An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0164
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Rejection of claim - cancellation Claim handling delays or issues Dissatisfaction with customer service
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant held a **Travel Insurance Policy** with the Provider. The policy period in which this complaint falls, is from **9 March 2020** to **8 March 2020**. This complaint concerns the Provider's failure to admit and pay the Complainant's travel insurance claim, in circumstances where the Complainant says the Provider gave her an expectation that the claim would be admitted.

The Complainant's Case

The Complainant, having booked the trip in **May 2020**, travelled by air from Dublin to [European location] at the end of **August 2020**, with a return flight scheduled for mid-**September 2020**.

On **7 September 2020** whilst abroad, the Complainant experienced difficulty breathing and was admitted to hospital, where she was diagnosed with a *"Pulmonary Embolism in both lungs"*. The Complainant was prescribed medication and discharged the next day and advised not to fly for four weeks.

On **9 September 2020**, the Complainant telephoned the Provider to query her travel insurance cover and says she was advised by the Agent that her policy provided her with up to **€10,000.00** (**ten thousand Euro)** cover towards the additional accommodation and travel expenses incurred as a result of her having been certified medically unfit to travel.

On **20 September 2020**, the Complainant's treating doctor confirmed that she was fit to travel, though still not by air. In her email to the Provider of **26 September 2020**, the Complainant advised, as follows:

> *"… My doctor said I would be fit to travel after 20th September but not by plane. My partner who is from Scotland was with me and had to stay also to look after me as was very breathless and weak initially.*
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> *We decided to travel to his house in Scotland by train from* [Location 2]*. We took a train from* [Location 2]*to Paris, the Eurostar from Paris to London. We broke the journey and stayed overnight in London as had travelled for 12 hours at that stage … The following day we travelled from London to Glasgow and then took a separate train from Glasgow to* [Location 3]*. This was the best option for me to leave France and at least get back to an English speaking country".*

The Complainant and her partner travelled on **22 September 2020** by train to Paris and then took the Eurostar train from Paris to London, where they stayed overnight to break up the journey, before taking a train the following day from London to Glasgow and a further train onward to their destination, where her partner resides. The Complainant later flew home to Dublin in **October 2020**.

The Complainant submits that as she would not have been medically declared fit to fly until early **October 2020**, her decision to travel by train to Scotland on **22 September 2020** meant she would not incur a further thirteen days' accommodation expenses in [European Country].

The Complainant completed a **Claim Form** to the Provider on **7 October 2020**.

Following its assessment, the Provider, by way of letter dated **27 October 2020** and email of **28 October 2020**, declined the Complainant's travel claim on the basis that she had travelled to a country which at the time of her travel, the Irish Government had advised persons not to travel to/avoid non-essential travel to, as part of the measures it imposed to curb the spread of the coronavirus (COVID-19).

The Complainant submits that instead of advising her of the potential cover available to a policyholder in her medical circumstances when she first telephoned on **9 September 2020**, the Provider ought to have declined her claim at that time, in that its Agent ought to have known or checked at the outset whether European Country] was at that time one of the countries where the Department of Foreign Affairs was advising Irish residents not to travel to.

The Complainant says the Provider's failure to decline her claim during this telephone call gave her a reasonable expectation that her claim would be admitted, and that this expectation influenced the decisions she then made, regarding her travel arrangements home.

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The Complainant set out her complaint in the **Complaint Form** she completed, as follows:

> *"I was in* [European Country] *in September* [2020]*. I started to have difficulty breathing and was hospitalised on* [date] *September with a pulmonary embolism – bi-lateral clots. I was told I could not fly for 4 weeks by my doctor. I phoned* [the Provider] *on 9th September to explain my situation, I was due to fly home on* [date] *September. I was told that I would be covered for extra accommodation costs, flight etc up to the value of €10,000. I needed to keep all receipts and documents and submit them for my claim which I duly did. At no point either during the many phone calls or emails was it even hinted at that I would not be covered.*
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> *I contacted my doctor and got a letter to say I would be fit to travel on 20th September but not by plane still as it was not 4 weeks since I had the clot. It was proving v expensive to stay in* [European Country] *for 4 weeks. My partner and I decided to travel by train from* [European Country] *to his house in the UK where I could continue to convalesce with no extra cost of accommodation etc. This was a reasonable decision in my mind as we were reducing costs and getting home with medical approval earlier than if we waited to fly. We were approved to travel from 20th September and we booked for 22nd as it was cheaper and times worked out better, as we had 4 trains in total to catch.*
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> *After a couple of months* [the Provider] *said because I had travelled to a country where the government had recommended I don't, the cover was invalid – surely someone in* [the Provider] *along the many conversations should have known that. I appealed their decision and lost and they referred me onto a company* [an Agent of the Provider] *who would now deal with my complaint. They gave me the same line and offered me €50 for my trouble – the receipt value* [of the claim] *was in the region of €2,500. I refused and again they came back and offered me an extra €50. I again refused but they lodged it into my account.*
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> *In my mind they are wrong or right – throwing the odd €50 at it is totally not acceptable …*
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> *The extra accommodation and near* (sic) *in mind I only stayed on 2 weeks instead of 4 was €1,000.* [The Provider] *say I stayed until the 22nd when I could have travelled on 20th – I explained this was because of travel times etc and if was flying would have to have been there until* [date] *October. I said I would be happy if they agreed to only cover the accommodation pro rata to 20th September (€711.11) and felt I was offering them a reasonable solution as opposed to €2,500. They refused again …*
>
> *I feel under the circumstances and times we are going through that staff in* [the Provider]*, in which I spoke to many, should have been aware of the situation regarding travel. It was incompetent, inefficient and had an impact on my decisions. We were on holiday; it was stopped in its track and would have looked for cheaper accommodation and possibly travel by ferry which would have been much cheaper.*

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My fear about travelling by ferry was that if something happens, I was at sea for over 24 hours and I was still apprehensive following my illness. Looking back I am now not prepared to accept the €711.11 but would like to have the full amount. Over a period of 10-12 weeks not one person mentioned that I may not be covered. I would also like to mention that my pulmonary embolism was not COVID-related".

The Complainant seeks for the Provider to admit and pay her travel insurance claim in the amount of **€2,483.44** and in this regard, when she submitted her **Complaint Form** to this Office, the Complainant advised:

"I would like to be paid a sum of money – the sum which I originally claimed."

The Provider's Case

The Provider says the Complainant first notified it of a travel insurance claim by telephone on **9 September 2020**.

In its **Formal Response** to the complaint investigation by this Office dated **12 August 2021**, the Provider set out the following timeline of events in relation to the Complainant's claim:

On **9 September 2020**, the Complainant telephoned the Provider to query cover as she was abroad in [European Country] and was due to return to Dublin later in September but had been hospitalised on some days earlier with a clot in her lung. The Complainant said she was prescribed medication and discharged and told to see a cardiologist when she got home. The Complainant said she was also advised that she would not be fit to fly for 4 weeks but did not think she would need to overstay that long but she was not up to travelling at present. She said she was looking at other options to travel home rather than flying.

The Provider says the Agent advised the Complainant of cover under Section 4, '**Additional Repatriation and Accommodation Costs'**, and read from the policy. The Agent informed the Complainant that she would need to complete a Claim Form and submit medical reports and evidence that she was deemed unfit to travel and the date, a fit to fly confirmation and the invoices for travel and accommodation. The call got disconnected and the Agent tried to call back but to no avail. A text message was sent to the Complainant confirming the claim reference number. A Claim Form was also emailed to the Complainant.

On **16 September 2020**, the Provider received an email from the Complainant advising that she was considering returning home by land, the following week and querying if a letter from the owner of the apartment she had rented, was sufficient for the accommodation element of her claim.

On **18 September 2020**, the Provider received a follow-up email from the Complainant seeking a response to her email of 16th September.

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On **23 September 2020**, the Provider emailed the Complainant requesting her to submit an invoice confirming the dates and cost breakdown for the additional accommodation and advising that on receipt of the completed Claim Form, and all supporting documentation, her claim could be fully reviewed.

On **26 September 2020**, the Complainant emailed the Provider to advise that her treating physician had confirmed that she was fit to travel after 20th September, but not by air, and so she and her partner had travelled by train on 22nd September from [Location 2] to Paris and then the Eurostar train from Paris to London, where they stayed overnight to break up the journey, before taking a train the following day from London to Glasgow and a further train onward to their destination, where her partner lived. The Complainant emailed her invoice for the extended accommodation costs in [European Country].

On **6 October 2020**, the Complainant emailed the Provider seeking an update on her claim.

On **7 October 2020**, the Provider spoke with the Complainant by telephone regarding her claim. The Agent advised the Complainant that she needed to submit the hospital admission records and complete and return the Claim Form. A Claim Form was resent for ease of reference.

On **12 October 2020**, the Provider received the **Claim Form** completed by the Complainant.

On **13 October 2020**, the Complainant emailed the Provider seeking an update.

On **15 October 2020**, the Provider emailed the Complainant to confirm that it had received her claim documentation by post, and this had been placed on file and her claim was in line for review and that the assessment team would be contact once completed.

On **16 October 2020**, the Complainant emailed the Provider to ask could she add her prescription costs to the claim. The Provider emailed the Complainant to advise that the IBAN details she had provided on her **Claim Form** were incorrect. The Complainant emailed her correct IBAN details shortly after.

On **19 October 2020**, the Complainant emailed the Provider seeking an update on her claim. The Provider emailed later that day to advise that her documentation had been placed on file and added to her claim for review, and that the assessment team would be in contact once completed.

On **20 October 2020**, the Provider emailed the Complainant to advise that the then current turnaround times for claim assessment were between 5 to 10 working days.

On **26 October 2020**, the Complainant emailed the Provider seeking an update.

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On **27 October 2020**, the Provider wrote to the Complainant to advise that it had declined her claim, as follows:

> *"Thank you for sending in your claim form and supporting documentation We were sorry to learn of the circumstances of your claim.*
>
> *The assessment of your claim has been completed and we wish to bring your attention to the following General Exclusions applying to all sections under the terms of your policy:*
>
> > *16) The **Insured Person** travelling to a country or specific area or event to which the Government of the country in which **You** are resident has advised persons not to travel or avoid non-essential travel.*
>
> *We note from the information on your claim form that the Incident happened while you were in* [European Country]. [European Country] *has remained under the Government's Directive to avoid travelling to since March 2020. Regrettably, this circumstance is not one of the insured events as outlined above and we are, therefore unable to allow benefit on this occasion …"*

On **28 October 2020**, the Complainant emailed the Provider at 09:01 seeing an update on her claim and at 09:03 the Provider emailed her a copy of the declinature letter that had issued to her by post the previous day. The Complainant emailed the Provider later that day at 16:24, as follows:

> *"I am extremely angry and upset regarding your response to the…claim. I was hospitalised on* [date] *September and discharged on 8th September having being diagnosed with clots in both lungs. My breathing was extremely bad and it was a very stressful time. I was told in hospital not to fly for 4 weeks,*
>
> *I contacted you on 9th September and explained the situation and that I was in* [European Country] *and asked if I was insured. I was given a claim number and told not to worry that I was covered for extra stay, travel home, and other expenses up to the value of €10,000. This impacted the decisions I took after that.*
>
> *I had another conversation approximately 2 weeks ago and again I was told the accommodation would be no problem but that normally you just pay for flight home I mentioned that /I could not fly for 4 weeks and if I had not come by train I would have had to pay another 2 weeks accommodation. This was the reason I did this. And it worked out cheaper. The person I was speaking to said she would run the travel by her supervisor and get back to me which she did not.*
>
> *At no stage during the first and second conversation was I told I was not covered because I was in* [European Country] *or was given any indication that it may even be an issue …"*

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On **2 November 2020**, the Provider emailed the Complainant to advise that it would review the outcome of her claim and that this reassessment would take between 5 to 10 working days.

On **11 November 2020**, the Provider wrote to the Complainant to advise that it was standing over its original decision to decline her claim as the Department of Foreign Affairs had advised against all travel from 17 March 2020.

On **16 November 2020**, the Complainant emailed the Provider seeking an update on her appeal. The Provider responded by email later that day to advise that the claim decision had been reviewed and the original decision remained unchanged and a letter confirming this has issued by post to her on 11th November.

On **17 November 2020**, the Complainant emailed the Provider to complain about its claim declinature and advised that her illness had not been COVID-related and she wanted the Provider to come to some satisfactory arrangement in the matter. The Provider responded by email later that day with a complaint reference number and advising that its complaints team would be in contact with her regarding the complaints procedure and timeframes.

On **19 November 2020**, the Provider's Complaint Agent emailed the Complainant to confirm that it would be conducting a thorough investigation of her concerns and would be in contact once this was completed, which should be no later than 40 working days from 17th November, the date of her complaint email.

On **27 November 2020**, the Complainant emailed seeking an update on her complaint.

On **30 November 2020**, the Provider emailed the Complainant to remind her that she had been advised that the investigation of her complaint would take no later than 40 days from 17th November.

On **4 December 2020**, the Provider's Complaint Agent issued the Complainant with its **Final Response**, as follows:

> *"… I understand your complaint relates to our decline of your claim for travel expenses while in* [European Country] *from xx/08/2020. The aspects of your complaint are as follows: -*
>
> - *You are angry and upset that we have declined your claim for travel expenses after you became ill in* [European Country] *in September. You have asked where it states in the Policy Wording that you would not be covered under these circumstances.*
>
> - *You contacted us on 09/09/2020 while in* [European Country]*, and we advised you that you were covered for extra accommodation expenses, the cost of travel home and other expenses up to the value of €10,000. Our advice impacted the decisions you made after that.*

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- *You travelled home by train after 2 weeks, because the doctors in* [European Country] *advised that you could not fly for 4 weeks. Travelling home by train meant that you did not have to pay another 2 weeks accommodation and this was the reason you travelled home by train earlier than advised.*

- *Our assessor advised they would call you back regarding your travel arrangements, but you did not receive any call.*
- *We gave you no indication that you would not be covered for your travel expenses throughout the claims process and question what is the point of having insurance.*

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

Regarding the first aspect of your complaint, I am sorry that you are angry and upset that on assessment of your claim we declined settlement of your travel expenses after becoming ill in [European Country]*. Regrettably, our decline of your claim is correct. The reason for this is that there is no cover on your travel insurance because you travelled to a country to which the Government of the country in which you are resident, has advised persons not to travel or avoid non-essential. This is quoted on page 44 of the Policy Wording, under the heading of General Exclusions Applying To All Sections.*

You booked your trip to [European Country] *in May 2020, with travel dates of xx/08/2020 returning xx/09/2020. On 28/03/2020, the Department of Foreign Affairs advised against all non-essential travel until further notice.* [European Country] *has never been on the*
green list for travel since 28/03/2020. Because you booked your trip when there was a government directive in place advising against travel to [European Country]*, decline of your claim is correct and I cannot uphold this aspect of your complaint.*

Moving to the second aspect of your complaint, our records show that you first contacted us on 09/09/2020 while ill in [European Country]*. You confirmed that you would not be fit to fly home for another 4 weeks and that you weren't well enough to travel at that time. You were considering your options regarding travelling home, other than flying. On your claim form you state that you were advised by doctors that you could not travel home until xx/10/2020, but that you were anxious to return from* [European Country] *and so on 22/09/2020 you travelled to the UK by train to your partner's home where you felt you could recuperate in a more relaxed environment. I accept that our assessor should have advised you from the outset that your claim was not covered, but I cannot accept that it was our advice that impacted your decision regarding when, or how to return home.*

The third aspect of your complaint relates to you travelling home by train after 2 weeks because the doctors in [European Country] *advised that you could not fly for 4 weeks. By doing so, you saved on extra accommodation expenses.*

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I appreciate that travelling home early, and by taking the train, it saved on accommodation and travel expenses. However, we would never recommend travelling against medical advice regardless of the saving involved. Also, as mentioned above, understandably you were anxious to return home earlier than was medically advised, and you state you felt you could recuperate better in the UK. For this reason I cannot uphold this aspect of your comply.

Regarding your comment that you did not receive a call back from our assessor as promised. I can see from your file that you spoke with our assessor on 07/10/2020. Our assessor confirmed she would discuss the question of your route home and call you back to discuss. This call back was not made and I apologise for this oversight. I can uphold this aspect of your complaint.

The final aspect of your complaint relates to us indicating that you had a valid claim from when you first contacted us on 09/09/2020. Our records show that it was not until we wrote to you on 27/10/2020 that we advised you did not have a valid claim. I accept that from your first contact with us on 09/09/2020 until 27/10/2020, we set the expectation that you were covered for travel expenses. We requested a claim form with supporting documentation to be sent to us. This was not necessary, and I am sorry for the trouble and effort we put you through, because our assessor should have recognised from the outset that you did not have a valid claim. I can uphold this aspect of your complaint.

Please note however, we cannot cover the costs you incurred to travel home because you booked your trip, and travelled to [European Country]*, when it was not on the green list. Had our assessor correctly advised you from the outset that you were not covered, you would still have incurred the travel expenses you are claiming for.*

In view of the fact that from 09/09/2020 until 27/10/2020, we led you to believe you were covered, I would like to offer you compensation in the amount of €50.00. Please be assured that our error has been brought to the attention of the Claims Team Leader, and will be addressed with the assessors involved …"

On **7 December 2020**, the Complainant emailed the Complaints Department to advise, among other things, that:

"… I confirmed that I could not fly for 4 weeks and not that I could not travel. I am sure you are aware of the danger of flying with clots – there was no reason not to travel by another form of transport once I felt up to it which I did … I chose to stay in [European Country] *until I was feeling better because I was told by* [the Provider] *that my travel expenses and accommodation costs would be covered. This actually had a huge impact on my decision as financially I could not afford to stay longer in* [European Country] *but was reassured by* [the Provider] *that I was covered for all extra expenses. You now have the audacity to offer me €50 to cover this. The staff in* [the Provider] *should be equipped with the correct knowledge to impart to their clients especially in a situation as stressful and worrying as this was. The staff obviously was not sufficiently trained to do so …*

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I did not travel against medical advice … I was only advised not to fly – I was not advised not to travel at all after 20th September ….

As mentioned above €50 compensation for lack of professionalism, lack of communication and inadequacy is not sufficient …"

On **9 December 2020**, the Complaints Department emailed the Complainant to advise that since it last wrote to her, situations where policyholders had travelled to countries where the Department of Foreign Affairs had advised against travel, were currently being reviewed and it would contact her as soon as it received an update regarding this matter.

On **7 January 2021**, the Complainant emailed seeking an update on her complaint.

On **8 January 2021**, the Complaints Department emailed the Complainant to advise that it had reviewed her case and because the underwriters had confirmed that the exclusion for travelling against government advice would apply to her claim, the decision to decline the claim stood. The Complaints Department also advised that in her initial telephone call of 9th September, the Agent gave the Complainant general guidance about the policy but did not guarantee cover as her claim would still need to be fully assessed. In further recognition of the service failings on the Provider's part, the Complaints Department offered to increase its compensation payment to the Complainant by another €50.00 to **€100.00 (one hundred Euro)**, to be paid into her account within 5 to 7 working days.

On **12 January 2021**, the Complainant emailed the Complaints Department stating that there was no doubt at any stage during the conversations she had with Provider staff that she would not be covered. To resolve this matter, the Complainant advised that she was prepared to accept a claim settlement in the amount of **€777.77 (seven hundred and seventy-seven Euro and seventy-seven Cent)**, this representing her accommodation expenses from xx to 20nd September, when she first felt fit to travel home.

On **13 January 2021**, the Complainant emailed the Complaints Department noting that it had deposited €50.00 into her account despite at no stage her agreeing to this suggested settlement and requested the recording of her telephone call on 9th September with the Provider.

On **15 January 2021**, the Complaints Department emailed the Complainant a recording of the telephone call from 9th September as requested and also advised that it had deposited its initial compensation offer to her account without delay, but that this would not affect her rights to escalate the matter further.

In assessing her travel insurance claim, the Provider notes that the Complainant, having booked the trip in **May 2020**, travelled by air from Dublin to [European Country] on **xx August 2020**, with a return flight scheduled for **xx September 2020**.

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The Provider says that in **March 2020**, in response to the COVID-19 pandemic, the Department of Foreign Affairs advised against non-essential travel to all destinations. In **July 2020**, the Department of Foreign Affairs published a **Green List**, listing those destinations for which this advice would no longer apply. The Provider notes that [European Country] was not included on this **Green List** at the time the Complainant travelled to [European Country], or at any time during her planned trip.

The Provider says that because the Complainant's **Travel Insurance Policy** does not cover trips to destinations where the Department of Foreign Affairs has advised against travel, it issued the Complainant with a claim declinature letter on **27 October 2020**, with a copy sent by email the day after, **28 October 2020.**

The Provider notes that the Complainant considers that it ought to have declined her claim when she first telephoned on **9 September 2020**, in that its Agent ought to have known or checked at the outset whether [European Country] was at that time one of the countries where the Department of Foreign Affairs was advising Irish residents not to travel to, and that the Provider's failure to decline her claim at that time, gave her a reasonable expectation that her claim would be admitted and that this expectation influenced the decisions she then made regarding her travel arrangements home.

The Provider accepts that it would have been possible to decline the claim by telephone on **9 September 2020** and it did uphold that aspect of the Complainant's complaint to it, though it does not accept that its advices impacted her decision regarding when, or how to return home.

The Provider says that if it had declined the claim during the telephone call on **9 September 2020**, the Complainant would still have had to travel home either by waiting for 4 weeks until she could travel by air, or travelling by train as soon as she was able to. The Complainant advised that she was not fit to travel and in her own words would need to feel a bit better before travelling. The Complainant later supplied a doctor letter confirming that she was fit to travel on **20 September 2020** overland and she booked train tickets for **22 September 2020** as the times were more suitable.

The Provider notes that in her email of **26 September 2020**, the Complainant advised that the way she travelled home was the best way for her, as follows:

> *"I was due to fly home on xx September but was told by doctor I could not fly for 4 weeks following the clot. I obviously had paid for flights – details below. I have claimed for accommodation on a separate e-mail. My doctor said I would be fit travel after 20th September but not by plane. My partner who is from Scotland was with me and had to stay also to look after me as was very breathless and weak initially.*
>
> *We decided to travel to his house in Scotland by train from* [Location 2]*. We took a train from* [Location 2] *to Paris, the Eurostar from Paris to London. We broke the journey and stayed overnight in London as had travelled for 12 hours at that stage. Details of hotel receipt below.*

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> *The following day we travelled from London to Glasgow and then took a separate train from Glasgow to* [Location 3]. *This was the best option for me to leave* [European Country] *and at least get back to an English speaking country".*

The Provider says the Complainant later contended that she would have travelled straight home, or at least home sooner than **22 September 2020**, if she knew she would not have been covered by her policy. She also acknowledged that the transport costs home would have been the same and only asked for the accommodation expenses from xx to 20th September to be met.

The Provider says that the Complainant had supplied confirmation from her treating physician confirming that she was not fit to travel by air for 4 weeks or at all by any other method until **20 September 2020** and had stated on **9 September 2020** that she was very weak and breathless and that she was not up to travelling at that point, and given the severity of her condition, the Provider would have to conclude that on balance, the Complainant would not have returned home any earlier or by any alternative means.

The Provider says that as the balance of probabilities is the civil standard of proof in Ireland and given the statements from the Complainant both at that time and later submitted, and also the medical evidence supplied, the Provider submits that it has to be said that on balance, the Complainant would have undertaken the same actions irrespective of any advice given by its Claims Team on **9 September 2020**. For these reasons, the Provider says it cannot agree that the Complainant's actions were affected by the contents of the telephone call she had with the Provider on **9 September 2020**.

The Provider says that where a compensation payment to a customer is considered necessary, it is paid without delay. In this case, the Provider says the compensation had been sent for lodgement to the Complainant's bank account at the same time the correspondence offering the compensation was issued. The Complainant subsequently wanted to reject the compensation payment as she considered it insufficient. The Provider says that given the Complainant was seeking additional payment for her complaint and as the payments would not prejudice her right to escalate the matter to the Financial Services and Pensions Ombudsman or the courts, there seemed little point in having her return the money as if her complaint or case was unsuccessful, the Provider would still honour the payment as it felt it was reasonable.

The Provider says that COVID-19 caused a lot of difficulty in assessing claims as the requirements and rules for travel for different countries was constantly changing and so initially, it would need to get all the information in, to be able to fully assess each claim. While it is easy to say in hindsight that the claim would not have been covered from the start, the Provider says that advising of the policy cover and the documents that would be needed would not be unreasonable, as a full claim assessment would need to be made in any event.

The Provider says that once some further information had been received, the claim should have been declined sooner but instead, further information was asked for, and this is why the Complainant may have believed her claim was likely to be covered.

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The Provider has acknowledged that its service did fall short and says that it reviewed the matter further at the Complainant's request and agreed that recompense was warranted. The Provider considers that a total of €100 compensation is reasonable, to account for its failure to manage expectations, for asking the Complainant to send in additional documents and for it not declining the claim sooner.

The Provider says the nature and scale of COVID-19 meant that its Claims Team had to deal with an unprecedented number of claims throughout 2020 as the majority of policyholders had to cancel trips and that this did impact its normal response times.

The Provider says that the Complainant decided not to adhere to the advice of the Department of Foreign Affairs. While the Provider acknowledges that the service it offered could have been better for the reason explained above, it also says that that would not make the Provider liable to pay the claim as there was no cover under the policy.

The Complaint for Adjudication

The complaint is that the Provider wrongfully or unfairly declined the Complainant's travel insurance claim, in particular in circumstances where the Complainant says the Provider gave her an expectation that the claim would be admitted for payment.

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 **13 April 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.

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I note that the Complainant, having booked the trip in **May 2020**, travelled by air from Dublin to [European Country] on **xx August 2020**, with a return flight scheduled for **xx September 2020**. The Complainant took ill on **xx September 2020** and was admitted to hospital overnight, where she was diagnosed with a pulmonary embolism in both lungs, was prescribed medication and advised not to fly for four weeks.

The Complainant later obtained a letter from her treating physician confirming that save for flying, she was fit to travel from **20 September 2020**. The Complainant departed [Location 2] on **22 September 2020** and travelled by train via Paris and London, arriving the following day at her partner's residence in Scotland, and she later flew home to Dublin in early **October 2020**.

The Complainant completed a **Claim Form** to the Provider on **7 October 2020**. Following its assessment, the Provider wrote to the Complainant on **27 October 2020** to advise that it had declined her travel insurance claim. The Complainant submitted an appeal and following its review, the Provider confirmed by letter dated **11 November 2020** that it was standing over its decision to decline the claim.

The Complainant's **Travel Insurance Policy**, like all insurance policies, does not provide cover for every eventuality. Rather the cover will always be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. The 'Important Notes' section at pg. 11 of the applicable **Travel Insurance Terms and Conditions Policy Wording** provides that:

> *"We will provide the services and benefits described in this Policy;*
>
> - *during the **Period of Insurance***
> - *within the Geographical Limits …"*

The 'Meaning of Words' section at pg. 8 of this **Policy Wording** defines *"Geographical Limits:* as:

> *"The countries of the Zone for which You have paid the appropriate premium, <u>except those countries or parts of countries where the Department of Foreign Affairs (DFA) has advised against travel</u>, as specified on the Policy Certificate excluding journeys solely within the Republic of Ireland and/or Northern Ireland which are for less than 2 nights and where paid accommodation has not been pre-booked".*
>
> [Underlining added for emphasis]

In addition, Provision 16 of the 'General Exclusions Applying To All Sections' at pg. 44 of the applicable **Travel Insurance Terms and Conditions Policy Wording** provides that:

> "*The **Insured Person** travelling to a country or specific area or event to which the Government of the country in which **You** are resident has advised persons not to travel or avoid non-essential travel*".

/Cont'd…

The Complainant's **Travel Insurance Policy** does not provide cover for losses arising from or during trips to destinations where the Department of Foreign Affairs has advised against travel. I note that in **March 2020**, in response to the COVID-19 pandemic, the Department of Foreign Affairs advised against non-essential travel to all destinations.

In **July 2020**, the Department of Foreign Affairs published a **Green List**, listing those destinations for which this advice no longer applied. This **Green List** was kept under review and revised by the Department of Foreign Affairs. As the country the Complainant had travelled to was not included on this **Green List** at the time she travelled there on **xx August 2020**, I am satisfied that the Provider declined the Complainant's claim in accordance with the terms and conditions of her **Travel Insurance Policy**.

The Complainant telephoned the Provider on **9 September 2020** to query her travel insurance cover. The Complainant submits that instead of advising her during this call of the potential cover available to a policyholder in her medical circumstances, the Provider ought to have declined her claim, in that its Agent ought to have known or checked at the outset whether [European Country] was at that time one of the countries where the Department of Foreign Affairs was advising Irish residents not to travel to.

The Complainant contends that the Provider's failure to do so gave rise to a reasonable expectation that her claim would be admitted, and that this expectation influenced the decisions she then made, regarding her travel arrangements home.

I note the Provider accepts in its **Final Response** to the Complainant dated **4 December 2020** that it should have advised the Complainant from the outset that her claim was not covered, though it does not accept that its advices impacted the Complainant's decision regarding when, or how to return home.

Recordings of telephone calls have been furnished in evidence. I have considered the content of these calls. It is clear from listening to the recording of the telephone call the Complainant made to the Provider on **9 September 2020** and I note that the Agent advised the Complainant, among other things, that:

> *"… With* [your policy]*, under the Section 4, so its additional repatriation accommodation costs, so what it says is, let me see, so if our medical officer confirms that it was medical necessary for you to be accompanied on the trip home and the return journey not to take place on the original, original scheduled date, so we will pay for the additional travel costs and accommodation costs incurred by you and person staying with you and accompanying you on the trip home, so, yeah, we will, will cover any additional travel and accommodation costs for one person required if necessary on medical advice to fly out to you – so we'll be able to look at any of the extra accommodation costs for after Friday, I suppose Friday would be the original intended return, so anything after Friday in terms of accommodation we will be able to look at …*

/Cont'd…

So, yeah, in terms of ourselves, with the section 4 additional repatriation and accommodation we will be able to look at the additional accommodation expenses after Friday as I said, and, in terms of the new flight then, you can see what way you can work it with the airline, they may let you maybe rebook it or I'm not sure what way they'll allow it or if you have to completely rebook it, like in a new flight under a new reference, I'm not sure what way they'll do it, but we can look at that expense …

With ourselves, now, with, I suppose, with this part of the policy, we would need confirmation, if both that he has deemed you unfit to travel on that original return date and I suppose confirmation of when you will be fit to travel home. I know you have the reports, we will need those, those as well, but just along with that, we will need, I suppose, a fit to fly and confirmation when he deemed you unfit to travel and for how long. Obviously that as well we'll just need all the receipts for accommodation and you know travel, depending if its, it could be maybe train or ferry, just we'll need all those receipts, confirmation of how much you spent and then we can get a claim form sent as well and you'll need to complete that and send it back and we'll pop it in line then for assessment …

As I said, it's all set up. I'll get the claim form sent now as well, I'll pop all the notes on, so, whenever, like there's no rush or I suppose time limit on you to come to us with the claim form and the supporting documents, so whenever you have it the claim will be ready and we can attach it on, all the details for sending it back will be on the very top of the front page of the claim form, the email and the postal address. So if you can just complete the claim form, send it back, we will need your original booking invoice just showing when you originally departed and were due to return …"

Having listened to this recording, it is easy to understand how the Complainant formed the impression that any additional accommodation and travel expenses arising from her illness, incurring after her original intended return date of **xx September 2020**, would be covered by her policy.

In that regard, having read out the cover provided by Section 4, 'Additional Repatriation and Accommodation Costs', of the **Travel Insurance Policy**, I am of the opinion that the Agent did not make it clear to the Complainant that an assessment of her claim would only take place after all of the claim documentation had been received and that her claim remained subject to an assessment against the full terms and conditions of the policy. I take the view that this constitutes a failing in its customer service to her.

I am also surprised that by **September 2020** the Provider had not instructed its Agents to address at the outset, the Department of Foreign Affairs' COVID-related travel advice/restrictions and the associated policy exclusion with those policyholders contacting it to query cover, particularly given that by that time, some six months into the pandemic, the Provider ought to have been well-versed in dealing with travel claims during COVID-times.

/Cont'd…

In my opinion, if the Provider had developed a protocol to address this very contemporary issue, a complaint such as this one would have been easily avoided. Whatever the Provider's practices for addressing claims of the nature outlined by the Complainant, I am satisfied that on this occasion it failed to alert her early in the process, to the fact that her trip to a country which was not on the Green List, would impact on her ability to claim and in my opinion, this constitutes conduct which was unfair to the her, within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.

Notwithstanding the poor customer service from the Provider in this matter, policy cover does not arise where it is not set out by the applicable **Travel Insurance Terms and Conditions Policy Wording** and in this regard, it is clear from the evidence that the Complainant's **Travel Insurance Policy** did not provide cover for losses arising from or during trips to destinations where the Department of Foreign Affairs had advised against travel.

I accept the Provider's position that irrespective of the advices given by its Agent, by telephone on **9 September 2020**, the Complainant could not have travelled home before **20 September 2020** at the earliest, this being the date she obtained confirmation from her treating physician that she was fit to travel, and thus she would have incurred additional expenses in staying beyond her original intended departure date of **xx September 2020** regardless of her discussions with the Provider.

In addition, I also take the view that it would have been prudent of the Complainant, either before booking the trip in **May 2020** at the height of the first wave of the COVID-19 pandemic, or before her departure in **August 2020**, to have contacted the Provider to ascertain whether her **Travel Insurance Policy** provided her with cover when booking or travelling during the pandemic, or she could have referred to her **Travel Insurance Terms and Conditions Policy Wording** and/or the Department of Foreign Affairs **Green List**, which was publicised at the time.

I note that in its **Final Response** to the Complainant dated **4 December 2020**, the Provider accepts that in the period from **9 September 2020** to **27 October 2020**, it led the Complainant to believe that her claim was covered by her policy, and it therefore offered a compensatory payment of **€50.00 (fifty Euro)** to the Complainant on **4 December 2020**, with a further compensatory payment of **€50.00 (fifty Euro)** made on **8 January 2021**.

In light of the poor customer service proffered by the Provider to the Complainant, during a period when the Complainant was recovering from her illness, for the reasons outlined above, I do not accept that a compensatory payment of €100 was adequate. Accordingly, I consider it appropriate to direct the Provider to uplift its payment made, to a total of **€300** to the Complainant, by making a payment representing the differential, to the Complainant's account, details of which the Provider already holds.

It is my Decision therefore, on the evidence before me that this complaint is partially upheld.

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Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2)(b).***

- Pursuant to ***Section 60(4)(d) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to compensate the Complainant by uplifting the payment already made to a total of **€300**, by making a payment representing the differential, to the Complainant's account (details of which the Provider already holds) within a period of 35 days from today. 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)

10 May 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

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Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.