



<u>Decision Ref:</u>	2020-0169
<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>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a decision by the Provider to decline a claim made by the Complainants on a travel insurance policy.

The Complainants' Case

The Complainants incepted a travel insurance policy with the Provider on **18 January 2018**.

In **May 2018**, the Complainants had travelled to North America and were due to take a connecting flight, to continue their trip. This connecting flight was however cancelled and rescheduled for 24 hours later. As a result of this, the Complainants decided to make alternative arrangements for the remainder of their journey, so they hired a car to get to their destination.

The Complainants submitted a claim form which was received by the Provider on **20 June 2018**. The Complainants contend that they are entitled to cover and to benefit under their policy for the cancellation and delay of the flight. The Complainants are unhappy that the policy has not paid out any costs suffered as a result of this difficulty with their trip. They believe that they have lost out on time, food and the cost of the car. They advise that they were left at the airport for approximately 8 hours and they had to get to their destination for the next day, so they had no other option but to find an alternative method of travel.

The Complainants contend that their claim has been wrongfully declined by the Provider. Ultimately, the Complainants want the Provider to reimburse them for the financial loss

(food and cost of car rental) suffered as a result of the cancelled and rescheduled connecting flight as well as compensate them for the eight hours they spent in the airport.

The Provider's Case

The Provider declined the Complainants' claim by way of email dated **27 July 2018**.

The Provider notes in its final response letter dated **20 August 2018**, that when the Complainants' connecting flight was cancelled and rescheduled for 24 hours later, they chose to travel by car to their connecting destination. The Provider states that its claims assessor requested the reason for delay/cancellation of the flight from the Complainants and that the Complainants submitted an email from the airline responsible. This email is dated **24 July 2018** and states that the reason for the flight being rescheduled was because the airline experienced a "*crew swap delay*".

In its email dated **27 July 2018**, the Provider states that "*crew swap delay*" is not a circumstance which is covered within the terms of section 11 ("*travel delay*") of the travel insurance policy and therefore it is not able to allow the claim. In its final response letter dated **20 August 2018**, the Provider also states that "*crew swap delay*" is not a circumstance which is covered within the terms of section 9 ("*cancellation*") of the travel insurance policy and therefore it is not appropriate to admit the claim for payment.

In its submissions to this Office, dated **3 October 2019**, the Provider states that both section 9 ("*cancellation*") and section 11 ("*travel delay*") establish that a "*crew swap delay*" is not listed under the policy as an insured event.

The Complaint for Adjudication

The complaint is that the Provider wrongfully repudiated the Complainants' travel insurance claim for the costs incurred by the Complainants as a result of their cancelled/rescheduled flight.

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

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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 **24 March 2020**, 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 Complainants, the final determination of this office is set out below.

It is important for the Complainants to understand that travel insurance policies, like all insurance policies, do not provide cover for every possible eventuality. Rather, the benefits payable will be for the reasons and in the manner, defined by the particular policy provisions which are in place between the policyholder and the insurer. Those provisions are laid out within the policy documentation and are subject to the terms and conditions and indeed exclusions which are specified.

POLICY PROVISIONS

The travel insurance policy provides as follows:-

*“Section 9 – Cancellation or **Curtailment & Trip Interruption**”*

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.

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

...

- **Your** abandoning **Your Trip** following the cancellation of or a delay of more than 12 hours in the departure of **Your** outward flight, sea-crossing or coach or train journey, forming part of the **Trip's** itinerary. This must be as a direct result of **Strike or Industrial Action**, ... adverse weather conditions, or the mechanical breakdown of, or accident involving, the aircraft, sea vessel, coach or train.

I further note that section 11 of the travel insurance policy states as follows:

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“Section 11 – Travel Delay

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...

I accept the Provider’s submission that these policy terms and conditions were issued to the Complainants at the time the travel insurance policy was incepted and that the Complainants had 14 days in which to review the cover and cancel with a full refund, if they decided that the cover was not suitable to them.

Having carefully considered all of the evidence before me, while I accept that the Complainants’ connecting flight was rescheduled, nevertheless, on the basis of the policy provisions which I have set out above, I note that the circumstances which the Complainants found themselves in, were not covered by Section 9 or Section 11.

I note in that regard that any claim for cancellation or travel delay arising directly or indirectly from “*crew swap delay*” is not covered under the terms of the Provider’s policy.

Accordingly, while I understand the Complainants’ upset I must accept that the Provider was not obliged to admit the Complainants’ claim under their travel insurance policy and accordingly the complaint cannot be upheld.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

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

17 April 2020

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.