



<u>Decision Ref:</u>	2021-0240
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Claim handling delays or issues Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The First Complainant held a travel insurance policy with the Provider. The Second Complainant, his wife, was listed as an insured person on the policy. The policy period in which this complaint falls, was from 15 June 2019 to 14 June 2020.

The Complainants' Case

The Complainants travelled to [European Country] on **25 February 2020** on holiday, with flights booked to return to Ireland on 1 April 2020.

On 15 March 2020, in light of the then emerging coronavirus pandemic, the Government of Ireland advised Irish citizens in [European Country] who wanted to fly home, to do so by midnight 19 March 2020.

As a result, the Complainants, with the assistance of their daughter, booked two flight tickets to Ireland on 17 March 2020, at a total cost of €757.78.

The First Complainant subsequently submitted a claim to the Provider in respect of the cost of the new 17th March flight tickets in the amount of €757.78, however the Provider declined the claim on the basis that his travel insurance policy did not provide cover for the cost of the new flights.

The Complainants' daughter sets out the Complainants' complaint in the Complaint Form that the Complainants signed in June 2020, as follows:

"COVID-19 – Announcement by Tánaiste...15/3/20, get home now from [European Country]. Booked 16/3/20 ([I] had contacted [the Provider] in desperation, who said 'it'll be ok – all will be sorted just get them home safe'! My own father had to book flights – no help from [the airline] or [the Provider] – [the Complainants] are high risk ([aged] 73 & 76) with regard to COVID. [I] also called Consulate [City X.] 15/3/20 later into the night – all indications get out now. Thousands were stranded awaiting 'so called' repatriation emails from [airline] – did not ever emerge!! ...

My father submitted claim for flights only return back – not even did he ask for taxi fares to [City Y.] or from [Irish] airport. The [airline] only fare were €757.78 for both passengers. The original flight home tickets were for 1/4/20 + cost €124.80 – not refunded to date but requested".

The Complainants seek for the Provider to admit and pay their travel insurance claim in the amount of €757.78.

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainants' travel insurance claim.

The Provider's Case

Provider records indicate that the Complainants' daughter telephoned the Provider on **16 March 2020** to advise that in light of the then emerging coronavirus pandemic and the Irish Government advice that all Irish citizens in [European Country] who wanted to fly home should do so by midnight 19 March 2020, that the Complainants had booked new tickets for a flight to Ireland for the next day, 17 March 2020.

The Provider says that the Agent advised the Complainants' daughter that she was unable to discuss the First Complainant's policy with her, without the Provider first having received the policyholder's consent to do so.

Instead, the Agent gave the Complainants' daughter very general guidance, namely, details on how to make a claim and how the Provider may be able to consider such a claim under the curtailment policy cover, but that the claim assessment process would only commence when a claim form was received.

The First Complainant telephoned the Provider on **7 April 2020** and the Agent arranged for a Claim Form to be sent to him.

The Provider received the First Complainant's completed Curtailment Claim Form on 17 April 2020, in which he set out the claim circumstances, as follows:

"Sun 15/3/20 – Simon Coveney Minister on news, TV, Twitter – all Irish people need to fly home to Ireland by 19th March as there will be no more flights. Daughter contacted [Department of Foreign Affairs] & Consulate in [City X.], very concerned as parents in 'high risk' (age). She also called [the Provider] on behalf of parents. [Airline] not responding to any calls, emails etc. & they did not make contact to flight holders – therefore we booked 'new flights' 17th March 2020 in line with DFA guidelines".

The Provider notes that the Complainants travelled to [European Country] on 25 February 2020 with an original return date of 1 April 2020. On 15 March 2020, in light of the then emerging coronavirus pandemic, the Irish Government advised Irish citizens in [European Country] who wanted to fly home, to do so by midnight 19 March 2020 so it was necessary for the Complainants to return home earlier than expected on 17 March 2020, meaning that they had to curtail their trip.

The Provider says that **Section 9, 'Cancellation or Curtailment & Trip Interruption'**, of the First Complainant's Travel Insurance Rules – Terms and Conditions booklet provides, at pgs. 22-23:

*"**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.*

Changes in Circumstances ...

- *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)*
...

What is covered – Cancellation & Curtailment

We will reimburse ... 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".

The Provider says that following its claim assessment, it emailed the First Complainant on 29 April 2020 to advise that his travel insurance policy did not cover the cost of the new 17th March flight tickets and that cover was limited to the unused 1st April tickets only. This email also advised that due to government restrictions the 1st April flight may have been cancelled by the airline and if it had been, then the airline must provide the Complainants with a refund and it directed the First Complainant to contact the airline in that regard.

The Provider notes that when the Complainants' flight to Ireland scheduled for 1 April 2020 was cancelled, the Complainants had a right to reimbursement, rerouting or return from the airline, no matter what the cause of cancellation, under Article 5 of Regulation (EC) 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

In addition, the Provider also notes that prior to the Complainants' daughter telephoning on 16 March 2020, the Complainants had already bought new tickets with the same airline for travel on 17th March, rather than change their existing booking for 1st April with that airline, and thus they could not have acted on or benefited from the Provider's advice in the matter.

The Complainants' daughter telephoned the Provider on 30 April 2020 to express her dissatisfaction that the Complainants' claim had been declined, and a complaint was logged.

Following its complaint assessment, the Provider emailed its Final Response to the Complainants' daughter on 29 May 2020, as follows:

"I understand your complaint relates to the fact that we have refused to refund you the cost of your new flight home.

Having had an opportunity to review our file notes I have completed my investigation and I am now able to present my findings.

Your claim form shows that you travelled to [European Country] on 25/02/2020 with an original return date of 01/04/2020. Government restrictions meant that it was necessary for you to return home earlier than expected on 17/03/2020. This means that you had to curtail your trip.

Under the Curtailment Section of your policy, you can claim for the unused portion of your flights, i.e. your original return flight on 01/04/2020 and the cost of any unused pre-booked accommodation. There is no cover for your new flight home on 17/03/2020.

As [European Country] itself went into lockdown on 14/03/2020 it is reasonable to believe that your original return flight home on 01/04/2020 may have been cancelled and if this is the case, [the airline] are obliged to refund you.

For situations like this our process is as follows:-

- *We are advising customers to speak to the airline, tour operator, travel agent and hotelier in all instances as the primary respondent to the situation.*
- *If a customer had booked through an EU based airline, and the airline is not offering the service (flight now cancelled), the passenger is legally entitled to a full refund ...*

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I am upholding your complaint in part. The reason for this is that while we correctly advised you to contact [the airline] in the first instance, we did not advise that if [the airline] do not refund you the cost of your unused original return flight on 01/04/2020, we shall require the following:-

- *the original booking invoice for the [airline] flight on 01/04/2020 that you did not use.*
- *the cancellation invoice for the [airline] flight on 01/04/2020 that you did not use; sometimes this cancellation invoice is referred to as a No Show letter.*
- *confirmation from [airline] why they did not refund you in full for the unused flight on 01/04/2020.*
- *a copy of [airline's] booking Terms and Conditions".*

The Provider acknowledges that it could have advised the First Complainant in its declination email of 29 April 2020 that it could consider a claim for the unused 1st April flight tickets if the airline do not refund this, however as the flight was refundable, it would not have been covered in any event and therefore would not have activated the cover under the policy.

The Provider says that it can only settle claims in line with the cover provided by the travel insurance policy. As there is no cover under the First Complainant's travel insurance policy for the cost of the new 17th March flight tickets, and given that no unused accommodation cost was claimed, and the cancelled 1st April flight is refundable from the airline, there is no settlement amount that the Provider could pay in respect of the Complainants' claim.

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

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined to admit and pay the Complainants' 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 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 **22 June 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.

The First Complainant held a travel insurance policy with the Provider, with the Second Complainant, his wife, listed as an insured person on the policy. They travelled to [European Country] on 25 February 2020 on holiday and intended to return to Ireland on 1 April 2020.

On 15 March 2020, in light of the then emerging coronavirus pandemic, the Government of Ireland advised Irish citizens in [European Country] who wanted to fly home, to do so by midnight 19 March 2020. As a result, the Complainants, with the assistance of their daughter, booked two flight tickets to Ireland for 17 March 2020, at a total cost of €757.78.

I note that the First Complainant subsequently submitted a claim to the Provider in respect of the cost incurred for the new 17th March flight tickets in the amount of €757.78, but the Provider declined the claim on the basis that the travel insurance policy did not provide cover for the new flights.

The First Complainant's travel insurance policy, like all insurance policies, does not provide cover for every possible eventuality; rather the cover is subject to the terms, conditions, endorsements and exclusions set out within the policy documentation.

I note that **Section 9, 'Cancellation or Curtailment & Trip Interruption'**, of the First Complainant's Travel Insurance Rules – Terms and Conditions booklet provides, *inter alia*, at pgs. 22-23:

*"**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.*

Changes in Circumstances ...

- *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)*
...

What is covered – Cancellation & Curtailment

We will reimburse ... 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”.

[Emphasis added]

Following the advice of the Irish Government on 15 March 2020, the Complainants curtailed their trip and on 16 March 2020 purchased new tickets for a flight to Ireland for the next day, 17 March 2020.

I note that the ‘Curtilment’ cover provided by the First Complainant’s travel insurance policy did not extend cover to include the cost of the new 17th March flight tickets. Instead, the ‘Curtilment’ cover was limited to unused non-refundable travel and accommodation costs.

I accept the Provider’s position that because the cancelled 1st April flight tickets were refundable by the airline, and as there was no unused accommodation claimed for, that there was no settlement amount that fell to be paid in respect of the Complainants’ claim. I am satisfied therefore, that the Provider assessed the Complainants’ claim in accordance with the terms and conditions of the First Complainant’s travel insurance policy.

In addition, I note that the Complainants’ daughter submits in the Complaint Form which the Complainants signed in June 2020 that:

“([I] had contacted [the Provider] in desperation, who said ‘it’ll be ok – all will be sorted just get them home safe”.

Having listened to the recording of the telephone call that the Complainants’ daughter made to the Provider on **16 March 2020**, I note that the Agent advised, as follows:

Agent: *I can tell you, we’re waiting for a directive, because obviously the Department of Foreign Affairs acted last night and said that they can go to [airline A] and they can go to [airline B] and one of the two entities, even if they didn’t fly with them, will get them home, like almost like a mercy mission. We’re waiting for a directive on how we would view that as a claim, but I’m sure by the time that it gets around to it, it’ll probably be along the lines of a curtailment.*

I am satisfied that the Agent did not advise the Complainants’ daughter that the Complainants’ claim would be settled.

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Instead, I note that the Agent advised that she could not discuss the First Complainant's policy with the Complainants' daughter without the Provider first having received the policyholder's consent to do so. She did, however, give the Complainants' daughter an understanding of the position of the Provider, in circumstances where it was waiting for clarity in the form of a formal directive from the Department of Foreign Affairs.

As the policy provisions are clear regarding the items which may be recovered in the event of curtailment, and as those provisions do not include the cost of the 2 new flights that were booked for 17 March 2020, it will be a matter for the Complainants to pursue the airline for recovery of the cost of the original flights, if those monies have not already been refunded. I note in that respect that when the Complainants made their complaint to this office they advised in June 2020, that they had made a request to the airline for a refund of the cost of those unused flights. Accordingly, on the basis of the evidence available, I am of the opinion that this complaint cannot reasonably be upheld.

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

14 July 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.**