



<b><u>Decision Ref:</u></b>	2021-0405
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues Rejection of claim - cancellation
<b><u>Outcome:</u></b>	Rejected

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

The Complaint relates to travel insurance policy held by the Complainants with the Provider.

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

The Complainants submit that they purchased a travel insurance policy from the Provider on **4 October 2018** and that this policy was used to cover a 77 day trip, beginning in Australia and ending in the United Kingdom (UK).

The Complainants state that they flew from the UK to Melbourne, Australia on **26 January 2020**. The Complainants submit that they travelled around Australia for a number of weeks before arriving in Sydney on **13 February 2020**.

The Complainants submit that as part of their trip, on **20 February 2020** they boarded a cruise liner. They further submit that the scheduled first stop on this part of their trip was due to be Brisbane, however, passengers were informed that the itinerary had changed due to Covid-19 restrictions. The Complainants state the captain informed the passengers that all Far East ports they were due to stop at, had now closed, so when the ship left Brisbane, instead of travelling north, changed course and travelled south to Melbourne, eventually arriving in Western Australia. The Complainants explain that at this point the ship was due to resume the original itinerary.

The Complainants state that on **11 March 2020**, the ship set sail for Sri Lanka as planned, but on **14 March 2020**, the Captain made an announcement as follows:

*“Decisions made by national authorities have significantly affected our planned itinerary... These developments have forced us again to make alternative plans. I can now confirm [the ship] is making her way to South Africa... [the ship] will sail from [South Africa] on Thursday 26 March and proceed towards [the UK], where we plan to arrive on Sunday 12 of April... All other guests may stay on board to [the UK], or they may choose to disembark in [South Africa] on 25 March. [Cruise Company] will arrange and cover the cost of your repatriation flights”*

The Complainants submit they made the decision to disembark the ship on **25 March 2020** in South Africa to be repatriated to the UK. The Complainants submit they informed the provider about this development.

The Complainants contend that on **18 March 2020** the Captain made another announcement informing all passengers that new Covid-19 restrictions in South Africa had been announced overnight stating the following:

*“The result of the South African Authorities decision is that no guest or crew can disembark in South Africa. Because of this, the cruise is now curtailed ... All guests must now remain on board with us until [the UK] where we are due to arrive on Sunday 12 April as per our original itinerary.”*

The Complainants submit that they were not allowed to leave the ship as they had previously planned and that the captain confirmed that the trip was curtailed until **12 April 2020**. The Complainants submit they were quarantined for 33 days and should not be penalised for not being permitted to disembark the ship to fly home early. The Complainants submitted a claim to the Provider to be reimbursed for the cost of the 33 days during which they say that their holiday was curtailed. The Complainants submit the Provider declined this claim on the **15 June 2020**.

### **The Provider’s Case**

The Provider says that its records indicate that the Complainants incepted a single trip travel insurance policy with the Provider on **4 October 2018**. The Provider’s records indicate that the Complainants opted for the Gold level policy of insurance.

The Provider issued its final response letter on **15 June 2020**. In this letter, the Provider declined the Complainants’ claim for trip curtailment. In its final response, the Provider outlined that the claim fell outside the agreed cover under the terms and conditions of the policy. The Provider outlined that the policy definition of curtailment to be applied, as was agreed under the contract entered into by both parties.

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The Provider points to the definition of “curtailment” under the policy which is as follows:

**“Curtailment/ Curtail/ Curtailed**

- means either

- (a) abandoning or cutting short **your trip** by direct early return to **your home**, in which case claim will be calculated from the day you returned to your home and based on the number of complete days of **your trip you** have not used, or
- (b) By you attending hospital outside **your home area** as an inpatient for at least a period of 48 hours. Claims will be calculated from the day **you** were admitted to hospital and based on the complete number of days **you** were hospitalised.”

The Provider further refers to “Section A Cancellation or curtailment charges” of the policy which states:

**“What is covered**

If **Your Trip** is cancelled or **Curtailed** due to one of the reasons below **We** will pay **You** up to the amounts shown in the Features and Benefits table of the policy **You** have purchased for any irrecoverable unused travel and accommodation costs (including excursions up to the amount shown in the Features and Benefits table) and other pre-paid charges (...) which **You** have paid or are contracted to pay together with any reasonable additional travel expenses incurred.

**Reasons for cancellation or Curtailment:**

1. The death, **Bodily Injury** or **Serious Illness** of:
  - a) **You**
  - b) **Your Travelling Companion**
  - c) Any person with whom **You** have arranged to reside temporarily during **Your Trip**
  - d) **Your Close Relative**
  - e) **Your Close Business Associate.**
2. **Compulsory quarantine, jury service attendance or being called as a witness at a Court of Law of You or Your Travelling Companion.**
3. **Redundancy of You or Your Travelling Companion.**
4. **You or Your Travelling Companion** who are member of the Armed Forces, Police, Fire, Nursing or Ambulance Services or employees of a Government Department and have **Your/their** authorised leave cancelled for operational reasons, provided that such cancellation or Curtailment could not reasonably have been expected at the time this insurance is purchased by **You.**
5. The Police requesting **You** to remain at or return to **Your Home** due to serious damage to **Your Home** caused by fire, aircraft, explosion, storm, flood, subsidence, malicious persons or theft.

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6. *Closure of air space directly attributable to volcanic eruption. Please note this cover only applies if **You** have purchased a Gold policy and this is shown on **Your** schedule."*

The Provider contends that the Complainants did not return home earlier than originally planned as a result of any reasons outlined above, in order to be covered, and neither were they hospitalised due to illness. The Provider states that the Complainants were not medically required to quarantine (confined to their cabin) but rather had to remain on the ship for the 33 remaining days and as a result the holiday they had expected did not materialise. However this scenario does not fall within the policy definition of curtailment, and therefore their claim fell outside the scope of the policy cover.

The Provider submits that the terms and conditions of the policy were clear to the Complainants prior to the policy inception and that a 14-day cancellation period was allowed in case the policy was not suitable for their needs. The Provider states that as the policy was not cancelled within the 14-day cooling off period, it was accepted on those terms and conditions as notified to the Complainants.

The Provider submits that the Complainants' insurance policy was not "*all encompassing*" and that there are situations which are not covered under the policy. The Provider asserts that even if the Complainants had been able to get off the ship in South Africa to fly home, they would not have been entitled to compensation under their policy as the reasons for curtailment would not have come within the reasons set out in the policy.

The Provider states that the Complainants submitted a claim for their "missed ports" under the Cruise Cover on their policy and that this aspect of their claim was accepted by the Provider to the maximum payable under the policy £500.00 (five hundred pounds) per person. The Provider further submits that it has noted that the Complainants have been offered future credit with the Cruise Company.

### **The Complaint for Adjudication**

The complainant is that the Provider unfairly declined the Complainants' claim for curtailment of their trip. The Complainants seek to be reimbursed for the cost of the 33 days of the 77-day trip that they say was curtailed, due to COVID-19 restrictions.

### **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.

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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.

I note that there were three telephone calls made by the Complainants to the Provider. Whilst recordings were not submitted to this Office, I note that the details of these calls were recorded by the Provider in its system notes.

A Preliminary Decision was issued to the parties on **14 October 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 Complainants held a Single Trip policy of insurance with the Provider for a 77 day trip starting in Australia and ending in the UK. I note the Complainants have submitted that the trip was curtailed for 33 days when the ship did not make the stops scheduled in the cruise itinerary and they were not allowed to socialise due to COVID-19 measures that the Cruise Company had to implement. I note the Complainants submit that their 33 days were not a holiday but the cruise ship "*was merely a vessel for getting [them] back home*" and a "*massive loss of enjoyment*". I note the Complaints submitted that the ship's captain stated that their trip was "*curtailed*" on the **18 March 2020**.

I note the Provider's submissions that although sympathetic to the Complainants, their claim is not eligible for benefit under the policy.

I note from the documentary evidence before me that the Policy covers "Curtailement" as follows:

***"What is covered***

***If Your Trip is cancelled or Curtailed due to one of the reasons below We will pay You up to the amounts shown in the Features and Benefits...***

***Reasons for cancellation or Curtailement:***

1. The death, ***Bodily Injury*** or ***Serious Illness*** of:
  - f) ***You***
  - g) ***Your Travelling Companion***
  - h) ***Any person with whom You have arranged to reside temporarily during Your Trip***

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- i) **Your Close Relative**
  - j) **Your Close Business Associate.**
2. **Compulsory quarantine, jury service attendance or being called as a witness at a Court of Law of You or Your Travelling Companion.**
  3. **Redundancy of You or Your Travelling Companion.**
  4. **You or Your Travelling Companion who are member of the Armed Forces, Police, Fire, Nursing or Ambulance Services or employees of a Government Department and have Your/their authorised leave cancelled for operational reasons, provided that such cancellation or Curtailment could not reasonably have been expected at the time this insurance is purchased by You.**
  5. **The Police requesting You to remain at or return to Your Home due to serious damage to Your Home caused by fire, aircraft, explosion, storm, flood, subsidence, malicious persons or theft.**
  6. **Closure of air space directly attributable to volcanic eruption. Please note this cover only applies if You have purchased a Gold policy and this is shown on Your schedule."**

In this regard, I am of the opinion that it was reasonable for the Provider to determine that the Complainants' claim did not fall within the scope of the policy. The policy clearly defines 'curtailment' and sets out a limited number of reasons for curtailment which are covered.

While I note the Complainants submitted that the Captain of the ship had described the trip as having been "curtailed", this was not a "curtailment" within the meaning of the policy definition. I am also conscious that the policy offers benefit for compulsory quarantine of the policyholder or the policyholder's travelling companion. I note in that regard that the Provider has indicated that the Complainants "were not ill and so were not quarantined (confined to their cabin), they were unable to leave the ship for 33 days and so the holiday that they expected did not materialise."

Whilst it is disappointing that the definitions within the policy do not include a definition of "quarantine", which would be useful to policyholders to ensure a clear understanding of their cover, I am satisfied that in this instance there is no evidence that the Complainants were required to stay in strict isolation within their cabin, in order to prevent the spread of disease. Rather, on the basis of the evidence made available to date, it appears that the Complainants were confined to the cruise ship and could not disembark, owing to the unwillingness of the intended disembarkation ports to accept passengers from the ship. This undoubtedly reduced the Complainants' enjoyment of their trip but the policy offers no cover for such loss of enjoyment.

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I note the Provider's advice that the Complainants were automatically offered future cruise credit for the period of 33 days, by the cruise company, because of being unable to leave the cruise ship for 33 days, in recognition of this limitation which was placed on their holiday.

Accordingly, whilst I note that the Complainants' claim in respect of their missed ports was admitted by the Provider for assessment, insofar as the Complainants' claim which is the subject of this complaint is concerned, I am satisfied that the Provider was entitled to decline the Complainants' claim for curtailment in accordance with the terms and conditions of the policy. For that reason, I do not consider it 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

5 November 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.