



<b><u>Decision Ref:</u></b>	2020-0234
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The Complainants renewed a travel insurance policy with the Provider on **1 September 2017**.

#### **The Complainants' Case**

The Complainants were scheduled to travel from Dublin to a European destination on **14 May 2018** for a week. They cancelled this trip, following the death of the Second Complainant's [relative] in the UK on [date] 2018.

The Complainants completed a Cancellation Claim Form to the Provider on **13 June 2018** but the Provider has yet to complete its assessment of the travel insurance claim.

In this regard, the Complainants set out their complaint, as follows:

*"[The Second Complainant's] [relative]...was diagnosed with [named] Cancer in June 2015. She passed away [on date]. In June 2017 her family met with her medical team to be advised that her death was imminent, weeks away, not months. We travelled to... in November 2017 to say our 'goodbyes'.*

*In January 2018 we booked our holiday to travel 14<sup>th</sup> May, by which time we did not expect [our relative] to be still with us. [Relative redacted] had the task of returning to the Hospice on two occasions to have the Medical Form provided by [the Provider] completed and signed. This had a most appalling effect on him. [The Provider] insisted that we get a letter stating [our relative] was "stable" when we booked the holiday, this was an impossible task.*

*We have been with this insurance company for decades and never made a claim. They insisted that all communication be made by email over phone, they don't have customers 'calling' in!"*

In an email to this Office at 21:36 on 16 March 2020, the Complainants submit, as follows:

*"I am at a loss to know what else I can do or provide in my insurance claim. I feel that information regarding [the Second Complainant's] [relative]'s condition and treatment before her death is outside realm".*

In addition, in the letter attached to this email, the First Complainant submits, as follows:

*"My dispute is with [the Provider] since I did pay the cost of our policy to them as requested [by the Provider] at each renewal date of our travel insurance policy. This was to protect ourselves and our family from any unforeseen problems that might occur to disrupt the holiday plan or problems during the holiday period.*

*Following [the Second Complainant's] [relative]'s death and cancellation of the planned holiday...we supplied, as instructed, to the best of our ability, all information we could under difficult circumstances. This included the original Death Certificate, hand delivered to [the Provider's] agent...We also supplied details of [the Second Complainant's late relative's] medication as instructed. The amount of information required was extensive and unreasonable.*

*We were not aware of any reason why we should not take our holiday at the time we booked with the travel agent".*

The Complainants seek for the Provider to admit the travel insurance claim in the amount of €1,046.40 (cost of holiday €1,308, less the €261.60 returned by the travel agency).

The complaint is that the Provider wrongly or unfairly failed to admit the Complainants' travel insurance claim for payment of benefit.

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

Provider records indicate that the Second Complainant telephoned the Provider at 17:26 on 8 May 2018 to advise that the Complainants had been scheduled to travel from Dublin to a [European destination] on 14 May 2018 but had to cancel this trip as her [relative] had died in the UK. The Second Complainant advised that her late [relative] had cancer but was stable with no immediate chance of her dying when they booked the trip on 25 January 2018.

The Complainants subsequently completed a Cancellation Claim Form on 13 June 2018. The Medical Declaration section of this Form had been completed by Dr Z., on **6 June 2018**, confirming that the deceased had a cancer diagnosis in June 2014, a further cancer diagnosis in October 2015 and chemotherapy treatment in April 2016. This Declaration also indicated that the deceased had been on medication, advising to "see list", and that she had a hospital admission in May 2017, advising to "see copy of letter 28/9/15".

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Following a review of the Claim Form, a Claims Assessor emailed the Complainants on **5 July 2018** asking for a copy of the list of medication and the letter dated 28 September 2015 referred to.

The Claims Assessor made a follow-up telephone call on **6 July 2018** during which the Second Complainant outlined her difficulties in obtaining the documents requested, resulting in the Claims Assessor referring the claim documentation received to date, to management for review. Following this, the Claims Assessor telephoned the Second Complainant on **16 July 2018** to advise that the Provider did need more information to substantiate the health of her late [relative] at the time of booking the holiday. A formal complaint was logged.

The Provider has not formally declined the Complainants' travel insurance claim. Rather the claim has been pended, awaiting relevant medical information that would indicate that the deceased had been in a stable medical condition at the time the Complainants booked the holiday and thus that the death was unforeseen. In this regard, the travel insurance policy terms and conditions stipulate that a policyholder must be unaware of the circumstances that give rise to the claim, at the time when the trip is booked.

The Provider now notes from the complaint documents furnished as part of this complaints process, that the Complainants were of the understanding in June 2017 that the Second Complainant's [relative]'s death "*was imminent*" and that they had travelled to the UK "*to say our 'goodbyes'*" in November 2017. This disclosure indicates that in 2017 the Complainants were aware of a terminal diagnosis, before booking the trip in January 2018.

In this regard, the Provider submits that to book a trip in the midst of uncertain circumstances, creates an unreasonable risk to the insurer. However, if the deceased's terminal prognosis had been for a long period, for example, one year, but if she then passed away earlier, the Provider could possibly be sympathetic. It is for this reason that the Provider requested additional documentation in its email of 5 July 2018, to substantiate the prognosis and state of health of the deceased, at the time when the Complainants booked the trip to determine whether the death was unforeseen.

The Provider says that it never asked the Second Complainant for her brother to attend the hospice to have the Medical Declaration completed, nor did it ask for him to return there for further information. Indeed, during the initial telephone call on 8 May 2018, the Second Complainant was asked to have the Medical Declaration completed by her late [relative]'s GP. The Provider is unsure why then the Second Complainant's brother chose to attend the hospice and not the GP.

In addition, on review of the telephone call recordings, the Provider notes that the reason he returned to the hospice the second time was attributed to the fact that the form could not be completed on his first visit, a factor completely out of the Provider's control.

In relation to the Complainants' comments that the Provider insisted that all communication be made by email or telephone as "*they don't have customers 'calling' in*", the Provider says that it is a claims handling company and in general it is not a customer facing office. Nevertheless, the Provider has seen no evidence of any insistence on the type of communication expected of the Complainants.

The Provider says that in fact, the Second Complainant asked in her telephone call on 18 June 2018 if she could drive to the Provider's office to hand in a copy of the death certificate. The Provider facilitated this request and accepted the documentation by hand on **22 June 2018**, when it scanned it to the claim file and then handed it back to the Second Complainant.

### **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 19 June 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 complaint at hand is that the Provider wrongly or unfairly declined the Complainants' travel insurance claim.

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In this regard, the Complainants were scheduled to travel from Dublin to a European destination on 14 May 2018 for a week but they cancelled the trip, following the death of Second Complainant's [relative] in the UK on [date] 2018.

The Complainants completed a Cancellation Claim Form to the Provider on 13 June 2018. The Provider has yet to complete its assessment of the travel insurance claim, advising that the claim has instead been pended, awaiting relevant medical information that would indicate that the deceased had been in a stable medical condition, at the time the Complainants booked the trip and thus that the death was unforeseen.

In this regard, in an email to this Office at 21:36 on 16 March 2020, the Complainants submit, as follows:

*"I am at a loss to know what else I can do or provide in my insurance claim. I feel that information regarding [the Second Complainant's] [relative]'s condition and treatment before her death is outside realm".*

I note that the Medical Declaration section of the Claim Form was completed by Dr Z., on **6 June 2018**, as follows:

***"State the specific medical condition which resulted in this claim***  
*Patient died on [date in 2018] ...*

***Date of diagnosis***

*June 14 – [named] cancer  
October 15 – metastases ...  
Patient died in hospice [date in 2018] ...*

***Has the patient been treated for this or any related conditions?***

*Pt. was diagnosed with [named] cancer June 14 and was treated with chemoradiotherapy & surgery October 15, diagnosed with lung metastases treated with chemo April 16 ...*

***Was the patient on any medication?***

*Yes*

***If YES, advise medication***

*See List ...*

***Has the patient been hospitalised in the 12-months prior to the booking of the trip?***

*Admitted May 17 ... see copy of letter 28/9/15".*

I note that neither the medication list nor the letter dated 28 September 2015 referred to by the doctor, were included with the Claim Form. As a result, the Provider emailed the Complainants on **5 July 2018**, as follows:

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*“The medical declaration completed by the [deceased’s] GP advised to see copy of letter dated 28/09/2015 also see list of medication unfortunately they are not attached to the documents submitted to our office. Please submit this documentation also we require GP to advise [the deceased] was in a stable condition at the time of booking your trip in January 2018”.*

Having listened to the recording of the telephone call the Provider made to the Second Complainant on **6 July 2018**, I am satisfied that the Agent clearly explained why this information was needed, in order to progress the claim assessment, as follows:

*“Because the Medical Declaration had extra on it, it says, like, there was medication and it says see attached list, and then it said there’s also a letter and other documents and see attached, but there was none of them with the Medical Declaration ...*

*Is it possible to get a letter from the GP or the hospice to advise your [relative] was in a stable condition when you booked your trip in January? ...*

*We can consider your claim, but we would have to have a letter confirming that she was stable at least, at the time of booking your trip ...*

*This would, you know, confirm then that that’s ok, we note she has been ill but it’s just that at the time of booking the trip that she would have been, like, ok, that you wouldn’t be aware that she was going to pass away at that stage”.*

There is no evidence before me indicating that the Complainants have furnished the Provider with the information requested in its email of 5 July 2018, namely, both the medication list and the letter dated 28 September 2015 that the deceased’s doctor referred to in the Medical Declaration section of the Claim Form completed.

The ‘**General Conditions Applying To All Sections**’ of the applicable Travel Insurance Policy – Terms and Conditions document provides, amongst other things, at pg. 42, as follows:

*“21. ... You must supply Us with a written statement substantiating Your claim, together with (at Your own expense) all certificates, information, evidence, and receipts that We reasonably require”.*

I am satisfied that it was reasonable for the Provider, based on the information made available to it at that time, to seek the documentation it requested in its email of 5 July 2018. Such documentation would help substantiate the prognosis and state of health of the Second Complainant’s [relative] at the time the Complainants booked the trip, and thereby help to determine whether the death was unforeseen, which in turn would help to establish whether the Complainants had a valid travel insurance claim to be admitted for payment.

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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. In this regard, Section 9, '**Cancellation or Curtailment & Trip Interruption**', of the applicable Travel Insurance Policy – Terms and Conditions document provides at pg. 22, as follows:

*“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 ...*

**Changes 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.*
- *The death, imminent demise, or hospitalisation due to serious accident or unforeseen illness, of Your Close Relative or the Close Relative of any person upon whom Your Trip depends”.*

In this regard, in order for there to be a valid cancellation claim, it is not sufficient for the policyholder to simply furnish the Provider with the death certificate confirming the death of the deceased that gave rise to the cancellation of the trip. Rather the policyholder must also provide evidence that the death was “unforeseen”, and not imminent at the time when they booked the trip. As with all insurance claims, the onus is on the policyholder to furnish the insurer with the necessary proof to validate the claim.

I note that the Complainants have since advised in the Complaint Form they completed for this office, as follows:

*“[The Second Complainant’s] [relative]...was diagnosed with [named] Cancer in June 2015. She passed away [date in] 2018. In June 2017 her family met with her medical team to be advised that her death was imminent, weeks away, not months. We travelled to...[the UK] in November 2017 to say our ‘goodbyes’.*

*In January 2018 we booked our holiday to travel 14<sup>th</sup> May, by which time we did not expect [our relative] to be still with us”.*

Given that they were of the understanding in June 2017 that the Second Complainant’s [relative]’s death “was imminent” and that they had travelled to the UK “to say our ‘goodbyes’” in November 2017, it is unclear whether the missing medical information awaited by the Provider, will confirm that the Complainants’ relative’s health in January 2018, was stable.

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The Complainants appear to have been aware of a terminal diagnosis before booking the trip in January 2018. In this regard, the terms and conditions of the Complainants' travel insurance policy clearly excludes cover in circumstances where the policyholder was aware at the time of booking the trip of the

*"imminent demise, or hospitalisation due to...unforeseen illness of Your Close Relative."*

As a result, in the continued absence of the documentation that it requested in its email to the Complainants on 5 July 2018, I am of the opinion that it was appropriate for the Provider to place the claim assessment on hold, pending receipt of the missing information referred to by the deceased's treating doctor.

I note that the Complainants submit in the Complaint Form that the Second Complainant's brother

*"had the task of returning to the Hospice on two occasions to have the Medical Form provided by [the Provider] completed and signed."*

However, having listened to the recording of the telephone calls before me, I note that when the Second Complainant first telephoned the Provider at 17:26 on 8 May 2018, to notify it that the Complainants had cancelled the trip due to the death of their [relative], the Agent stated that she would post out a claim form and that

*"the medical section needs to be completed by your late [relative]'s usual GP."*

In this regard, I am satisfied that the Provider did not advise the Second Complainant that the medical declaration section of the claim form had to be completed by the hospice where the deceased had died. Rather, it was made clear that it could be completed by the deceased's GP.

In addition, the Complainants also submit in the Complaint Form that the Provider

*"insisted that all communication be made by email or phone, they don't have customers 'calling' in!"*

In this regard, I have listened to the recording of the telephone call the Second Complainant made to the Provider on 18 June 2018 when she advised that she only had access to the original death certificate for the few days [owing to particular circumstances] and asked could she call to the Provider's offices with the death certificate that Friday. I note that the Agent stated,

*"Yes, you could do that. What we'll do is, if you call in, we'll take a photocopy of it and then give it back to you there and then."*



I note that the Second Complainant then called to the Provider's offices on 22 June 2018 with the original death certificate, which the Provider scanned to the claim file and then handed back to the Second Complainant. In this regard, I am satisfied that it is reasonable that the Provider would require sight of an original Death Certificate as part of its assessment of any claim that arises from a death. I note that the Provider facilitated the Second Complainant, in making that death certificate available in a way which did not delay the return of the original to the family.

Insofar as the complaint against the Provider is concerned however, that is the Provider's conduct in declining to admit the Complainants' claim for payment of benefit and instead placing the assessment of the claim on hold, pending receipt of further medical documentation as outlined in the details above, I am satisfied that the Provider did not act wrongfully in that regard.

Rather I am satisfied that the Provider was entitled to seek sight of the details referred to by the deceased's treating doctor, so that it could take those details into account when deciding whether or not the claim could be admitted for payment.

Accordingly, on the basis of the evidence before me, it is my Decision that this complaint cannot reasonably be upheld.

### **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**

13 July 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—

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- (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.**

