

## Before the Arbiter for Financial Services

Case ASF 017/2025

AS

(‘Complainant’)

vs

Cowen Insurance Company Limited

(C 55905)

(‘Service Provider’)

### Sitting of 16 May 2025

#### The Arbiter,

**Having seen the complaint<sup>1</sup>**, whereby the Complainant disputes the fact that her claim under the *Travel Protection* policy has been repudiated.

The Complainant stated that on 12 July 2023, after purchasing the flight tickets for herself and her family through Booking.com, she was presented with an additional offer during the purchase, specifically, the ‘Travel Protection’ offered by XCover insurance, which she decided to purchase.

She asserted, however, that the flight scheduled for 17 July by WizzAir from Warsaw to Catania was cancelled due to a fire that occurred at the airport of Catania on the morning of that same day.

Consequently, they were unable to reach their intended destination, compounded by the fact that WizzAir did not offer any flights to Catania in the subsequent days, while other carriers no longer had tickets to Catania.

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<sup>1</sup> Pages (P.) 1 – p. 6 with additional documentation from p. 7 - 178

The Complainant stated that she submitted a request to the insurance for reimbursement of the costs of the return tickets, reimbursement of the accommodation costs, a partial reimbursement of the rental car reservation, and reimbursement of the taxi fares to and from the airport. However, this claim was rejected with the following reason:

*'Your claim is not described in your content as eligible for insurance. Cover does not apply if your departure is cancelled, postponed or delayed for operational reasons such as the carrier's lack of staff, or for other commercial reasons such as low passenger demand.'*<sup>2</sup>

She insists that the circumstances do not pertain to the issue delineated in the insurer's justification as the financial loss she experienced was a consequence of a fire at the airport.

The Complainant contended that, at the time of purchasing the policy, her intention was to protect the family's trip against unexpected circumstances. She stated that, at the time of purchase, the insurance description included various benefits, notably, *'Trip cancellation – unforeseen circumstances covered by your insurance that force you to cancel the trip.'*

She insists that the situation preventing the trip from occurring was indeed an unforeseen circumstance, which she believed would be covered by the insurance policy. Nonetheless, both the carrier and the insurer are refusing to reimburse the incurred losses.

The Complainant additionally contended that, when purchasing the policy, she was not presented with the detailed insurance conditions. On 12 July, following the purchase of the same policy, she received an email confirming the scope of protection, and it was solely at that time that she was afforded the opportunity to log in to her account on the XCover.com website to access the detailed policy provisions.

In this regard, the Complainant requests that the Service Provider reimburse her the sum of €1,020.10 and PLN 3908,44<sup>3</sup> (in total equivalent to about €1,958), which represents the losses incurred due to the cancellation of the trip and the costs associated to the translation of the documentation for the purpose of this complaint.

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<sup>2</sup> P. 3

<sup>3</sup> PLN is currency of Poland Polish Zloty with each PLN equivalent to €0.24

**Having seen the reply<sup>4</sup> by the Service Provider,**

*'...*

*We have reviewed the claim and complaint and we would like to make the following remarks.*

*The policy was purchased through booking.com on July 12<sup>th</sup> 2023. The insured was due to travel from the 17<sup>t</sup> July 2023, till the 24<sup>th</sup> of July.*

*A claim was lodged on August 21<sup>st</sup>, in relation to a trip cancellation claim as the airline cancelled the departure flight, due to a fire at Catania airport. After some discussions with the insured with regards to missing documentation in order to properly assess the claim, the claim was rejected on October 18<sup>th</sup>, due to the following coverage "you're covered if you abandon your trip following the cancellation of, or a delay of more than 12 hours, in the departure of your outward international flight due to strike or industrial action (of which you were unaware at the time you either booked the trip or purchased this policy, whichever is the latest), adverse weather conditions, or the mechanical breakdown/accident of, the aircraft", therefore, since, the insured's scenario is not mentioned, our intermediary rejected the claim.*

*We would also like to address the insured's comments on the sale of the policy. When stating the description of the policy in her complaint, the insured, is referring to the Summary of Cover stating that the full policy terms were not made available to her before the sale. We would like to highlight that, as the policy is sold on a non-advised basis, the full policy terms are always available to our customers during the sale, and customers are asked to review & confirm acceptance of the terms before purchasing. They are then sent a confirmation email, upon purchase, inviting them, once again to review the full policy terms to ensure the cover is right for them. They are also entitled to the statutory 14-day cooling off period, should they feel the cover is not right for their needs. Therefore, since the insured confirmed she viewed the Policy Wording after the policy was purchased, she could still have opted out from the policy.*

*We understand that the insured has suffered a loss, but insurance policies are not designed to cover each and every scenario, and based on the policy wording, we do not see this as a covered claim.*

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<sup>4</sup> P. 183

*We have attached the Policy Wording and Policy Schedule for ease of reference.*

*...'*

## Hearing

During the hearing of the 28 April 2025, the Complainant submitted that:

***'My complaint is about the cost of the flight and accommodation of my family vacations that I could not use because the flight of Wizzair was cancelled because there was a fire at the airport. So, I lost a part of the cost of my flight tickets and accommodation and the cost of renting a car.***

***I bought a travel insurance for this cover, and I was sure that I was not going to get back these costs but the insurance rejected my claim.***

***I was sure that this situation, the fire at the airport, was not described in the policy as an exclusion from the insurance cover. And that is why I think this should be covered and the insurance should accept my claim.***

***I confirm that by way of resolution, I am asking for compensation to the amount of €1,020.10 and PLN 3908,44. A breakdown of this amount is listed in my complaint.***

***I say that I have provided all the receipts and bills.'***<sup>5</sup>

Mr Vella, on behalf of the Service Provider, declared that he does not have any questions for the Complainant.

The Arbiter asked the Complainant when the policy was purchased, to which Mr Vella replied that the policy was purchased on 12 July 2023 and the trip commenced five days later.

When asked if the Complainant had received a copy of the policy, she affirmed ***'Yes, I got it in an email which was sent to me by the company.'***<sup>6</sup> Furthermore, when questioned about whether she had, in fact, reviewed and accepted the policy, the Complainant responded, ***'Yes, I read the policy and I accepted it.'***<sup>7</sup>

During the same hearing, Kieran Vella, on behalf of the Service Provider, stated that:

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<sup>5</sup> P. 199

<sup>6</sup> P. 200

<sup>7</sup> Ibid.

***'So, as we have just established, the client purchased the policy five days prior to her trip and, basically, she said that she read the terms and conditions, and therefore the things that are covered.***

***So, this particular claim falls under trip cancellation, as I think we can all agree with because the client didn't go to her trip. She cancelled her trip due to, as she correctly said, a fire at the airport; at the arrivals country airport, in this case. Now, when you look at our policy wording under the trip cancellation benefits, there are six in this case, which are***

- illness, injury or death, which was not the case;***
- if you arrive at your departure points late;***
- have a close relative or family member who is injured;***
- your home or the home of the tickets holder is damaged;***
- you are summoned for jury service and armed service recall.***

***Another benefit that we offer is when you abandon your trip following the cancellation of or the delay of more than 12 hours in the departure of your outward international flight due to strike or industrial actions, adverse weather conditions or mechanical breakdown of the aircraft.***

***Once you read this, you can note that none of these scenarios apply to the client's cause of loss, basically, which was fire at the airport. The client stated that this is not listed under exclusions, which is the case, yes, but obviously we cannot mention each and every exclusion which we foresee to happen.***

***If we do that, the policy wording will never end because there are multiple scenarios which we cannot cover. So, yes, it is not excluded, and we didn't say that her scenario was excluded. What we said is that her scenario is not covered by our policy. It is not excluded. It is simply not covered. It is not something that we intend to cover. If it was something that we have intended to cover, it would have been listed under the benefit 6, when you abandon your trip.***

***Also, the client said in her complaint with regard to the sale of the policy that the full policy terms were not made available to her before the sale. I would like to point out that the policy is sold on a non-advised basis, and the full policy terms are not only sent after the policy is purchased but are also available prior***

***to the purchase of the policy. So, the client was aware of what she was buying not just after.***

***The steps to our sales process are viewing the policy wording, accepting the terms of the contract, purchasing the policy, receiving the full policy wording together with the Certificate of Insurance.’<sup>8</sup>***

During the cross-examination, the representative stated that:

***‘Asked to explain why there is written on the policy in the section How does it work, that the policy covers many unexpected events that can happen before or during travel, I say that is a summary of cover, protections provided for many unexpected events.***

***Now, as I mentioned earlier, prior to your purchasing the policy, you need to read the policy wording since this is sold on a non-advisory basis. So, we do not advise you to purchase this. You, based on your knowledge on what you have read on the policy, purchase the policy. There is a tick box that you have read and agreed with the policy wording. Now if you've just read protections provided for many unexpected events that can happen, that is not the correct way to go about this.***

***This is not an All-Risk policy; an open policy that we cover everything.***

***Also, under that section we provide the summary of cover like trip cancellation, medical protection, baggage protection. That is what we intend by many unexpected events; not everything can be covered.’<sup>9</sup>***

The Complainant has then presented her final submissions to the case, where she stated that:

***‘Mr Vella says that they describe the exclusions of the insurance policy, and they also describe these six events that they cover and pay for. But I cannot find this situation in the excluded situations. I couldn’t expect that a fire can happen; and could not even ask for this because when I bought this policy, I thought that I was covered for unexpected situations.***

***As Mr Vella said today, they cannot write all the unexpected situations but when I am covered for unexpected situations, I do not expect that my claim would be rejected. Like I said before, a fire at the airport is certainly an***

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<sup>8</sup> P. 200 – P. 201

<sup>9</sup> P. 201

***unexpected event and I cannot understand why you are rejecting this unexpected situation.*<sup>10</sup>**

For the final submissions to the case, the Service Provider submitted that:

***'As I just mentioned, there are three types: you have the benefits, you have the exclusions and you have the non-coverage which in the complainant's case, the claim falls under non-coverage; something which we do not intend to cover. It is market practice that not each and every exclusion is listed.***

***As mentioned by the client, this is something which she did not expect and this is something which we do not need to explain that we do not cover. If it is, we would have listed this under the benefits section.***

***We do sympathise with the client's situation because, obviously, she wanted to go on this trip, but an insurance policy intends to cover what is listed under the benefits. If we, as I mentioned and I'm going to mention again, were to list each and every exclusion, our policy wording would be so long that it would not be fair on customers to read it because they would have to go on and read 100 pages.*<sup>11</sup>**

**The Arbiter,**

**Having seen the statements made and evidence given by the Complainant,**

**Having seen the statements made and evidence given by the Service Provider,**

**Considers**

The complaint mainly revolves around the Service Provider's decision to decline the claim for a refund of unused travel expenses, as the Complainant's family was unable to reach their destination due to a fire at the airport of the country of arrival.

The Complainant stated that she could not use the flight and accommodation booked for her family vacation, as the WizzAir flight was cancelled due to the fire at the airport.

She claimed that she had purchased travel insurance and '*... was sure that I was going to get back these costs but the insurance rejected the claim.*<sup>12</sup>

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<sup>10</sup> P. 202

<sup>11</sup> *Ibid.*

<sup>12</sup> P. 199



In the original complaint form submitted, she stated that the Service Provider justified such rejection by indicating that:

*'Your claim is not described in your content as eligible for insurance.*

*Cover does not apply if your departure is cancelled, postponed or delayed for operational reasons such as the carrier's lack of staff, or for other commercial reasons such as low passenger demand.'*<sup>13</sup>

Both in its reply to the complaint, and even through its representative's declaration, the Service Provider clearly explained the type of policy in question, the cover it offers, and the reason why the claim submitted by the Complainant was refused.

Mr Kieran Vella, on behalf of the Service Provider, stated that:

*'... this particular claim falls under trip cancellation, as I think we can all agree with because the client didn't go to her trip. She cancelled her trip due to, as she correctly said, a fire at the airport; at the arrivals country airport, in this case. Now, when you look at our policy wording under the trip cancellation benefits, there are six in this case which are*

- *illness, injury or death, which was not the case;*
- *if you arrive at your departure points late;*
- *have a close relative or family member who is injured;*
- *your home or the home of the tickets holder is damaged;*
- *you are summoned for jury service and armed service recall.*

*Another benefit that we offer is when you abandon your trip following the cancellation of or the delay of more than 12 hours in the departure of your outward international flight due to strike or industrial actions, adverse weather conditions or mechanical breakdown of the aircraft.'*<sup>14</sup>

Mr Vella reiterated that none of the above-mentioned scenarios apply to the client's cause of loss.

As also referred to by the Service Provider, the Arbiter notes that the Complainant herself acknowledged that *'... my situation is not related to the*

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<sup>13</sup> P. 3

<sup>14</sup> P. 200



*situation described in the insurer's justification, the financial loss I suffered was caused by a fire at the airport.*<sup>15</sup>

The Complainant insists that *'I was sure that this situation, the fire at the airport, was not described in the policy as an exclusion from the insurance cover. And that is why I think this should be covered and the insurance should accept my claim.'*<sup>16</sup>

It is crucial to note that, as even noted by the Service Provider, the policy in question is not an All-Risks policy, wherein coverage is provided for all events unless specifically listed as an exclusion. The Complainant herself admitted that the fire at the airport was not delineated as an exclusion; however, it is not specified as covered either.

It was the Complainant herself who quoted the information presented on the Booking.com website regarding the policy offered by XCover. In the original complaint form, the Complainant declared that:

*'When purchasing the policy, I wanted to protect myself and my family's trip in the event of unexpected circumstances. I bought the insurance when purchasing tickets, which I did via Booking.com, the offer of XCover, as a Booking.com partner, was displayed when booking tickets. The insurance description included the following items:*

- *Trip cancellation – unforeseen circumstances **covered by your insurance** (emphasis by the Arbiter) that force you to cancel your trip*

*...'*<sup>17</sup>

It is crucial to note that the description itself refers to the *'unforeseen circumstances covered by your insurance'*. The aim of having an insurance policy is indeed to provide coverage for unforeseen or unexpected circumstances – this is its fundamental purpose. However, it does not commit the Insurance to cover all the risks unless excluded. On the contrary, it covers unforeseen or unexpected circumstances as defined in the policy.

For cover to be applicable and consequently for the claim submitted to the Service Provider to be accepted, the event leading to the cancellation of the trip must be explicitly listed under the Benefits section of the policy.

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<sup>15</sup> p. 3

<sup>16</sup> p. 199

<sup>17</sup> p. 3

In fact, according to the applicable travel policy wording, of which copies have been provided by both the Complainant<sup>18</sup> and the Service Provider,<sup>19</sup> the *'Trip Cancellation'* section details all the instances for which cover in the event of cancellation would apply.

In this regard, the Arbiter emphasises that the event leading to the cancellation of the trip is not one that the policy caters for.

Also, the Complainant contended that prior to acquiring the afore-mentioned travel policy, she did not possess the detailed insurance conditions which were subsequently provided to her after the finalisation of the purchase. In this regard, the Service Provider's representative explained that:

*'... the policy is sold on a non-advised basis, and the full policy terms are not only sent after the policy is purchased but are also available prior to the purchase of the policy. So, the client was aware of what she was buying not just after.'*<sup>20</sup>

When asked by the Arbiter as to whether she had indeed received a copy of the policy, the Complainant replied in the affirmative. She stated that *'Yes, I got it in an email which was sent to me by the company.'*<sup>21</sup>

Subsequently, when asked to confirm if she had read and accepted the said policy, she reiterated that *'Yes, I read the policy and I accepted it.'*<sup>22</sup>

The Arbiter notes that this is a matter whereby the occurrence leading to the cancellation of the trip is clearly uninsured. In simple words, it is not an event that the insurance policy in question caters for.

Having an insurance policy in force does not necessarily mean that all incidents or occurrences are covered. This is particularly, a standard travel insurance policy which explicitly outlines the benefits, limitations, and exclusions.

## **Decision**

It is evident that the Service Provider's reasoning for rejecting the claim in question aligns with the policy wording. Given that the Complainant has confirmed having read and accepted the terms of the policy and considering that the policy wording clearly delineates the occurrences covered in the event of

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<sup>18</sup> P. 144

<sup>19</sup> P. 189

<sup>20</sup> P. 201

<sup>21</sup> P. 200

<sup>22</sup> *Ibid.*

cancellation, the Arbiter does not find any case of misrepresentation by the Service Provider which could have given any kind of expectation to the Complainant that all events or circumstances will be covered under the policy.

Therefore, the Arbiter is unable to uphold this complaint and does not impose on the Service Provider any obligation to reimburse the Complainant for the expenses incurred as a result of cancelling the trip.

However given the exceptional circumstances of this case, the Arbiter recommends (without obligation) to the Service Provider to consider offering an *ex gratia* compensation of 25% of the loss.

Each party is to bear its own costs of these proceedings.

**Alfred Mifsud**

**Arbiter for Financial Services**

### **Information Note related to the Arbiter's decision**

#### *Right of Appeal*

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.