



<u>Decision Ref:</u>	2020-0170
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim – cancellation/delay of transport Complaint handling (Consumer Protection Code)
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a complaint made by the Complainants regarding a claim made on their travel insurance policy.

The Complainants' Case

The Complainants incepted a travel insurance policy with the Provider in or around **5 July 2017**.

On **31 January 2018**, the Complainants attended a meeting with their General Practitioner regarding an MRI scan, which had previously been undergone by the second Complainant. In the course of the meeting, they were "*strongly advised not to fly until 'a mass' that was reported by a radiographer*" was investigated further. The second Complainant attended the Accident & Emergency Department later that day.

The Complainants were due to commence their holiday the following day, on **1 February 2018**. The CT scan was performed on **1 February 2018**. The Complainants did not travel on their original outbound flight.

The results of the CT scan indicated that "*the 'mass' observed on the MRI scan did not exist. It was an unfortunate error in the MRI scan.*" [The second Complainant] *was cleared to travel*".

The Provider states in its letter dated **23 May 2018**, that

"I note you called in on the 1st of February to ask if you would be covered for the new flights and were advised that [the Provider] would only be able to consider a claim for cancellation of the entire holiday."

The Complainants submit in a letter dated 6 February 2019, that

"as it was still the first day of our planned holiday it seemed reasonable to try and get the holiday back on track. Seats were available on our next flight so we could still make the most of our holiday."

The Complainants subsequently purchased replacement outbound flights at a cost of **€496.21**, departing on **2 February 2018**. The Complainants travelled to the holiday destination on 2 February 2018, and the remainder of the Complainants' holiday passed without issue. The Complainants then submitted a claim for the cost of the replacement flights, which was declined by the Provider. The Complainants submitted a formal complaint to the Provider on **17 April 2018**.

The Provider set out in its final response letter dated **23 May 2018** that:

"[T]he cost of taxes and charges is not covered by the policy and you would need to contact [the airline] to request these fees from them. This left a payment of €32.00 for the flights that would have been covered by the policy. According to the hotel website, cancellation less than 48 hours before, would have incurred a cancellation charge of one night's accommodation, which would have been €42.00, making the total claimable €74.00."

The Complainants refer to the Provider's letter dated 23 May 2018 which states "[the Complainants] were originally due to travel [abroad] on the 1st of February to the 6th of February. Due to your wife's illness you were unable to travel [abroad]". In response to this statement the Complainants submit that the *"lack of basic understanding is gobsmacking. Clearly [the second Complainant] was not ill at all."* In a letter to this Office dated 6 February 2019, the first Complainant submits *"the [Provider's Complaint Handler] mishandled my claim and the subsequent complaint from start to finish"*, and *"exclusions or omissions that would always work in favour of the insurer are not fair to policyholders."* The Complainants state that it was *"clear that [the Provider's Complaint Handler] always aimed to process [the Complainants'] claim as a cancellation. Clearly we did not cancel the holiday"*. In an email dated 20 August 2018, the first Complainant submits an extract *"from one rejection that was sent to me"*:

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“Kindly note that the purpose of insurance is to ensure you remain in the same financial position had the event which led to the loss not occurred. If you did not have to cancel your outbound flight, you would have paid and availed of the booked flight with no claim being submitted. However as you did have to cancel that flight and were unable to use it, we have reimbursed you for the cost of same in addition to the unused accommodation. If we were to allow payment towards the replacement ticket purchased, this would result in your having incurred no costs to travel which is not the purpose of insurance.”

In response to the Provider’s statement, the first Complainant submits in an email dated **20 August 2018** that his

“financial position is not the same since the event that led to the loss. [The Complainants] did not cancel the outbound flight. Neither did I seek reimbursement for that flight. If [the Provider’s Complaint handler] did reimburse the cost of the replacement tickets, I would be in the same position as I feel I should be in, not at a financial loss. I never asked for the reimbursement of both flights.”

The Complainants seek for the Provider to pay the cost of the replacement outbound flight tickets, in the sum of **€496.21** incurred by the Complainants. The Complainants submit that the

“rejection of the claim, the appeal thereof, the first investigation and mediation process and now the time consuming formal investigation and adjudication process has already proven to be stressful and time consuming. [The Complainants] request that this be considered if compensation for such is permitted.”

The Complaint for Adjudication

The Complainants’ complaint is that the Provider wrongfully declined their claim for the cost of their replacement outbound flight tickets on 2 February 2018. In addition, the Complainants are unhappy that the Provider mishandled their subsequent customer complaint.

The Provider’s Case

The Provider maintains that it was entitled to reject the claim by reference to the terms and conditions of the policy.

Policy Terms and Conditions

The Provider has identified Sections 9 and 10 of the policy in support of its decision to decline the Complainants’ claim. These sections provide as follows:

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Section 9 – Cancellation or **Curtailment & Trip** Interruption

Cancellation cover applies if **Your Trip** takes place within the **Period of Insurance**, but prior to departing from the Republic of Ireland **You** are forced to cancel **Your** travel plans during **Your Period of Insurance** because of one of the following changes in circumstances which are beyond **Your** control and of which **You** were unaware at the time **You** booked the **Trip** and/or purchased this policy. Please also see the “Travel Delay” cover (Section 11).

Curtailment cover applies if **You** are forced to cut short a **Trip** **You** have commenced because of one of the following changes in circumstances which is beyond **Your** control and **You** were unaware at the time **You** commenced **Your Trip**.

Change in Circumstances

- Unforeseen illness, injury or death of **You** or any person with whom **You** have arranged to travel or stay during the **Trip**, or upon whom **Your Trip** depended.

...

What is covered – Cancellation & Curtailment

- Unforeseen illness, injury or death of **You** or any person with whom **You** have arranged to travel or stay during the **Trip**, or upon whom **Your Trip** depended.

We will reimburse the following amounts per **Insured Person** in total under this Policy for financial loss **You** suffer, being non-refundable deposits and amounts **You** have paid, for travel and accommodation **You** do not use because of your inability to commence travel or complete the **Trip**.

- Up to the amount shown on the Summary of Cover table per **Insured Person** under the age of 80 years at the commencement of the Period of Insurance.
- Up to the amount shown on the Summary of Cover table per **Insured Person** under the age of 80 years at the commencement of the Period of Insurance.

This policy covers travel and accommodation costs and does not cover any course associated with pre-booked excursions, activity entrance fees and tickets or theme park tickets.

...

Trip Interruption cover applies when **You** need to make an unscheduled return journey to the Republic of Ireland during a **Trip** because of...

...

What is not covered in this section

...

- p) Any costs relating to airport taxes, air passenger duty and other surcharges levied by the airline. **You** may be able to obtain a refund from **Your Carrier** for such charges.

...

'Curtailement' is defined in the 'Meaning of Words' section of the policy as follows:

Curtailement: Abandonment of a planned **Trip**, after commencement of the outward journey, by return to **Home** earlier than on the scheduled return date.

Section 10 provides as follows:

Section 10 – Missed Departure

WHAT IS COVERED

If during a **Trip** **You** arrive at the airport, port, train or coach too late to commence the journey as a result of:

- Mechanical breakdown or road traffic event accident involving the car in which **You** are travelling; or
- Cancellation or **Curtailement** of scheduled public transport due to adverse weather conditions, **Strike or Industrial Action** or mechanical breakdown or road traffic accident;
- An accident or breakdown on a motorway or dual carriageway that **You** are travelling on which causes an unexpected delay

We will provide assistance by liaising with the **Carrier** and/or tour operator to advise of **Your** late arrival and, as necessary, **We** will make arrangements for overnight hotel accommodation and alternative international travel.

We will pay for reasonable additional travel and accommodation expenses necessarily incurred to reach the booked destination by the most direct alternative route, up to a maximum under this Policy as shown in the Summary of Cover table for each **Insured Person**, during each **Trip** abroad.

...

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 18 March 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.

In addition to the specific sections of the Policy Terms and Conditions relied upon by the Provider, it is useful to set out one other section of the policy as follows:

Section 11 – Travel Delay

WHAT IS COVERED

- 1) If the departure of any flight, sea crossing, coach or train journey forming part of *Your Trip* and specified on *Your* ticket, is delayed as a direct result of **Strike, Industrial Action**, adverse weather conditions, or mechanical breakdown of aircraft, sea vessel, coach or train:**

- **For more than 12 hours beyond the intended *departure* time:**

*We will pay the amount shown on the Summary of Cover table per **Insured Person** for the first 12 hours *Your* departure is delayed and for each subsequent full 12 hours delay, up to the maximum shown on the Summary of Cover table per **Insured Person per Trip**;*

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Analysis

The Complainants made a claim on their policy with a view to recovering the amount of €496.21 which they had spent on purchasing new outbound flight tickets, in circumstances where they had not availed of their original outbound flight on the basis of medical advice provided to them at the relevant time. The Provider declined the claim for reimbursement of the cost of the new outbound flights. Instead, the Provider processed the claim as a 'cancellation claim' and paid out an amount of €74 in respect of 'cancellation charges' which the Provider maintains is the full amount to which the Complainants are entitled under the policy.

In their Complaint Form to this office, the Complainants maintain that their claim should have been processed as an "*interruption or unavoidable/exceptional delay*" rather than as a "*cancellation*". In separate correspondence it is suggested that the claim should have been processed as a "*missed departure*" or "*missed flight*".

Careful consideration is required of the terms of the Complainants' travel insurance policy in order to determine whether the Provider was lawfully entitled to repudiate the claim and whether, if it was, it has acted reasonably and justly in so acting. Travel insurance policies, like all insurance policies, do not provide cover for every possible eventuality; rather the cover will always be subject to the particular contractual arrangements in place, set out within the terms, conditions, endorsements and exclusions within the policy documentation.

I note that Section 11 of the policy, relating to '**Travel Delay**' does not apply to the Complainants' situation, insofar as this part of the policy is designed to deal solely with delays to the departure of various modes of transport such as airplanes, caused by various stated reasons. In this case, there is no suggestion that the departure of the Complainants' outbound flight was delayed in any way. Rather, the Complainants opted not to avail of the flight, in line with the medical advice which they were in receipt of at the relevant time.

Section 10 of the policy relates to '**Missed Departure**'. This section provides cover only in the event of a missed departure which is attributable to delays from a list of certain specified causes, such as road traffic accidents/breakdowns *en route* to the airport and cancellations of flights. In the event that a missed departure is caused by a reason other than one contained within the list of specified causes, cover is not available. Accordingly, by reference to the terms and conditions of the policy, and notwithstanding the Complainants' assertion that their claim should have considered under this section, I must conclude that the Provider was entitled to decline to consider the Complainants' claim under this section.

This leaves only Section 9 for consideration which relates to '**Cancellation or Curtailment & Trip Interruption**'. In circumstances where the Provider has chosen to admit the claim under the 'Cancellation or Curtailment' element of this section, it is not necessary to analyse whether or not the claim properly falls within this part of the section; this has been conceded by the Provider even though the Complainants' entire trip (their "*travel plans*") was not cancelled in this case.

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The Complainants argue that the claim should have been deemed an 'interruption'; I don't accept this. The claim does not relate to an unscheduled return journey to Ireland, as defined within the policy (set out above).

In circumstances where the Provider has admitted the claim under the cancellation and curtailment part of Section 9, and given that no other section of the policy applies, it falls to this office simply to analyse whether the compensation offered by the Provider, having so admitted the claim, was adequate. Whereas a successful claim under Section 10 of the policy (or indeed under the Trip Interruption subsection) could give rise to a liability on the part of the Provider to cover the cost of replacement flights, no such potential liability is created by Section 9. Rather, Section 9 limits the cover from the policy, in the context of the Complainants' claim, to the costs of their original outbound flights and the cost of unused accommodation.

The Provider has furnished this office with a copy of an airline booking confirmation document in respect of the original outbound flights and a copy of the accommodation bill paid by the Complainants. The airline booking confirmation document, confirms that the original outbound flights cost a total of €139.96 of which €107.96 was described as 'taxes and charges' and €32 was described as 'Admin Fee'. The actual fare appears to have been €0 for each of the Complainants. In respect of the accommodation, the Complainants were charged the amount of €42 for the single night of the accommodation which went unused.

Whilst it is not clear how the Complainants came to purchase flights which had a €0 fare, the fact of the matter is that, of the total cost of the flights of €139.96, €107.96 related to matters that are expressly excluded under Section 9(p) of the policy (set out above). Consequently, and again by reference to the terms and conditions of the policy, the Provider was obliged to provide cover in the amount of €32 plus €42, or a total of €74. This is the figure that the Provider did in fact pay out. Accordingly, by reference to the terms and conditions of the policy, and whilst I empathise with the Complainants, I am drawn to the conclusion that the Provider was entitled to decline the Complainants' claim for reimbursement of the cost of the replacement flights. Simply put, the policy purchased by the Complainants did not provide cover for the cost of purchasing replacement flights, in the event of a medically-compelled delayed departure.

Having had access to the phone recordings made available, I am also satisfied that the correct position was advised to the Complainants, when the first Complainant made contact with the Provider's claims team, on the original scheduled date of departure and in advance of the purchase of the replacement flights:

"We only cover you for the cancellation of the holiday, we don't cover for the re-booking of your holiday. We'll cover you for a cancellation of the holiday and what we cover for the cancellation would be your flight less the taxes, we don't refund on the airline taxes, your accommodation and any pre-booked hire cars, for full cancellation of your holiday."

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Insofar as the Complainants suggest that their claim and complaint was mishandled, I am not satisfied that this has been substantiated. The references on the part of the Provider to the second Complainant's illness were entirely innocent and I believe somewhat understandable, given the Complainants' submission to the Provider of a medical certificate containing reference to "*abnormal findings on brain MRI*" and to "*neurological symptoms + findings*".

Happily, the second Complainant received very good news on the medical front on 1 February 2018, and the Complainants were then able to proceed with their holiday the following day, although it was necessary to incur the cost of alternative flights, which for the reasons outlined above, were not covered by the policy.

In light of the entirety of the foregoing, and in the absence of evidence of wrongdoing by the Provider or conduct within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017** that could ground a finding in favour of the Complainants, I am not in a position to uphold the 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

9 April 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.

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