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| <u>Decision Ref:</u> | 2021-0115 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Claim handling delays or issues Failure to process instructions in a timely manner |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a policy of travel insurance with the Provider covering the period from the end of February 2020 to the end of February 2021.

The Complainant's Case

The Complainant travelled abroad in late **February 2020** and was scheduled to return home on **28 March 2020**.

The Complainant states that due to a Department of Foreign Affairs statement advising all Irish citizens to return home, he cut his trip short and returned home on **19 March 2020**.

The Complainant submitted a claim to the Provider to recover the costs of accommodation that he could not use, together with the additional travel expenses incurred by reason of his trip being curtailed – a total of more than €1,000.00.

The Complainant would like his claim to be admitted for payment, so that he can recover from the Provider, the loss he suffered by reason of his trip being curtailed.

The Provider's Case

The Provider, in its Final Response Letter dated **19 May 2020** refers to the Complainant's policy and states:

"as the circumstances which led to your claim is not outlined above, your policy will not extend to consider your claim on this occasion, unfortunately."

The Provider submits that the policy insures against specified events, and for a valid claim to arise it must be shown that one of these specified events has resulted in the claim submitted (and is not subject to any condition, restriction or exclusion that may apply).

The Provider's position is that the circumstances which led to the Complainant's claim do not come within the specified events identified within the policy terms and conditions.

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined to pay the Complainant's claim under a travel insurance policy for the losses he incurred, when he cut short his holiday, by reason of government advice to return home due to the COVID-19 pandemic.

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 Complainant was 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 March 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.

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Following the consideration of additional submissions from the Complainant, the final determination of this office is set out below.

On **17 February 2020**, the Complainant purchased a policy of travel insurance with the Provider. The period of cover was for a year from 28 February 2020 to 28 February 2021. The Complainant booked flights and accommodation for a holiday in [location] for a period of one month from February 2020 to March 2020. He paid €1,700.00 in advance for accommodation for the period from 10 March 2020 to 28 March 2020 (18 nights).

The Complainant flew to [location] in late **February 2020**. However, on **15 March 2020**, in the context of increasing uncertainty as to whether a travel ban would be introduced in response to the escalating COVID-19 crisis, the Tánaiste and Minister for Foreign Affairs stated:

"I am calling on all Irish tourists who wish to return from [Country] to do so by midnight this coming Thursday March 19th."

The Complainant made arrangements to curtail the trip. He booked a flight home for 19 March 2020 (with a different airline from the one he had initially booked through) which he states cost him €495.00. He was ultimately refunded the cost of the intended flight home (€254.00), leaving the claimed loss incurred by reason of rebooking the flight, at €241.00. He had also paid for his accommodation in full in advance, and he did not secure a refund for the cost of the unused 9 nights. He puts the cost of this at €850.00. The total amount of the claim, therefore, appears to be approximately **€1,091.00**.

The Complainant submitted a claim by form entitled "*Cancellation – Claim Form*" received by the Provider's claims handlers on **26 March 2020**. The explanation of why the trip was cancelled is stated as being:

"[Airline] cancelled flights all [location]/Ireland advised by Irish Government to vacate ASAP due to Covid 19"

The Provider declined to accept this as a valid claim and after it informed the Complainant of this position, he made a complaint in relation to this decision and a Final Response Letter issued on **19 May 2020**.

The Complainant's travel insurance policy provides cover against certain specified events which are set out in the policy wording, along with any conditions, restrictions, or exclusions which apply to the cover put in place. For a valid claim to arise it must be shown that one of these specified events (insured perils) has resulted in the claim being submitted, and that it is not subject to any condition, restriction or exclusion from cover.

The Complainant's policy contains separate sections entitled

"Section A: Cancelling your trip"

and

"Section C: Cutting your trip short"

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I note that under the heading “**Period of Cover**” the following is set out:

*“...For Single Trip and Annual Multi-Trip policies cover under section A (Cancelling **your trip**) ends as soon as **you start your trip.**”*

*“Cover under all other sections starts when **you leave your home** address in the Republic of Ireland (but not later than 24 hours before the booked departure date) or from the first day of the period of cover as shown on **your insurance schedule**, whichever is the later”*

I am satisfied that the Complainant cut his trip short, rather than having cancelled it. If the position was not clear enough from the plain wording of “**Section A: Cancelling your trip**” and “**Section C: Cutting your trip short**”, I am satisfied that the “Period of Cover” definition clearly explains that the “Cancelling your trip” provisions are only applicable, prior to departure.

The section entitled “**Cutting your trip short**” sets out the circumstances for cover:

*“We will provide cover if the cutting short of **your trip** is necessary and unavoidable as a result of the following.*

- 1. **You** dying, becoming seriously ill or being injured.*
- 2. The death, serious illness or injury of a **relative, business associate**, a person who **you** are travelling with or a **relative** or friend living abroad who you are staying with.*
- 3. If the police or relevant authority need **you** to return home to the Republic of Ireland after a fire, storm, flood, burglary or vandalism to **your home** or place of business.*
- 4. If **you** are a member of the armed forces or police, fire, nursing or ambulance services which results in **you** having to return **home** to the Republic of Ireland due to an unforeseen emergency or if **you** are posted overseas unexpectedly.”*

The Complainant is not suggesting that his circumstances fall within any of these specified events. Rather, his position is that his claim would have been accepted if it fell within the cancellation provisions, rather than curtailment, and in the unique and unprecedented circumstances that gave rise to this claim he believes that the Provider ought to pay out, even on an ex gratia or goodwill basis.

The “**Cancelling your trip**” section of the policy provides, amongst other things, that cover will be provided if the cancellation of the trip is necessary and unavoidable

*“If, after the time **you** booked **your trip** the Department of Foreign Affairs allocates a security status of 'Avoid non essential travel' or 'Do not travel' to **your** intended destination.”*

I note that the Department of Foreign Affairs allocated a status of “**avoid non-essential travel**” to [location] on **15 March 2020**, while the Complainant was already holidaying there.

If the Complainant's trip had not begun, he would have been entitled to make a claim to the Provider, under the policy, for the full costs of cancellation. Once he had departed on his trip however for [location] in late February 2020 (and as set out in the Period of Cover section) he ceased to be entitled to any benefit under Section A – “Cancelling your trip”.

I am satisfied that the policy wording clearly sets out that:

- the Complainant was not entitled to rely on the “Cancelling your trip” provisions of the policy after his departure on holiday;
- the “Cutting your trip short” section is the relevant applicable section of cover;
- the “Cutting your trip short” section does not provide cover for the particular circumstances giving rise to the Complainant’s claim.

The Complainant was unfortunate. He was one of many Irish tourists who were in [Country] on 15 March 2020 when the Minister for Foreign Affairs advised all citizens to come home prior to 19 March 2020. The Complainant very wisely elected to follow this advice, but I must accept that the Provider was entitled to decline cover for his claim because the circumstances giving rise to his curtailment of his trip, were not covered by the provisions of the policy in place.

The essence of the Complainant’s dissatisfaction stems from his awareness that in the context of this unique situation which arose, there are other insurance providers in the market which, although aware that their policyholders’ circumstances were not covered by the policy of insurance in place, nevertheless met some or all of the claims made, and elected to do so on an on an *ex gratia*/goodwill basis.

The actions taken by other financial service providers however, whilst no doubt welcome to those providers’ customers, are not the subject of this complaint about the conduct of the Provider in this instance.

The complaint is that the Provider wrongfully declined to pay the Complainant's claim and because I accept that the Complainant was not covered by the policy provisions, I cannot find that the Provider acted wrongfully in reaching its decision to decline the Complainant’s claim. As the Provider’s conduct, in my opinion does not come within the terms of **Section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**, this complaint cannot be upheld.

Conclusion

It is my Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, that this complaint be 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**

23 April 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.