



<u>Decision Ref:</u>	2018-0081
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Poor wording/ambiguity of policy Rejection of claim – cancellation/delay of transport
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant made a claim under his Travel Insurance Policy having missed a flight from Geneva to Dublin on the 11th of March 2017. The Insurer declined the claim relying on specific provisions of the policy.

The Complainant's Case

The Complainant held a Travel Insurance Policy with the Insurer. The Complainant states that he missed a flight from Geneva to Dublin on the 11th of March 2017 owing to the fact that his rental car would not start when he went to leave for the airport. As a result, he states that he was obliged to expend CHF 1683 (Swiss francs) on a replacement flight. The Complainant sought to claim for this amount on his policy but his claim was declined.

The complaint is that the Complainant made a claim on his insurance policy which, he maintains, was improperly declined by the Insurer.

The Provider's Case

The Insurer states that it received a call to its Travel Claims Department from the Complainant on the 6th of July 2017 in respect of a missed flight which was scheduled to take off at 08:55 hours on the 11th of March 2017. The Insurer states that the Complainant advised it that, on the morning of the flight in question, the Complainant's hire car would not start.

The Insurer further states that the Complainant advised that he was able to rectify the problem himself within 20 minutes following which he arrived at the airport at 07:40 hours, notwithstanding which, he did not have sufficient time to clear security and make it to the gate before the flight closed and departed without the Complainant.

The Insurer maintains that, as the Complainant missed his flight as a result of a delay of 20 minutes only, it was entitled to form the view that the Complainant did not allow sufficient time to allow for any delays that might arise. On this basis, and by reference

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 28 June 2018, 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, the final determination of this office is set out below.

Prior to considering the substance of the complaint, it will be useful to set out the relevant terms and conditions of the policy.

Policy Terms and Conditions

The Insurer has identified “*Missed Departure - Section 7*” of the policy in support of its decision to decline the Complainant’s claim.

This section provides as follows:

WHAT YOU ARE COVERED FOR

We will pay you up to €550 in total for the cost of extra accommodation and transport which you have to pay to get to your journey destination or back home because you do not get to the departure point by the time shown in your travel itinerary (plans) because:

- public transport (included scheduled flights) does not run to its timetable; or
- the vehicle you are travelling in has an accident or brakes down.

WHAT YOU ARE NOT COVERED FOR

Any claim unless you:

- get a letter from the public transport provider (if this applies) confirming that the service did not run on time;
- get confirmation of the delay from the authority who went to the accident or breakdown (if this applies) affecting the vehicle you were travelling in;
- have allowed time in your travel plans for delays which are expected.

In addition to the foregoing, the ‘Making a claim’ section of the policy (to be found at page 10 thereof) provides that the following documentation must accompany any claim:

Missed Departures

Detailed account of the circumstances causing you to miss your departure together with supporting evidence from the public transport provider or accident/breakdown authority attending the private vehicle you were travelling in.

Telephone Conversation

The Insurer has provided this office with a recording of the phone conversation of the 6th of July 2017 during which the Complainant notified the Insurer of the claim. In the course of this call, the Complainant advises the Insurer that he missed his flight because “*there was a breakdown*” insofar as his hire car “*wouldn’t start when we went to leave*”. In response to a question, the Complainant states that he was “*able to get it going, it was a loose connection in the battery*”. The Complainant further states that this process took twenty minutes after which he was able to drive to the airport. The Complainant states

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that he arrived at the airport slightly more than an hour before departure at 07:40 but that there wasn't enough time to get through security as the airport was busy.

Following a short interlude, the Insurer's agent reverts to the Complainant advising that the claim for missed departure would not be covered because the Complainant was *"broken down for 20 minutes"* and because the Complainant arrived at the airport *"an hour before but the airport was too busy"*.

As a result, the Insurer maintained that the reason for the missed departure *"would be more that you didn't leave yourself enough time to make it to the airport, you were only delayed 20 minutes"*.

The Complainant responds that he only missed the flight by five minutes and expresses incomprehension as to why cover would not be extended. The Insurer's agent highlights that the delay was only 20 minutes and that insured individuals should leave *"enough time for delays like this"*.

Analysis

The Complainant states that he missed his flight because his rental car broke down. The Insurer queries why the matter was not reported to the car hire company. Additionally, the Insurer states that it *"has no proof at all to support the fact that there was a fault with the vehicle"*.

However, notwithstanding the foregoing, I do not apprehend that the Insurer in fact formally disputes that the car broke down, it having no proof to the contrary. The only proof provided to me (and in this regard the Insurer's contention that it has *"no proof"* is incorrect) is the evidence of the Complainant affirming that the car broke down. In circumstances where that evidence is not gainsaid, I am satisfied to, indeed obliged to, conclude that the contention is correct.

The Complainant states that he managed to rectify the problem himself and get the car running. The Insurer does not appear to take issue with this contention. Furthermore, the Insurer does not appear to challenge the length of time the Complainant states it took to get the car going, nor the time at which the Complainant states that he arrived at the airport. The Complainant's contention that he missed his flight by 5 minutes only is also uncontroverted. Accordingly, as a matter of simple mathematics and based on unchallenged contentions, it is clear that, had the Complainant not been delayed by twenty minutes, he would not have missed his flight, which he did ultimately miss by five minutes.

In light of the foregoing, I am satisfied that the Complainant was covered, and thus entitled to compensation, as, by reference to the wording of the policy, he did not get to the departure point in sufficient time because the vehicle in which he was travelling broke down. The foregoing is subject to the important qualification that no exclusion contained within the policy serves to disentitle the Complainant to the cover to which he might otherwise be entitled.

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In its response to this office, the Insurer set out its rationale for declining the claim as follows:

In this instance the customer was delayed by only 20 minutes as a result of a fault with his vehicle, but still missed his flight. In view of this we don't feel he'd left sufficient time for his journey to Geneva airport to allow for possible delays.

As a general rule passengers are expected to arrive at check-in at least 90 minutes prior to European flights and to factor a further 30 minutes if parking a car. As [the Complainant] would have needed to park the vehicle, the above-recommended check in time supports our decision.

The passage cited above relies upon the Complainant's alleged failure to allow sufficient time to account for "possible delays". This phrase is also employed in the Insurer's Final Response Letter. Additionally, in the course of the telephone conversation described above, the Complainant was advised that he had not allowed sufficient time for delays "such like this" – i.e. delays like a car breakdown.

It is important to note that the reference to 'possible delays' does not reflect the wording of the policy. The policy requires an insured to allow sufficient time for "delays which are expected" as opposed to "possible delays". There is a significant distinction between the two and I am satisfied that, whereas the breakdown of the hire car could be categorised as a possible delay, there is no evidence to support the proposition that it was a delay that should have been expected. As such, I am satisfied that this exclusion, based on the precise wording of the policy, should not have been applied.

The Insurer also makes reference to the time generally recommended by airlines to passengers to allow for check-in and security etc. Whilst this is no doubt sound advice, and whilst it may very well be a sensible matter to include in a travel insurance policy, the fact is that the policy in question here stipulates no specific time period which insured individuals should allow.

A second issue relates to whether the Insurer was entitled to decline cover by reference to the Complainant's failure to satisfy the following requirement (exclusion):

*[To] get confirmation of the delay from the authority who went to the accident or breakdown (if this applies) affecting the vehicle **you** were travelling in*

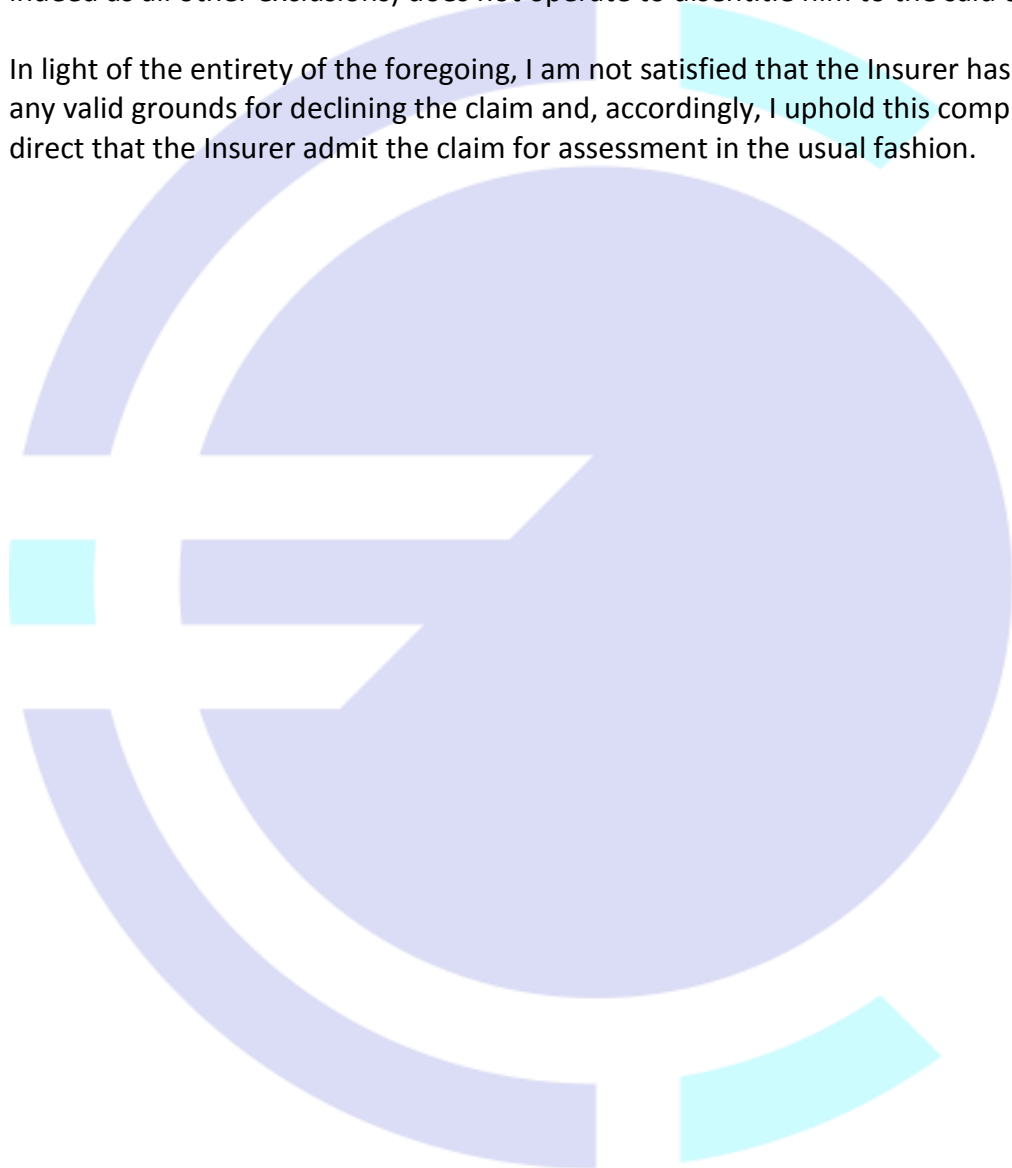
The Insurer has argued that the qualifying words "(if this applies)" refer to the reason for the delay "and not to whether a third party attended the vehicle". In essence, the Insurer is arguing that the words in question operate simply as an indicator that one or other of the two grounds of cover (the other relating to public transport) will require to be vouched, depending on which is applicable.

I do not agree with the Insurer's interpretation of the relevant words. In particular, I am satisfied that, owing to the location in the sentence of the words in question (ie after the reference to the attendance on site of an authority and not, for example, at the end of the

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sentence), the plain meaning of the exclusion is that vouching documents from an authority will be required only if an authority went to the breakdown. In any event, it is clear that no authority attended in this case and thus it would not have been possible for the Complainant to comply. It also bears mentioning that the Complainant's claim was effectively declined in the course of the phone call of the 6th of July 2017 which he had made simply for the purposes of securing a claim form. I believe that a claim such as the one the subject of this complaint requires proper assessment by the Provider. The fact is that the Complainant was and is *prima facie* entitled to cover and this exclusion (as well indeed as all other exclusions) does not operate to disentitle him to the said cover.

In light of the entirety of the foregoing, I am not satisfied that the Insurer has established any valid grounds for declining the claim and, accordingly, I uphold this complaint and direct that the Insurer admit the claim for assessment in the usual fashion.



Conclusion

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

Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by admitting the Complainant's claim for assessment.

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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

24 July 2018

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**.