



<u>Decision Ref:</u>	2018-0155
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant submitted a claim under his single trip travel insurance policy for the cost of purchasing a new return flight home from Paris, on 15 June 2016, following the cancellation of his original flight on 14 June 2016 due to air traffic control strike action in France.

The complaint is that the Provider has wrongfully and unreasonably declined to pay the Complainant's claim.

The Complainant's Case

The Complainant travelled by air from Dublin to Paris on 12 June 2016.

The Complainant's return flight from Paris to Edinburgh on 14 June 2016 was cancelled as a result of an air traffic control strike in France on that date, and as a consequence the Complainant was unable to meet his ongoing flight from Edinburgh to Dublin on the same date.

The Complainant booked an alternative flight home from Paris to Dublin the following day, 15 June 2016. The Complainant submitted a claim under his travel insurance policy for the cost of this alternative flight home.

The Complainant states that his claim was rejected by the Provider on the basis that he had prior knowledge of the possible disruption of his travel plans due to air traffic control

disputes in France. The Complainant disputes this, stating that he had no such knowledge, and that nor did the airline in question which, he submits, had a fully booked flight from Paris to Edinburgh that day.

The Complainant notes that reference has been made by the Provider to a number of media websites which the Provider states had announcements about scheduled air travel disruptions affecting flights from France on 14 June 2016, in advance of the dates he booked his trip and purchased his travel insurance (7 and 8 June 2016 respectively). The Complainant states that he was not informed of these notifications until after he had submitted his claim to the Provider. The Complainant submits that it is unreasonable of the Provider to state that he had prior notice of possible disruption to his flights. The Complainant states that *“other companies have settled for similar claims during this period when Irish fans were returning home from matches in the Euro soccer tournament in France”*.

The Complainant’s complaint is that the Provider has wrongfully, and unreasonably, declined to pay his claim. He seeks payment of the costs incurred in making alternative travel arrangements for his journey home.

The Provider’s Case

The Provider submits that the Complainant’s travel insurance policy contains an exclusion of cover for any claim for additional travel expenses incurred in returning home, arising from one of the contingencies listed in the policy booklet (including “strike” and “industrial action”), if the contingency in question had already started or been forecast before the trip was booked or the insurance was effected, whichever was the later.

The Provider states that, following a review of the Complainant’s claim for the cost of his alternative return flight from Paris to Dublin, the claim was declined as it was found that the strike action which had led to the cancellation of the Complainant’s original return flight on 14 June 2016 had been announced prior to the date that the Complainant had purchased his travel insurance policy (8 June 2016), and indeed prior to the date he had booked his trip (7 June 2016).

The Provider submits that the forecast strike action on 14 June 2016 received extensive coverage in the media across Europe at the time, and the Provider has referred to a number of media links in this regard.

The Provider has expressed regret if the Complainant was not aware of the scheduled strikes prior to booking his flights or purchasing his policy, but states that the exclusion applies regardless of the Complainant’s knowledge.

The Provider’s position remains that, in circumstances where the strike action for 14 June 2016 had been forecast in advance of the dates on which the Complainant booked his flights and purchased his policy, the Complainant’s claim is excluded from cover under his policy.

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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 17 October 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, my final determination is set out below.

The complaint is that the Provider has wrongfully or unreasonably declined to pay the Complainant's claim under his single trip travel insurance policy for the cost of purchasing a new return flight home from Paris, on 15 June 2016, following the cancellation of his original return flight on 14 June 2016 due to air traffic control strike action in France.

The submissions show that the Complainant booked return flights to Paris on 7 June 2016, and that he purchased a travel insurance policy, underwritten by the Provider, on 8 June 2016.

The submissions show that the Complainant flew to Paris on his scheduled flight on 12 June 2016. However, when the Complainant arrived at the airport on 14 June 2016 for his return flight from Paris, he was advised that his return flight had been cancelled as a result of air traffic control strike action. The Complainant booked an alternative flight home from Paris to Dublin the following day, 15 June 2016.

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I note that the Complainant submitted a claim for compensation for his cancelled flight to the airline concerned, but that this claim was unsuccessful. A written communication from the airline to the Complainant, dated 4 July 2016, which is included in the submissions, advised the Complainant that:

“...the reason for your disruption was due to recent Air Traffic Control Restrictions. This event is classified as “extraordinary” under EC Regulation 261/2004 as it was outside of our control. This means that in this instance there is no compensation payable”.

Having been unsuccessful in his attempt to claim compensation from the airline, the Complainant submitted a claim under his travel insurance policy on 5 July 2016 for the cost of his alternative flight home, in the sum €606.80 (inclusive of €558.00 for the return flight, and €48.80 for taxi fare to the airport).

In its Final Response Letter to the Complainant dated 26 August 2016, setting out its reasons for declining the Complainant’s claim, the Provider advised that the Complainant’s policy contained an exclusion in relation to strike action as follows:

“We shall not be liable for:-

- 1. Any claim arising out of any contingencies specified above, if such contingencies had already started or been forecast before the trip was booked or the insurance was effected, whichever is the later”.*

The Provider noted that the Complainant’s policy had been purchased on 8 June 2016, and stated that:

“...having reviewed the information available at this time, I must conclude that the air traffic control strike on 14 June had been forecast prior to this date. The strike was mentioned via a number of media outlets...”

The Provider advised the Complainant that his claim had been declined as *“the strike action had been forecast prior to the purchase of the insurance policy, therefore the exclusion applies and we are unable to assist with the claim”.*

The Complainant’s travel insurance policy provides cover against certain specified events, which are set out in the policy wording, along with any conditions, restrictions, or exclusions which might apply to the cover put in place.

The Provider has submitted a copy of the policy booklet containing the terms and conditions which applied to the single trip travel insurance policy purchased online by the Complainant, on 8 June 2016, for the period 12 June - 14 June 2016.

The terms of cover applicable to the Complainant’s claim in this instance are set out in Section 2 of the policy booklet, entitled *“Journey Continuation”*, as follows (at page 13-14):

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Section 2, Journey Continuation

We will pay up to the limit shown in the Schedule of Insurance for:

...

Return Journey

- (i) Reasonable additional travel and accommodation expenses incurred in returning to your home, or place of employment (whichever occurs first), if subsequent to you leaving your accommodation such additional and reasonable travel expenses are incurred as a result of the following:
 - a) If travel is by non-scheduled transport, interruption caused by strike, locked out workers, industrial action, bomb scare, criminal action, hijack, fire, avalanche, landslide, earthquake, flood or accident to or mechanical breakdown of such non-scheduled transport in which you travel.
 - b) If travel is by scheduled public transport, the contingencies specified in (i) above and also adverse weather conditions...

The following exclusion to the "Return Journey" cover is set out on page 14 of the policy booklet:

Exclusion

We shall not be liable to pay for:-

1. Any claim arising out of any of the contingencies specified above, if such contingencies had already started or been forecast before the trip was booked or the insurance was effected, whichever is the later."

The terms of cover set out above state that the Provider will not pay a claim arising out of any of the events specified under Section 2, Journey Continuation, including strike and industrial action, in circumstances where the event or contingency had already started or been forecast before the trip was booked or the insurance policy was purchased, "whichever is the later."

In a response from the Provider, dated 10 November 2017, to a further submission from the Complainant, dated 9 November 2017, the Provider explained the application of the policy exclusion as follows:

"...it is clear that the policy does not provide cover where strike action has been announced. There is clearly a higher risk of flights being affected if strike action has been announced and therefore we include this policy wording as this is not a risk the insurer wishes to accept. Airlines don't generally start cancelling flights until pretty much the last minute, as they work with legal teams to try and negotiate a

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deal to prevent strike action or minimise the effects. This is why the policy term is worded as it is...

If you choose to book a flight following the announcement of strike action then you need to be willing to accept the risk as it is more than likely that you could be affected. This is not something that most travel insurance policies will cover. An insured person is expected to act as an uninsured person and try to prevent a loss from occurring. A prudent person should be checking to see if there is a potential their flight could be cancelled."

I note in this response from the Provider that it uses the term "*strike action has been announced*". While the policy wording refers to "*such contingencies had already started or been forecast*". Neither word, "*announced*" or "*forecast*" appears to be defined in the policy.

It is not clear to me therefore what the Provider relies on to establishment if a strike has been "*forecast*". Given the potential for this claim to deny a policyholder the right to make a successful claim in certain circumstances, I believe greater clarity is required in relation to what constitutes whether a strike is "*forecast*".

The Provider's submissions make reference to certain items of media coverage in May and early June 2016, which reported at that time upon air traffic control strikes which were scheduled to take place in France on a number of dates in May and June 2016.

I note in its Final Response Letter to the Complainant, the Provider states that "*the strike was mentioned via a number of media outlets*". It goes on to provide links to:

The websites of the UK Guardian, the UK Travel Weekly, and the UK Independent

While it does state "*this is not an exhaustive list of publications on the topic*", I believe it demonstrates an unreasonable expectation that an Irish Student would be expected to consult such websites prior to incepting a travel insurance policy.

I note the Travel Weekly article referred to includes this comment:

"Industrial action tomorrow (Thursday) is to be followed by further strikes announced for June 3-5 and June 14, meaning more cancelled flights, delayed journeys and detours across Europe".

The Guardian article referred to is a lengthy article about Airlines calling on the EU to stop French strike disruption with a passing reference that "*a further strike scheduled for 14 June may still take place*".

The UK Independent article referred to contains the following:

"On the eve of one of the busiest weekends of the year for travel, the threat of widespread flight disruption has been lifted".

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It goes on to say another strike is scheduled for 14 June.

I believe that even if the Complainant had read these articles in detail he would not be able to discover what might transpire on June 14, particularly given the reference to strikes being called off on the eve of the planned strike and the references to delayed journeys and detours.

In a document created by the Provider on 28 July 2016 and modified on 28 July 2016 submitted in evidence, I note the Provider identifies three Irish websites, namely, Journal.ie, The Irish Times and Dublinlive.ie

On reviewing the material referred to on these sites, I note comments/headlines as follows:

The Irish Times has a headline *“French Air Traffic Controllers will stage work stoppages between June 3rd and June 5th”*.

However, further down the article there is a reference to *“French Air Traffic Controllers will down tools on June 14th”*.

Ironically, the article that the Provider refers to in Dublinlive.ie is headed *“French Air Traffic Controllers strikes: Insurance firm warns holidaymakers and football fans to get covered”*.

The article makes a passing reference to travellers *“facing more chaos as they brace themselves for further industrial action between June 3-5 and again on June 14”*.

However, the main purpose of the article is to advise travellers to take out insurance to cover the risk of flight cancellation.

It is my view that if the Complainant had given careful consideration to the content of all of these articles he would have had a difficulty knowing whether or not his particular flight would be cancelled on June 14.

The Complainant has stated that he was unaware of the forecast strike action when he booked his trip to Paris on 7 June 2016, and subsequently purchased his insurance policy on 8 June 2016. I have no reason to doubt this. The Provider has responded that the exclusion applies, irrespective of the Complainant’s knowledge. I note that the Complainant’s policy contains a General Exclusion (18) of “any claims attributable to any set of circumstances known to you at the time of effecting this insurance or booking a trip, whichever is the later, where such set of circumstances could reasonably have been expected to give rise to a claim”. While there is a requirement that the insured have knowledge of such circumstances in order for this General Exclusion to apply, the exclusion upon which the Provider seeks to rely in declining the Complainant’s claim under Section 2, is intended to apply, regardless of whether the Complainant was aware of the scheduled strike action or not.

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Therefore the exclusion upon which the Provider seeks to rely in declining the Complainant's claim makes no reference to any requirement of knowledge on the part of the insured, but requires simply that the contingency "*had already started or been forecast*" before the trip was booked or the insurance was effected, whichever was the later, in order for the exclusion to apply. In circumstances where "*forecast*" has not been defined as it relates to strike action, I find this to be an unreasonable requirement.

I accept that the submissions support the Provider's position that industrial strike action by air traffic controllers in France had been scheduled to take place over a number of days in May and June 2016, including 14 June 2016, and that this strike action had been reported upon in Irish and United Kingdom media outlets towards the end of May 2016.

However, in the circumstances where the Provider does not define what it means by "*forecast*" and goes on to use the word announced in its place, I believe it was unreasonable to decline the claim in question on the grounds that it was excluded from cover.

Section 60 (2) (c) of the Financial Services and Pensions Ombudsman Act 2017 prescribes:

"A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:

...

(c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;

I find the conduct of the Provider in declining this claim to be unreasonable for the reasons set out above and I therefore uphold the complaint and direct the Provider to admit the claim in the sum of €606.80.

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), (c) 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 claim in the sum of €606.80.

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.

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FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

12 November 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.