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| <u>Decision Ref:</u> | 2022-0125 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Claim handling delays or issues |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a travel insurance policy. The complaint is that the Provider wrongfully declined to pay the Complainant's full claim and the Complainant wants the Provider to pay the amount of the claim for €257.75 (two hundred and fifty seven euro and seventy five cent).

The Complainant's Case

The Complainant submits that she and her husband were to travel from Cork to [Spanish destination] on **13 September 2019**. The Complainant states that on the morning of **13 September 2019** she received a text from the ferry company advising that the ferry they were due to travel on was cancelled due to a technical problem. The Complainant submits that they were offered three options and they chose to take a ferry sailing the following day, **14 September 2019** at 4:00 pm, from the same Cork port to a port in France.

The Complainant states that she and her husband travelled to Cork on **13 September 2019** and stayed in a hotel that night. She submits that they travelled by ferry from Cork on Saturday **14 September 2019** at 4:00pm, arriving in France on **15 September 2019** at 7:30am. The complainant submits that she and her husband drove to Spain on **16 September 2019** for pre-arranged appointments and arrived at their final destination on **19 September 2019**.

The Complainant submits that she and her husband were to return from [Spanish destination] to Cork on **3 November 2019** at 12:00pm. The Complainant submits that she

received a text on **1 November 2019** from the ferry company advising that due to adverse weather conditions this sailing was cancelled. She states that she was offered three alternatives and she chose to return to Ireland from [Spanish destination] via UK ports. The Complainant submits that she and her husband departed [Spanish destination] on **4 November 2019** and arrived in [UK port 1] on **5 November 2019** at 7:00pm. The Complainant states that they drove on **6 November 2019**, staying overnight in London. On **7 November 2019** the Complainant and her husband departed [UK port 2] at 8:30pm and arrived in Dublin at 11:45pm.

The Complainant submits that she spoke to an agent of the Provider on **14 October 2019** and she maintains that during this call, which was to extend cover, the claim was discussed, and the agent advised that her claim would be covered. The Complainant submits that she submitted a claim to the Provider on **6 December 2019** for expenses for herself and her husband including accommodation, petrol, toll and parking charges and food, incurred due to the delays in the ferry journeys which totalled €1,180.05 (one thousand one hundred and eighty euro and five cent). Taking into account the refund received from the ferry company of €95 (ninety-five euro) she was seeking to claim for €1,085.05 (one thousand and eighty five euro and five cent) for herself and her husband.

The total sum sought by the Complainant was half of this amount, which is €542.75 (five hundred and forty two euro and seventy five cent). The Provider had already paid €285.00 on the policy, so the Complainant submits the amount outstanding is €257.75. The Complainant wants the Provider to pay the remaining amount of the claim due.

The Provider's Case

The Provider, in its email dated **7 February 2020**, states that it paid €60 (sixty euro) to the Complainant under the Travel Delay section of the policy based on the time the Complainant was delayed from the original departure times to the actual departure times.

The Provider submits that the Travel Delay cover in the Complainant's policy did not offer cover under this section for any additional costs incurred to reach her destination.

The Provider outlines in its email dated **7 February 2020** how the refund was calculated. The Provider submits that the original settlement of €60 should have been higher in the circumstances, and says the correct amount was €285 (two hundred and eighty-five euro). The Provider apologised for this error. It outlined that it could not pay any of the additional expenses incurred, as there was no cover for these within the policy terms.

The Provider says that, having spoken to the agent to whom the Complainant spoke on **14 October 2019**, the said Provider's agent advised that they would not have discussed the claim as the call was just in relation to cover, and had there been a claim at that point, they would have referred the Complainant to the claim handler. The Provider states that its agent does not record its calls.

The Complaint for Adjudication

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The complaint is that the Provider wrongfully declined to pay the Complainant's full claim.

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 **11 March 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

Prior to considering the substance of the complaint, it is useful to set out the chronology of events (quoting certain correspondence) as well as the relevant terms and conditions of the policy.

The Complainant's travel insurance policy was incepted on **27 March 2019**. On **14 October 2019** the Complainant's policy was extended from 45 days to 60 days cover.

On **1 November 2019**, the Complainant's husband telephoned the Provider requesting a claim form. He informed the Provider's agent during this call that his ferry company had cancelled and he and the Complainant were required to make alternative travel arrangements. I note from the audio evidence that the Provider stated during this call that *"I can't guarantee you will be covered...you'll be covered for the travel delay benefit only....I can't guarantee you'll be covered for your hotels"*. She said she would send out the form for the travel delay benefit and I note that the said claim form was sent by email on **4 November 2019**.

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On **7 November 2019** the ferry company wrote to the Complainant confirming that the crossings to and from Spain on **13 September 2019** and **3 November 2019** had been cancelled. The ferry company stated that it attached a cheque for €95 (ninety-five euro) as *“a travel allowance contribution based on the distance between [UK port 1] and [UK port 2] which you had to drive your back to Ireland”*.

On **19 November 2019**, the Complainant’s husband spoke with the Provider’s agent over the phone. The Complainant’s husband set out the details once again and stated that he and the Complainant would be claiming for the hotel in Cork, the journey miles in Spain, and the journey miles to the new port and hotel in the UK. The Provider’s agent stated that they would be covered under the *“travel delay benefit only”* and that she *“can’t guarantee that they’re going to cover for you.”* She also advised that he should seek a refund from the ferry company, and that he would need an email from the ferry company stating that it would not cover him. She stated after this that she could not *“guarantee he would be covered”* and that she could not say what the assessor would decide.

On **27 November 2019**, the Complainant’s husband spoke with the Provider’s agent over the phone. The Complainant’s husband stated he was awaiting the relevant documents from the ferry company.

On **2 December 2019**, the Complainant’s husband spoke with the Provider’s agent over the phone. He stated that he had not sent in the claim form yet because he had only just received the response from ferry company. On the advice of the Provider’s agent, it was agreed he would send in his claim form with the letter from the ferry company attached to the claim.

On **4 December 2019**, the Complainant’s husband spoke with the Provider’s agent over the phone. The Provider’s agent advised that he should send in all the relevant documents he had, including receipts, and the assessor would then review the claim. The Provider’s agent stated that this was a travel delay benefit type claim, and that a cancellation claim was a different thing. She stated that the travel delay benefit claim does not cover mileage as it is not covered under the policy. The Provider’s agent stated that the circumstances of this claim fell into a travel delay, benefit claim.

On **6 December 2019** the Complainant’s husband sent in the claim form for both himself and the Complainant and correspondence from the ferry company, to the Provider by email.

On **10 December 2019**, the Provider issued the Complainant and her husband an assessment of the claim and a settlement offer of €60. The breakdown of the settlement was for a travel delay of 46 hours. This was made up of travel delay benefit payable of €30 for initial 12 hour delay and €15 for each full 12 hour period thereafter. It also stated that food and fuel are excluded by the policy.

On **13 December 2019** the Complainant’s husband spoke with the Provider’s agent over the phone.

The Complainant's husband stated that this was a cancellation claim, to which the Provider's agent queried that the trip had been "*cancelled altogether*" and if not, this was a travel delay benefit under the policy. She explained that it is only a cancellation under the policy, when the trip is cancelled, which was not the circumstances of the Complainant and her husband's claim.

The Complainant's husband also stated that the Provider's settlement letter was "*not legible*" and the address was unreadable. I note that this letter was not submitted by the Provider to this Office. The Complainant's husband made the complaint during the telephone call.

On **19 December 2019** a complaint acknowledgement sent by Provider.

On **8 January 2020** the Complainant's husband spoke with the Provider's agent over the phone. He stated that payments had been made into his account, but he did not agree to settlement of the claim. The Provider's agent stated that the complaints team looked at the matter and that the Complainant and her husband should have been paid for "*both...journeys*" and €285 should have been paid in total. The Complainant asked why this was not paid originally, but the Provider's agent could not say as she was not involved in the claim "*at that stage*". The Complainant sought that the matter be sent back to the complaints team for reassessment, which the Provider agreed to. The Complainant also stated to the Provider's agent that the Complainant had spoken to an employee agent of the Provider on **14 October 2019** and that during this call, which was to extend cover, the claim was discussed and the agent advised that her claim would be covered.

The Provider had internal emails on **4 February 2020** which stated that the "*note on the file*" from the telephone call from **14 October 2019** concerned an extension of the policy from 45 days to 60 days, and did not discuss a claim. As a result, it was not recorded, and the claim was actually made on **1 November 2019** per the Provider's log.

On **7 February 2020** the Final Response Letter (in the form of an email) was issued by the Provider, quoting the policy terms as follows:

"SECTION 4 TRAVEL DELAY

This section does not apply to trips within Ireland

YOU ARE COVERED

1) *For a benefit of €30 for the first full 12 hours you are delayed and €15 for each full 12 hours You are delayed after that, up to a maximum €150 (regardless of the number of incidents of delay) as a result of:*

Or

2) *Up the amount under Section 1 'Cancellation section' of this policy (less €100) if You abandon the trip (on the outward journey only) after the first full 12 hours if Your outward or return flights, sea crossing, coach or train departure to or from Ireland are delayed for more than 12 hours beyond the intended departure time (as specified on Your travel ticket) as a result of:*

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- a) *Strike or industrial action (provided that when this policy was taken out, there was no reasonable expectation that the trip would be affected by such cause):*
- b) *Adverse weather conditions;*
- c) *Mechanical breakdown or technical fault of the aircraft, coach, train or sea vessel."*

The email of 7 February 2020 stated that the claim was originally calculated from the time the Complainant was scheduled to depart, to the time she actually left Cork and [Spanish departure point] respectively. The Provider then stated that she should have been paid an additional €15 in the original settlement as these were separate incidents, meaning the first 12 hours of the delay of the return journey should have been €30, not €15. The Provider apologised "*for this mistake*".

The Provider stated that "*it would have been fairer to pay the benefit based on the time you would have been delayed waiting for the next direct ferry to and from Cork, as this as the route you originally booked.*" The letter broke down the payment as follows:

Outward journey:

Original departure: 13 September 2019: Cork to [Spanish destination] 22.30pm

Next direct departure: Wednesday 18 September at 11.00am

Total delay: 4 days and 12.5 hours

First 12 hours = €30

Subsequent 8 x 12 hour periods of delay x €15 = €120.00

Total to pay €150.00 (maximum limit reached)

Return journey:

Original trip: Sunday 3 November 2019 [Spanish destination] to Cork: 12.00pm

Next direct departure: 7 November 2019 15.00pm

Total delay: 4 days and 3 hours

First 12 hours = €30

Subsequent 7 x 12 hour periods of delay x €15 = €105.00

Total to pay €135.00

The Provider stated that this left a total settlement of €285.00 and deducting the €60 already paid, this left an additional €225.00 to pay.

The letter stated that the original settlement should have been higher and upheld his complaint in this regard. However, the letter stated that the Provider "*cannot pay any of the additional expenses incurred, ... no cover for them within the policy terms.*"

The Provider stated that the telephone call of **14 October 2019** was with a different organisation, namely the third-party insurance body which would have dealt with that call.

However, the letter stated that the Provider spoke with the insurance body which:

“advised that the call on the 14th was just to extend the cover and they would not have discussed the claim. He said if they had known there was a claim at point [sic] they wouldn’t have been able to extend the cover and would have referred you to the Claim handler. [third party insurance body] has informed me that they do not record their calls so they are unable to provide these to you. If you feel you were misadvised in this call you would need to raise a complaint to [third party insurance body].”

Because there is no recording available of this telephone call of **14 October 2019**, I do not have sufficient evidence to accept that the Complainant was advised during this telephone call that the claim would be accepted.

On **12 February 2020** the Complainant’s husband contacted the Provider by telephone. During this call he stated he was still not happy with the settlement offer. He stated that it *“was a cancellation”* and not a delay claim. The Complainant sought that the matter be reviewed again.

On **11 March 2020**, the Provider emailed the Complainant stating that it carried out a re-assessment of the claim. This email stated that the cancellation section of the policy only applies if *“you do not travel on your holiday and your trip is cancelled before you leave Ireland”*.

The policy states:

*“SECTION 1 CANCELLATION
YOU ARE COVERED
Up to €5,000 if Your travel and accommodation arrangements are cancelled before
Your departure from Ireland...”*

Analysis

I note that the terms of the policy are quite clear. Because the Complainant and her husband did not cancel their trip altogether, she could not avail of section 1 “cancellation” cover under her policy. Accordingly, although the delay was caused by a ferry “cancellation”, in my opinion, the relevant section of the policy for the claim, was for travel delay under section 4, and the amounts payable for benefit under the wording of that section.

The Complainant’s expenses, including accommodation, petrol, toll parking charges and food are not covered under section 4, and therefore, are not payable by the Provider to the Complainant, in response to her claim. I do not accept therefore that there is any further policy benefit payable to the Complainant by the Provider in accordance with the policy terms and conditions.

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Having reviewed the evidence available in this matter, I am satisfied that in February 2020 the Provider, having received the Complainant's complaint, reviewed the Complainant's claim and confirmed the payment of additional benefits under the policy to the Complainant. In those circumstances, as the evidence discloses no basis upon which the Provider was obliged to make any further payments to the Complainant, I take the view that the Provider adequately met its obligations, at that time.

Some months later, the Complainant pursued her complaint to this Office as she takes the view that she was entitled to additional policy benefits. I am satisfied however that the benefits under the policy have been correctly calculated and, in those circumstances, noting that the Provider made the appropriate payments available to the Complainant in February 2020, I do not accept that there is any basis upon which this complaint should be upheld.

Conclusion

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

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

7 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

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Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.

