



<u>Decision Ref:</u>	2022-0077
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants hold a multi-trip travel insurance policy with the Provider.

The Complainants' Case

The Complainants submit that in October 2019, they booked a holiday with a travel company and paid a deposit of €300.00 (three hundred euros). The balance of €2,500.00 for the holiday was due to be paid in **March 2020**, with an intended departure date in May 2020.

The Complainants cancelled their trip as they felt they were at risk in terms of their health. The First Complainant submits that at the time of the cancellation he and his wife were almost eighty years old, and that COVID-19 made it unsafe for them to travel. The Complainants state that the holiday company subsequently cancelled the flight, but refused to refund their deposit. The Complainants explained this to the Provider who told them that the holiday company "*are liable.*"

The Complainants argues that they took out their insurance "*in good faith,*" to cover them "*for all unforeseen complications that would arise.*"

The Complainant asserted when he made this complaint that:

"I am writing with frustration over a holiday I booked in October last year. I paid a deposit off 300 euro to travel with [Travel Agent]. The balance was due in March which I did not pay as the virus was rampant. At 79 years of age I felt it would have been dangerous for us to travel. As it happened [Travel Agent] did eventually cancel flight but refused to pay my deposit as I cancelled before they did.

Now my argument is with [Provider] who say [Travel Agent] are liable which I believe they are not. When I took out the Multitrip last May¹ in good faith I felt I was covered for all unforeseen complications that would arise that is what insurance is for in my mind. I would not expect [Provider] to refund my deposit if I just cancelled the holiday because I didn't want to go. I cancelled for health reasons. I think [Provider] are being unreasonable and should pay the 300 euro and not look for a way like insurance companies do."

The First Complainant wants the refund of his deposit in the amount of €300.00 (three hundred euros) and submits that *"I can't win against the big companies."*

The Provider's Case

The Provider submits that the Complainants advised on **20 March 2020** that they *"had decided not to travel given the threat imposed by Covid 19."* The Provider states that it informed the Complainants at that time that they could contact the Provider within 48 hours of their intended departure date, *"and if the travel ban was still in place at that time, we would review your claim in line with the Terms and Conditions of your policy."*

The Provider submits that in order for the Complainants' claim to be covered by their insurance *"there must be a government directive in place at the time you are due to take your trip."* The Provider says that in March 2020 *"in technical terms, you had not yet missed the trip, so you had not experienced any loss."*

The Provider submits that in the absence of a Government directive at **25 May 2020**, the intended date of travel, the Complainants' cancellation was considered to be *"disinclination to travel,"* which is not covered by the policy. The Provider asserts that the *"Tour Operator must refund the cost if they cannot provide the trip/booking."*

The Provider wrote to the Complainants and asserted as follows:

¹ May 2019

“Our records show that on 20/03/2020 you called us to advise that you had paid a €300 deposit for a trip to [European Country] in May but had decided not to travel given the threat imposed by Covid 19. Our agent correctly requested that you contact us within 48 hours of your intended departure date, and if the travel ban was still in place as at that time, we would review your claim in line with the Terms and Conditions of your policy. On 27/04/2020, we received your claim form and cancellation invoice from [Travel Agent] dated 16/03/2020; on this cancellation invoice [Travel Agent] had apologised for the fact that your trip had been cancelled and suggested that you contact your travel insurance providers. The fact that [Travel Agent] had cancelled your trip due to Covid 19 changes the situation in that they are now legally obliged to refund you in full any amounts you paid for a trip/service they can no longer provide... the effect of this is that the Tour Operator must refund the cost if they cannot provide the trip/booking...”

In order for you to have a valid claim there must be a government directive in place at the time you are due to take your trip. When you contacted us on 20/03/2020, your trip was not due to take place until 25/05/2020 and because that was some time away, and the government directive may change or be lifted, we correctly requested that you call us back within 48 hours of your departure date. The reason for this is that if the Government directive changed between the time of your call on 20/03/2020 and your intended departure date of 25/05/2020, and travel to [European Country] was allowed, then you would no longer have a valid claim under one of the specified events for cancellation. It was too early to determine whether you had a valid claim under your multitravel policy and in technical terms, you had not yet missed the trip, so you had not experienced any loss.

I fully appreciate why both you and your doctor believed it safer not to travel ... given the threat of Covid 19, but in the absence of a government directive as at 25/05/2020, this is considered disinclination to travel which is not covered on your policy...I would suggest that you revert to [Travel Agent] for full refund of any amounts you paid them. [Travel Agent] are legally obliged to refund you any amount you paid for a trip that they cancelled, or in other words, a service you paid them for but that they can no longer provide.”

The Provider contends that the Complainants' claim does not fall under the Complainants' insurance policy insofar as there was no Government directive restricting their travel on the intended date of travel.

The Complaint for Adjudication

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The complaint is that the Provider unfairly and incorrectly declined to pay the Complainants' claim in relation to their holiday deposit.

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.

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 **6 January 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

The Provider relies on their **Terms and Conditions**, dated **29 March 2019**, where at Section 9, page 22, it said as follows:

"Section 9 - Cancellation or Curtailment & Trip Interruption

***Cancellation** cover applies if Your Trip takes place within the Period of Insurance, but prior to departing from the Republic of Ireland You are forced to cancel Your travel plans during Your Period of Insurance because of one of the following changes in circumstances which are beyond Your control and of which You were unaware at the time You booked the Trip and/or purchased this policy. Please see also, the 'Travel Delay' cover (Section 11).*

[My underlining for emphasis]

Changes in Circumstances

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- *Unforeseen illness, injury or death of You or any person with whom You have arranged to travel or stay during the Trip, or upon whom Your Trip depended.*
- *The death, imminent demise, or hospitalisation due to serious accident or unforeseen illness, of Your Close Relative or the Close Relative of any person upon whom Your Trip depends.*
- ...
- *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).*
-”.

I note that these details are followed by additional provisions and further, below, on Page 23, the policy provides:

“What is not covered in this section

- a) *Any disinclination to travel or continue travelling, unless Your change of travel plans is caused by one of the circumstances listed under 'What is Covered'.*
- ...
- l) *Prohibitive regulations by the government of any country, or delay or amendment of the Trip due to government action.*
- ...
- o) *The Policy Excess as shown on the Summary of Cover table per Insured Person, for each and every claim. If You are claiming only for loss of deposit then the excess is reduced to €15 per Insured Person per claim.*
-”.

The Provider submits that it wrote to the Complainants on **7 May 2020** as follows:

“I have reviewed your claim details and wish to confirm the following to you with regards the new travel restrictions in place due to the Coronavirus;

- *We are advising customers to speak to the airline, tour operator, travel agent and hotelier in all instances as the primary respondent to this situation*
- *If a booking is made via a Tour Operator, the Package Travel Regulations (PTR) apply; the effect of this is that the Tour Operator must refund the cost if they cannot provide the trip/booking*

- The PTR recently changed and was broadened to include bookings made online that include 2 elements booked 'independently' on the same wholesalers site ([Company] and the like).
- If you booked via a Travel Agent, you will need to go back to the Travel Agent to make the necessary applications for refund; otherwise you can do this directly with the airline/tour operator."

The First Complainant submits that he wrote to the Provider on **31 August 2020**, and said as follows:

"I got in touch with the travel agent and they once I cancelled before they cancelled the flight they are not liable. I made it clear from the beginning that I cancelled the holiday when the balance was due because of the serious situation and because we are 79 years of age. They are not legally bound to refund my deposit. That is why if I feel strongly that my insurance should cover my loss. That is why I take out travel insurance. Covid was an unforeseen situation and I take out travel insurance for that reason. [Travel Agent] know they are legally right and I can only turn to my insurance."

The Provider submits that it replied to the Complainants on **31 August 2020**, and said as follows:

"I understand that the reason you cancelled your trip to [European location] was because of the serious situation regarding Covid 19 and that you feel you should be covered by your travel insurance for the loss of your deposit. You correctly state that the pandemic was an unforeseen situation and that is the reason you take out travel insurance. Unfortunately, not every unforeseen situation is covered on your travel insurance. All policies of insurance contain various terms and conditions and these cannot be expected to cover every eventuality as to do so would make the premiums prohibitively expensive. As with all insurance, few policies if any, cover every eventuality or every unexpected event. Most policies insure against specified events only and are subject to the terms and conditions of the policy. Please see below the list of covered incidents where cancellation of a trip is necessary [cites section] ... where pandemics are the reason for cancellation of a trip, a government directive prohibiting travel to that country must be in place. That's why, when you called us on 20/03/2020, we asked you to call us back within 48 hours of your intended departure date of 25/05/2020 to see if travel to [European location] was still prohibited as this would determine whether or not you had a valid claim.

[My underlining added for emphasis]

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I am sorry that [Travel Agent] are not refunding your deposit because you cancelled your trip before they did. However, as you cancelled your trip to [European location] without knowing if a government directive was in place when you were due to travel on 25/05/2020, this is considered dis-inclination to travel, which is not a covered incident."

The Provider also submits that:

"On the 17th March, the Department for Foreign Affairs advised against all non-essential overseas travel until at least 29/03/2020. On the 28th March 2020 this was extended until further notice. It was subject to change at anytime. At the time of the cancellation on the 16th, there wasn't a government directive in place covering the dates of the trip, due to commence on the 25th May. As a result the cover cause '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)' would not come into effect. In addition, The trip was a package holiday. If it had been unable to go ahead and/or the advice from the DFA remained in place for the dates of the trip, a full refund would have been due to the customer under Package Holidays and Travel Trade Act, 1995 (incorporating the EU Directive 2015/2302 on Package Travel and Linked Travel Arrangements as amended by SI 80 of 2019). By cancelling when the customer did, the loss of deposit was incurred as a cancellation charge, that would not have been incurred had the booking remained open. There was still the possibility of it going ahead when it was cancelled, and as the DFA advice had remained in place for the time of the trip, it would have been refunded in full by [Travel Agent] in May.

I have reviewed the telephone call evidence carefully and note that during a telephone call on **20 March 2020**, the following was said:

Provider Agent 1: *"because you're not travelling until May what we would advise is that you need to check that the Department of Foreign affairs are still advising not to travel to your destination, and then we would consider a cancellation claim..."*

Provider Agent 1: *"...you are not going until the 25 May ..is that correct...so basically we need to wait until 24 hours prior to that departure date, and then if the ban is still in place and the Department of Foreign affairs advises not to travel to your destination, then we would consider this claim."*

[My underlining added for emphasis]

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Provider Agent 1: *"we couldn't give you answer until 48 hour prior to your departure, so if the ban is lifted and you can travel then there wouldn't be any claim."*

I also note that during the telephone call on **7 May 2020**, the following was said:

Provider Agent 2: *"unfortunately, we wouldn't be able to provide cover for that because it was cancelled before the government placed that travel ban, so we wouldn't be able to cover for that amount."*

...

[My underlining added for emphasis]

Provider Agent 2: *"you cancelled the trip before you knew if you could travel at that time."*

I note the cancellation email from the Travel Agent to the First Complainant dated **16 March 2020** and which reads

"we're sorry your booking has been cancelled. You may be able to make a claim against your travel insurance. Please refer to your travel insurance policy documentation to find your next steps. If an outstanding balance on your booking is due, this should be settled as soon as possible. Please find your cost breakdown and cancellation summary detailed below."

I note that the Provider's **Terms and Conditions** includes cancellation cover in the event of:

"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)".

I note in particular that the First Complainant was advised over the phone that to avail of this provision that the ban needed to be in place and that he was directly advised that *"...you are not going until the 25 May ..is that correct...so basically we need to wait until 24 hours prior to that departure date, and then if the ban is still in place and the Department of Foreign affairs advises not to travel to your destination, then we would consider this claim."*

The Complainants cancelled their trip on **16 March 2020**, two months before the Department of Foreign Affairs advice for **May 2020**, could be ascertained.

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In reviewing the policy provisions, I note that the cancellation cover offered by the policy refers to cover if the policyholder is forced to cancel travel plans because of one of the listed changes in circumstances set out in the policy. One of those change in circumstances is “*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).*”

I note that this change in circumstance does not specify that the Government directive must be in place at the intended date of travel, within 24 hours of the intended date of travel or, within 48 hours of the intended date of travel, as suggested by the Provider in its communications with the Complainant. Rather, it makes no reference to any particular date and is ambiguous in that regard, insofar as one potential interpretation of the provisions, in my opinion, is that once a Government Directive prohibits travel to the intended country and a policyholder is thereby forced to cancel travel plans, cover will be made available.

I note the Provider’s submission that, “*as you cancelled your trip to [European location] without knowing if a government directive was in place when you were due to travel on 25/05/2020, this is considered dis-inclination to travel, which is not a covered incident.*” This position, however, is very much dependent on a very specific interpretation of the policy wording which I have referred to above.

I note that *dis-inclination to travel* is not covered under the Provider’s **Terms and Conditions**. I also note that the Complainants may have become liable for the €2,500.00 (two thousand five hundred euros) balance in the interim period, and no doubt they will have wanted to avoid such a liability knowing that international travel in May 2020 could have been dangerous and/or unlikely. I note that the Complainants are elderly and have certain health considerations; they contend that they are long standing customers of the Provider and they acted in good faith.

I am satisfied that the Complainants’ decision not to travel was reasonable in their circumstances and as a result, it is understandable that they cancelled, well ahead of their Travel Agent doing so. In my opinion, the Complainants could well have been forgiven for having understood that they would be covered by the policy, given the particular policy wording in place, as referred to above. If it was the intention of the Provider that cover would be provided only in the event of a Government Directive being in place within a certain period of the intended date of travel, then it was open to the Provider to specify this in clear and comprehensible terms, within the policy wording. It did not however, do so, and this absence of clarity is disappointing.

I can well understand the logic for the provider including a provision of the nature suggested, given the potential for a full refund to have fallen due to the policyholder under Package Holidays and Travel Trade Act 1995. The Provider, however, did not specify this provision within the policy wording and indeed, in my preliminary decision I had noted the varying references to *within 24 hours* and *within 48 hours* of the intended travel date, suggesting to me that the Provider's interpretation of its own policy wording, was perhaps less specific than it might have been.

Since that time, the Provider has clarified that:

At the time of this incident, as things were changing so quickly, it was decided that in order to be reasonable and fair to all of our clients who had trips booked that we would advise people to wait out until 48 hours before their intended trip date to see if at that point their trip would be possible to take or affected by Government Directives, however, we do understand and appreciate your findings.

I am satisfied that this more generous approach by the Provider was an effort to be fair to its customers, but I remain of the view that the Provider's failure to specify within the policy wording, that a claim for cancellation under the "Government Directive" provision would be entertained only in the event of the Government Directive being in place at a particular point in time, or during a particular period measured by reference to the intended departure date, was an error on its part, and in my opinion this was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, as amended.

Accordingly, I am satisfied that it is appropriate to uphold this complaint and I consider it appropriate to direct the Provider to make a compensatory payment to the Complainants in the sum of €350, in recognition of the confusion caused to the Complainants by virtue of the ambiguity within the policy provisions.

I also recommend that the Provider consider amending the terms of the policy wording to more accurately outline the precise cover which is made available.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €350, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider.

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- I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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)

2 March 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.