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| <u>Decision Ref:</u> | 2020-0215 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Rejection of claim - pre-existing condition Disagreement regarding Medical evidence submitted |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

On **30 January 2017**, the Complainants booked a trip to South Asia, with a third party travel agency, and were due to travel on 8 June 2017, returning 23 June 2017. The holiday was fully paid for by the end of March 2017.

On **10 February 2017**, the Complainant's mother attended her GP with a swelling and was referred for MRI and ultrasound.

On **16 April 2017**, the Complainants purchased a travel insurance policy with the Provider.

On **6 June 2017**, the First Complainant cancelled the trip to due to the ill health of her mother and the effect that this had on her own mental health. On the same day, the First Complainant submitted a claim to the Provider.

On **2 October 2017**, the Provider declined the claim on two bases: firstly, that a claim based on mental health issues had to be substantiated with a relevant consultant's opinion and, secondly, that the First Complainant's mother had been receiving treatment for a tumour and was under medical investigation, at the time the policy was purchased in April 2017.

The Provider pointed out that the policy excludes cover where cancellation of a trip is due to the medical condition of a relative and where investigations for that condition are ongoing at the time of policy inception. Subsequent correspondence was exchanged between the parties, which culminated in the Provider standing over its decision to decline the claim.

The Complainants' Case

The Complainants' case is set out in the letters submitted in the course of this investigation and in the documentary evidence that has been submitted with it.

The First Complainant asserts that the diagnosis of her mother with cancer in **April 2017**, caused her great stress and shock, which got worse as the holiday drew nearer. The First Complainant refers to a GP note dated **6 June 2017**, which states that she has been examined and that, in her GP's opinion, she was unfit to work from **6 June 2017** to **6 July 2017** due to anxiety caused by her mother's terminal illness.

The First Complainant says that this justified her cancelling the trip as she was not able to travel due to the stress. The First Complainant states that she took out the travel insurance in good faith, and that she has travelled for many years and never made a travel insurance claim before. In relation to the requirement for a specialist consultant opinion, the First Complainant notes that she does not have private health insurance and that this made that requirement difficult to meet.

The Complainants seek reimbursement for the cost of the trip, which was cancelled.

The Provider's Case

Firstly, the Provider asserts that it has legitimately declined the Complainants' claim. The Provider refers to two conditions of the travel insurance policy that justify the declination. One such condition requires any claim based on the mental health of a claimant, to be substantiated by the opinion of a consultant specialising in the relevant field. The Provider says that only a GP's report was submitted in support of the claim, not a psychiatrist's report, as required by the policy.

Another such condition excludes cover when the claim arises from the critical illness of a relative who was undergoing investigation for that critical illness, at the time when the policy was purchased. The Provider notes from the First Complainant's mother's medical records, that she was undergoing investigation and treatment for her illness at the time when the policy was incepted.

In **February 2017**, the First Complainant's mother attended her GP with neck swelling and was referred for an MRI. In **March 2017**, she underwent an MRI that showed lymphadenopathy with parapharyngeal lesion, which on examination revealed a tonsillar tumour with a differential diagnosis of primary tonsillar squamous cell carcinoma vs lymphoma. By letter dated **7 April 2017**, the Complainant's mother's Consultant advised that further investigations were warranted and it was after that, on **16 April 2017**, that the travel insurance policy was purchased. The Provider, therefore, asserts that this situation is covered by the conditions of the policy excluding cover, as investigations were ongoing at the time when cover came into place.

In relation to the reasonableness of how the Provider conveyed information to the Complainants, the Provider has furnished screenshots that set out the online process that a customer goes through when incepting a policy. The Provider notes that when a customer accesses the online quote section, there is a reference to '*Insurance Product Information Document*'. If a customer clicks this section, then a reference is made to certain exclusions under the policy, one of which is the critical illness exclusion when a relative is undergoing investigations when the policy is incepted.

Additionally, when the customer proceeds to purchase the insurance, the Provider says that the purchaser must tick a box in order to confirm that he or she is satisfied with the Important Conditions relating to health, and the exclusions. The purchaser is also advised that for their benefit and protection they should read the "*Terms of Business and Schedule of Fees and Charges*". Any purchaser is required to tick another box confirming that they are satisfied with these.

The Provider points to the Exclusions which are set out to the purchaser who is alerted to the fact that:

"It is a condition of this policy that you will not be covered for any claims arising directly or indirectly from;

At the time of taking out this policy or at the time of booking the trip;

- *Any medical condition for which you or a close relative or a travelling companion are aware of but have not had a diagnosis.*
- *Any medical condition for which you or a close relative or a travelling companion have received a terminal prognosis.*
- *Any medical condition for which you or a close relative or a travelling companion are on a waiting list for or have the knowledge of the need for surgery, treatment or investigation at a hospital, clinic or nursing home."*

The Provider asserts that it validly declined the claim in accordance with the terms of the policy.

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainants' travel insurance claim.

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 **28 May 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.

Policy Terms and Conditions

The "**Important Conditions relating to Health**" are set out at Page 4 of the policy. One sub-heading specifies as follows:

'Exclusions that apply if a Close Relative or Travelling Companion has Medical Conditions:

If any of the below exclusions apply to Your Close Relative(s) or Travel Companion(s) at the time of taking out this policy or at the time of booking the trip, You will not be covered under Section A – Cancellation or Curtailment Charges, Section B – Emergency Medical and Other Expenses, Section C – Hospital Benefit, Section D – Personal Accident and Section X3 – Green Fees for any claims arising directly or indirectly:

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- (i) *Any Medical Condition for which a Close Relative or Travelling Companion have received a terminal prognosis*
- (ii) *Any Medical Condition for which a Close Relative or Travelling Companion are receiving or on a waiting list or have the knowledge of the need for surgery, treatment or investigation at a hospital, clinic or nursing home.*
- (iii) *Any Medical Condition for which a close relative or a travelling companion are aware of but for which they have not had a diagnosis'.*

In addition, at Page 7 under the heading “**Section A: Cancellation or Curtailment Charges**” the following is specified:-

‘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 (in the case of stress, anxiety, depression or any other mental or nervous disorder a consultant specialising in the relevant field) to cancel a trip prior to the cancellation of that trip.’

In respect of the condition governing a claim arising from the critical illness of a relative, I note that the following facts are relevant, as revealed by the First Complainant’s mother’s medical records. In **February 2017**, the First Complainant’s mother attended her GP with neck swelling and was referred for an MRI. In **March 2017**, she underwent an MRI that showed lymphadenopathy with parapharyngeal lesion, which on examination revealed a tonsillar tumour with a differential diagnosis of primary tonsillar squamous cell carcinoma vs lymphoma. By letter dated 7 April 2017, her consultant advised that further investigations were warranted. On **16 April 2017**, the travel insurance policy was inceptioned.

I am satisfied that it is clear from this medical history that the First Complainant’s mother was receiving treatment and undergoing further investigations when the travel policy came into existence on **16 April 2017**. While she may not have received a firm diagnosis by that date, the terms of the policy do not require that to be the case. On that basis, the wording of the exclusion applies and the Provider was entitled to decline the claim on that basis.

In respect of the other condition, I note that the medical report submitted by the First Complainant was from her GP. The First Complainant’s asserted basis for cancellation of the trip was due to the stress and anxiety caused by her mother’s declining health. This is a cancellation based upon *‘stress, anxiety, depression or any other mental or nervous disorder’* as set out in the policy.

I take the view that in those circumstances, the First Complainant was obliged to furnish a consultant’s report substantiating the illness she had asserted. As she did not do so, the wording of the exclusion applies and the Provider was permitted to decline the claim on that basis also. It is notable that the Provider accepts that it may have waived this requirement in different circumstances, but given the fact that the First Complainant’s mother had been receiving treatments and investigations at the time of policy inception, any waiver of this condition would not change the outcome of the claim.

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In all of the circumstances, on the basis of the evidence before me, I am satisfied that the Provider was entitled to decline the claim in accordance with the terms of the policy.

While this is undoubtedly not the result that the Complainants sought, it is important to note that there is no suggestion that the First Complainant was not suffering from stress and anxiety which caused her to cancel the planned trip, at what was a very difficult time. The Provider indeed acknowledges that the ill health of the First Complainant's mother would have caused significant stress at the material time.

In this instance however, the policy was put in place by the First Complainant at a time when her mother was already undergoing medical investigations for a health issue. Consequently, the policy incepted at that time did not offer cover for these circumstances which were already in existence. Accordingly, there is no reasonable basis upon which it would be appropriate to uphold this complaint.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

23 June 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.