



<b><u>Decision Ref:</u></b>	2022-0063
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Travel
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - cancellation Rejection of claim – partial rejection
<b><u>Outcome:</u></b>	Rejected

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

The Complainant booked a cruise leaving from a US City and he had the benefit of a travel insurance policy with the Provider.

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

The Complainant submits that he booked a holiday of a lifetime for himself and his wife, to travel on a cruise liner, to celebrate a life event. The Complainant states that this was booked through a travel agent, and they flew to the United States on [redacted] **March 2020** and planned to set sail on the cruise the following day.

The Complainant submits that the scheduled return date to Ireland was later in **March 2020**. On arriving in the United States, the Travel Agent contacted the Complainant around 21.00 to inform him that the cruise had been cancelled. With no accommodation booked beyond the first night in Hotel A, the Complainant submits that they were “*effectively stranded & homeless.*” The Complainant contacted the hotel that they had booked for the period after the cruise, Hotel B, and Hotel B allowed him to move the booking forward. The Complainant stayed in Hotel B with his wife for a period of 4 days and boarded a return flight to Ireland a week earlier than planned in **March 2020**.

The Complainant submits that the Travel Agent arranged the return flight from the United States before the US travel ban came into force. The Complainant states that the airline allowed him to use the original return booking and waived the rebooking fee - however, there was a fare difference of €352.00 (three hundred and fifty two euros). The Complainant also maintains that he had booked a number of non-refundable transfers from the port and hotel (booked directly through the Travel Agent).

The Complainant states that the Cruise Ship Company offered a full refund of the cruise and he submitted a claim to the Provider for the entire expense of the trip, less the cost of the cruise. The Complainant submits that this claim was assessed under section CJ - *Cancellation and Curtailment charges* of the travel insurance policy and the Provider offered a settlement of €352.00 (three hundred and fifty two euro) minus the €150.00 (one hundred and fifty euro) excess charge. The Complainant maintains that this assessment is incorrect and states it should be assessed under section C2b - *Holiday Abandonment*, as no Government Directive was issued regarding travel for Irish passengers until **20 March 2020**.

The Complainant submits that:

*"[I] paid for [Credit Card] with [Complainant's Bank] to include travel insurance. On 13/03/2020 we were flying to [US City] to avail of a long awaited cruise for [a life event celebration]. Whilst we were in the air, the cruise was cancelled, so we were made aware of this by [Travel Agent] on arrival at [US City] 9pm that night. We stayed in a hotel as arranged that 1st night, then as we were due to be on a cruise. We were effectively stranded & homeless. The Hotel we were due to stay in for 4 days after the cruise very kindly agreed to bring forward our booking by a week as we were stuck until alternative flights to [US City] could be sought by the agent. We got flights eventually 4 days later on the 18/03/2020 at an extra charge of €352, and got home to Dublin 12 hours before the US lockdown. We lost several transfers we paid for, got charged extra to get home and effectively lost the whole family holiday of a lifetime. I haven't claimed for 1 cent more, not even a cup of coffee. So my claim constitutes the cost of the loss of the holiday which initially cost €5581, minus the amount being refunded from [Cruise Ship Company] the cruise provider €2732, plus the extra we were charged for flights, €352. So, the amount of €3201 is what I claimed. As you can see they refused, citing certain words to wriggle out of it. I submitted the claim under their section C2, Travel Delay, missed connection & holiday abandonment sub section(b). They have offered €352 minus €150 excess. This is not only totally unacceptable it is an insult. I am also extremely dissatisfied with the time frame."*

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By email dated **23 April 2020**, the Complainant asserts that:

*"Under no circumstances would we have travelled had we been aware the cruise was about to be cancelled or that the ensuing lock down in the USA was about to happen. In relation to the breakdown, yes the flights and hotels were used as were some of the transfers, but they were not used for the intended purpose of our holiday- they were used as a matter of necessity and urgency, we were effectively stranded and had little other choice but to follow the direction of our travel agent. I am sure [Travel Agent] did their utmost to minimize cost to us and assist in every way given it was a most inconvenient and somewhat frightening experience. This is the basis of my claim. I am only claiming for what I have lost."*

The Complainant states that:

*"The flights for the 18/03/2020 were not confirmed for us by [Travel Agent] until the morning of the 17/03/2020, so suffice to say the stay in the hotel was far from one of leisure but one of utter anxiety and necessity. ... Had it not been in place whilst we were waiting repatriation, we would have had to pay for accommodation which would have been covered by the policy, according to [Provider] policy wording. It does not exclude a prepaid booking. Again I fail to understand by their explanation why [the Provider] feel that they need not indemnify me on this account. Whereas had this booking not been in place, we would have been without accommodation until [Travel Agent] arranged our return ... Likewise, the same thinking appears to be the case regarding the cost of the return flights. Repatriation flights are covered, according to their policy wording. It must be noted that their policy does not exclude these circumstances."*

The Complainant also states that:

*"The outbound flight, initial transfer from [US City] airport and the first nights hotel accommodation understandably cannot be redeemed or recovered as they were used as per the itinerary. However, I believe my claim is fair in this regard as I am not trying to recover any further costs such as meals and taxes, nor being unreasonable regarding what I am prepared to settle for. I also understand it is not [Provider's] responsibility to compensate for the inconvenience or the extraordinary degree of disappointment my wife and I endured as a result of this situation."*

The Complainant also notes that these events have affected his wife *"she is also suffering a huge financial loss, not to mention the disappointment at the loss of the cruise as we arrived in [US City]."*

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The Complainant wants the Provider to refund the cost of the lost holiday as follows: €5,581.00 (five thousand, five hundred and eighty one euro) total, minus the cost of the cruise €2,732.00 (two thousand, seven hundred and thirty two euro), the balance being €3,201.00 (three thousand, two hundred and one euro).

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

The Complainant held travel insurance with the Provider as an associated benefit of making payment using a credit card they held with their bank. The Provider submits that it received a claim from the Complainant regarding the cancelled trip. The Provider states that the Complainant submitted a claim for the entire cost of the trip, minus the cost of the cruise, as this was covered by the Cruise Ship Company.

The Provider says that the Complainant submitted his claim to the Provider's Nominated Claim Handlers on **15 April 2020** and the claim was assessed on **23 April 2020**. The Provider's Nominated Claim Handlers requested a cancellation invoice in respect of the unused part of the trip that was non-refundable. The Provider maintains that it assessed the claim based on section C1 - *Cancellation and Curtailment Charges*. It submits that, based on its assessment of the information provided by the Complainant, the claim would be settled for €352.00 (three hundred and fifty two euro) minus the €150.00 (one hundred and fifty euro) excess charge. The Provider maintains that this claim is outside the remit of assessment under section C2b - *Holiday Abandonment* because the Complainant was not subject to a delay of 12 hours before departure and he did not elect to cancel the trip as a whole. The Provider maintains that the Complainant successfully departed for the destination, meaning section C2b does not apply.

The Provider submits, by letter dated **19 February 2021**, that:

*"The claim was assessed as follows:*

*Flight Change €352*

*Hotel to Port Return at a cost of €159.90*

*Total Cost €511.90*

*Settlement offered €511.90 less Excess of €75 per insured person*

*Total €361.90*

*On 26th of May 2020, the Complainant appealed the decision of the above payment and advised he was not accepting this amount, as his claim was for the amount of €3,201 which included the initial flight and the accommodation paid whilst in [US City]."*

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By email dated **27 May 2020** the Provider's Complainant's Handler submits that:

*"Please be advised, under the curtailment section of your policy, we are only able to deal with unused costs and extra costs incurred to get you home. From the documentation we received from [Travel Agent], the breakdown states that the only non-refundable costs which were unused were the transfers from the Port to Hotel and from the Hotel to the Port, and the extra expenses incurred to get to home were the flight change fees. This is why the settlement we have provided is €361.90."*

The Provider in its **Final Response Letter**, dated **18 July 2020**, said as follows:

*"I note you were seeking to have your claim assessed under Section C2b – Holiday Abandonment, however; I must explain that this section of your policy would only apply should you be delayed for at least 12 hours before departure and elect to cancel your trip as a whole. As you successfully departed to your intended destination, this section of cover would not apply to your claim."*

The Provider submits that:

*"To claim under the Holiday abandonment section of the policy as noted below, the delay has to be as a result of; Strikes, Locked-out workers, Industrial action, Riots and/or Civil Commotion, hi-jacks, Avalanches, Landslides, Adverse weather or Mechanical Breakdown of aircraft or Sea vessel - after the date of booking the Insured Journey which could not reasonably have been anticipated at the time. Due to the circumstance of this claim there was no cover available under the Holiday Abandonment section of the policy."*

The Provider stands by its decision to reject most of the claim and states that this is in line with the **Terms and Conditions** of the Complainant's travel insurance policy.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongfully or unfairly failed to fully admit and pay the Complainant's travel insurance claim.

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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 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 **25 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. 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's **Terms & Conditions** state, at page 6, that:

*"Curtailed or Curtailed*

*The cutting short of an Insured Journey once an Insured Person has departed from the Republic of Ireland, for any of the reasons outlined in Section C 1 (Cancellation or Curtailment Charges)."*

The Provider's **Terms & Conditions** state under *Section C1 - Cancellation & Curtailment Charges*, at page 13, that:

*The Insurer will indemnify an Insured Person in respect of travel and accommodation expenses paid or contracted to be paid by an Insured Person in respect of their own Insured Journey and not recoverable i.e. including forfeited deposits where the Insured Journey is necessarily cancelled or Curtailed as a result of:*

[My underlining for emphasis]

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- a. death, injury or illness of an Insured Person:*
- b. death, injury or illness of the spouse / Partner, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, child, fiancé(e), close business associate of an Insured Person or person with whom an Insured Person has arranged to travel:*
- c. compulsory quarantine, jury service or witness call in a court of the Republic of Ireland of an Insured Person;*
- d. redundancy of an Insured Person commencing after the date an Insured Journey is booked and qualifying for payment under the current redundancy payment laws:*
- e. fire at the residence of the Insured Person rendering it uninhabitable 10 days or less before departure.*
- f. if after the time the Insured Person books their trip, the Department of Foreign Affairs advises against all but essential travel to their intended destination.*

*The maximum indemnity under Section C1 is €2,500 for each Insured Person."*

**Section C2 -Travel Delay, Missed Connection & Holiday Abandonment** of the Provider's **Terms & Conditions**, page 14, says as follows:

*"Subject to a delay of at least 8 hours to any part of the Insured Journey arising solely out of interruption or curtailment of scheduled services by reason of strikes, locked-out workers, industrial action, riots and / or civil commotion, hi-jacks, avalanches, landslides, adverse weather or mechanical breakdown of aircraft or sea vessel after the date of booking the Insured Journey which could not reasonably have been anticipated at the time, the Insurer will pay each Insured Person as follows*

*a. Travel Delay*

*An amount of €50 if the Insured Person's departure is delayed for at least 8 hours and a further €20 for each additional full 8 hour period of delay up to a maximum of €120 in respect of any one Insured Person.*

*b. Holiday Abandonment*

*If the Insured Person elects to cancel the whole travel itinerary following a delay of not less than 12 hours beyond the scheduled departure time, the Insurer will pay for any irrecoverable costs (whether paid or contracted to be paid) or for the reasonable extra costs of travel and accommodation you need to reach your booked holiday destination if you decide to continue with your planned trip, up to a maximum of €2,500 for each Insured Person.*

*c. Missed Connection*

*If the Insured Person misses a flight connection due to the airline with whom they have booked to travel being unable to deliver them in sufficient time to their connecting airport to meet their connecting flight due to poor weather conditions, strike, industrial action, or mechanical breakdown, we will pay the reasonable extra costs of travel and accommodation the Insured Person needs to continue their pre-booked journey in accordance with their itinerary, up to a maximum of €1,000 for each insured person.*

Cover under this section is subject to;

- a. the Insured Person shall have checked in for an Insured Journey at or before the recommended time*
- b. the Insured Person has allowed enough time to reach their final international departure point at or before the recommended time*
- c. the Insured Person shall have obtained from the appropriate transport company or authority a statement confirming the period of and reason for the delay*
- d. the Insured Person can only claim under sub section a, b or c of Section C2."*

The Provider submits, by letter dated **19 February 2021**, that:

*"The claim was assessed as per the Complainants Policy wording (outlined below), and the unused transfers from the port to the hotel and the change of flight fee were covered under this claim. The policy does not extend to cover the original flight and the accommodation charges."*

The Complainant submits in response that:

*"It should however cover a repatriation flight, which ours was, as well as the accommodation and necessary transfers leading up to that flight. However, in point 3 they say they settled the claim following the guidelines of their own policy wording, which clearly states that their cover does extend to accommodation and flights, as per below. So I am unclear again, as how their decision was reached."*

By email dated **21 July 2020**, the Complainant asserts that:

*"I wanted to add that the Covid 19 travel advisory by the DFA took effect on 20/03/2020. This is contrary to their findings investigating my complaint and also points to me being covered under section C1, (f)."*

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There are two provisions under the Provider's **Terms & Conditions** which the Complainant could fall under. The first is *Section C1 - Cancellation & Curtailment charges* which will offer cover when a trip is cancelled due to a number of reasons, including *"if after the time the Insured Person books their trip, the Department of Foreign Affairs advises against all but essential travel to their intended destination"*.

I note that the Complainant asserts that *"the Covid 19 travel advisory by the DFA took effect on 20/03/2020"* after their return flight to Ireland on the **18 March 2021**. This contention raises an argument that, in fact, the Complainant had no cover *under Section C1 - Cancellation & Curtailment charges*, given that the Complainant maintained that the Government advisory did not in fact give rise to the curtailment of their claim, which rather arose owing to the cancellation by the cruise company of the cruise which had been booked.

The Complainant has sought to argue that it is the second provision of the Provider's **Terms & Conditions** which the claim should fall under, being *Section C2 -Travel Delay, Missed Connection & Holiday Abandonment* which covers when a **delay** of 8 hours occurs to any part of the Insured Journey arising solely out of interruption or curtailment of scheduled services by reason of strikes, locked-out workers, industrial action, riots and or civil commotion, Hi-jacks, avalanches, landslides, adverse weather or mechanical breakdown of aircraft or sea vessel after the date of booking which could not reasonably have been anticipated at the time.

Cover also applies to cancellation of the **whole travel itinerary** following a delay of not less than 12 hours beyond the scheduled departure time or a missed flight connection due to the airline with whom they have booked to travel being unable to deliver them in sufficient time to their connecting airport to meet their connecting flight due to **poor weather conditions, strike, industrial action, or mechanical breakdown**. I am not satisfied that the Complainant and his wife were covered under *Section C2 -Travel Delay, Missed Connection & Holiday Abandonment* and indeed, there is no evidence of a delay of 8 hours or 12 hours, due to *poor weather conditions, strike, industrial action, or mechanical breakdown*.

In the event however, the Provider sought to assess the claim under Section C1 "Cancellation and Curtailment Charges" and it is the calculation of the benefit payable as a result of that claim assessment, that has given rise to this complaint.

I note that within the Complainant's submissions there are numerous references to the anxiety which he and his wife encountered during the difficult days when they were seeking to resolve their travel difficulties, after they received notification that the cruise had been cancelled.

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The Complainant acknowledges however, that the Provider is not obliged to make a benefit payment arising from the inconvenience or the extraordinary degree of disappointment which he and his wife suffered, as a result of the situation they encountered. I note that the Complainant and his wife were able to change their booking with the hotel as a result of which, they were in a position to use the accommodation on different dates, and whilst this was not ideal, nevertheless I note that they received the benefit of their booking and in that respect did not incur a financial loss.

The Complainant points out that if that booking had not been in place, they would have had to pay for accommodation which would have been covered by the policy. This is not however, what occurred. Rather, the Complainant and his wife used the accommodation which had been booked, but did so during different dates, to meet their immediate needs when they found themselves without accommodation.

The Complainant is also disappointed that the benefit payable by the Provider does not include the cost of the original flights. It is clear from the evidence however, that those flights were used by the Complainant and his wife, and I note that the Provider has met the cost of the increased fare which became payable, when the date of the return flight was changed.

In all of the circumstances, I am satisfied that the evidence does not disclose any wrongdoing by the Provider in relation to this claim. Rather, I am satisfied that the Provider was reasonable in its approach to the claim assessment and in those circumstances, I take the view that there is not reasonable basis before me, upon which this complaint can 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**  
**Financial Services and Pensions Ombudsman (Acting)**

16 February 2022

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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.

