



<u>Decision Ref:</u>	2018-0182
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim – cancellation/delay of transport
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants made a claim on their travel insurance policy having been delayed for a total of 12 hours in respect of a trip from Florida to Cork via Manchester. The Provider declined the claim relying on specific provisions of the policy.

The Complainants' Case

The Complainants held a travel insurance policy with the Provider. On a date in July 2017, they were booked to fly from Orlando, Florida to Cork via Manchester. The intended schedule provided for the Complainants' arrival in Manchester at 07:35 in advance of an onward flight to Cork departing at 09:05 landing in Cork at 10:40. The Complainants state that, owing to adverse weather conditions, their departure from Orlando was delayed by 2 ½ - 3 hours meaning that the flight did not arrive in Manchester until 09:30 with the result that the Complainants missed their intended onward flight to Cork. As a result of the foregoing, the Complainants were required to rebook flights from Manchester to Cork via London with the result that the Complainants did not land in Cork until 23:30.

The Complainants state that when they got home they contacted the Provider and were advised that they were entitled to compensation in the amount of €40 per person. The Complainants submit that they were subsequently advised that they were not entitled to anything. The complaint also relates to being provided with conflicting advice by the Provider and to the difficulty they experienced in making their claim.

The complaint is that the Company wrongfully declined the Complainants' claim on their travel insurance policy and furnished them with incorrect information. The Complainants believe that they are entitled to benefit of €160.00 comprising €40 in respect of each member of the family/travelling party.

The Provider's Case

The Provider accepts that the Complainants were delayed getting home, through no fault of their own however it disputes that the circumstances fall within the cover provided in the policy. The Provider highlights that the airline covered the rebooking costs to get them from Manchester to Cork via London "*leaving no claim under the missed departure section of cover*".

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 16 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 substantive observations 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.

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Policy Terms and Conditions

The Provider has identified the provisions of “*Section 11 – Travel Delay*” of the policy, in support of its decision to decline the Complainants’ claim. This section provides as follows:

WHAT IS COVERED

1) *If the departure of any flight, sea crossing, coach or train journey forming part of **Your Trip** and specified on **Your** ticket, is delayed as a direct result of **Strike, Industrial Action, adverse weather conditions, or mechanical breakdown of aircraft, sea vessel, coach or train:***

- *For **more than 12 hours** beyond the intended **departure** time:*

*We will pay the amount shown on the Summary of Cover table per **Insured Person** for the first 12 hours Your departure is delayed and for each subsequent full 12 hours delay, up to the maximum shown on the Summary of Cover table per Insured Person per Trip;*

The Summary of Cover table records that the relevant amount in this case for a delay of more than 12 hours, was €40 per insured person.

“*Section 10 – Missed Departure*” of the policy is also relevant and it provides as follows:

WHAT IS COVERED

*If during a **Trip You** arrive at the airport, port, train or coach too late to commence the journey as a result of:*

...

- *Cancellation or **Curtailement** of scheduled public transport due to adverse weather conditions, **Strike or Industrial Action** or mechanical breakdown or road traffic accident:*

...

*We will pay for reasonable additional travel and accommodation expenses necessarily incurred to reach the booked destination by the most direct alternative route, up to a maximum under this Policy as shown in the Summary of Cover table for each **Insured Person**, during each Trip abroad.*

Analysis

It will be convenient to address this complaint in two parts.

Declinature of Claim

The terms of the policy clearly set out events which will give rise to benefits. In respect of travel delays, the terms provide that cover will apply if the departure of a policy holder’s flight (the singular is employed) is delayed for more than 12 hours beyond the intended departure time as a direct result of adverse weather conditions.

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The terms of the policy explicitly refer to a delay to any particular single flight – in this regard reference is made to the departure time specified on the ticket. The terms do not allow for the cumulation of delays to various different flights or to any overall delay in a particular trip.

In this case, though the Complainants' flight from Orlando was delayed as a direct result of adverse weather conditions, this delay was not for more than 12 hours, but was a delay of 3 hours only. Consequently, this delay does not meet the threshold to activate cover under the policy. I have not been furnished with any detail as to any delay to the Complainants' rebooked flight to London or to their onward flight from London to Cork however it is not possible that either of those flights was delayed for more than 12 hours, given the time at which the Complainants finally arrived in Cork.

In light of the foregoing, I am satisfied that the Provider was entitled to decline the claim, as the Complainants did not suffer any loss for which their policy provided cover. Accordingly, this aspect of the complaint is not upheld.

The Manner in which Claim was Dealt With

The Provider has confirmed that this claim was assessed over the course of a number of phone calls and that *"no claim form or claim documents were received"*. I have been furnished with recordings of the phone calls between the First-named Complainant and the Provider on the 21st, 24th, 27th and 28th of July 2017 and I have listened to the content.

In the first call of the 21st of July 2017, the First-named Complainant advises that her flight from Orlando was delayed by 2 ¼ - 2 ½ hours. She confirms that they were due to land in Cork at 10:40 but that, as a result of having to re-route their trip home, they didn't land until 23:30. The claims handler advises that *"under Section 11 of [the] policy"* the Complainants *"would be covered under travel delay"* as they were *"delayed over 12 hours"* and thus the Complainants would be *"entitled to"* €40 per person. This was an incorrect interpretation of the policy. The claims handler took the First-named Complainant's details and, given the relatively small amount of compensation involved, undertook to process the claim as *"tele-claim"* without the need for any paper claim.

Nothing of note took place in the call of the 24th of July 2017. In the call of the 27th of July 2017, a different claims handler advises that, as the Complainants' airline covered the cost of rerouting the Complainants home, it would not be possible to make any claim under the missed departure section of the policy, leaving only the possibility of a claim for travel delay. The claims handler further advises however that, as the delay to the flight from Orlando was below 3 hours, the Complainants *"won't be entitled to claim for the travel delay for those 3 hours because it has to be a minimum of 12 hours"*.

The claims handler goes on to advise that, as the flight ultimately taken by the Complainants out of Manchester (the 19:55 to London Heathrow) departed less than 12 hours after the scheduled departure time of the flight the Complainants were originally due to take (the 09:05 to Cork), the total delay here was also less than 12 hours thus meaning that it was not

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covered by the policy. The claims handler states that *“the travel delay is calculated from when you were due to take off to when you actually took off”*.

Again, in the circumstances of the Complainants’ case, I am of the view that this was an incorrect interpretation of the policy given that the actual departure time related to a different flight (with a different ticket and to a different location) than the departure time of the intended flight to Cork. The departure of the 09:05 to Cork was not in fact delayed at all (based on the evidence available) nor was the departure of the 19:55 flight to London Heathrow. What in fact occurred was that the intended flight was missed, and compensation would have been available under the missed departure section of the policy had the Complainants’ airline not arranged a re-route. Once the direct flight to Cork was missed, a strict interpretation of the terms of the policy would have resulted in the conclusion that the ‘Travel Delay’ section of the policy was not applicable to this component of the trip. The correct interpretation would of course have resulted in the same outcome for the Complainants (given that their airline bore the cost of the re-routing) however, this does not detract from the fact that this was the second occasion on which the First-named Complainant was incorrectly advised.

The claims handler concludes that no compensation will be available. The claims handler makes no reference in this call to the information previously communicated by the Provider in the call of the 21st of July 2017 notwithstanding that the First-named Complainant refers to same. The final call involves the First-named Complainant making a complaint to the Provider.

In the circumstances, I am satisfied that over the course of both of the phone calls to the Provider which dealt with the substantive matter, the First-named Complainant was, unreasonably, provided with inaccurate information and two separate mistaken interpretations of the policy. This is very disappointing. A policyholder should be able to rely on clear and correct information being made available from a Financial Service Provider when a query arises. The information furnished by the Provider however, in both instances referred to, fell below the standard which a policyholder is entitled to expect. Accordingly, I am satisfied that the Provider failed in the level of service it made available to the Complainants and I uphold this aspect of the 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 partially upheld on the grounds prescribed in **Section 60(2) (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 make a compensatory payment to the Complainants in the sum of €200, 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
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES

8 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.