 7. The exclusion relied on by the Underwriter to decline the Complainants’ claim is as follows:

“Exclusions applying to Section 7

A&B What is not covered

...

4. *Circumstances that could reasonably have been anticipated at the date the **policy** was purchased or renewed or the **insured trip** was booked.”*

Payment Receipt

The Provider furnished the First Complainant with a receipt of payment dated **28 February 2018**. The payment method was by credit card and the transaction date on the receipt is recorded as **28 February 2018** in the sum of €110. The Provider has also furnished this Office with a *Cardholder Copy* receipt. This document indicates that a payment was processed by the Provider using the First Complainant’s credit card details at 11:56am on **28 February 2018**.

In a letter dated **24 April 2018** appealing the refusal of his claim, the First Complainant states:

“2. Travel insurance was purchased on the 28/02/2018 and was quoted for two days before the validation date ...”

This is again acknowledged by the First Complainant in a letter dated **9 January 2019**.

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The Complainants' Claim

The Complainants submitted a *Travel Delay/Missed Departure/Missed Connection – Claim From* dated **9 April 2018** in respect of their missed flight from Ireland to Europe scheduled for departure on **3 March 2018**. The reason provided by the Complainants for missing their flight is that:

“Storm Emma ... completely snowed us in – could not travel to the airport. All public transport was cancelled – road blocked.”

In an email to the First Complainant dated **19 April 2018**, he was advised by the Underwriters' claims handler that his claim was being declined pursuant to the exclusion contained in section 5, A1. The First Complainant appealed this decision by letter dated **24 April 2018**. Following this, he was advised by the Underwriters' claims handler by letter dated **29 August 2018** that his claim was again declined by virtue of exclusion 4 attaching to section 7 of the policy.

Analysis

The complaint is that the First Complainant was misled by the Provider as to the cover available under the annual multi-trip travel insurance policy, purchased during a telephone conversation which took place on **28 February 2018**. The audio file has been included in the evidence and I have outlined certain aspects of this conversation above.

I am satisfied that the Provider's agent gave an adequate explanation as to the type of cover provided by the policy. During the conversation the First Complainant asked a number of questions, all of which concerned flight cancellation and delay. These were all adequately addressed by the Provider's agent and at one point, the discussion included potential flight cancellation in the context of snow.

It is clear from the conversation that both parties were aware of the impending storm. However, the First Named Complainant did not inform the Provider's agent about his dependence on public transport to get to the airport, and he did not ask whether he would be covered in the event that public transport was not running. None of the queries raised by the First Complainant concerned how he intended to travel to the airport for his departing flight, 3 days later. I do not accept that the Provider's agent acted contrary to the provisions of **Section 60** of the **Financial Services and Pensions Ombudsman Act 2017** in not seeking to elicit such information from the First Complainant or make any such additional enquiries. In my opinion, this was not a query required by the Provider to establish suitability for the product. Rather, it was a matter for the First Complainant to discuss his pending plans to use public transport to travel to the airport, if his trip was likely to be dependent upon that mode of transport. Therefore, I do not accept that the First Complainant was misled during this conversation. Rather, I believe that the Provider's representative answered all of his questions and sought to inform him as best as possible as to how the policy would work.

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The First Complainant collected the relevant policy documentation from the Provider's office on the same day as the telephone conversation and was also furnished with copies of this documentation by letter dated **28 February 2018**. These documents set out the type of cover offered by the policy and the various exclusions and definitions attaching to the policy. Furthermore, I do not accept that the First Complainant was not aware of his right to cancel the policy. In the Provider's letter dated **28 February 2018** the First Complainant was advised to read, amongst other things, his policy schedule and the policy booklet. The relevant parts of these documents which I have set out above, set out the First Complainant's right to cancel the policy, if he wished to do so.

It is unfortunate that although the First Complainant told the Provider that he was intending to travel in 3 days' time and wanted to be covered, he did not however, advert to the particular circumstances which he wished to cover i.e., his requirement to rely upon public transport in order to travel to the airport. This was an entirely separate issue quite apart from any risk that the flight to Europe would be cancelled because of a pending storm.

Accordingly, on the basis of the evidence before me, I take the view that there is no reasonable basis upon which it would be 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**

13 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.