



<u>Decision Ref:</u>	2022-0004
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

The Provider is the underwriter of a travel insurance policy incepted by the Complainant which also provides cover for the Complainant's wife (together, the **Insured**). The Insured were due to travel from Ireland to Japan via Finland in **October 2019**. However, the flight from Finland to Japan was cancelled. The Complainant subsequently made a claim under the policy but is dissatisfied with the Provider's assessment of the claim.

The Complainant's Case

The Complainant says that the Insured booked flights to Japan to depart on **12 October 2019** via a Booking Agent. The Complainant has provided details of flights from Dublin to Helsinki and Helsinki to Narita. On **11 October 2019**, at 15:37 (only 19 hours before the initial departure time), the Complainant says the Insured received a message with updated flight details where the departing flight from Finland was changed from 17:35 to 21:00.

On **12 October 2019**, the Complainant says the Insured were due to board a flight from Dublin and that he was also tracking the flight details for the journey from Finland to Japan.

At 09.57 on **12 October 2019**, before boarding the flight from Dublin, the Complainant says he noticed that the flight from Finland to Japan had been cancelled on the Helsinki airport website.

The Complainant says the Insured discussed this scenario following the flight delay announcement and agreed on their way to the airport that they would cancel the trip if the delay resulted in them arriving in Tokyo after **17 October 2019**.

On arrival in Helsinki, the Complainant says the parties were given no guidance, so they went to the Airline desk and were told that their flight had been cancelled due to bad weather which was rescheduled for **16 October 2019** to Narita. The Complainant says he subsequently approached the Airline desk, following which the Insured were moved to a flight to Narita due to depart at 22:00 on **12 October 2019**. This flight was later cancelled at 17:00 due to bad weather. The Complainant says the parties were then given a meal voucher and transported to a local hotel by bus for the night and were asked to contact the Airline in the morning.

The Complainant says the Insured contacted the Airline the following morning and having been placed on hold for 40 minutes, the parties were told that the first flight to Japan would be on **19 October 2019**. The Complainant says the Insured found a flight online from Heathrow to Osaka on **15 October 2019** but the Airline would not fly the parties to Heathrow or book the flights to Osaka. The Complainant says the parties booked their own flights to Heathrow and then to Osaka. The Complainant says that due to flight timing and train times, the parties spent one night in Osaka before they could travel to Tokyo, arriving in Tokyo at approximately 15:00 on **17 October 2019**.

The Complainant says the Airline informed him that it would instruct the ticket agent to process a refund for the Dublin to Narita leg of the original flight, which they were told could take up to three months to go through. As at **26 June 2020**, the Complainant says the funds have not been received.

The Complainant says he also contacted his bank to chargeback the payment in respect of the original flights but it has refused to do so. The Complainant says that as the payment has not been received from the Airline, Booking Agent or the Bank and at this stage the Complainant does not expect to receive it, the claim under the policy is valid.

The Complainant says the Provider's Final Response letter refers to the policy wording and cites a passage from this letter, as follows:

*"What you are not covered for
Under Delay and Abandonment*

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*The withdrawal from service of an aircraft, cross-channel train or sea vessel (temporarily or permanently), on which **you** are booked to travel, by the carrier or on the recommendation or order of any government, civil aviation authority, port authority, rail authority or other similar authority in any country.”*

The Complainant says on **6 May 2020**, the Provider’s claims department initiated the following payments:

“I am pleased to confirm that we are in a position to issue payment to you for €40,00 in full and final settlement of your claim.

Payment has been calculated as below:

Description Claimed Amount Deduction Sum Payable

*Travel Delay from Helsinki – London
(€20 for first 12 hour period of delay) €40.00*

Travel delay claims are settled on the basis of a payment of €20.00 per person for the first complete 12 hours of delay, and €10.00 per person after each extra delay of 12 complete hours.

As you were due to depart on the 12th of October at 17:35 and you did not depart until the 13th of October at 17:10 this is the reason we are only able to consider the first full 12 hours of delay for you and [the Second Insured]. The policy only covers for the above benefit and so I am unable to assist you with any other expenses you may be claiming for.”

The Complainant says that if the policy excluded cancellation then how can the Provider make the above payment. The Complainant says the Provider calculated the payment based on the time from the original Helsinki to Tokyo flight to the Helsinki to London flight (which is in the opposite direction and which makes no sense). The Complainant submits that if this clause is to be correctly applied, it should be from the time the Insured were due to depart Helsinki (**12 October 2019** at 17:35) to the time they got back on their itinerary that is, 15:00 on **17 October 2019**. The Complainant calculates this as: €20 + 9*€10 x 2 passengers = €220. However, the Complainant says the Insured are more interested in the flight refund.

The Complainant says he requested details of how many policies in respect of which the Provider had settled cancellation claims included in the above clause because, by definition, that clause excludes all cancellations.

The Complainant says this request was refused by the Provider citing GDPR which the Complainant says is irrelevant as an aggregate number of payouts or indeed no payouts gives no personal details and thus, GDPR does not apply.

By definition, the Complainant says, with a cancellation the carrier withdraws the service, be that due to their own decision or the instructions of some authority/government. So if this clause is invoked, the Complainant submits that the Provider will never pay out for a cancellation. The Complainant regards this as a clear breach of the Consumer Protection Code, to imply that cancellations are covered but then include a clause that ensures claims would never be paid.

In a further submission dated **7 August 2020**, the Complainant refers to the delay/abandonment clause relied on by the Provider, cited above. The Complainant says that this clause refers to “the withdrawal from service of an aircraft” and states that he is unsure how the Provider could be confident that the aircraft was withdrawn from service as the Complainant is unable to verify that information from his database. The Complainant says withdrawal of service is not defined in the policy and in an attempt to find a definition for aircraft withdrawal from service, the Complainant says the only ones he could get were *“withdrawal from service (and ending its ability to generate revenue)”* or *“The life cycle of these aircraft is defined as the time interval between the product conception stage and its withdrawal from service, Decommission – mean to withdraw from service.”* The Complainant says the aircraft the Insured were due to travel on never physically left service, it merely was prohibited from taking off due to the absence of landing slots at the final destination. Had the airlines on which the Insured were due to travel the opportunity, the Complainant says, he is sure they would have been only too happy to fly the aircraft to another location with fare paying passengers rather than leaving it on the tarmac. The Complainant says at all times, the aircraft was functional, there was just nowhere to fly. Thus, it was available for service and the Complainant says he is sure if the aircraft maintenance records are reviewed, it will be seen that it was available for service.

The Complainant says he has a Certificate in Aircraft Acquisition and Finance and has over 15 years’ experience in the aircraft leasing industry including 8 years working with the largest aircraft leasing company in the world. The Complainant says that aircraft are only withdrawn from service for repairs, maintenance, actual physical safety of the aircraft/engines or obsolescence (technical or financial).

The Complainant says that the withdrawal of an aircraft from service is not the same as the withdrawal of a service. In the case of a withdrawal of a service, the aircraft is still available for use but in the case of a withdrawal of an aircraft from service the physical aircraft is no longer available for use – thus there is a substantial difference.

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The Complainant says the clause refers to a withdrawal from service of an aircraft which simply did not occur. The aircraft was available for service, it just did not fly.

The Complainant says he has spoken to a number of individuals in the aviation industry and they have confirmed his interpretation of “withdrawal from service of an aircraft” versus “withdrawal of service of an aircraft”. He suggests that a somewhat similar interpretation is applied the Revenues Commissioners when deciding upon whether an individual is an employee or self-employed, the Complainants say (that is, is it a contract of service or a contract for service).

In the Final Response letter, the Complainants says there is a clear reference to the withdrawal of the service on the bottom of page 1 which is not the same as the withdrawal from service of the aircraft being relied upon, one is a service and the other is a physical asset that ceases to be available for operation. The Complainant says we have all experienced or heard of aircraft being changed just before a flight due to technical or maintenance issues. In that case, the Provider says the original aircraft is withdrawn from service and a replacement aircraft is used and the service of the flight continues.

If the Provider is of the opinion that the aircraft was withdrawn from service, the Complainant requests that it provide aircraft maintenance documentation to support this position. As with any withdrawal from service, the Complainant says it will be recorded in the aircraft’s maintenance records under Aviation Authority regulations. In the Insured’s case, the Complainant says they were re-booked on a second flight the same day and requests that the Provider furnish documentation to support the withdrawal of both aircraft. If this is not forthcoming, the Complainant submits that the Provider’s position is without support and his claim is valid.

In resolution of this complaint, the Complainant states, as follows:

“Flight cancellation refund €766 + cost of time associated with distractionary tactics of [the Provider] 10 hrs @50 = €500 = €1,266 less paid €40 = €1,226”

In a submission dated **16 December 2020**, the Complainant advises, amongst other matters, that he is increasing the value of his claim to take account of the ongoing administration by a further 10 hours at €50 per hour. As such, the Complainant advised that his claim *“is currently 220/766 + 20*50 = €1,220/€1,766 at a minimum.”*

The Provider's Case

The Provider advises that the Complainant is the policyholder and that his travel companion is also named on the travel insurance policy. The Provider says there is one level of cover under the policy which commenced on **20 May 2019**.

The Provider says the Complainant first contacted it on **15 April 2020**. The Provider says it believes that the Complainant's claim was correctly declined based on the exclusions contained in the policy terms and conditions and the fact the Airline has offered to refund the Complainant.

The Provider says it does not cover any costs if a flight is cancelled by an airline. The airline should offer a refund or put the customer on the next flight as the airline is responsible for all refunds of flight/flight amendments. The Provider says if a flight is delayed, it covers the following delay/abandonment:

"We will pay

Delay:

€20 after the first full 12 hours of delay and €10 after each extra delay of 12 hours up to €300 in total; or

Abandonment:

up to €1,500 in total for your part of the unused costs of the journey which have been paid or where there is a contract to pay that cannot be recovered from anywhere else, if, after you have been delayed for more than 12 hours, you decide to abandon the journey before you leave the Republic of Ireland."

Regarding the calculation of the delayed departure period, the Provider says the Complainant was due to depart on **12 October 2019** at 17:35 and did not depart until 17:10 on **13 October 2019**. This meant a delay of 23 hours and 35 minutes. The Provider says it covers each full 12 hours period, of which there was only one in this timeframe.

The Provider says the Complainant has been advised by the Airline that it would refund the costs of the cancelled flights. The Provider says it strongly suggests that the Complainant continue to seek this refund from the Airline. If no refund is forthcoming, the Provider suggests that the Complainant seek clarity through the Airline's internal complaints process, if this has not already been done.

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The Complaints for Adjudication

The complaints are that the Provider:

1. failed to refund the costs of the cancelled flights; and
2. failed to correctly assess the duration of the delayed departure.

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 30 November 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant's Claim

The Complainant completed and signed a 'Travel Insurance Claim Form' dated **21 April 2019** (the incorrect year appears to have been inserted) with his wife being listed as an additional claimant. The Complainant completed the 'Travel Delay Claims' section of the form in respect of the flight due to depart from Helsinki to Narita at 17:35 on **12 October 2019** which was stated to be cancelled due to bad weather. The Complainant also completed the 'For Abandonment Claims' section of the form.

It appears that the claim form and supporting documents were received by the Provider around **20/21 April 2020** with further documentation being requested on **24 April 2020**. On **30 April 2020**, the Provider's Travel Claims Department wrote to the Complainant by email, as follows:

"Please note from the documents you have provided we are unsure on what exactly you are looking to claim for. You have advised your flight from Helsinki to Tokyo was cancelled due to weather conditions. Please be advised we have yet to receive a new booking invoice from you to show when you actually departed Helsinki to show the full length of your delay.

Kindly note you have also provided a booking invoice showing you left London to Hong Kong on the 15/10/2020. When the original flight information you have provided show you left Ireland to Helsinki on the 12/10/2020. I welcome your comments on this discrepancy.

I would kindly ask that you forward the following to enable me to further assess your claim:

- *Please provide us with a full detailed description of the full circumstances of your claim, detailing which flight was delayed, the time you took a new flight and any other relevant information for us to further process your claim."*

The Complainant responded the same day, as follows: *"Please find attached further details of our trip. We had to reroute due to the cancelled flights and continue our trip via London."*

By email dated **6 May 2020**, the Travel Claims Department wrote to the Complainant in respect of his claim, as follows:

"I am pleased to confirm that we are in a position to issue payment to you for €40.00 in full and final settlement of your claim.

/Cont'd...

Payment has been calculated as below:

Description	Claimed Amount	Deduction	Sum Payable
<i>Travel Delay from Helsinki - London (€20 for first 12 hour period of delay)</i>	€40.00		€40.00

Travel delay claims are settled on the basis of a payment of €20.00 per person for the first complete 12 hours of delay, and €10.00 per person after each extra delay of 12 complete hours.

As you were due to depart on the 12th of October at 17:35 and you did not depart until 13th of October at 17:10 this is the reason we are only able to consider the first full 12 hours of delay for you and [the Second Insured]. The policy only covers for the above benefit and so I am unable to assist you with any other expenses you may be claiming for. ...”

It appears this was followed by further correspondence between the parties, with the Travel Claims Department writing to the Complainant on **14 May 2020**, as follows:

“Kindly note, we are only able to consider costs under the travel delay section of the policy.

Under the ‘Travel delay’ section of the policy you wish to claim under the abandonment section.

Abandonment

up to €1,500 in total for your part of the unused costs of the journey which have been paid or where there is a contract to pay that cannot be recovered from anywhere else, if, after you have been delayed for more than 12 hours, you decide to abandon the journey before you leave the Republic of Ireland.

As you have informed us, you travelled from Dublin to Helsinki. Only when you arrived were you informed the connecting flight had been cancelled. For us to consider claims for abandonment, the flight from Dublin needs to be delayed for more than 12 hours as a result of this you abandon your journey before you leave the Republic of Ireland. We are unable to consider any other costs you may have incurred. ...”

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Responding the same day, the Complainant stated that:

"I have already provided you with a copy of Helsinki Departures board dated and timed before we boarded our flight to Helsinki - photo dated and timed 12th Oct 09:57, so we chose to abandon our trip prior to leaving ROI."

A formal complaint appears to have been made following the Provider's claim settlement offer. Following this, the Provider wrote to the Complainant on **12 June 2020**, as follows:

"Whilst I understand your disappointment with the Claims Department's stance, I must concur with their findings.

Under your ... Travel Insurance Policy there are certain exclusions that apply, one of which states that you are not covered for anything caused by;

*- the withdrawal from service of an aircraft, cross-channel train or sea vessel (temporarily or permanently),
on which you are booked to travel, by the carrier or on the recommendation or order of any government,
civil aviation authority, port authority, rail authority or other similar authority in any country.*

*In this case, the airline withdrew the service because of poor weather conditions and it is the airline who should be offering you compensation. I believe that you had received confirmation from [the Airline] that you would receive a refund for the cancelled flight. I can only recommend that you pursue them further for this refund.
...."*

The Policy

Section 1 of the policy covers cancellation and curtailment charges in the following terms:

*" **Cancellation or curtailment charges – Section 1***

*If **you** think **you** may have to cut **your journey** short (curtail), **we** must be told immediately ...*

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WHAT YOU ARE COVERED FOR

*We will pay up to €1,500 in total ... for **your** part of the unused personal accommodation, transport charges and other travel expenses which have been paid or where there is a contract to pay that cannot be recovered from anywhere else.*

We will provide this cover in the following necessary and unavoidable circumstances:

Cancellation

- *If **you** cancel **your journey** before it begins because one of the following happens:*
- *The death, serious injury or serious illness of **you**, someone **you** were going to stay with, **a travelling companion**, or a **relative** or **business associate** of **you** or a **travelling companion**.*
- ***You** or a **travelling companion** is needed by the Gardaí ...*
- ***Your redundancy***

Curtailment

***You** cut **your journey** short (curtail) after it has begun because of one of the following:*

- *Anything mentioned in Cancellation except **redundancy**.*
- ***You** are injured or ill and are in hospital for the rest of **your journey**. ...”*

Section 8 covers delayed departure and states:

“ **Delayed departure – Section 8**

WHAT YOU ARE COVERED FOR

*Compensation if the flight, international train or sea vessel **you** are booked on is delayed at its **departure point** from the time shown in **your** travel itinerary (plans) because of:*

- *a serious fire, storm or flood damage to the **departure point**;*
- *industrial action;*
- *bad weather;*
- *mechanical breakdown of the international train or sea vessel; or*

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- the grounding of the aircraft due to a mechanical or a structural defect.

We will pay:

Delay

€20 after the first full 12 hours of delay and **€10** after each extra delay of 12 hours up to **€300** in total; or

Abandonment

up to **€1,500** in total for **your** part of the unused costs of the **journey** which have been paid or where there is a contract to pay that cannot be recovered from anywhere else, if, after **you** have been delayed for more than 12 hours, **you** decide to abandon the **journey** before **you** leave the Republic of Ireland.

WHAT YOU ARE NOT COVERED FOR

Under Delay and Abandonment

Anything which is caused by **you** not checking in at the **departure point** when **you** should have done.

Missed connections.

Compensation unless **you** get a letter from the airline, railway company or shipping line giving the reason for the delay and showing the scheduled departure time and the actual departure time of the flight, international train or sea vessel.

Any delay caused by a riot, civil commotion, strike or industrial action which began or was announced before **your** policy or travel tickets for **your journey** were bought (whichever is later).

The withdrawal from service of an aircraft, cross-channel train or sea vessel (temporarily or permanently), on which **you** are booked to travel, by the carrier or on the recommendation or order of any government, civil aviation authority, port authority, rail authority or other similar authority in any country.

Under Abandonment

An excess of **€75**.

More than the lowest market value of equivalent accommodation, transport charges and other travel expenses, if payment was made using frequent flyer points, airmiles, loyalty card points, redeemable vouchers or another similar scheme.

Please refer to Sections General exclusions, Conditions and Making a claim that also apply."

Analysis

The Insured were due to travel from Dublin to Helsinki and from Helsinki to Narita on **12 October 2019**. The flight from Helsinki to Narita was due to depart Helsinki airport at 5:35pm on **12 October 2019** but was cancelled due to bad weather.

The Complainant explains that this flight was rescheduled at least twice and was ultimately rescheduled to **19 October 2019**. At the same time, the Insured made their own travel arrangements by booking a flight from Helsinki to Heathrow and from there to Osaka.

The Complainant's policy document sets out the various types of cover provided under the policy, the conditions which must be satisfied to trigger cover and the benefit payable once cover is triggered.

In his submissions, the Complainant makes the point that the policy does not cover cancellations, this appears to be in the context of flight cancellations. For completeness, I note that the policy, at section 1, provides cancellation and curtailment cover. However, as can be seen from the wording of section 1, this cover applies only in certain circumstances which do not include the circumstances giving rise to the cancellation of the Insured's flights from Helsinki to Narita. Therefore, while I accept there is cancellation cover under the policy, I do not accept that this cover is responsive in the context of the present complaint.

Section 8 of the policy provides cover for delayed departure and for the payment of benefit for delay or abandonment arising from the delayed departure, but not both. In respect of delay, the benefit payable is €20 for the first full 12 hours of delay and €10 for each further 12 hour period of delay to a maximum of €300 in total per insured. The benefit payable for abandonment is up to €1,500 for unused or irrecoverable costs, subject to certain conditions.

Section 8 states that compensation will be provided if the flight that an insured is booked on is delayed at its departure point from the time shown in an insured's travel itinerary due to, for instance, bad weather. As can be seen from the wording of section 8, this section of the policy does not provide cover for flight cancellation. Rather, the cover provided is for delay or abandonment however it arises but subject to the limitations or exclusions contained in the policy.

It is clear from the correspondence from the Travel Claims Department and the Provider's Complaint Response dated **4 November 2020** that the Provider was not disputing that the Insured's flights from Helsinki to Narita were delayed or that benefit was payable for delay.

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However, in a submission dated **13 November 2020** in response to an earlier submission from the Complainant, the Provider said that:

“the Delayed Departure offer of €40 (€20 per person) was offered as a goodwill gesture as Delayed Departure cover only exists when the flight from the Departure Point has been delayed. In this case, the Departure Point was Dublin.”

From the available evidence, this appears to be the first time the Provider has raised these points. However, I do not consider it fair or reasonable for the Provider to only raise these points at this stage of the claim or the complaint. If the Provider was making a goodwill gesture in respect of the Complainant’s claim this should have been clearly communicated rather than allowing the Complainant (and subsequently, this Office) to believe that the Provider’s position was that a valid claim had been made in respect of travel delay. Further to this, if the Provider considered that the claim was not covered by reference to the policy definition of departure point, this should have been communicated by the Provider at a much earlier point in time than **13 November 2020** regardless of whether these points were being made in response to a submission from the Complainant.

The policy defines ‘Departure point’ as:

*“The airport, international train station or port where **your** outward journey from the Republic of Ireland to **your** destination begins and where **your** final **journey** back **home** begins (including any connecting transport **you** take later).”*

While the departure point begins from the Republic of Ireland (that is, Dublin airport), the inclusion of the words in parenthesis indicates that the departure point is not confined to a single location but includes *any connecting transport* later taken. This is a very broad term which I am satisfied, reasonably interpreted, would include any form of transport taken in order to reach the intended destination. Therefore, in the context of this complaint, I am satisfied that the departing flight from Helsinki to Narita is to be considered part of the outward journey from Ireland to the Insured’s destination (that is, Japan) and thereby comes within the meaning of departure point.

Having regard to the wording of section 8, I am satisfied that the Insured’s flight from Helsinki to Narita was delayed from the time shown in their travel itinerary (the scheduled departure time) due to an insured peril (bad weather). Accordingly, I am satisfied that cover was triggered under section 8.

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The Provider has offered to settle the Complainant's claim in the amount of €40 in respect of the delay experienced. However, the Complainant has taken issue with the amount of benefit payable. The Provider appears to have taken the position that benefit is payable in respect of the period between the scheduled departure time of the cancelled flight from Helsinki to Narita and the scheduled departure time of the flight from Helsinki to Heathrow. The Complainant considers that if the Provider applied this section correctly, the benefit should be calculated by reference to the period between the scheduled departure time of the cancelled flight from Helsinki to Narita and the time the Insured got back on their itinerary at 3pm on **17 October 2019** when they arrived in Tokyo.

From the evidence, I note that the booking confirmation for the Insured's flights from Helsinki to Heathrow on **13 October 2019** records the departure time from Helsinki as 16:00 and the arrival time in Heathrow as 17:10. In its email of **6 May 2020**, the Travel Claims Department advised the Complainant that: *"As you were due to depart on the 12th of October at 17:35 and you did not depart until 13th of October at 17:10 this is the reason we are only able to consider the first full 12 hours of delay"*

The Provider's statement is slightly conflicting as it appears the Provider may have confused the departure time for the Helsinki/Heathrow flight with its arrival time. However, it appears the Provider considered the period of delay to be from the scheduled departure time of the cancelled Helsinki/Narita flight to the scheduled departure time of the Helsinki/Heathrow flight, although it may have mistaken the departure time for the Helsinki/Heathrow flight. This would appear to be in line with the Provider's comments in a submission dated **14 November 2020**, where it stated that: *"the Delayed Departure benefit is calculated from the time when the delayed flight was due to depart until when the customer actually departs the Departure Point."*

In respect of delay, it is my opinion that benefit is only payable for periods of delay. The evidence shows that the Insured made alternative travel arrangements in order to arrive in Japan by booking a flight from Helsinki to Heathrow with a further flight from Heathrow to Osaka. When the Insured booked their flights from Helsinki to Heathrow, I am of the view that the delay ended at the scheduled departure time of this flight and I do not consider that the delay ended at the scheduled departure time of the flight from Heathrow to Osaka or when the Insured arrived in Tokyo.

Accordingly, the period between the scheduled departure time of the cancelled flight from Helsinki to Narita at 5:35pm on **12 October 2019** and the scheduled departure time of the flight from Helsinki to Heathrow at 4pm on **13 October 2019** is 22 hours and 25 minutes.

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This period of delay comprises one full 12 hour period of delay. In such circumstances, this entitles each person insured under the policy to a benefit payment of €20, giving a total payment of €40 which is the amount offered by the Provider in settlement of the Complainant's claim.

Therefore, in the circumstances of this complaint and in light of the benefit provided for under section 8 in terms of delay, I accept that the appropriate benefit payment was offered to the Complainant.

When the Complainant submitted his claim form, he sought to claim for delay and abandonment. As noted above, section 8 only provides for the payment of benefit under the headings 'Delay' or 'Abandonment' and not both.

The Provider emailed the Complainant on **6 May 2020** to advise that the claim had been settled in respect of "Travel Delay". In its email of **14 May 2020**, the Provider attempted to explain why it was considered that the Insured did not abandon their journey. In the submissions exchanged between the parties in the course of this complaint there has been extensive engagement as to whether benefit is payable under the 'Abandonment' heading.

For abandonment benefit to become payable, the requirements imposed by section 8 are that:

*"if, after **you** have been delayed for more than 12 hours, **you** decide to abandon the **journey** before **you** leave the Republic of Ireland."*

Therefore, it is my opinion that the Insured must first experience a delay of 12 hours and then decide to abandon their journey but before they leave the Republic of Ireland.

It is the Complainant's position that the Insured decided to abandon their journey prior to departing Dublin airport. The scheduled departure time for the Dublin to Helsinki flight was 10:15am on **12 October 2019**. The Complainant's evidence is that at around 9:57am on **12 October 2019**, he noticed that the flight from Helsinki to Narita had been cancelled. There is no evidence to suggest that the Insured were aware of any delay associated with, or cancellation of, this flight prior to 9:57am which was 18 minutes before the Insured's scheduled departure from Dublin airport and 7 hours and 38 minutes before the scheduled departure time of the flight from Helsinki to Narita.

Based on the evidence, it appears to me that the Insured were simply aware of the flight cancellation and the prospect of delay but had yet to experience any delay or any delay prior to departing Dublin airport because the delay did not actually arise until after the scheduled departure time of the Helsinki to Narita flight.

Even if it is accepted that the Insured decided to abandon their journey prior to departing Dublin airport, there is no evidence that they had been delayed for 12 hours before they made this decision. In this regard, I note the following comments from the Complainant in a submission dated **25 November 2020**:

“Is the insurer suggesting that we should have refused to board the flight to Helsinki, got everyone off the flight, demanded the flight be delayed and our baggage unloaded – and then set up camp in Dublin Airport for a further 18 hours (to ensure that we would meet the 12 hour time limit on the Japan flight)?”

Therefore, I do not accept that the Insured had experienced the required 12 hour delay prior to making any decision to abandon their journey prior to departing Dublin airport.

The second aspect of a claim for abandonment benefit is that the Insured “*decide to abandon the **journey** before **you** leave the Republic of Ireland.*” Very much central to whether abandonment benefit is payable is the definition of the term ‘journey’. ‘Journey’ is defined as:

*“A trip that takes place during the **period of insurance** which begins when **you** leave **home** and ends when **you get back home** or to a hospital or nursing home in the Republic of Ireland, whichever is earlier. ...”*

For the purposes of this definition, the Insured’s trip began when they left their ‘home’ (which is defined as their usual place of residence in the Republic of Ireland) ended when they returned ‘home’.

The Insured originally intended to travel to Japan by flying from Dublin to Helsinki and from Helsinki to Narita. However, the evidence does not support the Insured’s assertion that they took a decision to cancel or abandon their ‘journey’ once they learned of the cancellation of their flights from Helsinki to Narita or prior to departing from Dublin airport. Although not travelling on the flights originally booked, the evidence clearly shows that the Insured continued with their journey to Japan despite being aware of the flight cancellation.

It appears to me that rather than abandoning their journey, the Insured took the decision not to continue on their journey to Japan by flying directly from Helsinki but instead decided to find alternative flights. If the Insured abandoned their journey, I would have expected them to return to Ireland from Helsinki.

In a submission dated **13 November 2020**, the Complainant states that:

“What we choose to do after we “decide to abandon” is irrelevant as to whether we decided to abandon or not – the criteria is deciding not acting/abandoning.”

However, I am not persuaded by the point the Complainant makes. As noted above, I do not accept that the Insured decided to abandon their journey prior to departing Dublin airport and their actions once they arrived in Helsinki is very much inconsistent with any such decision.

Therefore, based on the evidence, it was the Insured’s intention to travel to Japan. They eventually arrived in Japan but not in the manner intended. Therefore, within the meaning of the policy, I do not accept that the Insured decided to abandon their journey prior to leaving Dublin airport or at all.

In light of the foregoing analysis, I do not accept that any benefit is payable under the ‘Abandonment’ heading of section 8.

In the Provider’s letter of **12 June 2020**, it cited the withdrawal of service exclusion as a basis for declining the Complainant’s request for a refund of the cancelled flight costs. The Complainant disputes that the cancellation of the flight due to bad weather can be properly considered as a withdrawal from service of an aircraft.

The relevant exclusion declines cover in the following circumstances:

*“The withdrawal from service of an aircraft, cross-channel train or sea vessel (temporarily or permanently), on which **you** are booked to travel, by the carrier or on the recommendation or order of any government, civil aviation authority, port authority, rail authority or other similar authority in any country.”*

The Provider’s reliance on this exclusion appears to suggest that the cancellation of the flight arose from a withdrawal from service of the aircraft due to the bad weather. However, while the above exclusion is applicable to both delay and abandonment claims, it appears the Provider only sought to use it in response to abandonment aspect of the claim and not the delay aspect. Although, it is not clear why this was the case.

/Cont’d...

Considering the nature of the cover offered by section 8, I believe that the Provider's reliance on this exclusion in response to the Complainant's claim would have the effect of completely undermining the cover provided by this section of the policy. For example, the Provider could point to this clause to decline cover in response to any claim where a cancellation of a flight occurred. However, I do not accept, on a reasonable interpretation, that this was the intention or purpose of this exclusion. As such, I do not accept that the Provider was entitled to rely on this exclusion to decline the Complainant's claim and I would consider its conduct in doing so to be disappointing. However, prior to the Provider's reliance of this exclusion, I note that there appears to have been certain engagement between the parties where the Provider set out the basis as to why did not consider the Insured to have abandoned their journey by reference to the wording under abandonment heading.

While I do not consider that the Provider was entitled to rely on the above exclusion in response to the Complainant's claim for the cancelled flight costs, in the circumstances of this complaint and having regard to the provisions of section 8 and the relevant policy definitions, I accept that the appropriate amount of benefit was paid by the Provider in respect of the delay arising from the cancellation of the flight from Helsinki to Narita. Further to this, in the context of the evidence presented and the relevant policy wording, I do not accept that any benefit is payable in respect of abandonment. Therefore, I do not consider that the Provider wrongly failed to refund the costs of the Insured's cancelled flights.

In the Complaint Form, the Complainant refers to *distractionary tactics* on the part of the Provider. Further to this, in a submission dated **16 December 2020**, the Complainant says the Provider "*has chosen to be disruptive of my efforts to process the claim in an efficient manner*" I have been furnished with no evidence that the Provider engaged in any such tactics or has been disruptive towards the Complainant.

I note the Complainant's requests for maintenance records or such similar documentation to be made available in order to support his position on the proper interpretation of the above exclusion. I do not believe that the Provider is required to furnish this information nor do I believe that the Provider would be expected to have access or an entitlement to this information. Further to this, I do not consider any refusal on the part of the Provider to furnish information regarding the number of cancellation claims to have been unreasonable as I do not consider such information to be relevant to a determination of this complaint, especially as each claim under a policy depends on its own particular facts and circumstances. In these circumstances, I do not accept that any declined requests for information means that the Provider has engaged in distractionary tactics or been disruptive.

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

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

5 January 2022

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.