



<u>Decision Ref:</u>	2019-0406
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - delays Claim handling delays or issues Poor wording/ambiguity of policy
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant made a claim under the Travel Insurance Policy as her flight from Philadelphia to the Turks and Caicos Islands in **January 2017** was cancelled due to bad weather. The Insurer paid the Complainant €270, however, the Complainant contends that the policy was misleading in respect of the amount of compensation she expected to recover.

The Complainant's Case

The Complainant held a Travel Insurance Policy with the Provider covering herself and her son. The Complainant states that on **7 January 2017** the flight that she was due to take with her son, was cancelled due to bad weather in the United States. There were no flights available for four days and there was no available accommodation in the area. As a result, the Complainant and her son purchased a flight to where her husband was living, and they stayed with him.

On her return, the Complainant submitted a claim to the Provider for the cost of the flights. The Complainant states that the expenses were deemed valid but she was referred to the terms and conditions of the policy, which provides for a limited payment based on delay time, rather than for costs incurred.

The Complainant received €270 in circumstances where she had incurred outlay of €1,063.38 and \$149.89.

The complaint is that the Provider misled the Complainant in its travel policy in that it did not clearly set out the limitations of the benefit payable and therefore the policy was not fit for the purpose for which it was sold.

The Provider's Case

The Provider states that on **7 January 2017** the Complainant's flight from the USA was cancelled. An alternative flight was scheduled for **11 January 2017**. The Complainant sought to claim for the cost of return flights to travel to relatives with whom they stayed while waiting for their new flight on **11 January 2017**. The Complainant also claimed for food and loss of earnings.

The Provider states that the only cover the Complainant held under her travel insurance policy was for travel delay of €135 per person. The Provider further states that a sum of €270 was paid to the Complainant under the policy on **3 February 2017**. The sum of €270 was to compensate the Complainant and her son for the travel delay experienced.

The Provider wrote to the Complainant on **3 February 2017** and set out Section 4 of the policy wording in relation to travel delay

"Please refer to page 16 of your policy wording. Section 4 – Travel Delay and you will note claims in respect of travel delay are settled on the basis of a payment of €30 per person for the first complete 12 hours of delay and €15 per person for each subsequent and complete 12 hours of delay up to a maximum of €150.

In this instance you are entitled to a payment of €135 per person.

The only cover provided by the policy in respect of travel delay is the benefit detailed above, thus we are unfortunately unable to assist you with the other expenses for which you have claimed.

We respectfully refer you to page 26 of your policy wording, General exclusion number 7 where you will note – you are not covered for anything directly or indirectly caused by: 7) any other loss connected to the event you are claiming for unless we specifically provide cover under this policy"

The Provider states that the Complainant was disappointed with the cover under her travel insurance policy. The Provider appreciates that the Complainant faced a difficult set of circumstances that the policy did not provide cover for however, the travel delay benefit was to cover expenses such as food while they were delayed.

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The Complaint for Adjudication

The complaint is that the Provider misled the Complainant in its travel policy, and failed to adequately set out the limits of benefit which would be payable in the event of a flight cancellation.

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 24 October 2019, 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.

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

Policy Terms and Conditions

The Provider has identified "*Section 4 – Travel Delay*" of the policy in support of its decision to decline the Complainant's claim.

This section provides as follows:

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“YOU are covered

- 1) *For a benefit of €30 for the first full 12 hours you are delayed and €15 for each full 12 hours you are delayed after that, up to a maximum of €150 (regardless of the number of incidents of delay or*
- 2) *Up to the amount under Section 1 – Cancellation section – of this policy (less €100 excess) if you abandon the trip (on the outward journey only) after the first full 12 hours*

If your outward or return flights, sea crossing, coach or train departure to or from Ireland are delayed for more than 12 hours beyond the intended departure time (as specified on your travel ticket) as a result of:

- a) *Strike or industrial action;*
- b) *Adverse weather conditions;*
- c) *Mechanical breakdown or technical fault of the aircraft, coach, train or sea vessel.*

YOU ARE NOT COVERED

- 1) *For the first €100 of each and every incident per each insured person involved in the incident, unless the excess waiver premium has been paid*
- 2) *If you do not check in for the flights, sea crossing, coach or train departure before the departure time*
- 3) *If you do not obtain written confirmation from the airline, shipping, coach or train company stating the period and the reason for delay*
- 4) *For any claims arising from withdrawal from service temporarily or otherwise of the aircraft, coach, train or sea vessel*
- 5) *For anything mentioned in the General Exclusions.*

NOTE – *This section only applied for delays at your final international departure point to or from Ireland.*

GENERAL EXCLUSIONS

YOU are not covered for

- 6) *any other loss connected to the event you are claiming for unless we specifically provide cover under this policy.*

Analysis

The Complainant held travel insurance cover with the Provider. On **7 January 2017**, the flight that she was due to take with her son was cancelled as a result of bad weather in the United States. The Complainant submitted a claim for the cost incurred for flights, food and loss of earnings however, this claim for those items was rejected, as the travel insurance policy did not provide cover for these elements of loss.

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Instead, the Complainant received €270 notwithstanding her outlay of €1063.38 and \$149.89. The Complainant was very disappointed that the policy did not provide adequate cover given the circumstances she found herself in. She believes that the policy was misleading.

The Provider appreciates that the Complainant was faced with a difficult set of circumstances however, the policy wording is such that her additional expenses were not covered.

Travel insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

The relevant sections of the policy document have been set out in detail above. While I do accept that the Complainant took the view that she was left with no real alternative but to book a flight for herself and her son to return to her husband until the re-scheduled flight was due to depart, unfortunately, the policy does not provide benefit for these additional expenses.

I note that the Complainant received payment in the sum of €270 from the Provider.

In the circumstances, I believe that the Provider assessed the Complainant's travel claim correctly, and that it was entitled to decline cover for the additional expenses claimed by the Complainant arising from the position she found herself in when her flight was cancelled in January 2017. Whilst the Complainant believes that the policy was misleading, I don't accept this. In fact the policy provisions which are quoted above, make the position completely clear. If the Complainant had examined her policy cover, it should have been quite clear to her what the extent of the cover was, arising from such a travel delay; I don't accept in those circumstances that the policy was misleading in its terms.

Accordingly, I do not believe that it would be reasonable to uphold this complaint as there is no evidence of wrongdoing on the part of the Provider.

Conclusion

My Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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**

19 November 2019

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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.

