



<b><u>Decision Ref:</u></b>	2021-0003
<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>	Rejected

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

The First Complainant holds an annual travel insurance policy with the Provider. His partner, the Second Complainant, and daughter are listed as insured persons on the policy.

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

The First Complainant, the policyholder, and his partner and daughter were due to holiday abroad from 22 June to 6 July 2019, however they cancelled this trip and submitted a claim to the Provider as the Second Complainant had *“to undergo surgery on the 22-5-19 and as a result cannot fly for up to 6 weeks after surgery”*.

Following its assessment, the Provider declined this claim by way of correspondence dated **17 June 2019** as it concluded that the circumstances giving rise to the cancellation were not unforeseen and therefore such circumstances were not covered by the terms and conditions of the First Complainant's travel insurance policy.

In this regard, in her letter to this Office dated **23 July 2019**, the Second Complainant submitted as follows:

*“We booked the holiday on 30/12/18 and I had on 21/12/18 attended [hospital] with severe pain which I was advised in A & E was most probably gallstones. I did not know at this stage that any surgery would be carried out, I was told I would receive a referral letter to a consultant in due course who would arrange to have tests carried out.*

*I received a letter for an appointment in February 2019...and they advised after carrying out a scan that they would put me on list to be assessed but could not give me a time or date of when this would happen or even if surgery would be required. I unfortunately suffered severe pain in my back and crippling vomiting on the 22<sup>nd</sup> of April and was advised by GP on call to present to A & E, which I did. I ended up having a 9 day stay in [hospital]...and was told I had a severe gallbladder infection and was then at this stage only advised that I would need to have surgery once the infection had subsided. I was discharged on the 1<sup>st</sup> of May 2019 and over the following days I received a phone call from [hospital] to advise that I had been scheduled to have surgery to remove me gallbladder on the 22/05/2019.*

*[The Provider] seem to be of the opinion that I knew I would have to have surgery at some stage which is completely untrue, all I knew was that I was going to be reviewed by a consultant and this is what happened. The surgery may never have taken place had I not unfortunately got a bad infection.*

*I was advised having had the surgery on the 22/05/2019 that I would not be able to fly and was advised to contact my travel agent to cancel same, which I duly did. I took the advice of the professionals and refused to put myself in any danger in relation to flying or travelling and I have thank God recuperated fully now.*

*I feel that I have been unfairly treated with my claim as I did not know if or when I was having any surgery at all. Was I supposed to put my life on hold at this stage when I didn't know what the outcome was going to be? I like any other person who wanted to go on holidays was looking forward to it and never ever envisaged that I would need to cancel same.*

*I am extremely disappointed to think that I had taken out travel insurance with [the Provider] as I do every time I travel and that they are penalising me and my family for something that was completely unforeseen and unavoidable”.*

Similarly, in her email to this Office dated **26 August 2020**, the Second Complainant submitted, as follows:

*“All I want to say is that when I was seen on December 21<sup>st</sup> 2018 I was told it was gallstones and that I would be referred to a consultant but was not told at that time that I would be going for surgery and we proceeded to book our holiday that December. I was seen in February [2019] and told I would be put on a list, still none the wiser as to when this surgery would take place, if at all”.*

In the Complaint Form signed by the Complainants, the Second Complainant submitted, as follows:

*“No date was given to me about surgery when I met Consultant in February [2019], so I didn't know when [the surgery] would happen, [the Provider] are not even considering this, which is very upsetting. Was I supposed to put my life on hold for something that could have taken a year or more to happen?”*

As a result, the Complainants “would like to be reimbursed for the cost of the holiday in full”, that is, the cancellation charge of €1,996.40.

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### The Provider's Case

Provider records indicate that the First Complainant holds an annual travel insurance policy with the Provider. His partner, the Second Complainant, and daughter are listed as insured persons on the policy. The First Complainant booked a trip on 30 December 2018 for all three to holiday abroad from 22 June to 6 July 2019, however he subsequently cancelled this trip on 14 May 2019. In the Claim Form he signed on 20 May 2019, the First Complainant advised of the reason for the trip cancellation, as follows:

*“My partner [the Second Complainant] has to undergo surgery on the 22-5-19 and as a result cannot fly for up to 6 weeks after surgery”.*

The Provider notes that the Second Complainant's GP stated in this Claim Form that the Second Complainant had first consulted for the condition on **21 December 2018**. In addition, the Second Complainant herself acknowledged by telephone to the Provider that she was aware on 21 December 2018 that she was being referred to a specialist, that she subsequently received an appointment for the specialist on **5 February 2019** and that during this consultation she was made aware that she was then being placed on a waiting list. The Provider thus concluded that the illness resulting in the Second Complainant's surgery on **22 May 2019** was not unforeseen, when booking the trip on 30 December 2018.

The Provider notes that the Complainants are not claiming for the occurrence of the Second Complainant's illness per se, but rather because the recovery period for the surgical procedure response to her illness, ultimately coincided with the dates of the Complainants' trip. The Provider says that the First Complainant's travel insurance policy specifically states that it only covers claims arising from unforeseen illnesses that prevent travel; cancellation due to a surgical procedure in respect of an illness that existed prior to the booking of the holiday that prevents travel, is not covered.

The Provider says that the First Complainant's travel insurance policy does not cover the insured, for cancellation due to unforeseen surgery. Rather it provides cover for unforeseen illness. The Provider says that the fact that the Second Complainant was not placed on a waiting list until after the booking date of the trip is irrelevant to the claim and the cover. What is relevant, the Provider says, is that the Second Complainant's illness was under investigation at the time the First Complainant booked the trip on 30 December 2018, that is, that the Second Complainant had already presented with the illness on 21 December 2018, and had been referred to a specialist for that illness.

In this regard, the Provider says that insurers do not accept risks that they cannot understand or quantify. This is common in many lines of business and is typical in travel insurance. The Provider notes that few policies would accept that someone should commit to a holiday when they have a medical condition under investigation. Rather, such investigations should be complete before someone commits to a booking, so they can be certain they can make the trip.

Accordingly, the Provider is satisfied that it declined the Complainants' claim in accordance with the terms and conditions of the First Complainant's travel insurance policy.

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### **The Complaint for Adjudication**

The Complainants' complaint is that the Provider wrongly or unfairly declined their 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 on **26 November 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.

I note that the First Complainant held an annual travel insurance policy with the Provider which included cover for his partner, the Second Complainant, and daughter. The First Complainant booked a trip on 30 December 2018 for all three to holiday abroad, the following June, but he subsequently cancelled this trip on **14 May 2019** as the Second Complainant was due to undergo surgery the following week and had been advised by her treating specialist not to fly for up to 6 weeks after. The Provider declined the resultant claim as it concluded that the circumstances giving rise to the cancellation were not unforeseen and therefore were not covered by the policy terms and conditions.

The First Complainant's travel insurance policy, like all insurance policies, does not provide cover for every possible eventuality. Rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, I note that **Section 9, 'Cancellation or Curtailment & Trip Interruption'**, of the applicable Travel Insurance Terms and Conditions Policy Document, provides at pg. 22, as follows:

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*“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”.*

I also note from the documentary evidence before me that the Second Complainant’s GP Dr M. completed **Section 5, ‘Medical Declaration’**, of the Claim Form on **20 May 2019**, as follows:

***“What date did the patient first seek advice regarding their intention to travel?***

*14.05.19*

***State the specific medical condition which resulted in this claim***

*Surgical Procedure – 22.5.19 ...*

***Date of Diagnosis*** *21.12.18*

***Date of first consultation for this condition*** *21.12.18*

***What date was the patient deemed unfit to travel?*** *14.05.19*

***What date did you advise this? Advised by hospital –*** *14.05.19”.*

I am of the opinion that it was reasonable for the Provider to determine from the documentary evidence before it, that the Second Complainant first presented on 21 December 2018, with the illness that ultimately resulted in her surgery on 22 May 2019, that is, the surgery which prevented the Complainants from travelling as planned on 22 June 2019.

As the Second Complainant first presented with this illness on 21 December 2018, prior to the First Complainant booking the trip a week later on 30 December 2018, I am of the opinion that it was reasonable for the Provider to conclude that the Second Complainant’s illness existed prior to the holiday booking and therefore was not an unforeseen illness, at the time of the booking.

Whilst I appreciate that the Complainants did not know when the First Complainant booked the trip on 30 December 2018, that the Second Complainant would ultimately require surgery in May 2019 (to treat the illness that she had first presented with on 21 December 2018) I accept the Provider’s position that it is the date of the illness that is relevant to the assessment of the claim, not the date of the surgery.

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In this regard, I am of the opinion that it was reasonable for the Provider to conclude that the Second Complainant's surgery was a response to the illness that she first presented with on 21 December 2018.

Accordingly, I am satisfied that the Provider was entitled to decline the Complainants' claim in strict accordance with the terms and condition of the First Complainant's travel insurance policy and for that reason, it is not 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  
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

4 January 2021

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.