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| <b><u>Decision Ref:</u></b>             | 2020-0367                         |
| <b><u>Sector:</u></b>                   | Insurance                         |
| <b><u>Product / Service:</u></b>        | Travel                            |
| <b><u>Conduct(s) complained of:</u></b> | Rejection of claim - cancellation |
| <b><u>Outcome:</u></b>                  | Partially upheld                  |

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

This complaint relates to a travel insurance policy held by the Complainants which they purchased on **14 September 2018** from another financial service provider, which is tied to the Provider for multitrip travel insurance business.

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

The Complainants state that in **July 2018** they booked a Caribbean holiday for their honeymoon. The Complainants submit that at the time of booking, the travel agent provided no information to them in relation to any potential health risks associated with travelling to the Caribbean.

The Complainants state that they visited their GP on **14 September 2018** and found out that they were expecting a child. They also submit that their GP, at this stage had not provided them any details of risks to pregnancy in relation to travel.

The Complainants stated that on Monday **17 September 2018** they incepted their travel insurance for the honeymoon and submit that the Provider's tied agent '*went through high-level terms and conditions*'. The Complainants state that the Provider's tied agent advised them that they were covered for pre-existing conditions. The Complainants also state that they informed the Provider's tied agent that the First Complainant was pregnant. They submit that the Provider's tied agent advised that the only scenario wherein they would not receive pregnancy related cover would be if she was in the last trimester but otherwise any complications with pregnancy would be covered.

The Complainants state that on Monday **24 September 2018**, they became aware of the presence of the Zika virus in the Caribbean. The Complainants state that when they became aware of this, it was too late to contact their GP and they therefore availed of the Provider's 24 hour nursing helpline to seek advice on what to do. The Complainants submit that the nurse was unaware that the Zika virus was an issue in the Caribbean and she advised the Complainants to seek information online and also that they should contact the Tropical Medical Bureau as well as their GP.

The Complainants state they consulted with their GP on Tuesday **25 September 2018**, and they were advised not to travel to the Caribbean given the obvious associated risks to pregnancy. The Complainants state that upon receipt of this advice they contacted the Provider to advise the cancellation of their honeymoon. The Complainants submit that the Provider stated, *'...provided that your pregnancy was not confirmed at the time of the booking, then you will be eligible to claim for the cancellation'*. The Complainants submit that they informed the Provider, the official reason they decided to cancel their trip was due to the risks that the Zika virus has on pregnancy. The Complainants submit that the Provider stated *'if you discover that you are pregnant after the trip is booked, you will be eligible to claim'*. The Complainants state that their GP confirmed that this was the case.

The Complainants state that their claim was later denied by the Provider and they contend that:

*'We have not been quoted a specific area of [The Provider's] terms and conditions that directly relates to the reason our claim has been denied'*.

The Complainants state that the Provider denied their claim because they booked their travel insurance after they found out they were pregnant. The Complainants also state that on **29 November 2018** the Provider stated to them that the Zika virus was in the public domain and they should have known this at the time of booking.

The Complainants contend that their claim should be payable under the cancellation and curtailment section within the policy terms and conditions. The Complainants contend that they had no prior knowledge of the presence of the Zika virus in the Caribbean when booking their honeymoon and they were medically advised not to travel to this destination, due to circumstances out of their control, namely the presence of the Zika virus in the region and its likely effect on the pregnancy.

The Complainants also submitted advice issued by the Health Service Executive (HSE) in relation to the Zika virus which stated:

*'1. Anyone who may become pregnant within 6 months following travel to an affected area should consider postponing their trip.*

*2. What is the current travel advice for women who are pregnant or trying to become pregnant?*

*You should consider postponing your travel to affected areas'*.

The Complainants also contend that the Provider's refusal of the claim, was on the basis that the Zika virus was in the public domain. They submit:

*'When we rang the [Provider's] maternity line to ask for advice given that we had just become aware of the potential risk, their own midwife (specialist on all matters) did not know of its presence and therefore referred us to our GP for separate advice'.*

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

The Provider issued a Final Response Letter dated **6 December 2018** and outlined its understanding of the timeline of events. The Provider states that the Complainants booked their honeymoon on the **4 July 2018**, found out about their pregnancy on **14 September 2018** and purchased their travel insurance with the Provider on the **17 September 2018**. The Provider also stated that it was aware that the Complainants contacted the [Provider's] nurse-line for advice regarding the Zika virus at 20.49 on the **24 September 2018**. The Provider also states, *'Your completed claim form indicates the GP confirmed the cancellation was recommended on the 20 October 2018'.*

The Provider, referring to cancellation of the Complainants' claim, states:

*'Under the terms and conditions of your policy you are not covered for claims arising for cancellation due to an incident which takes place prior to the commencement date of your travel insurance. Given your pregnancy was confirmed prior to the purchase of the policy the pregnancy does not change the cover under the policy. However in this incidence the Zika virus is only a concern if you are pregnant at the time of travel. Therefore the insurance risk is in existence before the purchase of the policy'.*

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully declined the Complainants' claim on their travel insurance policy. The Complainants seek reimbursement for the financial loss suffered as a result of having to cancel the trip.

### **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.

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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 **24 September 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.

#### **Chronology of Events**

- **26 July 2018:** The Complainants booked a holiday to the Caribbean for their honeymoon.
- **14 September 2018:** The Complainants found out they were expecting a child.
- **17 September 2018:** The Complainants incepted their travel insurance.
- **24 September 2018:** The Complainants became aware of the presence of the Zika virus in the Caribbean.
- **25 September 2018:** The Complainants notified the Provider and the Claim Form was issued.
- **1 November 2018:** The Provider received the completed Claim Form.
- **9 November 2018:** The Complainants claim was assessed by the Provider. The Provider contacted the Complainants and informed them verbally that their claim was declined.
- **9 November 2018:** The Complainants formally lodged a complaint with the Provider.
- **15 November 2018:** The Provider acknowledges the complaint.
- **19 November 2018:** The Provider discussed the complaint with the Complainants.

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- **29 November 2018:** The Provider discussed the appeal of the claim with the Complainants.
- **3 December 2018:** The First Complainant told the Provider that they had contacted the Provider's Nurse on the 24 September 2018.
- **4 December 2018:** The Formal Declinature Letter was issued for the claim.
- **6 December 2018:** The Provider sent its Final Response Letter to the Complainants and the complaint was closed.
- **12 February 2019:** The Complainants made a subject access request to the Provider.

### Policy Terms and Conditions

#### **Section 9 – Cancellation or Curtailment and Trip Interruption**

Page 22 of the Terms and Conditions states that:

*'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...*

*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 commence Your Trip.*

#### *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.*
- *Your abandoning Your Trip following the cancellation of or a delay of more than 12 hours in the departure of Your First outward international flight, sea-crossing or coach or train journey from Your Home country, forming part of the Trip's itinerary. This must be as a direct result of Strike or Industrial Action (of which You were unaware at the time You either booked the Trip or purchased this policy, whichever is the latter), adverse weather conditions, or the mechanical breakdown of, or accident involving, the aircraft, sea vessel, coach or train.*

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- *Your first outward international flight, sea-crossing or international coach or train journey, from Your Home Country, forming part of the Trip's itinerary, having been cancelled and no suitable alternative having been provided within 12 hours of the booked departure time. The cancellation must be as a result of Strike or Industrial Action (of which You were unaware at the time You made travel arrangements for the Trip), adverse weather conditions, or the mechanical breakdown of, or accident involving, the aircraft, sea vessel, coach or train.*
- *You or any person with whom You plan to travel being called up for jury service or being subpoenaed as a witness in a court of law (other than in a professional or advisory capacity).*
- *If You are made redundant and You qualify for redundancy payment under current legislation.*
- *A government directive prohibiting all travel to, or recommending evacuation from the country or area You were planning to visit or were staying in, as a result of natural disasters (such as earthquakes, fires, floods, hurricanes) or epidemic(s).*
- *Accidental damage, burglary, flooding or fire affecting Your Home, occurring during the Trip or within 48 hours before You depart, when the loss relating to Your Home is in excess of €2000 or when Your presence is required by the police in connection with such events.*
- *Your compulsory quarantine.*
- *If, following the commencement of Your Trip, You are unable to continue Your Trip, as detailed in Your itinerary, due to the loss or theft of Your passport, or that of any person You are travelling with'.*

On page 2 of the Terms and Conditions the start date of the Travel Insurance is defined as:

*'Your cover starts for all benefits from the Commencement Date of Your policy as shown in Your period of cover on Your policy certificate. There are no waiting periods. Cancellation cover only applies from the Commencement Date of Your policy'.*

I note that the Complainants booked their honeymoon in **July 2018**. They say that they received confirmation that the First Complainant was pregnant on **14 September 2018**. The Complainants purchased a travel insurance policy on **17 September 2018** and cancelled their trip on the **25 September 2018**. The Complainants' period of cover, as per the Policy Certificate was from the **17 September 2018** to **16 September 2019**.

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I note from the documentary evidence before me, that the policy terms and conditions state under 'Cancellation or Curtailment & Trip Interruption' that:

*'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...**'*

It is clear that the Complainants were aware of the pregnancy when they incepted the travel insurance policy on **17 September 2018**.

In the Declinature Letter to the Complainant on the **4 December 2018**, the Provider notes the following:

*"We note from your claim form and supporting documentation that your travel insurance did not commence until the 17/09/2018. The medical declaration submitted with your claim forms confirms that your pregnancy was confirmed on 14/09/2018 ....Therefore your travel policy was not effective at the time you became aware of the need to cancel the trip".*

The Provider states in its submissions that:

*'We are empathetic towards Zika claims but not empathetic to a policy of insurance being purchased after the insured event is present. In this case the Complainant was pregnant before the purchase of the policy. The pregnancy does not change the cover under the policy. However, in this incidence the Zika virus is only a concern if you are pregnant at the time of travel. Therefore, the insurance risk is in existence before the policy was purchased'.*

I note that the terms and conditions of the policy are clear in stating that:

*'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...**'*

It is clear from the terms and conditions of this policy, and the submissions made by the Provider, that if the Complainants were aware at the time they booked the trip and/or purchased this policy that the First Complainant was pregnant, they would not be covered for pregnancy related cancellation under the terms and conditions of the policy because their risk was in existence prior to the Complainants' purchase of the policy. I accept that the Provider was entitled to decline the claim on this basis.

In analysing this claim under the Consumer Protection Code, 2012, I have a concern regarding the information provided to the Complainants when they telephoned the Provider's tied-agent on **17 September 2018** and I note the following details of the conversation:

*"1:21 – Sales Agent – You are also covered for pre-existing conditions*

*.....*

*1:35 – [First Complainant] – I just recently found out I am pregnant, do I need to tell you anything specifically?*

*1:43 – Sales Agent – Congratulations by the way. The only thing you wouldn't be covered for is in your last trimester.*

*1:46: [First Complainant] OK.*

*1:47 – Sales Agent – Ok. So you are completely fine there.....any complications with pregnancy will be covered".*

Furthermore, the Complainants called the Provider on **25 September 2018**, and note the following:

*"1:44 – Sales Agent – So the condition is that in relation to cancellation due to pregnancy and the Zika Virus, provided that your pregnancy was not confirmed at the time of booking, then you will be eligible to claim for cancellation.*

*2:00- [First Complainant] – Perfect, ok.*

*2:03 – Sales Agent – So if you discover that you are pregnant after the trip is booked, you will be eligible to claim."*

The Provider in its submissions to this Office has stated:

*"The purpose and role of the advisor is to capture as much information as possible to register the claim. In registering the claim ... any advice provided is not a validation that the claim will be successful, and all claims would be subject to an assessment under the terms and conditions and level of cover on the policy."*

When the Complainants contacted the Provider's tied-agent on **17 September 2018**, the agent confirmed to them that they were covered for a pre-existing condition. The Provider's agent also informed the Complainants that the only thing they would not be covered for is the last trimester of the pregnancy.

I also note that on a call between the Complainants and the Provider on **25 September 2018**, the Provider informed the Complainants that they would be covered *"provided that your pregnancy was not confirmed at the time of booking"*.

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I am satisfied that this information was not in fact in alignment with the policy terms and conditions which state that you will be covered if ***“You were unaware at the time You booked the Trip and/or purchased this policy”***. The Complainants were aware that the First Complainant was pregnant at the time of purchasing the policy, but based on the evidence provided to this Office, they were not aware at the time they booked the trip.

Furthermore, the Provider’s tied-agent confirmed to the Complainants during a telephone conversation on **17 September 2018**, when the policy was sold that they would be covered for a pre-existing condition. This clearly contradicts the policy wording which states that the Complainants will only be covered, provided that they were unaware at the time they purchased the policy, of any pre-existing conditions. I am therefore of the view that the Provider has a case to answer to the Complainants, arising from the incorrect information made available to the Complainants at the time the policy was sold; the information provided by the Provider’s tied-agent was not clear and accurate and in fact contradicted the policy terms and conditions.

Having regard to the particular circumstances of this complaint, and in particular the failings of the Provider that have been noted above, I consider it appropriate to partially uphold this complaint and to direct the Provider to make a compensatory payment of €700.00 to the Complainants, in order to conclude.

### **Conclusion**

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(g)***.
- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €700, to an account of the Complainants’ choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with ***Section 60(8)(b)*** 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**

20 October 2020

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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.

