



<u>Decision Ref:</u>	2022-0179
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a declined travel insurance claim, which the Complainants made under a travel insurance policy they held with the Provider.

The said Policy was purchased on **08 August 2019** by the Complainants and expired on **07 August 2020**. An extra premium was paid by the Complainants on **27 February 2020** to cover a trip extension (a holiday period of up to a maximum of 45 days).

The Complainants are seeking compensation from the Provider in the sum of €854.00 (eight hundred and fifty four euro) in respect of additional flight costs they incurred by returning home early from their holiday on account of COVID-19, due to the World Health Organisation (the “WHO) declaring COVID-19 a global pandemic, and also on foot of an Irish Government warning that all Irish people abroad should return to Ireland as flights would no longer operate from **22 March 2020**.

The Complainants’ Case

The Complainants (a husband and wife) travelled abroad on holiday on **04 March 2020** with the intention of returning to Ireland on **01 April 2020**.

During this trip, the First Complainant states that:-

“... the Irish Government announced there would be a lockdown and anyone abroad had to make their way home before 22 March 2020 or you would be stranded as countries were shutting down due to COVID-19.”

On foot of this announcement the Complainants cut short their holiday and rather than return to Ireland on **01 April 2020** as planned, they returned to Ireland on **17 March 2020**.

The Complainants assert that they submitted a claim form to the Provider and that they were informed that they *“had no cover for this”*.

The Complainants further assert that they made a further appeal to the Provider on foot of the decision to refuse their claim:-

“I made a complaint and they said it was investigated and still no.”

The claim was initially declined on **10 August 2020**. The First Complainant on the **13 August 2020**, in response to the Provider’s agent, sought to elevate the matter within the Provider where he stated:-

“I ask that you raise this with a supervisor as I am not happy with the decision.”

On **15 September 2020** the First Complainant wrote to the Provider’s agent where he stated:-

“I have been waiting on an update regarding my complaint about a claim that was refused on 13th Aug. A supervisor was supposed to review my case, it is now the 15th Sept. Please can you get in touch before I pursue this with the Ombudsman. To say I am disappointed with the lack of communication I have received from yourselves is an understatement. I hope to hear from you sooner rather than later.”

The Provider’s Case

The Provider’s case is that the Complainants’ early return from holiday as a consequence of the Irish Government’s travel warning regarding the COVID-19 pandemic, is not an insured event under their travel insurance policy, and therefore the Complainants are not covered for the costs of the claim.

When the claim was first declined on **10 August 2020** the clause at Section 1 – *Cancellation or Curtailment* was highlighted.

“We completely appreciate that this would have been a very stressful situation for yourself, and don’t doubt that you took all the necessary precautions to get home as safely as possible. Unfortunately, these circumstances do not fall under the parameters of cover listed above, and regret that in light of the above the insurers are unable to make a payment in respect of your claim in this instance.”

The Provider states in its Final Response Letter dated **22 September 2020** that:-

“an airline’s decision to cancel a flight is not listed as an insured event and so is not covered by this policy.”

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The Provider in its Final Response Letter dated **22 September 2020** further states:-

"I would at this time draw your attention to the following terms within your policy;

Payment shall only be made under any Section of this Insurance following the occurrence of an insured contingency resulting in loss, damage, injury or illness sustained by, or a claim made against you arising out of, or in the course of a Covered Trip subject to the terms, conditions, limitations and exclusions contained herein or endorsed herein.

As is confirmed in the excerpt of wording above, any circumstances that are not detailed as insured events do not fall for cover under your policy. Whilst we are not unmindful of the reasons behind the decisions taken, the policy can only operate on the occurrence of the circumstances described within the wording. Any further circumstances such as the direction of a government, I am sorry to advise, do not fall into the exclusion noted above."

The Complaint for Adjudication

The complaint is that the Provider wrongfully repudiated the Complainants' travel insurance claim and provided poor customer service during the handling of their complaint.

The Complainants want the Provider to compensate them for the additional costs of €854.00 (eight hundred and fifty-four euro) in respect of their return journey home.

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.

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A Preliminary Decision was issued to the parties on **9 May 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.

In considering the complaint, I have been mindful of the following chronology of events:

08 August 2019 – The Policy was purchased by the Complainants covering the period **09 August 2019 – 08 August 2020**.

27 February 2020 – Complainants extended cover on the Policy to include a trip extension (a trip of up to 45 days in duration).

04 March 2020 – Complainants departed on holiday.

11 March 2020 – The WHO declared COVID-19 a pandemic.

17 March 2020 – Complainants returned to Ireland from holiday. The original scheduled return date was **01 April 2020**.

20 April 2020 – First notice of loss by the Complainants when they phoned the Provider. A “Curtaiment” claim form was sent out by the Provider to the Complainants on that date.

08 May 2020 – The “Curtaiment” claim form was submitted to the Provider by the Complainants, via a Broker.

10 August 2020 – The Complainants were told that their claim had been refused.

13 August 2020 – The Complainants responded to the Broker expressing dissatisfaction with the decision and requesting the decision be appealed to, or reviewed by, a supervisor of the Provider for further consideration.

13 August 2020 – The Broker responded to the Complainant’s e-mail informing them that their complaint would be registered and independently reviewed by the Provider’s complaints team.

15 September 2020 – The First Complainant in an e-mail to the Provider stated, *“To say I am disappointed with the lack of communication I have received from yourselves is an understatement”*.

15 September 2020 – An apology e-mail was sent from the Provider informing the Complainants that their complaint had been flagged as urgent for the Provider’s complaints team to look at.

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22 September 2020 – The Provider’s Final Response Letter was issued standing over the original decision to decline the claim.

I note that the Policy was purchased by the Complainants on **08 August 2019** and provided 12 months cover. A further premium was paid on **27 February 2020** to facilitate an extended holiday stay of up to 45 days abroad.

On the date of purchase the Complainants were provided with a copy of the Policy including all Terms & Conditions and a detailed schedule of all insured risks. **Section 1** of the Policy titled **“Cancellation or Curtailment”** is the specific section relied on by the Complainants in making their claim, in the circumstances of having to cut their holiday short, due to the outbreak COVID-19 pandemic. I note that Section 1 of the Policy states: -

“Section 1 – Cancellation or Curtailment

We will pay up to the limit shown in the Schedule of Insurance for any irrecoverable payments paid or contracted to be paid for travel, accommodation and unused pre-booked excursions (including reasonable additional travel and accommodation expenses incurred for return to the Republic of Ireland) should the projected trip be cancelled before commencement or curtailed before completion, directly and necessarily as a result of:

- (i) Death, Bodily Injury, Illness or compulsory quarantine of;*
 - a) you, or*
 - b) any member of the travel party, or*
 - c) any person with whom you intend to reside or conduct business with during the Period of Travel, or*
 - d) any immediate relative or business associate.*

- (ii) Marital breakdown (provided that formal legal proceedings are commenced between the commencement date of the Period of Insurance and the date of commencement of the Period of Travel) of:-*
 - a) you, or*
 - b) Any member of the travel party.*

- (iii) Summoning to jury service or witness attendance in a court of the Republic of Ireland or unavoidable requirement to be present in the Republic of Ireland for service in any military or civil emergency of :-*
 - a) you, or,*
 - b) any member of the travel party.*

- (iv) Major damage or burglary at the home or place of business of:-*
 - a) you, or,*
 - b) any member of the travel party, or*
 - c) any person with whom you intend to reside or conduct business during the Period of Travel.*

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- (v) *The cancellation of scheduled or chartered transport services (including publicly licensed transportation) caused by accident, strike, industrial action, Hi-jack, criminal act, bomb scare, riot, civil commotion, fire, flood, earthquake, landslide, avalanche, or mechanical breakdown, provided that the event giving rise to such cancellations occurs, or is only announced, after this insurance is affected or the covered trip is booked, whichever the later;*
- (vi) *Adverse weather conditions making it impossible for you to travel to the point of departure at commencement of the outward trip. “*

I note that Section 1 of the policy is clear and written in plain English. The Policy and associated terms and conditions were provided to the Complainants at the time of purchase and it is clear based on Section 1 of the Policy, that the Policy does not provide cover for the curtailment circumstances in which the Complainants found themselves.

The Policy was purchased on **08 August 2019** when the COVID-19 pandemic was not within the contemplation of consumers or insurers alike, and in any event, the Policy offered no cover for travel disruptions caused due to a pandemic.

I am also conscious that no evidence has been offered to suggest that the Complainants in **February 2020** sought to clarify the provisions of the Policy to see if disruptions on account of COVID 19 were covered, when in **February 2020** they re-engaged with the Provider on the Policy terms, to extend the holiday cover for up to 45 days for any one trip. Accordingly, there is no suggestion that the Complainants were in any manner misled to believe that they would be covered for such a situation arising.

In those circumstances, having considered the provisions of Section 1 of the policy headed “Cancellation or Curtailment” I am satisfied based on the policy provisions that the Provider was entitled to come to the conclusion that the Complainants’ circumstances leading to the curtailment of their holiday, were not covered by the provisions of the policy and that it was appropriate to decline their claim.

The second element of the complaint is set out in the remarks of the first Complainant in an e-mail dated **15 September 2020** to the Provider where the Complainants stated:-

“To say I am disappointed with the lack of communication I have received from yourselves is an understatement”.

I note that upon receipt of the complaint, the Provider responded and wrote back to the Complainants on the same day, **15 September 2020**. Seven days later on the **22 September 2020** the Provider issued a Final Response Letter. In those circumstances, I do not accept that there was a lack of communication by the Provider to the Complainants regarding the issues raised in the Complainants’ complaint and accordingly, I do not accept that the Provider has a case to answer to the Complainants in that regard.

Accordingly, on the basis of the evidence before me, I take the view that it is not reasonable to uphold this complaint.

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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 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)

1 June 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.

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.