



<u>Decision Ref:</u>	2022-0005
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Rejection of claim - cancellation Dissatisfaction with customer service
<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 Complainants. The Complainants were due to travel from Ireland to Japan via Finland in **October 2019**. However, the flight from Finland to Japan was cancelled. A claim was subsequently made under the policy and two payments were received from the Provider totalling almost €1,985.00. The Complainants later sought to recover the cost of the cancelled flights under the policy which was declined by the Provider.

The Complainants' Case

The Complainants say that they booked flights to Japan in **December 2018** to depart on **12 October 2019** through a Booking Agent. The Complainants explain that the flights scheduled for **12 October 2019** were cancelled and, on **13 October 2019**, the Airline informed the Complainants that a refund would be issued for the flight. Having not received a refund, the Complainants say the First Complainant emailed the Booking Agent on **28 October 2019** and **5 November 2019**. The Complainants explains that the First Complainant telephoned the Booking Agent, located in Spain, as he did not receive a response to his emails. The Complainants say the First Complainant was told that it would be 60-90 days before a refund would be forthcoming.

The Complainants say the First Complainant telephoned the Booking Agent in **January 2020** and was told that the refund would be fast-tracked and that he would receive an email by **24 January 2020**. However, nothing was received. The Complainants say the First Complainant telephoned the Booking Agent on **28 January 2020** and *forced* them to update him by email.

As a result of the information the First Complainant received, the Complainant say the First Complainant had no choice but to wait 90 days from his initial correspondence with the Booking Agent before he could contact his Payment Service Provider for a chargeback. The Complainants say the Payment Service Provider is unwilling to process a chargeback request. The Complainants further say that the First Complainant has exhausted all options and they are now claiming under the travel insurance policy.

The Complainants have provided details of flights from Dublin to Helsinki and Helsinki to Narita (Japan). On **11 October 2019**, at 15:37 (only 19 hours before the initial departure time), the Complainants say they 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 Complainants says they were due to board a flight from Dublin and that the First Complainant 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 Complainants say the First Complainant noticed that the flight from Finland to Japan had been cancelled on the Helsinki airport website. The Complainants say the First Complainant informed the Airline staff at the departure gate in Dublin airport of the cancellation. The Complainants say the staff member confirmed the cancellation and told them to board the flight and that the Airline "*would take care of you*". However, the Complainants say that the Airline have not responded when asked about the commitment made by their staff member. The Complainants advise that the First Complainant has a screenshot of the departure cancellation. The Complainants say they were told to board the flight by the Airline staff member in the knowledge that the departing flight from Finland had been cancelled, the flight from Finland to Japan was significantly at risk and that the Complainants were likely to incur costs as a result.

On arrival in Helsinki, the Complainants say they were given no guidance, so they went to the Airline desk and were told that their flight to Narita had been cancelled due to bad weather which was rescheduled to **16 October 2019**. The Complainants say the First Complainant subsequently approached the Airline desk, following which the Complainants were moved to a flight due to depart to Narita at 22:00 on **12 October 2019**. This flight was later cancelled at 17:00 due to bad weather.

The Complainants say they 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 Complainants say they received no further meal or refreshment support from the Airline.

The Complainants say they 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 Complainants say they found a flight online from Heathrow to Osaka on **15 October 2019** but the Airline would not fly them to Heathrow (the Airline offered to fly the parties to Dublin) or book the flight to Osaka despite the flight being with an Airline partner. The Complainants say they booked their own flights to Heathrow and then to Osaka. The Complainants says that due to flight timing and train times, they spent one night in Osaka before they could travel to Tokyo.

The Complainants say the Airline indicated 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 **14 April 2020**, the Complainants say the funds have not been received. The Complainants say the First Complainant also contacted his bank to chargeback the payment in respect of the original flights but it has refused to do so. After much 'to-ing and froing', the Complainants say they received €1,984.68 in compensation under section 8 of the travel insurance policy but the Provider is refusing to pay for the cancelled flights for which the Complainants have not been paid either by the Booking Agent, the Airline or the Payment Service Provider. The Complainants have also cited a number of sections of the travel insurance policy and state that as payment has not been received from the Airline or Payment Service Provider and as the parties do not expect to receive it, the claim under the travel insurance policy is valid.

In a further submission dated **7 August 2020**, the First Complainant refers to an email from the Provider dated **13 January 2020**, declining the claim under the policy. In this submission, the First Complainant makes a number of observations. The First Complainant says the Provider accepts that any discussion in respect of the policy regarding 'Catastrophe Cover' is irrelevant and that the only section of the policy the parties are concerned with is section 8. The First Complainant submits that:

"The key clause from the Policy Section 8 is:

'you choose to cancel your trip before departure from the Republic of Ireland.' ..."

The First Complainant has also provided a photo of the Helsinki airport departures website in respect of the cancelled flight showing the time on his mobile phone as 09:57 on **12 October 2019**.

The First Complainant says the flight from Dublin departed at 10:20 on **12 October 2019** and that the Complainants were aware of and made their choice to cancel the flight prior to departing Ireland.

The First Complainant says there is no requirement to take actual action under section 8, merely the reference to 'choose' that is, the act of cancellation. Invariably, the First Complainant says, there will be a delay between the choice of a course of action and the implementation of that action for example, I choose to go to the beach next Saturday – the choice is made now but the action is on Saturday.

The First Complainant says the policy wording clearly states **before departure from the Republic of Ireland** and does not prohibit departure from Ireland that is, it does not state *cancel your trip without departure* from the Republic of Ireland.

The First Complainant submits that the wording could have the interpretation that a policyholder must *depart from Ireland* in order to be able to claim under this section as a policyholder must "choose to cancel" "before" "departure". The First Complainant says this might require three things in order to claim **choose, before and departure**.

The First Complainant states that the Complainants' claim under the policy is valid and the necessary criteria under section 8 are met.

In resolution of this complaint, the Complainants are seeking:

*"Payment of flight costs not recovered + extra time in dealing with claims assessors inefficiencies €1,532 * 50% = 766 + 234 (10 hours) = €1,000"*

The First Complainant further advised that there was a miscalculation in the hourly rate in respect of the above passage. As such, the First Complainant advised that *"the total claim is now 766 + 20 hours @ €50 = €1,766."*

The Provider's Case

Before setting out the Provider's Complaint Response, Provider records indicate that the Complainants' claim was handled by the Claims Settlement Provider.

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Provider records further indicate that around **22 December 2019**, the First Complainant made a formal complaint to the Claims Settlement Provider regarding the declinature of the claim. The Claims Settlement Provider issued a Final Response to this complaint on **13 January 2020**.

The Complainants' Insurance Validation Certificate states that the insurance provided by the policy is underwritten by the Provider. At page 39 of the policy document, which deals with complaints, it states that any complaints regarding a claim are to be made to the Claims Settlement Provider. The policy continues by stating that if a policyholder remains dissatisfied with the outcome of this process, a complaint can be made to the Provider.

In an email to this Office dated **2 July 2020**, the Provider's Head of Risk & Compliance stated that the Final Response issued by the Claims Settlement Provider and subsequent correspondence was to be regarded as the Provider's final position in respect of the First Complainant's complaint. The email further advised that the Provider's Head of Risk & Compliance was the appropriate officer within the Provider to contact regarding the complaint.

In its Complaint Response dated **9 November 2020**, the Provider advises that the Complainants are the policyholders on the travel insurance policy the subject of this complaint which was an annual multi-trip travel insurance policy covering the period **19 February 2019 to 18 February 2020**.

The Provider says there is no cover under the policy beyond that which has already been paid. The Provider says there is no cover under section 1, 'Cancellation', as the reason for cancellation is not a peril listed under the insured causes. The Provider points out that the Complainants could have purchased cover for the situation encountered, namely, cancellation of the trip following catastrophic weather conditions. The claim would have then been covered had the Complainants decided to cancel the trip before leaving Ireland (subject to policy limits). The Provider says the Complainants chose not to purchase that cover. The Provider refers to section 22.1 of the policy and the insurance certificate where, the Provider says, it clearly states that this is an optional additional cover.

The Provider says it is satisfied it declined the claim in accordance with the policy terms and conditions. The Provider submits that it has gone well beyond what it might have paid in agreeing an *ex gratia* payment to recognise the "[un]usual and difficult circumstances." The Provider says the total amount claimed as initially submitted was £6,584.12.

Responding to a question as to whether it was feasible for the Complainants to wait six days to avail of a re-scheduled/next available flight to Japan, the Provider says this is not a judgement for the Provider to make and is not relevant insofar as the settlement of the claim is concerned. The Provider says the important point here is that notwithstanding alternative travel arrangements were made without waiting for the delayed flight, the full benefit was paid under the relevant section, Delayed departure - €500.00 per person, even though the Complainants made alternative arrangements and were not delayed for the full period. The Provider says it was accepted that this would have been the delay had the Complainants waited and so the policy benefit was paid in full.

The Provider explains that it issued a policy of insurance to provide insurance against certain events. It argues that whether it was feasible for the Complainants to wait for the re-scheduled flight is not a matter which is relevant to the legal terms of the contract but the Provider says it did not seek to cut the benefit based on the alternative arrangements made. The Provider says it believes this was fair and reasonable.

The Provider says it was the Airline's decision to cancel the flight and as such, it is the Airline's responsibility to refund the costs. The Provider says its understanding is that the decision was based on the likely onset of a typhoon in Japan on or around the time of arrival. The Provider says it is not privy to the contract between the Complainants and the Airline nor would the Provider have any standing in assisting the Complainants in such a matter as it is not party to that contract. Further to this, the Provider says the policy does not provide for assistance in recovering uninsured costs.

Regarding costs not recovered from other sources, the Provider says it would reject such a contention as it believes the Complainants are misunderstanding the basis of the policy and seem to believe that it extends to cover any and all costs that they cannot get back regardless of the policy terms and conditions. The Provider says the policy is a legal contract which clearly states that it covers those costs that are irrecoverable if arising from an insured event. Such events, the Provider says, are set out in the policy. The cancellation of the flight arising from bad weather/typhoon was not an insured event under this policy, the Provider says. It states that the perils insured are clearly laid out in section 1, 'Cancellation', and as such, the Provider says whilst it is sympathetic that the Complainants have so far been unable to recover these costs, it is not for the insurers to stand in for the legal responsibilities of other organisations.

In the First Complainant's previous submissions (specifically an email dated **23 February 2020**), the Provider says the First Complainant selectively quoted an excluded section (8.2.3.d) to assert that because he had not been able to recover costs from the Payment Service Provider, he must be able to recover the costs under section 8. The Provider says this is incorrect and also selective.

The Provider says it has already paid out the maximum benefit under section 8.1. The Provider says the wording of that section clearly goes on to state that firstly, a claim can only be made under section 8.1 or section 8.2 not both and secondly, the decision to cancel the trip must be made **before** leaving Ireland. The Provider says that whatever way the Complainants choose to present the circumstances, it is a matter of fact that they did not cancel or abandon the trip and got on the plane and left Ireland. The Provider says it is neither reasonable or credible to assert that the Complainants got on the plane, went to their ultimate destination but had decided to cancel the trip.

The Provider says the Complainants seem to take the view that as insurers had made an *ex gratia* goodwill payment, that entitled the Complainants to come back and claim other costs that are the responsibility of other organisations. The Provider submits that an insurance policy is a legal contract which is subject to terms and conditions, and the contract is to be read in its entirety. If the circumstances fall outside those terms and conditions, it is not the responsibility of the insurer to be responsible for those costs. The Provider says it has been sympathetic and understanding throughout this claim (hence agreeing to making an *ex gratia* payment) but to selectively quote from the policy without putting it in the context of the basic facts or other wording in the policy is disingenuous. The Provider says this is not an insured loss under the terms of the policy (save to the extent that the Provider paid full benefit for travel delay under section 8.1).

The Provider says it would be unfair to those policyholders who paid more for their insurance policy to cover such eventualities to make payments to customers who chose not to buy the appropriate cover and indeed, even more so to seek to make insurers responsible for the failure of other organisations (airlines) to make reimbursements that are their legal responsibility.

The Provider says insurers have paid the cost of the delay that was insured under the policy and have gone beyond that in agreeing to pay additional costs as a gesture of goodwill. The Provider states that the Complainants should pursue other costs from those legally responsible for refunding those costs.

The Provider says it strongly opposes this complaint and contests the basis on which it has been brought. The Provider submits that it made every effort to be sympathetic and recognise the unfortunate circumstances the Complainants encountered notwithstanding they had not purchased cover which applied to the circumstances of the claim. The Provider says claim handlers attempted to recognise the difficulties the Complainants faced and liaise with underwriters on the points made by the Complainants.

In addition to paying the benefit due under the policy in respect of the delay suffered, the Provider says it made an *ex gratia* payment of €984.68 to recognise the circumstances were unusual and very unfortunate. The Provider also notes the policy premium paid for the Complainants' annual cover was €73.00. The Provider says the fact it is resourced and structured to respond to claims and complaints should not mean it picks up liabilities of organisations who do not respond to legitimate claims against them.

The Provider says at one point, it was argued that the Complainants made the decision to cancel the trip before they left Ireland and therefore the claim should be paid under the cancellation section. This despite the fact the Complainants got on the plane and actually continued with the trip (albeit rearranging and rerouting). To subsequently seek to rewrite the circumstances, the Provider says, is improper and should form part of the considerations and basis for dismissal of the complaint.

The Provider says it has endeavoured to be sympathetic throughout this process and has shown to be flexible, reasonable and fair. The Provider says this is demonstrated by it paying an *ex gratia* contribution to the losses suffered. The addition of 'costs' in preparing the claim, the Provider says, is extremely disappointing and an improper use of the Ombudsman process when insurers are endeavouring to be fair and reasonable whilst acting within the terms and conditions of the policy. The Provider says the Complainants are entitled to recovery of the costs from other organisations and that the Complainants should pursue these organisations rather than seeking to put these costs onto those who have already discharged their responsibilities.

The Complaint for Adjudication

The complaint is that the Provider failed to reimburse the cost of the cancelled flights as part of the claim under the Complainants' travel insurance policy.

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 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 Complainants' Claim

The Complainants signed the Claims Settlement Provider's 'Cancellation Claim Form' on **29 October 2019** in respect of a 'Non Medical Cancellation' of their flights on **12 October 2019** to Japan.

By email dated **12 November 2019**, the Claims Settlement Provider wrote to the First Complainant declining the claim, as follows:

"Having reviewed your documentation, it is noted that you have experienced travel disruption due to flight cancellation.

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Within the cancellation notification from [the Airline], it is noted this was due to typhoon Hagibis.

Please note, your policy terms and conditions state that you must purchase an additional catastrophe cover in order to be covered for disruption associated with Natural catastrophe, which means avalanche, earthquake, fire, flood, hurricane, landslide, storm, tsunami or volcanic eruption.

In view of the above, unfortunately, I am unable to offer any settlement to you. [...].”

The First Complainant responded to the Claims Settlement Provider the same day, as follows:

“Our flight was originally scheduled to take off from Hel at 17:35 and arrive at 09:05.

This was subsequently rescheduled to 21:00 take off, giving a landing time of 12:30. Narita airport reopened at 04:39.

[Hyperlink to article regarding reopening of Narita airport]

Thus the flight could have taken off and landed.”

It appears that a formal complaint was made by the First Complainant in respect of the Claims Settlement Provider’s decision around **22 December 2019**. A formal complaint was acknowledged by the Claims Settlement Provider by email dated **23 December 2019**. It appears that the First Complainant provided further details regarding his complaint by email on **3 January 2020**. An update regarding the complaint was also sent to the First Complainant by the Claims Settlement Provider on **3 January 2020**. By email dated **13 January 2020**, the Claims Settlement Provider issued a formal response to the complaint, as follows:

“We have reviewed your policy terms and conditions, and would refer you to Section 8-Delayed Departure, page 25, where it states cover is provided as follows:

[Section 8]

/Cont’d...

Having reviewed the above terms and conditions of your policy, we agree that the policy does not provide any further explanation regarding 'adverse weather conditions' and therefore agree the claim is considerable under this section of your policy.

However, we would advise that this section of your policy provides cover for a set benefit which is dependent on the number of hours you are delayed from your original departure point.

The reason the policy only provides cover for the set benefit is due to the fact that when there is a delay or cancellation to your flight, the airline will offer an alternative flight free of charge as well as accommodation, and therefore additional expenses would not be incurred if the alternative flight was taken. Whilst we understand that you did not wish to wait until 19th October 2019 to travel, the choice of making your own alternative arrangements was of your own choice, and the insurance would not provide cover for the expenses incurred as outlined in the above cover.

Noting that you purchased the Platinum level of cover, you would be entitled to a benefit of €50.00 per insured person for each 12 hours period you are delayed, up to a maximum on €500.00 [...]

We would advise that had you waited for the alternative flight offered by the airline, you would have incurred a delay of 7 days, and therefore the maximum sum payable of €500.00 per person would have been offered.

In view of this, it has been agreed on this occasion that a payment of €1000.00 can be made for the travel delay benefit that would have been incurred had you waited for the next available flight from the airline.

We note that there has been mention of coverage under Section 22-Catastrophe section by the bother (sic) the claims handler and also by yourself in response to your claim decision, having reviewed this section, we do not believe this would be applicable to you regardless whether you purchased the additional cover or not. [...]

Therefore, taking the above into account, the definitions of typhoon or hurricane would strictly speaking be irrelevant as even if the claim was due to a catastrophe defined by the policy and you had purchased the additional catastrophe cover, the costs you have incurred would not be covered under this section in any case.

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Your comments in relation to the definitions of hurricane and typhoon have been noted, and whilst we believe hurricane would naturally be interpreted to include a typhoon, the wording on this could be clearer and therefore this has been raised with the Underwriters.

In relation to other standard sections of the policy, they also would not provide cover for the additional or unused costs which are being claimed, as it would not be an insured peril under the other sections also (cancellation, curtailment, missed departure).

Each of these sections detail the costs in which they cover and the reasons in which they will cover them, and unfortunately a delayed or cancelled flight (whether due to a Typhoon or bad weather or operational reasons) would not be covered under these sections.

In view of the above, we have arranged payment in the sum of €1000.00 being the maximum amount payable under Section 8-Travel Delay, and this payment will arrive in your account in due course.

As explained, we are unable to consider the specific costs being claimed by you as these fall outside the scope of your policy. [...].”

The First Complainant responded to the Claims Settlement Provider on **16 January 2020**, as follows:

“As you are aware we were due to travel to Japan on Oct 12th for a holiday and ultimately to attend the Rugby World Cup.

As you are also aware our flights to Japan were cancelled due to adverse weather conditions and we were offered flights on Oct 19th arriving Oct 20th – the day after Ireland were due to play New Zealand. As a result we had to abandon our initial trip and consider whether we would travel to Japan at all.

Following extensive searches by ourselves we booked a new trip and managed to salvage a portion of the accommodation, travel, events etc from the original abandoned trip. Unfortunately we were unable to reuse or recover the following costs as outlined and supported in the original claim documentation, and as such now wish to claim for these under Section 8:

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<i>Bullet Train</i>	<i>654.00</i>	
<i>Parking</i>	<i>63.18</i>	<i>5/11 *139</i>
<i>Kyoto Hotel</i>	<i>2,278.87</i>	<i>JPY273,464 *50% Two room booked</i>
<i>Tea Ceremony</i>	<i>125.00</i>	<i>JPY 60,000 50% cancellation fee x 50% 4 people attending only two claimed</i>
	<i>€3,121.05</i>	

I appreciate we can only claim under 1 or 2 and thus expect payment net of the €1,000 already received.”

Responding the same day, the Claims Settlement Provider explained that:

“As the policy states, the cover for trip abandonment is if after a delay of 24 hours from your initial international departure point from the Republic of Ireland you decide you wish to abandon your trip and not travel at all, you can claim the unused portion of your travel and accommodation expenses.

[Extract from section 8]

Unfortunately, as you did not cancel your trip before your departure from the Republic of Ireland, and still continued to travel, the claim would not be considered under this section of your policy. [...].”

In a further email on **16 January 2020**, the First Complainant stated, as follows:

“I attach a copy of the Helsinki departure screen at 09.57 on Oct 12th before we had boarded in Dublin and thus before we had left the Republic of Ireland.

If you wish to check the metadata of the photo it is dated Oct 12. Indeed I attach a screen print from my phone with the Album data showing.

[...]

Thus we had decided to abandon our trip prior to departing Dublin.”

The Claims Settlement Provider wrote to the First Complainant by email on **22 January 2020** to advise that his comments had been sent to the underwriter of the policy for consideration to ensure the Claims Settlement Provider was interpreting the policy in the correct manner.

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On **27 January 2020**, the Claims Settlement Provider wrote to the First Complainant explaining, as follows:

“Having had further discussion with the Underwriters regarding your claim, they have agreed, as a final offer to resolve your complaint, to consider the unused tea ceremony, bullet train and Kyoto hotel costs. However they have confirmed that the amount already settled in the amount of €1000.00 is to be deducted from the final sum of these unused costs.

I have therefore calculated a further sum is due as follows

Tea Ceremony JPY 60,000 4 x 2= JPY 30,000 @ 50% = JPY 15,000 @ 113.41 = €132.26 – PAC €125

Kyoto Hotel JPY 273,464 / 2 rooms= JPY 136,732 @ 113.41 = €1205.64

Bullet Train €654

TOTAL: €1984.64 less €1000.00 already paid= €984.64

I would advise that the above payment is on a ‘without prejudice’ basis and is the final settlement from the Underwriters for your claim. [...].”

On **26 February 2020**, the First Complainant wrote to the Claims Settlement Provider regarding the recovery of the cost of the Complainants’ cancelled flights, as follows:

“As you are aware in Dec 2018 we booked our flights to Japan via [the Booking Agent] attach 1. As you are also aware on Oct 12th 2018 our flight was cancelled. On Oct 13th [the Airline] informed us that a refund would be issued for the cancelled flight. Having not received any refund I emailed [the Booking Agent] (trading name of merchant) on Oct 28th - attach 2.

I then emailed them again on Nov 5th – attach 3. As I did not receive a response I telephoned them in Spain and was told it would be 60-90 days before a refund would be forthcoming.

I telephoned them again in mid Jan to be told that the refund was being fast-tracked and I would get an email with details of payment by Jan 24th – nothing was received. I then rang them again on Jan 28th and forced them to email me an update – attach 4. We have still not received any refund.

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As a result of the information I had received I had no choice but to wait the 90 days from my initial correspondence with [the Booking Agent] before I could contact [the Payment Service Provider] for a chargeback. [The Payment Service Provider] are unwilling to process a chargeback – attach 5. As a result I have exhausted all options and I am now claiming under our travel insurance. [...].”

The Claims Settlement Provider responded to the First Complainant on **5 March 2020**, as follows:

“Unfortunately, as the travel was cancelled by the provider, they are responsible to reimburse you for the unused flights.

I would recommend you contact the airline directly in order to obtain a refund.

Unfortunately, these costs are not covered under the policy.”

In response to this, by email on the same day, the First Complainant stated that:

“Claims have been submitted to the booking agent and the credit card company – neither of which have paid out. [...]

We have not received and do not expect to receive the funds from any other source, I have sent you the documentation from [the Payment Service Provider], thus the claim is valid.”

The Claims Settlement Provider communicated its final position on the matter by email dated **20 March 2020** stating that *“the policy will not be able to provide settlement for cancellation by the provider.”*

In an email dated **23 March 2020**, the First Complainant responded, as follows:

“You have not addressed the issue, you subsequently paid out further funds under section 8 2 after that letter. What I am claiming now is updated information as the Debit Card provider is not paying:

What is not covered

For subsection 2. only of What is covered:

/Cont’d...

d. Any costs incurred by **you** which **are** recoverable from **your** credit card provider or for which **you** receive or are expected to receive compensation or reimbursement.

As the provider is not paying it and you have a copy of this letter, it is therefore covered. Please address this issue as your other letter is irrelevant."

The Claims Settlement Provider responded on **12 April 2020**, as follows:

"As previously advised to you in our Final response letter:

'In relation to other standard sections of the policy, they also would not provide cover for the additional or unused costs which are being claimed, as it would not be an insured peril under the other sections also (cancellation, curtailment, missed departure). Each of these sections detail the costs in which they cover and the reasons in which they will cover them, and unfortunately a delayed or cancelled flight (whether due to a Typhoon or bad weather or operational reasons) would not be covered under these sections.'

[...]."

[Claims Settlement Provider emphasis]

The Policy

The Complainants' 'Insurance Validation Certificate' indicates that the cover provided under the policy was the 'Platinum' level of cover. The 'Schedule of Benefits and Excesses' outlines the type of cover provided under the different levels of cover and the level of cover provided by the optional cover sections available under the policy.

The cover provided in respect of 'Section 8 - Delayed departure' for Platinum level policyholders is, as follows:

Cover Section	Platinum Cover	*Excess
Section 8 - Delayed departure		
Delayed departure after 12 hours delay	€50 per 12 hours up to €500	Nil
Abandonment of trip After 24 hours delay	€7,500	€50

/Cont'd...

Section 8 of the policy states, as follows:

“Section 8 – Delayed Departure

What is covered

*If the **public transport** on which **you** are booked to travel:*

- 1. is delayed at the final departure point from or to the **Republic of Ireland** (but not including delays to any subsequent outbound or return connecting **public transport**) for at least 12 hours from the scheduled time of departure, or*
- 2. is cancelled before or after the scheduled time of departure as a result of any of the following events:*
 - a. strike or*
 - b. industrial action or*
 - c. adverse weather conditions or*
 - d. mechanical breakdown [...]*

We will pay you:

- 1. up to the amount as shown in the **schedule of benefits** for each complete 12 hours delay up to a maximum as shown in the **schedule of benefits** (which is meant to help **you** pay for telephone calls made and meals and refreshments purchased during the delay) provided **you** eventually travel, or*
- 2. up to the amount as shown in the **schedule of benefits** for **your** proportion only of any irrecoverable unused travel and accommodation costs and other pre-paid charges which **you** have paid or are contracted to pay, if:*
 - a. after a delay of at least 24 hours, or*
 - b. following cancellation, no suitable alternative **public transport** is provided within 24 hours of the scheduled time of departure*

you choose to cancel ***your trip*** before departure from the ***Republic of Ireland***.

You can only claim under subsection 1. or 2. above for the same event, not both.

/Cont'd...

You can only claim under one of either Section 8 – Delayed departure or Section 9 – Missed departure on your outward journey for the same event, not both. [...].”

Analysis

The evidence is that the Complainants were due to fly from Ireland to Japan on **12 October 2019** through Finland. Before boarding the flight from Dublin to Helsinki on **12 October 2019**, the Complainants became aware that the flight from Finland to Japan had been cancelled. The Complainants boarded the flight to Helsinki and on arrival at Helsinki airport it appears the flight to Narita, Japan remained cancelled. The flight was initially rescheduled for **16 October 2019** and then for 9:00pm on **12 October 2019** but this flight was later cancelled and the Complainants were transported to a nearby hotel for the night. It appears that on **13 October 2019**, the Complainants were advised that the flight to Japan was rescheduled to **19 October 2019**. It appears that on **13 October 2019**, the Complainants booked alternative flights to Japan flying through Heathrow airport. The Complainants’ flight plan appears to have been to fly from Helsinki to Heathrow departing on **13 October 2019** and from Heathrow to Osaka departing on **15 October 2019**.

Section 8 of the policy provides cover for delayed departure. For a claim to trigger cover under section 8, the circumstances giving rise to the claim must come within the perils at either section 8.1 or section 8.2.

In the context of this present complaint, section 8.2 provides cover if the public transport on which the Complainants were booked to travel was cancelled as a result of adverse weather conditions. The evidence is that the flight from Finland to Japan was cancelled prior to its scheduled departure time due to a typhoon. While the term ‘adverse weather conditions’ in section 8.2 of the policy is not defined, I am satisfied that a typhoon would reasonably be understood to come within the meaning of this term. Accordingly, I am satisfied that the cancellation of the Complainants’ flight due to typhoon triggers cover under section 8.2 of the policy.

Once cover is triggered, section 8 proceeds to identify the benefit that will be paid under the heading, ‘We will pay you’. This part of section 8 is divided into two sub-sections and states that a policyholder can only claim under one of these sub-sections. As can be seen, there is a limit to the amount recoverable, by reference to the policy schedule, under section 8.

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Sub-section 1 states benefit is payable “*up to the amount as shown in the **schedule of benefits** for each complete 12 hours delay up to a maximum as shown in the **schedule of benefits** ... provided **you** eventually travel*”. Sub-section 1 further states the intended purpose of this benefit is “*to help **you** pay for telephone calls made and meals and refreshments purchased during the delay*”.

Reading sub-section 1 and the purpose for which the benefit is intended in conjunction with the policy schedule, I consider the benefit payable to each policyholder is €50.00 for every 12 hours of delay from when the delay began up to a maximum of €500.00 once there has been an initial 12 hour delay. While the policy schedule imposes an initial 12 hour delay requirement, I am satisfied this is simply a condition which must be satisfied before the stated benefit becomes payable. However, I do not believe this is to be interpreted as meaning that the benefit payable is calculated based on each complete 12 hour period of delay which arises following the expiry of the initial 12 hours of delay. I am of the view that once there has been a 12 hour delay, benefit is payable from the point at which the delay first began. That said, on the basis of the evidence, I am satisfied that the initial 12 hours of delay required by the policy schedule is likely to have been satisfied.

The evidence shows that the Complainants eventually travelled to Japan, although by way of alternative flights. In the context of section 8, it is my opinion that the delay ended when the Complainants recommenced their trip on **13 October 2019** by departing on the flight from Helsinki airport for Heathrow airport. In these circumstances, I am of the view that the Complainants were actually delayed for the period between the scheduled departure time of the cancelled flight from Finland to Japan (being 5:35pm on **12 October 2019**) and the departure time of their flight from Helsinki to Heathrow on **13 October 2019**.

Therefore, the Complainants were only entitled to the payment of benefit under this sub-section of the policy for this period as this was the duration of delay experienced by the Complainants.

Sub-section 2 provides for the payment of benefit in respect of irrecoverable costs. This sub-section applies:

“... if:

- a. *after a delay of at least 24 hours, or*
- b. *following cancellation, no suitable alternative **public transport** is provided within 24 hours of the scheduled time of departure*

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you choose to cancel your trip before departure from the Republic of Ireland.”

Central to sub-section 2 is that the Complainants “choose to cancel **your trip** before departure from the **Republic of Ireland.**” I note that policy definitions are set out at page 10 of the policy document.

The term ‘trip’ is defined as: “any holiday or pleasure **trip** or journey, within the geographical areas shown in the **policy certificate** that begins and ends in **your home area** during the **period of insurance.** ...” The term ‘Home area’ is defined as: “An **insured person’s usual place of residence in the Republic of Ireland.**”

Having considered the evidence, I do not accept that the Complainants cancelled their trip, which was, in essence, to visit Japan. Rather, based on the evidence, it is my view that the Complainants chose to cancel the rescheduled flight from Finland to Japan and not their trip. The evidence is that the Complainants travelled to Japan by taking alternative flights and completed their intended (although delayed) trip. Therefore, it is my opinion, within the meaning of the policy, that the Complainants did not cancel their trip. Therefore, the benefit provided under sub-section 2 is not payable.

In light of the above analysis, it is my view that the appropriate amount payable in respect of the Complainants’ claim is likely to have been in the region of €200.00. This is because the period of delay, as noted above, began at the scheduled departure time of the cancelled flight on **12 October 2019** and ended at the time of the Complainants’ flight from Helsinki on **13 October 2019**. However, the departure time of this flight is not clear from the evidence. Therefore, there is likely to have been a maximum of two complete or full 12 hour periods of delay. In accordance with the policy schedule, each policyholder is entitled to €50.00 for every 12 hours of delay. This would give a total of €100.00 per policyholder.

In any event, I note that the maximum benefit payable under section 8 has been paid arising from the delay experienced by the Complainants, that being €500.00 in respect of each policyholder and totalling €1,000.00. This is the benefit provided by sub-section 1 above. As the maximum benefit has been paid under section 8, I do not accept that the Provider was required to make any further benefit payment under section 8 of the policy as the Complainants’ entitlement in respect of this claim has been fully exhausted. Notwithstanding this, a further payment of approximately €985.00 was made in respect of irrecoverable costs. This is the benefit provided by sub-section 2 above. However, as can be seen from the foregoing analysis, I do not consider that the Complainants were entitled to any benefit payment under sub-section 2.

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Therefore, I do not accept that the Provider has failed to reimburse the Complainants for the costs of the cancelled flights.

In the Complaint Form, the Complainants refer to “*claims assessors inefficiencies*”. In a submission dated **16 December 2020**, the First Complainant says the Provider “*has chosen to be particularly disruptive in my efforts to process the claim in an efficient manner [...].*”

However, the Complainants have not provided any further detail or evidence as to these inefficiencies or how the Provider has been disruptive.

It appears that the Complainants’ claim was initially declined on the basis that they had not purchased the ‘Catastrophe cover’ (at section 22 of the policy) which was considered by the Claims Settlement Provider to provide cover for travel disruption caused by typhoon. This position appears to have arisen from the absence of a definition of ‘adverse weather conditions’ in section 8.2 of the policy. Following a complaint from the First Complainant, it was acknowledged by the Claims Settlement Provider that typhoon was not defined in the policy and that the claim would be considered under section 8. As can be seen, this was followed by a further series of correspondence between the parties regarding the claim.

Having regard to the wording of section 8, I am satisfied, on any reasonable interpretation, that disruption caused by a typhoon should be considered to come within the meaning of ‘adverse weather conditions’. Therefore, I believe that the Claims Settlement Provider should have assessed the Complainants’ claim under section 8 of the policy. While this led to a regrettable delay in the assessment of the claim, having considered the evidence, I accept there was a reasonable level of engagement between the Claims Settlement Provider and the First Complainant regarding the claim. Further to this, I do not accept that there were any *inefficiencies* outside of the initial failure to assess the claim under section 8 nor am I satisfied that there is any evidence to suggest that the Claims Settlement Provider or the Provider were disruptive towards the Complainants.

I note that the Complainants received approximately €1,985.00 in respect of the claim. It is my view that this is well in excess of the amount recoverable under section 8 and the amount the Complainants were entitled to under the policy. While I accept that the claim should have been assessed under section 8 and that there was a delay in doing so, I consider that a flexible and reasonable approach was taken towards the claim and benefit payments were made in an amount and in circumstances where benefit payment was not contractually required to be paid. In these circumstances, I believe the Complainants have been adequately compensated for the initial failure to assess the claim under section 8 and the delay arising from this.

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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.