



<u>Decision Ref:</u>	2022-0189
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's refusal to indemnify an insurance claim made on the Complainant's travel insurance policy.

The Complainant's Case

The Complainants submit that on **29 April 2019** they renewed their multi trip travel insurance policy with the Provider, with the policy cover period to run from **9 May 2019** to **9 May 2020**. The complainant state that the policy covered them both, at a cost of €125 per person.

The Complainants submit that they planned a trip to Spain to commence on **7 March 2020** with an intended return date of **29 March 2020**. The Complainants submit they were aware of the emerging COVID-19 travel restrictions however, as no Government directive regarding travel from Ireland to Spain was in place on **7 March 2020**, they travelled to Spain as planned.

On **15 March 2020** a Department of Foreign Affairs Government directive was issued, instructing any Irish citizens in Spain wishing to return to Ireland to do so before midnight on **19 March 2020**. The Complainants submit they acted on the directive instructions and booked the only two seats available on a flight home on **17 March 2020**, which cost €726.10 (seven hundred and twenty-six euro and ten cent). The Complainants contend that, due to the time of the flight arrival in Dublin, all public transport had finished for the day necessitating a stay in hotel for the night, this costing €104.00 (one hundred and four euro).

The First Complainant states that he submitted a claim to recoup the costs of the new return flight and an overnight hotel stay in Dublin. The First Complainant contends that he also informed the Provider about an airline refund of €80.83 (eighty euro and eighty-three cent) for the original return flight and deducted this from the claim.

He further says that on **30 March 2020** this claim was declined by the Provider, because:

“on 7 March 2020 there was no DFA Government Directive in Place no benefit could be allowed for the new flight.”

The First Complainant says that he responded to the Provider and requested a senior decision maker be appointed to review the claim.

The First Complainant submits that on **17 April 2020**, he requested that a complaint be officially lodged by the Provider, and that the Provider confirmed by email on **23 April 2020** that this had been done. The Provider issued its final response, by email, to the Complainants on **7 May 2020**, declining their claim for the second time.

The Provider’s case

The Provider contends that the Complainants claim is not covered under the terms of their travel policy. The Provider highlights pages 22 to 23 of the Policy Terms and Conditions Document and in particular section 9 in relation to Cancellation/ Curtailment. The Provider submits that the policy covers the following:

“financial loss You suffer, being non-refundable deposits and amounts You had paid for travel and accommodation You do not use due to inability to commence travel or complete the trip”

The Provider contends that the early return flights and one night stay in a Dublin hotel do not fall within the policy terms as they were considered *“additional expenses”*.

The Provider goes on to explain that the Complainant should be eligible to claim for refund directly from the hotel in Spain, regarding their unused booking costs and it outlines what the Provider would require from the Complainants should any such refund request be declined by the hotel.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and/or reasonably refused the Complainants’ claim for the cost of their return flights to Dublin and one overnight stay in a Dublin hotel, necessitated due to a Government directive, arising from COVID-19.

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 **26 October 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.

I note that on **23 March 2020** the Complainants notified the Provider of their claim online, which stated as follows:

"our planned flight was [location] to Dublin 29th March but Simon Coveney (Tánaiste) told all Irish citizens to leave [European country] before midnight 19th March. we phoned your office and were unable to get through. We had a very difficult time trying to get an alternative flight. We eventually succeeded in booking a flight for 17th March which cost 726.70 euro. We submitted a claim for 80.84 euro to [Airline] for our cancelled trip on 29th March. this alternative flight/ time of arrival necessitated at Dublin hotel one night accommodation."

On **30 March 2020**, the Provider responded by email stating:

"Unfortunately, at the time of your travel dates, outbound on 07/03/2020 no DFA Government Directive was in place for [European country], due to this we are unable to allow benefit for your new flight."

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Again, on **30 March 2020**, the First Complainant replied by way of email stating:

"...I dispute your response that we are not entitled to be reimbursed for the return portion and necessary accommodation due to curtailment of our trip as per the directive of Simon Coveney DFA to return back to Ireland before Thursday 19th March.

Please copy your senior decision maker re the details of this claim as I hope there will be a reversal of this decision."

On **6 April 2020**, the Provider emailed the Complainants stating:

"We are sorry to hear that you are disappointed with the outcome of your claim. Please confirm if you would like us to register a complaint on your behalf."

On **17 April 2020**, the Complainants replied confirming they wished to register a complaint, and on the same day the Provider sent a confirmation email regarding the lodging of the complaint.

On **7 May 2020**, the Provider sent the following final response letter, declining the claim:

"I am sorry to hear that you have been dissatisfied. Please be assured that all expressions of policyholder dissatisfaction are taken seriously. All feedback is valuable and will be used to further improve our service.

Due to the current pandemic, the Complaints Department are following government guidelines and restricting the number of staff in the office at one time which may impact on our ability to answer and make outbound calls. Regrettably, this means I am unable to call you to discuss the outcome of your complaint. I understand your complaint relates to the following areas

- *We have declined your claim for the cost of an earlier flight home from [European country] and for the cost of one night's accommodation in Dublin.*

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

Our records show that you travelled to [European country] on 07/03/2020 with an intended return date of 29/03/2020. Given the Covid 19 situation you returned home early on 17/03/2020. You have advised that you are claiming €80.84 from [airline] for the unused original return flight on 29/03/2020, but want to claim for your new flight home on 17/03/2020 in the amount of €726.70 and the cost of one night stay in a Dublin hotel.

Please refer to section 9 - Cancellation/ Curtailment, on pages 22-23 of the policy terms and conditions.

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*Under the heading **What is Covered**, it states that we will reimburse you for financial loss you suffer, being non-refundable deposits and amounts you have paid, for travel and accommodation you do not use because of your inability to commence travel or complete the trip. As your new flight home and your night's stay in the hotel are additional expenses, as opposed to travel and accommodation you paid for but were not able to use, there is no cover and I am unable to uphold your complaint.*

I know [airline] are refunding you the cost of the original unused return flight. You would also be able to claim for any unused pre booked accommodation that you do not use from 17/03/2020 to 29/03/2020. However, as [European country] went into lockdown on 13/03/2020, we would advise you to contact the accommodation Providers for refund of the unused accommodation in the first instance.

If you are not successful in getting a refund from the accommodation Providers, and are interested in claiming for this, we will require the following:-

- *a letter from the accommodation Providers confirming they are not refunding the unused portion of your booking and their reasons for not doing so.*
- *the original booking invoice for the accommodation.*
- *the cancellation invoice from the accommodation Providers confirming the actual dates of your stay.*
- *A copy of the accommodation Providers booking terms and conditions.*

I appreciate this is not the outcome you were expecting but if you have any questions, please contact me.

Should you not be satisfied with this fine response, you have the right to refer your complaint to the financial services and pensions ombudsman. They are an independent authority and will consider your complaint free of charge."

I note that **Section 9** of the Policy Terms and Conditions Document at "**Cancellation or Curtailment and Trip Interruption**" states:

"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]

I am satisfied that the Complainants did not cancel their trip, before leaving Ireland and therefore, they were not eligible to make a claim to the provider under the "**Cancellation**" provisions of the policy.

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Section 9 of the Policy Terms and Conditions Document, continues, that:

Curtailment cover applies if you are forced to cut short a trip you have commenced because of one of the following changes in circumstances which is beyond Your control and You were unaware at the time You commenced Your Trip.

Changes in circumstances.

...

- **A government directive prohibiting all travel to, or recommending evacuation from the country or area you were planning to visit or staying in, as a result of natural disasters (such as earthquakes, fires, floods, hurricanes) or epidemic(s).**

[my underlining and bolding for emphasis]

It is clear to me in those circumstances that the Complainants were eligible to make a claim to the Provider under these policy provisions for "**Curtailment**", as they met the criteria for a claim under that heading.

The next question which arises, in respect of such a curtailment claim, is what expenses the Complainants were entitled to recover from the Provider. I am conscious that **Section 9** states in that regard, as follows:

"What is covered - Cancellation and Curtailment

We will reimburse the following amounts per insured person in total under this policy for financial loss you suffer, being non-refundable deposits and amounts you have paid, for travel and accommodation you do not use because of your inability to commence travel or complete the trip."

[my underlining for emphasis]

The Provider has submitted to this Office that, as a result, the only potential benefit to be recovered when making a "curtailment" claim, is for unused travel and accommodation costs. I accept this, and the above provisions are clear in that regard. In this instance, as the cost of the unused flight was refunded by the airline, the Complainants did not need to pursue a claim for those recovered costs. The Provider has also pointed out that no claim was submitted by the Complainants for, nor was there a mention of, any unused accommodation.

Section 9 further states regarding **trip interruption**:

"Trip interruption cover applies when you need to make an unscheduled return journey to the Republic of Ireland during a trip because of:

- *The death, even demise or hospitalisation due to serious accident or illness of a Close Relative*

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- *Accidental damage, burglary, flooding or fire affecting Your home, when a loss in excess of €2000 is involved or when Your presence is required by the police in connection with such events.”*

[my underlining and bolding for emphasis]

The Provider says that because the reason for the returning to Ireland was not one of these reasons, there is no claim that can be accepted under that policy section. For these reasons, the Provider contended that it was unable to accept the claim for the cost of what were the Complainants’ additional flights to return to Dublin.

In the Complainants’ letter to this office on **10 June 2020**, the First Complainant stated as follows:

I am sorry to be using your precious time on this complaint, but I am shocked that the policy has not been honoured by [insurance company] (who I always held in high regard).

[the second complainant] and I are both in our 70s and we took out this travel policy to cover unforeseen situations like we have just been through. The 1st refusal was given that our outbound flight was before the DFA government directive was in place ie we flew to [European country] before we got the direction to come home [email copy attached].

After I complained a different reason was given. I've read the Product Information Document and the terms and conditions [relevant sections highlighted]. I felt very confident that our claim was covered under the policy ie as we would be compensated for the return ticket and the hotel cost.

...

I feel that [the Provider] is not honouring either the content or the spirit of the terms and conditions.

This refusal has caused a lot of stress and anxiety during these hard times and hope you are in a position to find us a happy resolution to this situation.”

In considering this complaint, I have noted section 9 of the policy which states as follows:

“What is covered - Cancellation and Curtailment

We will reimburse the following amounts per insured person in total under this policy for financial loss you suffer, being non-refundable deposits and amounts you have paid, for travel and accommodation you do not use because of your inability to commence travel or complete the trip.”

[my underlining for emphasis]

Moreover, I note that the Provider did not refuse to reimburse the Complainants *for any* unused pre booked accommodation that they did not use from 17/03/2020 to 29/03/2020, or for any unused flights.

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I am satisfied that the cost of the return flights to Dublin and one overnight stay in a Dublin hotel were not “*unused*” items under section 9, but as the Provider has explained, were extra travelling costs, referred to by the Provider as “*additional expenses*”.

Since the preliminary decision of this Office was issued in **October 2021**, the Complainants have made a number of submissions pointing to relevant provisions of the policy. In particular, I note the Complainants’ reference to the provisions set out under **Section 9 “Cancellation or Curtailment & Trip Interruption”**, which includes those details at page 23 of the policy, stating that:

“What is covered - Trip Interruption.

*On condition that **You** contact the [Travel Policy] helpline on [number redacted] first and that **We** make all travel arrangements. **We will pay necessary travelling costs incurred in returning **You** Home** in the event **You** have a valid **Curtailment claim** up to the amount shown on the summary table.*

....”

[my underlining for emphasis]

I accept in that regard that this policy provision refers to a valid “**Curtailment**” claim, and also refers to the Provider paying the necessary travelling costs incurred in returning the insured persons home, subject to the Provider being contacted and making the necessary travel arrangements itself. I am satisfied that the Complainants had a valid curtailment claim because of the Government directive requiring that they would return to Ireland, and indeed, this is not disputed by the Provider. Rather the Provider says that curtailment benefit is limited to non-refundable deposits and amounts already paid for travel and accommodation not used. I take the view however that this position is thrown very considerably into doubt, by the above quoted policy provisions.

I accept the Complainants’ contention that the details in the policy, under “**What is covered - Trip Interruption**”, created the firm impression that the policy provided cover for precisely the situation in which the Complainants found themselves, when they were required to curtail their trip and return to Ireland.

In my opinion the various policy provisions set out under **Trip Interruption** and **Curtailment** are confusing and indeed, as illustrated above, they are in conflict with each other. I am also conscious that notwithstanding several opportunities given by this Office to the Provider, to engage with and comment on this argument raised by the Complainants, since the preliminary decision of this Office was issued, the Provider elected to make no further observations.

Provision 4.1 of the Consumer Protection Code (CPC) states that:

“A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information”

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I am not satisfied that the Provider's policy provisions referred to above, were adequately clear, and I believe that it has a case to answer to the Complainants, in that respect. In my opinion, I am satisfied that I should accept that although the policy provisions are confusing and in conflict, they are nevertheless clearly open to the interpretation that the Complainants' circumstances were covered.

I note that such cover for curtailment under Trip Interruption, was stated to be subject to the condition that the Complainants contact the Provider's helpline, and that the Provider would make all the required travel arrangements. The Complainants have stated that they made repeated attempts to do just that, but they failed to get through on the helpline. This is understandable, given the global situation which had arisen and given what I believe to have likely been an unprecedented number of policyholders seeking to make contact with the helpline during this time. One can well understand that the helpline is likely to have been inundated with queries and calls, and I accept the Complainants' evidence that they repeatedly tried to make the required contact but were unable to do so.

In all of those circumstances, I take the view on the evidence, that the position adopted by the Provider, in declining the Complainants' claim for policy benefits, was unreasonable, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Turning to Provider's conduct in dealing with the claim, I note its email of **30 March 2020**, which stated:

"Unfortunately, at the time of your travel dates, outbound on 07/03/2020 no DFA Government Directive was in place for [European country], due to this we are unable to allow benefit for your new flight."

Provision 7.19 of the Consumer Protection Code (CPC) states that:

"If the regulated entity decides to decline the claim, the reasons for that decision must be provided to the claimant on paper or on another durable medium."

After the Complainants lodged a complaint, I note that the Provider sent a very clear and detailed email on **7 May 2020** setting out the reasons for standing over its decision to decline their claim. However, I believe the initial email dated **30 March 2020** was a little more vague and could have better set out a clear reason under the policy, for declining the claim.

In particular, I note the submission from the First Complainant that *"After I complained a different reason was given"*. I don't accept this however, because the explanation given at that time by the Provider, concerned a claim for "Cancellation", rather than the benefits payable for "Curtailment" under the same section 9. I do not agree that there was any altering of the Provider's position, though certainly, I believe that the Provider could have better communicated the reasons for the initial rejection of the claim.

I am satisfied indeed, that it was appropriate for the Provider to consider both possibilities, to ensure that it adequately assessed the Complainants' situation. It is disappointing however that it did not also consider the potential for cover under **Trip Interruption** which referred to a curtailment claim. Had it done so, it may have elected to cover the Complainants' claim, without it having been necessary for the Complainants to pursue the matter with this Office.

Accordingly, on the evidence available, I take the view that it is appropriate to substantially uphold this complaint, and to direct the Provider to make a compensatory payment to the Complainants, as detailed below. This figure takes account of the amounts sought to be recovered by the Complainants, the policy excess which would have been deductible under the policy, and the overall inconvenience caused to the Complainants, by the Provider's approach to their claim.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially 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 make a compensatory payment to the Complainants in the sum of **€900** (nine hundred Euros) 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. 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)

7 June 2022

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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.