



<u>Decision Ref:</u>	2021-0180
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Complaint handling (Consumer Protection Code) Rejection of claim – partial rejection
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint arises out of a travel insurance policy and relates to the Provider's refusal to pay a claim made by the Complainant under the policy.

The Complainant's Case

The Complainant was injured in an accident abroad in **December 2019**. He made a claim under his travel insurance policy with the Provider. He submits that the Provider accepted and paid the claim and he "warned" the Provider, that a further claim might be made if there were health issues arising from the accident.

The Complainant states that he underwent an x-ray in **January 2020** which revealed that his injury had not healed. As a result, he was unable to travel abroad later that month. The Complainant submits that he was able to reschedule the first leg of his journey at no extra cost but that the second flight was rescheduled at a cost of €268. He contends that he also had to cancel an overnight hotel stay without a refund, which gave rise to a loss of €51.44. The Complainant submits that he therefore made a claim on his policy for these expenses totalling €319.44 but the Provider wrongfully declined his claim.

The Provider's Case

The Complainant holds an account with a digital banking platform which the Provider advises, made him “*eligible to upgrade to include travel insurance at a monthly cost.*” It is understood in that regard that the upgrade to purchase travel insurance at a monthly cost, was effected through the Complainant’s digital banking platform app, on his mobile phone.

The Provider says that all terms and conditions are available for review both before and after completing the upgrade via the accountholder’s digital banking platform app.

Following the Complainant’s injury whilst travelling abroad in December 2019, he submitted a claim to the Provider in respect of the cost of a flight to return home and private hospital costs, all of which totalled €882.99. The Provider has indicated that following the deduction of a policy excess in the sum of Stg£75.00, the claim was settled for a total of Stg£660.80.

The Provider submits that it correctly settled the Complainant’s initial claim which was in accordance with the policy terms and conditions. The Provider further submits that the Complainant’s policy provides cover in 3 sections namely:

- Emergency Overseas Medical Assistance and Expenses
- Delayed Departure
- Delayed Baggage

The Provider says that the Complainant’s subsequent claim does not fall within the types of cover provided by the policy. It points out that the policy does not contain a section for cover for cancellation.

The Complaint for Adjudication

The complaint is that the Provider wrongfully refused to fully indemnify the Complainant in respect of his losses. The Complainant seeks to have his subsequent claim paid in the amount of €319.44.

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

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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 **27 April 2021**, 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.

Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant made a claim on his travel policy, in the amount of €319.44 which was declined by the Provider. In that respect, I note that in **December 2019**, the Complainant travelled to [European country], and he suffered an injury during this trip. As a result of this injury, the Complainant submitted a claim arising out of having to book a flight home, and some additional hospital expenses. This claim under the policy was paid and settled by the Provider.

The Complainant's claim of €319.44, which is the subject of this complaint, arises out of the fact that the injury that the Complainant suffered initially in December 2019, subsequently prevented him from being able to travel again as he had planned, on **22 January 2020**.

The Complainant was required to re-schedule his flight from Dublin to London and also his connecting flight from London to his planned destination. In addition, he was required to cancel an overnight stay in a hotel in Dublin. There was no cost arising out of the re-scheduled flight from London onwards, but the additional cost of rescheduling the flight from Dublin to London was €268 and the cost of cancelling the hotel was €51.44. This totalled €319.44.

Prior to making the claim, the Complainant had emailed the Provider on 9 January 2020 to inform it that he was due to undergo a further x-ray on 15 January 2020, which would inform him whether he was able to fly to the destination as planned on 22 January 2020. The Complainant explains that this was

"booked well before the trip to [European country]. If I am told not to fly then I will be adding abortive flights and a month's Airbnb accommodation to my claim."

The Provider declined the claim on the basis that this other loss was not covered under the terms and conditions of the cover made available by the travel policy.

In particular, the Provider asserts that the policy only provides cover in 3 sections namely:

- Emergency Overseas Medical Assistance and Expenses

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- Delayed Departure
- Delayed Baggage

I have been supplied with a copy of the terms and conditions of the applicable travel insurance policy along with the '**Insurance Product Information Document**' which provides as follows:

“What is Insured?

Emergency Overseas Medical Assistance and Expenses: *if you fall ill or suffer an injury while on your trip, we will pay up to £15,000,000 for your emergency medical expenses and transportation costs. We will pay up to £300 for emergency dental treatment for the immediate relief of pain to natural teeth.*

Delayed Departure: *if the departure of the public transport on which the [Digital Banking Platform’s] premium or metal account holder is booked to travel, as per your travel itinerary, is delayed by at least 4 hours due to: adverse weather, strike action; industrial action; mechanical breakdown; technical fault; closure of airspace directly due to volcanic eruption; or due to a natural disaster; we will pay you an initial compensation of £80; and an additional £80 for each complete one hour. That you are delayed after the initial 4 hours delay, up to a maximum of £320 per trip.*

Delayed Baggage: *if the [Digital Banking Platform’s] premium or metal account holders package is temporarily delayed on the outward international journey and not return to within 4 hours, we will pay up to a maximum amount of £320 for the purchase of essential emergency items per trip.”*

I also note that the Policy Document in respect of the above sets out in more detail the scope of cover in the following manner:

Emergency Overseas Medical Assistance and Expenses

What is covered

We will cover up to £15,000,000 for Your emergency medical treatment and related expenses (or emergency dental treatment up to a financial limit of £300) if You suffer a Serious Illness or a Bodily Injury or are quarantined (on the orders of Your treating Medical Practitioner), during Your Trip for:

Emergency medical treatment, including the costs of rescue or assistance services to take You to a Hospital, which is outside Your Home Country.

Emergency medical expenses incurred outside Your Home Country for:

a) additional costs for transport and accommodation (up to a similar standard of Your original booking) if it is deemed medically necessary for You to stay

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after the date You were booked to return to Your Home Country. This includes extra costs You have to pay to return to Your Home Country if You cannot use Your booked transport;

b) returning You to Your Home Country, if it is deemed medically necessary because You have a Bodily Injury or Serious Illness and You cannot use Your booked transport;

c) additional costs for transport and accommodation for one Close Relative or friend who has to stay with You or travel to be with You;

d) additional costs for transport and accommodation for Your children who are on the same Trip as You, and who have to stay with You or travel without You to return to their Home Country.

Reasonable related expenses incurred if You die:

a) outside Your Home Country, for funeral costs outside Your Home Country; or

b) for returning Your body or ashes to Your Home Country.

Emergency dental treatment (natural teeth only) up to a financial limit of £300, for the immediate pain relief outside Your Home Country.

Delayed Departure

What is covered

If the departure of the Public Transport on which you are booked to travel, according to Your travel itinerary, is delayed by at least 4 hours due to:

adverse weather;

strike action;

industrial action;

mechanical breakdown;

technical fault;

closure of air space directly due to volcanic eruption; or

closure of air space directly due to a natural disaster;

We will pay You:

an initial compensation amount of £80 if You are delayed for more than 4 hours;

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an additional compensation amount of £80 for each complete hour You are delayed after the initial 4 hour period, up to a maximum payment of £320 per Trip.

Delayed Baggage

What is covered

We will pay You up to £320 in reimbursement for You purchasing emergency replacement clothing, medication and toiletries if Your Baggage is temporarily lost during Your outward Trip (Including any connecting flight(s)) and is not returned to You within 4 hours.

I note that in pursuing his second claim in **January 2020**, the Complainant sought to recover the cost of re-scheduling an additional outbound flight which he had intended to take in late January 2020, in relation to a different subsequent trip. The Complainant was also unable to recover the cost of lost hotel accommodation, booked for Dublin, which he was unable to use when he was obliged to cancel his intended trip in January 2020, as a result of ongoing difficulties stemming from the injury he sustained in December 2019. This was no doubt disappointing for the Complainant.

I am satisfied however, that the particular items of loss were not covered by the particular travel insurance cover held with the Provider. The items claimed for did not fall under "*Emergency Overseas Medical Assistance and Expenses*", and neither did they fall under the cover available to him in the travel policy for "*Delayed Departure*" or "*Delayed Baggage*".

Travel insurance policies, like all insurance policies, do not cover every possible eventuality. As a result, cover is only as prescribed within the policy terms and conditions and in that event, the cover will of course be subject to any relevant exclusions or endorsements set out.

In this event, the additional losses sustained by the Complainant were not recoverable under his travel insurance policy. I am satisfied that even if the Complainant had originally included these items in the first claim he made to the Provider, the items would not have been recoverable at that earlier time, as they do not fall under the 3 heads of cover which the policy specifies. Consequently, the Provider was not obliged to make any payment to the Complainant for those losses.

Since the preliminary Decision of this Office was issued, the Complainant has contended that his additional loss is recoverable under "**Delayed Departure**" as his departure in January 2020 was clearly delayed.

I note in that respect that the provisions under the heading of "**Delayed Departure**" refer to cover:

If the departure of the Public Transport on which you are booked to travel, according to Your travel itinerary, is delayed by at least 4 hours due to

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It is clear from the evidence however that it was not the public transport, on which the Complainant was booked, which delayed the Complainant from departing in January 2020. Accordingly, I am satisfied that the Provider was entitled to adopt the position which it did, that the Complainant's claim should be declined.

As the evidence before me discloses no wrongdoing by the Provider, in declining the Complainant's claim, I am satisfied that this complaint cannot 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
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

3 June 2021

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.