



<u>Decision Ref:</u>	2022-0043
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation Claim handling delays or issues Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a travel insurance policy.

The Complainant's Case

The Complainant submits that he was due to travel abroad on holiday with his family on **13th March 2020**. He further states that the evening before their scheduled departure, he received an urgent communication from his employer (a hospital) which cancelled "*all leave for Medical Consultants with immediate effect given the emerging Covid crisis*".

The Complainant says that he attempted to notify the airline that he would be unable to travel the following day, but was unsuccessful. He contends that when he emailed the airline to request a refund "*in part or in whole or a voucher*", the airline advised that he was not entitled to a refund, as the flight had taken off. The Complainant submits that he made a claim on his multi-trip policy with the Provider, which was rejected. He further submits that he appealed this decision on the grounds that his inability to travel arose from a directive issued by his employer, and he sets out these details in his submissions.

The Complainant says that he appealed the Provider's decision. The Complainant states that the Provider's website at the time of his travel stated that:

"If you have not yet travelled or are seeking to cancel an upcoming trip, there is no coverage under your policy in response to Coronavirus, unless....(2) You have been

medically quarantined in Ireland due to Coronavirus and are therefore unable to travel”.

The Complainant asserts that he would normally have been required to medically quarantine following contact with diagnosed COVID-19 patients however, essential frontline healthcare staff were allowed a derogation from quarantine during this period.

The Complainant wants the Provider to pay him the sum of **€2,442.90**, comprising the cost of flights and accommodation for the trip not taken.

The Provider’s Case

The Provider submits that there would be no cover under the policy for the Complainant, simply because he had been in contact with a patient with COVID-19. The Provider states that it could only consider the claim for cancellation due to quarantine, if the Complainant had been medically quarantined in his home or at a facility in his country of residence, that would have left him unable to travel.

The Provider submits that under the terms and conditions of the Complainant’s policy the following conditions are not covered:

“k) Any Cancellation, Curtailment or Trip Interruption caused by work commitment or amendment of your holiday entitlement by your employer”.

The Complaint for Adjudication

The complaint is that the Provider has wrongfully declined to pay the Complainant’s claim under a travel insurance policy.

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.

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A Preliminary Decision was issued to the parties on **10 January 2022**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

Chronology of Events

- **22nd January 2020:** Travel insurance policy was incepted by the Complainant with the Provider
- **12th March 2020:** The hospital at which the Complainant is employed as a key frontline healthcare worker, issued a communication cancelling all leave for staff in the Complainant's position with immediate effect, due to the COVID-19 crisis
- **13th March 2020:** Complainant scheduled to travel on holiday to [Country] with his family
- **13th March 2020:** Complainant submits copies of flight invoice, accommodation and transfer receipts to the Provider in respect of his claim
- **18th March 2020:** Provider writes to Complainant rejecting his claim on the basis that it was "*cancelled due to cancellation of annual leave*"
- **21st March 2020:** Complainant responds to Provider's letter of **18th March 2020** which rejected the Complainant's claim and refers the Provider to the 'government directive' provision in his policy
- **31st March 2020:** Complainant responds to an enquiry from the Provider's agent and confirms that he wants to have a complaint logged on his behalf
- **29th April 2020:** Provider issues its Final Response to the Complainant, rejecting the complaint
- **6th May 2020:** Provider writes to Complainant in respect of his response to the Final Response Letter, stating that the policy does not provide cover for government directives relating to the HSE's withdrawal of annual leave
- **11th August 2020:** Complainant issues email to Provider submitting that he is entitled to cover due to the fact he would ordinarily have been required to medically quarantine following contact with "*diagnosed covid patients*", but that a derogation applied to essential healthcare staff
- **24th August 2020:** Provider writes to the Complainant to confirm its position in respect of the Complainant's suggestion that the cancellation of his trip falls within the remit of the 'government directive' provision, providing a '*retrospective document*' from his employer
- **27th August 2020:** Complainant responds to the Provider, citing "*genuine other "true cause" / causes that I believe "cannot be ignored"*", including his position as a frontline healthcare worker; his responsibility to his patients and his responsibility to his colleagues and staff in [Hospital]

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The Complainant purchased a multi-trip travel insurance policy (“the Policy”) with the Provider on **22nd January 2020** with a period of cover running up until **21st February 2021**. The Complainant booked flights, a hotel transfer and accommodation for a trip to [Country] consisting of four days from **13th March 2020** until **17th March 2020**.

I note that at 19.53pm on **12th March 2020**, the evening before the Complainant’s scheduled trip, he received a communication from “*the lead clinical director of the hospital group*” that, as a result of the emerging COVID-19 crisis, all annual leave for medical staff in the Complainant’s position was cancelled.

The Complainant subsequently made a claim under the Policy on **13th March 2020**, for the cost of his lost flights and accommodation in the sum of **€2442.90** (having secured a refund of the hotel transfer fee, minus a deposit of €60.00). The Provider notes in its submissions to this Office that the flights were subsequently cancelled by the airline in question, resulting in the Complainant’s receipt of a refund. The Complainant makes clear that he only secured a refund of the taxes, rather than the cost of the flights, and he confirms that he only seeks to recover costs “*not coverable from another resource*”.

The Complainant’s claim was reviewed by the Provider, in accordance with the terms and conditions of the Policy. The Provider declined to accept this as a valid claim and after it informed the Complainant of this decision, the Complainant made a complaint on **21st March 2020** and a Final Response Letter was issued on **29th April 2020**.

The Complainant’s travel insurance policy provided cover against certain specified events which were set out in the policy wording, along with all applicable conditions, restrictions, or exclusions applying to the level of cover in place. For a valid claim to arise, it must be demonstrated that one of these specified events covered by the policy, resulted in the loss claimed for by the Complainant, and that it was not subject to any restriction or exclusion from cover.

Evidence

(i) Relevant Sections from the Policy

“General Exclusions Apply to All Sections”

24. *Any costs recoverable from another source”*

I note that this section has been referred to by the Provider to confirm that the cost of the Complainant’s flights are not recoverable under the Policy, because he was subsequently issued with a refund by the airline in question.

The Complainant’s policy contains a section entitled “**Section 9 – Cancellation or Curtailment & Trip Interruption**”.

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This section contains certain exclusions, including:

“What is not covered in this section:

...

k) Any Cancellation, Curtailment or Trip Interruption caused by work commitment or amendment of Your holiday entitlement by Your employer.”

[my underlining for emphasis]

(ii) Complainant’s Letters of 11th August 2020 and 24th August 2020

In his letter of **11th August 2020**, the Complainant refers to information set out on the Provider’s website, which he re-states as:

“there is no coverage under the Policy for trip cancellation in response to Coronavirus, unless

- 1. A government directive has been issued which advises against all non-essential travel to an affected area which forms part of your trip.”*

The Complainant submits that he possesses status as a permanent employee of the Health Service Executive, a government agency. He asserts that therefore, the cancellation of his annual leave is *“a clear written directive from the same government agency”*. He has also submitted that he would ordinarily have been required to medically quarantine following contact with patients who had COVID-19 arising from his position as a healthcare worker.

In his letter of **24th August 2020**, the Complainant referred to a *‘retrospective document’* from his employer, which was also supplied and sets out as follows:

“[Complainant] would ordinarily have been required to medically quarantine following these contacts. However, as was necessary during this period for other Essential Frontline Healthcare Staff, a derogation from quarantine applied during this period”

This assertion was rejected by the Provider in circumstance where cover would not arise due to the Complainant’s contact with a patient with COVID-19. The Provider submits that it can only consider a cancellation claim arising from quarantine, if the individual in question has been *“medically quarantined in your home or a facility in your country of residence that would leave you unable to travel to your destination and provide a certificate of quarantine”*.

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The Provider refers to the Policy's reference to "**Your compulsory quarantine**" at Section 9 in support of this submission. I agree with the Provider's position in respect of the "*retrospective document*" dated **9th August 2020** supplied by the Complainant's employer, because it simply confirms that the Complainant was in contact with patients who had contracted COVID-19 but it does not establish that the Complainant was required to quarantine at the time when he had been scheduled to travel.

Analysis

I am satisfied that the policy wording clearly sets out that the Complainant was not entitled to rely on '*Section 9 – Cancellation or Curtailment & Trip Interruption*' in the Policy, by reason of the clear exclusion of "*Any Cancellation, Curtailment or Trip Interruption caused by work commitment or amendment of Your holiday entitlement by Your employer*".

At the time the cancellation arose, the reason for it was clearly the communication the Complainant had received from his employer, that annual leave for employees of his status was cancelled immediately. I am not satisfied that this communication constituted a Government Directive, as it was specifically addressed to the staff at the hospital where the Complainant works.


I agree with the Provider's position that the full and first disclosure of the reason for the cancellation, had always been that the annual leave had been withdrawn, and this was the reason cited for the Complainant's claim. The Provider cannot be required to overlook this reason, which is clearly excluded under the terms of the Policy, quoted above. It is regrettable that the Complainant was particularly unfortunate in this instance, that his employer cancelled his annual leave, in response to the emerging COVID-19 emergency.

The complaint made is that the Provider wrongfully declined to pay the Complainant's claim. Because I accept that the Complainant's particular circumstances for his trip cancellation were not covered, and indeed were specifically excluded from cover by the policy provisions, I cannot find that the Provider acted wrongfully in reaching its decision to decline the Complainant's claim. 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**, and consequently this complaint cannot 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

1 February 2022

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.