



<b><u>Decision Ref:</u></b>	2021-0071
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Disagreement regarding Settlement amount offered Claim handling delays or issues Delayed or inadequate communication
<b><u>Outcome:</u></b>	Rejected

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

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

#### **The Complainant's Case**

The Complainants submit that they travelled to Spain on **13 August 2019** with their family but on **19 August 2019** he received news that his father had died suddenly, and they were required to return home.

The Complainants state that the Second Complainant telephoned the Provider on **19 August 2019** and spoke to [Employee]. The Provider gave a reference number to the Second Complainant. They submit that she queried if the Provider could arrange to get them "*home as soon as possible*". She says that the Provider agent advised that the Complainants "*would have to make our own arrangements and submit the costs in a claim once we got home*".

The Second Complainant states that she pointed out to the Provider's [Employee] that "*It was a condition of cover that the [the Provider] make all travel arrangements and we were worried that if we made the arrangements that the costs would not be covered.... [The Provider's employee] still insisted that we had to make all travel arrangements ourselves*".

The Complainants submit that they booked flights for **20 August 2019** from an alternative location, as this was all that was available to them, which was a 6-hour drive (including food stops) from where they were located. They state that they travelled on the **19 August 2019** and booked a hotel near the Airport at a total cost of €448.49 for all 5 members of the family.

The Complainants state that they also paid a car hire charge of €200 due to the fact they had to return the car to an alternative airport than originally booked.

The complaint is that the Provider wrongfully declined to repay the Complainants' claim in full. The Complainants say that the Provider has declined cover for the full travel costs of them returning home, following the death of a close relative. The Complainants want the Provider to reimburse them for their full costs:

*"Total cost to get family back to Ireland was €2,042.85 but we have only received €413.91".*

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

The Provider, in its Final Response letter **25 November 2019** stated, having reviewed the calls, file notes and policy wording, as follows:

*"The agent asked if you had booked any alternative flights, you advised you were in [Location A] but had looked up your options and there was a flight the following day from [Location B]. The agent advised that you would be covered to return home under the Curtailment section of the policy. You asked if you should go ahead and make the booking and the agent confirmed yes, the agent also confirmed that you would be covered for the flight and any unused accommodation due to your early return. The agent asked if you required any further assistance and you replied no and the call ended".*

The Provider submits that as the Complainants, in the call with the Provider on **19 August 2019**, did not mention that they would require overnight accommodation, and as the Provider's position was that the four hour trip could have been undertaken on the day of the flight, it did not uphold this element of the complaint.

The Provider subsequently reviewed the car hire expense of the claim and agreed that this should be deemed a travel expense and paid €200 to the Complainant whilst maintaining that it was entitled to reject the balance of the claim by reference to the terms and conditions of the policy.

In its response to this office, the Provider advanced an improved offer in agreeing to cover the cost of the overnight accommodation and certain other matters. The Provider however, stands over its refusal of certain other items in the claim.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully declined to pay the Complainants their full travel costs of returning home, following the death of a close relative.

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## **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 **24 February 2021**, 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 Provider has identified Section 9 of the Policy Terms and Conditions in support of its decision to decline the Complainants' claim. These sections provide as follows:

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

...

**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.*
- *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.*

...

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### **What is covered – Cancellation & Curtailment**

**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:

- The death, imminent demise, or hospitalisation due to serious accident or unforeseen illness, of a **Close Relative** ...

### **What is covered – Trip Interruption**

On condition that **You** contact [the Provider's] helpline on [redacted] first, and that **We** make all travel arrangements. **We** will pay necessary travelling costs incurred in returning **You** Home in the event **You** have a valid **Curtailment** claim up to the amount shown on the summary of cover table. If the situation permits and the period of **Your** original booked **Trip** has not expired, **We** will also pay necessary additional travel costs in transporting **You** back to the location abroad. The total amount claimed under this section can not exceed the amount shown on the Summary of Cover table.

...

### **Special conditions relating to claims in this section**

...

In the event of **Curtailment** or interruption of the **Trip**, **You** must contact **Us** first and allow **Us** to make all the necessary travel arrangements. If, at the time of requesting **Our** assistance in the event of a **Curtailment** or interruption claim, satisfactory medical evidence is not supplied in order to substantiate that the claim is due to an unforeseen illness, injury or death of **You**, a **Close Relative**, travelling companion or person with whom **You** have arranged to stay whilst on **Your Trip**, **We** will make all necessary arrangements at **Your cost** and arrange appropriate reimbursement as soon as the claim has been validated.

...

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**What is not covered in this section**

...

- f) Any costs in respect of any unused pre-paid travel costs when **We** have paid to repatriate **You**..

...

I note that 'Curtailed' is defined in the 'Meaning of Words' section of the policy as follows:

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

**Analysis**

The Complainants made a claim on their travel policy seeking reimbursement in the amount of €2,042.85. The Provider initially (in October 2019) sanctioned payment in the amount of €213.91 before subsequently (in November 2019) offering an additional €200 in respect of the car hire charge incurred due to the car being returned to a different location from where it had been rented.

With regard to the payment originally sanctioned by the Provider, in the amount of **€213.91**, this arose from a claim approved in the amount of €638.91, relating to the cost of the new flights to Ireland and part of the cost of unused accommodation in the holiday location. In that regard, the provider deducted an excess in the amount of €425, being five times the individual excess of €85 applied in respect of each traveller. In its response to this office, the Provider offered an improved settlement of **€948.42** on the basis of a claim approved in the amount of €1,373.42 minus the excess of €425.

It is useful to set out, in the first instance, details of the claim as submitted by the Complainants together with the Provider's initial response thereto (subsequent to its admission of the car hire charge which followed promptly after its initial refusal):

<b>Item Claimed</b>	<b>Amount Claimed</b>	<b>Amount Allowed</b>
New flights home	€458.91	€458.91
Hotel at Airport	€448.49	€0
Car hire drop-off fees	€200	€200
Unused accommodation	€210	€180
Petrol	€59 & €35.02	€0
Parking at the hotel	€21	€0
Unused return flights	€357.45 & €252.98	€0
Minus Excess		-€425
<b>Total Payment</b>	<b>€2,042.85</b>	<b>€413.91</b>

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In its response to this office of **August 2020**, the Provider put forward the following improved settlement offer (the improved aspects of which are highlighted below):

<b>Item Claimed</b>	<b>Amount Claimed</b>	<b>Amount Allowed</b>
New flights home	€458.91	€458.91
Hotel at Airport	€448.49	€448.49
Car hire drop-off fees	€200	€200
Unused accommodation	€210	€210
Petrol	€59 & €35.02	€35.02
Parking at the hotel	€21	€21
Unused return flights	€357.45 & €252.98	€0
Minus Excess		-€425
<b>Total Payment</b>	<b>€2,042.85</b>	<b>€948.42</b>

The Provider's offer of August 2020 therefore covers the entirety of the Complainants' claim with the exception of the 'unused return flights' and the additional amount of €59 claimed in respect of petrol. The single largest differential relates to the 'unused return flights'. I am entirely satisfied that the policy does not provide cover for the reimbursement of such an expense. The policy expressly excludes any unused pre-paid travel costs in the event that the insurer has borne the cost of 'repatriating' or flying the insureds home. In this case, though the Complainants initially bore the cost of the new flights home, the Provider promptly accepted the claim in respect of 100% of this cost and accordingly, the exclusion was activated.

The second part of the Complainants' claim which the Provider has declined to accept is the €59 sought in respect of petrol. This was a charge incurred by the Complainants in the town in which they were holidaying before they went on their road journey to [Location B], a journey of some 500km.

It seems to me to be fairly clear that this expense served to fill the Complainants' rental vehicle with petrol, prior to embarking on this road trip. The Complainants then incurred a further petrol expense of €35.02 immediately prior to dropping the vehicle off; this almost certainly represented a 'topping-up' of the tank so that the vehicle would be returned with a full tank of petrol as required under the rental agreement (lest a penalty be suffered). In the circumstances I am in agreement with the Provider's categorisation of the €35.02 as the cost of the petrol expended on the road trip from the holiday destination to [Location B]. I accept that the €59 refill represented the replenishing of the tank from earlier journeys unconnected with the claim on the policy.

There is a further aspect to this matter and that is the Complainants' contention that, having refused to 'arrange' the return trip to Ireland itself, as the Complainants contend is mandated in the policy, the Provider should be required to satisfy the claim in full. In the course of the first call to the Provider, at 05:42, a matter of hours after the First Complainant's father had unfortunately passed away, the Second Complainant quoted that part of the policy which states that the Provider would make the travel arrangements at the Provider's expense.

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In response, the Provider's agent stated that this could be done if the Complainants were in a position to provide a death certificate. Whilst it was obviously entirely impossible for the Complainants to be able to produce a death certificate at this time (or indeed in the days immediately thereafter), as pointed out by the Second Complainant, this inability triggered the 'special condition' reproduced above such that, by reference to the policy, it fell to the Complainants to bear the cost of the return trip in the first instance and to seek reimbursement from the Provider thereafter, as ultimately happened.

The policy does provide, in such circumstances, for the Provider to arrange the return trip at an insured's expense (to be followed by a claim for reimbursement). The Second Complainant highlighted this in the course of the phone call in question. The Provider responded that they would be able to do precisely that (via a travel agent), but noted that it is "*not always the quickest way*". The Second Complainant took this advice and ultimately opted to make the arrangements herself. Indeed, between the first phone call on the day of the bereavement and the second phone call less than three hours later, the Second Complainant had very promptly researched the available options and had already identified the flight out of [Location B] as the best option (as there were no flights available out of the airport that the Complainants had flown in to). The Second Complainant enquired whether she should go ahead and book the flights and confirmation was provided.

In the circumstances, I am satisfied that there was no obligation on the Provider to arrange and pay for the return journey, up front. Whereas the Complainants would have been within their rights to insist on the Provider arranging the journey at the Complainants' expense, this option was offered but effectively declined by the Second Complainant who was doubtlessly and entirely understandably, concerned with getting home, as quickly as possible, and she succeeded in making the arrangements very swiftly to facilitate a quick return to Ireland.

Finally, I note the Second Complainant's contention, as expressed in the phone call of 02 November 2019, that the policy excess on her policy is €50 per person rather than €85. It is not entirely clear where the Second Complainant was quoting from but the 'Summary of Cover' schedule in the policy furnished in evidence clearly stipulates €85 as the excess applicable on curtailment or trip interruption claims.

In light of the entirety of the foregoing, I am satisfied that the offer advanced by the Provider in its formal response to this complaint, in August 2020 represents a fair and reasonable settlement of the Complainants' claim. As I understand this offer to remain open to the Complainants to accept, I do not consider it necessary to uphold the complaint though it is disappointing that the Complainants found it necessary to pursue this complaint in order to secure the greater than three-fold increase in the payment of policy benefits, that they were due.

As the Provider in its initial response to this Office recognised those more expansive entitlements due to the Complainants, and it has made those available for acceptance since August last, I do not consider it necessary or appropriate to uphold this complaint and it will be a matter for the Complainants to now contact the Provider directly should they wish to accept the Provider's corrected benefit amount which is payable.

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**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**

22 March 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.**