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| <u>Decision Ref:</u> | 2021-0114 |
| <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**

The Complainants' complaint relates to the outcome of a claim on their travel insurance policy, which they had purchased from the Provider in 2018.

The Complainant's Case

The Complainants had been travelling during 2018 when a “*technical aviation disruption*” occurred in respect of a connecting flight. As a result of being unable to get their connecting flight, the Complainants say they were prevented from travelling to their destination. They submit they had to spend a few nights in hotels and at airports and that this event resulted in financial loss relating to flights, accommodation and tours. The Complainants made a claim on their policy in this respect. The Complainants' claim was refused by the Provider.

The Provider outsourced the handling of the Complainants' claim to a third party. A final response letter, dated 23 October 2018, issued from the third party, on behalf of the Provider, which stated that it understood that the First Complainant was unhappy with the assessment of their claim, that it conducted a thorough review of the Complainants' case and that it was not upholding the Complainants' complaint.

The First Complainant contends that their trip started and concluded in Ireland and that the policy cover states a single trip cannot exceed 45 days, which theirs did not. He contends that there is nothing within the exclusions section of their policy that excludes their claim from being successful and that there is nothing explicitly stated within the policy defining/outlining where and how a trip begins.

The First Complainant contends that there is no legitimate reason for the refusal of their claim on their policy and/or that they were misled in respect of their policy.

In addition, the First Complainant submits that if their claim is not covered under their policy then a consequence of that is that there was no cover for parts of their travel where that travel encompassed more than a single destination. He contends that, if that is the case, then it seems misleading for a 'Multi-Trip cover', with cover of up to 45 days for a single trip, not to cover the remainder of travel once you attempt to embark on a flight from a second destination other than Ireland.

The First Complainant submits that they were not compensated by the airline. He says once they left their "*second destination (still with c.35 days of [their] trip remaining)*" that they were no longer covered by their policy for flights, accommodation, tours/excursions.

The Provider's Case

The Provider maintains that the Complainants have not suffered any loss recognisable by the 'Missed connection' section of the policy in circumstances where the airline covered the costs of new flights and accommodation pending the departure of those new flights.

The Provider further maintains that the Complainants are not entitled to compensation by reference to the 'Cancelling your trip' section of the policy as the entire trip was not cancelled.

The Complaint for Adjudication

The Complainants' complaint is that the Provider wrongfully refused a claim on their travel insurance policy. The Complainants are "*seeking to be reimbursed all costs incurred, including flights, accommodation and tours missed*".

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.

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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 3 March 2021 outlining my preliminary determination 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 issue of my Preliminary Decision, the Complainants made a submission to this Office under cover of their e-mail dated 3 March 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 5 March 2021 that it had no further submission to make.

Having considered the Complainants' additional submission and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

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

Section A of the Policy deals with 'Cancelling your trip' and provides as follows:

What you are covered for

We will pay up to the amount shown in the table of benefits for:

- *travel and accommodation expenses which **you** have paid or have agreed to pay under a contract and which **you** cannot get back;*
- *the cost of excursions, tours and activities which **you** have paid for and which **you** cannot get back; and*
- *the cost of visas which **you** have paid for and which **you** cannot get back.*

Please note: *If payment has been made using frequent flyer points, airmiles, loyalty card points or the like, settlement of **your** claim will be based upon the lowest available published flight fare for the flight originally booked if they are nontransferable.*

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We will provide this cover if the cancellation of *your trip* is necessary and unavoidable as a result of the following.

- 1. *You* dying, becoming seriously ill or being injured.**
- 2. The death, serious illness or injury of a *relative, business associate*, a person who *you* have booked to travel with or a *relative* or friend living abroad who *you* had planned to stay with. The incident giving rise to the claim must have been unexpected and not something *you* were aware of when *you* took out this insurance.**
- 3. *You* being made redundant, as long as *you* are entitled to payment under the current redundancy payments law and that, at the time of booking *your trip*, *you* had no reason to believe that *you* would be made redundant.**
- 4. *You* or a person who *you* have booked to travel with being called for jury service (and *your* request to postpone *your* service has been rejected) or attending court as a witness (but not as an expert witness).**
- 5. If the police or relevant authority need *you* to stay in the Republic of Ireland after a fire, storm, **flood**, burglary or vandalism to *your home* or place of business within seven days before *you* planned to leave on *your trip*.**
- 6. If *you* are a member of the armed forces or police, fire, nursing or ambulance services which results in *you* having to stay in the Republic of Ireland due to an unforeseen emergency or if *you* are posted overseas unexpectedly.**
- 7. If after the time *you* booked *your trip* the Department of Foreign Affairs allocates a security status of 'Avoid non-essential travel' or 'Do not travel' to *your* intended destination.**
- 8. If *you* become pregnant after the date *you* arranged this insurance cover (or booked *your trip*, whichever is earlier, if *you* have arranged Annual Multi Trip Insurance) and *you* will be more than 26 weeks pregnant at the start of or during *your trip*. Or, if *you* become pregnant after the date *you* arranged this insurance cover and *your* doctor advises that *you* are not fit to travel due to complications in *your* pregnancy.**

Section D2 of the Policy deals with 'Missed connection' and provides as follows:

Please note: This section does not apply to trips taken solely within the Republic of Ireland.

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What you are covered for

We will pay up to the amount shown in the table of benefits for the reasonable extra costs of travel and accommodation you need to enable you to continue with your pre-booked journey in accordance with your itinerary should you miss a flight connection due to;

- *The airline with whom you are booked to travel being unable to deliver you in sufficient time to your connecting airport to meet your connecting flight due to poor weather conditions, a strike, industrial action or mechanical breakdown.*

Analysis

The Complainants in this case departed Ireland in March 2018 for a two-month holiday around several South American countries. In the middle of this trip, in April 2018, the Complainants were due, on the same day, to fly from one city in a South American country (City 1) with the flight departing City 1 in and around 8:40 am, to another city in the same country (City 2) with the flight intended to arrive at around 10:10 am, before taking a connecting flight, due to depart City 2 in and around 12:00 pm to a city in another South American country (City 3) with the flight intended to arrive at around 17:35 pm, before taking a further connecting flight, due to depart City 3 in and around 18:45 pm to a city in a third South American country (City 4), with the flight intending to arrive at around 19:50 pm.

In the course of the first of the three flights, the plane on which the Complainants were travelling was diverted *“to another airport which led to a 6 hour delay and a missed connection with no connection flight offered for 3 days”*. The reason for the diversion is not entirely clear insofar as the Complainants’ complaint form refers to *“a mechanical breakdown of a plane”* whereas a letter from the airline refers to the scheduled destination airport *“being closed by the Aviation authorities”*. However, an entry in the Provider’s internal system notes clarifies matters insofar as it states as follows:

Have located an article regarding disruption in [redacted] airport on XX/04/2018, which was due to a [airline other than the Complainants’ airline] airplane being stranded on the track – mechanical breakdown?

In any event, the Complainants’ flight was diverted and delayed for several hours in reaching its destination (City 2) which caused the Complainants to miss the two further flights which they had planned on taking that day. In my Preliminary Decision I had detailed that *“in the event, the Complainants travelled on the following day to City 3 having overnighted in City 2. The Complainants then were required to overnight in City 3 before finally reaching City 4 two days later than scheduled. (In this regard, the reference in the Complainants’ claim form to a delay of “3 days” appears to be incorrect.)”*

However, as the Complainants had noted in their post Preliminary Decision submission, this was not an accurate representation of what had occurred. The correct sequence of events was that the Complainants did spend one night in City 2 and travelled to City 3 the following day and had to stay overnight at City 3. At this point the Complainants correctly point out that they did not travel to City 4, but instead proceeded to City 5 as “[the airline] *provided [them] a flight to [City 5]*”. The Complainants submit that “[they] *did not travel to city 4 as the airline advised the next available flight to city 4 would not be available for another 2 days*”.

While I had detailed in my Preliminary Decision that “*as a result, the Complainants lost money on hotel accommodation they had booked in the final destination but which they were unable to use. They were also at a loss in respect of a tour they had booked*”.

However, it should be noted that the correct statement is that as a result of the missed connection flights, the Complainants lost money and hotel accommodation they had booked in City 4, but which they were unable to use. They were also at a loss in respect of a tour they had booked in City 4.

It would appear however that the cost of the two replacement flights to City 5 which “*was [the Complainants’] next stop after [City 4]*” and the cost of overnight accommodation in City 2 and City 3, pending the departure of those replacement flights, were covered by the airline according to the email from the First Complainant to the Provider of 3 September 2018.

The Complainants submitted a claim on their policy seeking €547 in respect of missed flights. This figure appears to equate to the total cost of all three flights on the original day of travel (notwithstanding that one flight was availed of, albeit it was severely delayed). The Complainants also sought compensation of “397” in a “*non € amount*” (the currency is not identified in the claim form) in respect of unused hotel accommodation and missed tour costs.

In my Preliminary Decision, I had detailed that the “*accompanying documentation indicating that the missed tour costs related to a trip planned for 3 days subsequent to the original travel date (by which stage the Complainants had arrived in City 4) at a cost of US\$210. I suspect that the figure of ‘397’ included by the Complainants on their form actually reflects the euro equivalent of non-euro expenditure claimed*”.

However, I acknowledge that the statement “*by which stage the Complainants had arrived in City 4*” is inaccurate.

The Provider emailed the First Complainant on 12 September 2018 declining the claim. The email quoted Section D2 of the policy in its entirety (as reproduced above) before stating as follows:

We note that you are claiming the costs of the missed flights as [the airline] provided you with a flight to [City 4] and they also provided accommodation while you were travelling to [City 4].

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The missed connection section only considers the additional expenses incurred and not unused expenses.

The Complainants raised a complaint arising from this rejection of their claim. As part of this complaint, the Complainants expressed the view that their claim should also be considered under Section A of the policy relating to 'Cancelling your trip'. The Provider responded to this complaint in its Final Response Letter of 23 October 2018 wherein it first addressed the claim under Section D2 in the following terms:

*We note that the claims department requested confirmation of any additional costs you incurred as a result of your missed connection to [City 3]. The email received on 03/09/2018 in reply to the email from the claims department states that the airline provided you with an additional flight to [City 4] and accommodation in both [City 2] and [City 3]. Kindly note that your travel insurance policy considers **"the reasonable extra costs of travel and accommodation you need to enable you to continue with your pre-booked journey in accordance with your itinerary should you miss a flight connection"**. The above Missed Connection section within your policy does not extend to consider any unused costs as a result of a missed connection. As no additional costs have been advised or provided in order for the claims department to assess under this section, unfortunately insurers are unable to be of financial assistance under this section of the policy.*

With regard to the Complainants' contention that the claim should be assessed under 'Section A - Cancelling your trip', the Provider set out those parts of this section reproduced above before setting out a further provision from the General Definitions section of the policy that defines a 'trip' as *"your holiday or journey starting from the time that you leave your home in the Republic of Ireland or from the start date shown on **your** schedule, whichever is the later, until arrival back at **your home** address in the Republic of Ireland"*. The Provider went on to set out the following reasoning:

*Kindly note that **Section A -Cancelling your trip** considers the cancellation of a trip to and from Ireland. As such, as your claim is for an internal trip from [one South American county] to [another South American county] your claim does not fall for consideration under this section.*

The Complainants contend that this reasoning is flawed as their trip did begin and end in Ireland. The Complainants further submit that, if that reasoning is accepted, then the policy as a whole is misleading.

In its response to this office, the Provider identified a further provision of the policy not previously relied upon under the 'Period of cover' part of the 'Cover options available' section of the policy which provides as follows:

*Cover under section A (Cancelling **your trip**) starts at the time **you** book the **trip** or pay the insurance premium, whichever is the later.*

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*If **you** have arranged an Annual Multi-Trip policy, cover under section A (Cancelling **your trip**) starts at the time that **you** book the **trip** or the first day of the period of cover as shown on **your insurance schedule**, whichever is the later. For Single Trip and Annual Multi-Trip policies cover under section A (Cancelling **your trip**) ends as soon as **you** start **your trip**.*

The section of the policy that appears the most appropriate under which to consider the claim made by the Complainants is 'Section D2 -Missed connection', given that a missed connection is precisely what occurred to the Complainants. This section provides cover only for additional expenses incurred in an effort to continue a journey. It does not provide cover for any prepaid services which go unused as a result of a missed connection. In circumstances where the Complainants' airline covered all the additional expenses in full, I accept that the Complainants are not entitled to compensation under this section.

In my Preliminary Decision I had stated that this "*other section of the policy relied upon by the Complainants is 'Section A -Cancelling your trip'. It would appear to me that the Complainants did not in fact cancel their trip. Upon realising that they were going to be delayed in reaching City 4, the Complainants may well have sought to cancel their hotel accommodation, or some part thereof. The Complainants certainly cancelled the tour. However, the trip itself was not cancelled and the Complainants proceeded to City 4, albeit later than planned, and continued with the rest of their trip*".

However, while I acknowledge that the Complainants ultimately did not visit City 4 as "*the airline advised [them that] the next available flight to city 4 would not be available for another 2 days*" and chose to proceed to City 5 which was the Complainants "*next stop after [City 4] and [they] arrived here earlier than planned as [they] [were] unable to travel to [City 4] and otherwise would have been stranded at airports*". It therefore still remains my view that the Complainants did not in fact cancel their trip. But instead, upon realising that they were going to be delayed and ultimately prevented in reaching City 4, the Complainants may well have sought to cancel their hotel accommodation, or some part thereof. The Complainants certainly cancelled the tour. However, the trip itself was not cancelled and the Complainants proceeded to bypass City 4 and arrived at City 5 "*earlier than planned*" and continued with the rest of their trip.

The Provider initially relied on the definition of a 'trip' in the policy in declining the claim. In this regard, the Provider essentially argued that Section A provides cover for a trip which is cancelled in full, that is, prior to the original departure from Ireland. I accept that the terms of the policy allow for this construction. The further provision relied upon by the Provider in its response to this office supports this position in rendering it clear that cover under this section was not available to the Complainants after they had left Ireland. I therefore accept that the Provider was entitled to reject the claim by reference to this Section A. I would point out, additionally, that it seems to me that Section A would not have been available to the Complainants in any event as their loss did not fall within any of the eight circumstances in respect of which cover is available under this section.

For the reasons set out in this Decision, I do not uphold this 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 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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

22 April 2021

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.