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| <u>Decision Ref:</u> | 2022-0016 |
| <u>Sector:</u> | Insurance |
| <u>Product / Service:</u> | Travel |
| <u>Conduct(s) complained of:</u> | Rejection of claim - delays Claim handling delays or issues Dissatisfaction with customer service Poor wording/ambiguity of policy |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a Travel Insurance Policy. The Provider declined the Complainant's claim relying on specific provisions of the policy.

The Complainant was insured under a travel insurance policy held by a payment account provider, with which he holds an account. The payment account provider is the Group Policyholder and the Complainant met the beneficiary eligibility criteria of this Policy, in order to be insured.

The Complainant's Case

On **28 December 2019**, whilst travelling on a different continent the Complainant booked to travel from [City C] to [City M]. At the departure gate he was refused boarding due to an issue with his ticket, which did not display his destination.

The Complainant states that the airline informed him there was a problem on its system with the payment for the flight, and therefore he was not allowed to board the plane because his payment for his ticket had been cancelled. The Complainant says:

"The airline denied me to board on the basis of a systems technical fault in which my payment was cancelled and later refunded. The failure in this system is clearly a technical fault"

When making this complaint, the Complainant said that he was unhappy with the Provider turning down his claim, and that *"I have been out of pocket from this incident for months now, through no fault of my own"*.

The Provider's Case

The Provider submits that the Complainant's cover was incepted on **7 August 2019** and was valid until **7 August 2020**.

The Provider says that heads of cover offered by this policy are set out in three sections detailed as follows:

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

The Provider states that there is no cover under the Complainant's policy for missed flights or any delays caused by reasons other than those listed in the terms and conditions under the *'delayed departure'* section of the insurance policy. The Provider contends that, in this instance, the cause of the delay experienced by the Complainant, was not covered under the terms and conditions of the policy.

The Provider's position is that the claim was declined because flights that are not the *"international outbound, connecting or inbound flights"* are not covered under the policy and the flight in question was not therefore covered.

The Provider states that the term *'technical fault'* in the context of the applicable cover under the *'delayed departure'* section of the policy, relates to faults that cause a flight to be delayed in departing, be that a technical fault with the aircraft or with airport systems. The Provider is satisfied that the Complainant's claim was declined in accordance with the terms and conditions of the travel insurance policy.

In its Final Response Letter, on **22 March 2020**, the Provider advise the Complainant that:

"Whilst I have fully reviewed your case and comments, I must assess your claim in line with your policy cover. It is with regret I advise that the decision made is correct and in line with the policy terms and conditions".

"A policy of insurance is not necessarily all encompassing and [that] there are often instances which are not covered by the policy but which a policyholder must simply meet the cost themselves".

Subsequently, when responding to the investigation of this Office, the Provider advised on **4 September 2020**, that:

*“When the Complainant tried to board the flight of **28th December 2019** from [C] to [M], his boarding pass was not accepted at the gate, and he was advised that his ticket did not have a destination.*

The flight from [C] to [M], on which the Complainant was booked, was not delayed, it departed as scheduled, but unfortunately the Complainant was refused boarding. These circumstances do not fall within the scope of the policy and the status of the claim therefore is declined

The term “technical fault” in the context of the applicable cover under the Delayed Departure section of the policy would relate to a fault that causes a flight to be delayed in departing, be that a technical fault with the aircraft or airport systems etc.

*Under the Delayed Departure section of the policy, cover is provided “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 ...*

“The flight from [C] to [M] was not delayed, it departed as scheduled...”

The Complaint for Adjudication

The complaint is that the Provider wrongfully declined the Complainant’s claim made on his travel insurance policy for benefit of £320.00. The Complainant also wants to be reimbursed €150 for the additional time he has spent seeking to resolve the 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 **13 December 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

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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.

I note that the Complainant's itinerary whilst abroad, included his plans to travel on **28 December 2019**, on an internal flight from [City C] to [City M] and on arrival to [City M], he was due to take a bus from [City M] to [City H] in another country, at 20:30.

The final stage of the planned trip was for the Complainant to take a flight at 00:05 on **11 January 2020** from [City Y] to [City A].

Evidence

Statement of Insurance

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| Group Policy Holder | [Redacted] Travel Ltd |
| Start date: | 2019-08-07 07:38:50 |
| Expiry date: | 2020-08-07 07:38:50 |
| Delayed baggage: | Yes |
| Delayed flight: | Yes |
| Overseas emergency medical insurance limit: | £15,000,000 |

People Insured

| | |
|-------------------|---------------|
| Name | Date of Birth |
| [The Complainant] | [redacted] |

Policy Terms and Conditions as at 1 August 2018

The Provider has identified the provisions of the Complainant's cover under "delayed departure", at page 18 of the Group Travel Insurance Policy, which follows below, in support of its decision to decline the Complainant's claim.

This section provides as follows:

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;
- ✓ 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**.

What is not covered

x Any flight that is not **Your** international outbound, connecting or inbound flight.

Definition of Public Transport

The Provider has defined the term “*Public Transport*” on page 6 of the Policy Wording, Group Travel Insurance Policy, in support of its decision to decline the Complainant’s claim.

*“Public Transport means any publicly licensed aircraft, sea vessel, train or coach on which **You** are booked to travel.”*

Communications between the parties

- **Letter from the Provider to the Complainant dated 2 March 2020**

“..... unable to accept your claim on this occasion as a policy exclusion applies to your particular circumstances ...

Insurance policies, such as the one covering your agreement have standard terms, conditions and exclusions.”

- **Email from the Complainant to Provider dated 2 March 2020**

"The airline, [A], denied me to board on the basis of a systems technical fault in which my payment was cancelled and later refunded ...

The failure in this system is clearly a technical fault either with the airline or payment [Provider], otherwise, I would have been able to board the flight."

- **Letter from the Provider to the Complainant dated 11 March 2020**

"Travel insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to terms, conditions, endorsements and exclusions ...

What is not covered:

*x Any flight that is not **Your** international outbound, connecting or inbound flight ...*

*The flight in question of **28 December 2019** from [C] to [M] was not your international outbound, connecting or inbound flight."*

- **Email from the Complainant to Provider dated 12 March 2020**

*"..... I feel it is pertinent to dispute your interpretation of the policy in regards to my claim (now) being invalid because any flight that is not **YOUR** international outbound, connecting or inbound flight" is not covered.*

... definition of a "connecting flight" - "a flight taken from an airport other than that from which the journey began, and which is taken in a different plane from that used for the previous stage of the journey".

My flight from [C] to [M] was a flight taken from an airport other than that which my journey began and in a different plane. Connecting flights are flights connecting together my trip.

..... there was a delayed departure due to technical faults. I was unable to board my intra-trip/ connecting flight linking together my travels and have suffered expenses as a result."

Analysis

I note in this complaint that the contractual documentation between the Complainant and the Provider is governed by and construed in accordance with the laws of England and Wales. I also note that the Provider and the Complainant have agreed to have the adjudication of this complaint by this Office undertaken by this Office, pursuant to Irish Law.

The relationship between the parties is governed by the terms of the agreement which is contained in the terms and conditions of the policy documents dated **1 August 2018**. Specific regard must be had to the rules in relation to *'delayed departure'*, as this is the heading under which the Complainant has sought to make his claim. These terms set out the circumstances that are covered, and what is excluded, which determines whether a claim falls within the policy criteria.

I also note that cover under this *'delayed departure'* section, is specified to be applicable only to a delay that the insured experiences of 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. The Complainant has sought to rely on *"technical fault"* because he says that there was a technical fault with his ticket, which prevented hi boarding the plane.

I note that the Provider says that there is no cover under the policy for missed flights or for any delays caused by reasons other than those listed in these terms. I also note the Provider's position that the internal flight from [City C] to [City M], on which the Complainant was booked, was not the Complainant's *"international outbound, connecting or inbound flight"* as required by the policy provisions, and it says that accordingly, the Complainant's circumstances were not within the scope of the policy cover.

I note that the Complainant says that it was a *"connecting flight"*. He is unhappy with the Provider's refusal of his claim under the policy and says that:

"..... definition of a "connecting flight" - "a flight taken from an airport other than that from which the journey began, and which is taken in a different plane from that used for the previous stage of the journey".

My flight from [C] to [M] was a flight taken from an airport other than that which my journey began and in a different plane. Connecting flights are flights connecting together my trip. Again, it is incomprehensible that your interpretation of the [Provider's] travel insurance would exclude coverage of travel on a trip".

He appears to suggest in that regard that he should be covered because the phrase *"international outbound, connecting or inbound flight"* does not require the connecting flight to be an *"international connecting"* flight.

I believe that the Provider could indeed make those words clearer to policyholders, if the Provider's intention is, as it seems, to only cover *"international connecting"* flights. Quite

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apart from that aspect of the matter however, I note that the flight was not delayed, and it took off without the Complainant on board.

Similarly, for the Complainant to be covered, he would need to illustrate that his issue arose from a “technical fault” and in that regard I accept the Provider’s position that the term ‘*technical fault*’ in the context of the applicable cover under the ‘*delayed departure*’ terms and conditions of the policy, anticipates a fault that causes a flight to be delayed in departing, be that of a technical fault with the aircraft or airport systems. I note that the Provider submits that the flight from [City C] to [City M] was not delayed by a ‘*technical fault*’ and in fact, it departed as scheduled. Therefore, the Provider’s position is that the flight was not delayed and as a result, the Complainant’s circumstances do not fall within the terms and conditions of the policy.

I note that the Complainant maintains that the term ‘*technical fault*’ covers his circumstances because:

“The airline denied me to board on the basis of a systems technical fault in which my payment was cancelled and later refunded. The failure in this system is clearly a technical fault...”

The term ‘*technical fault*’ is not defined or explained in the policy, though I do not accept the Complainant’s suggestion that the technical banking/payment fault he experienced with his payment for his ticket, constituted a technical fault which delayed the flight. The flight was not delayed, and instead it departed without the Complainant, as he was unable to board because of an issue with his ticket. Whilst the Provider maintains that this term ‘*technical fault*’, covers only a technical fault with the aircraft and/or airport systems, and I accept this, I would suggest that the Provider consider revising its policy wording to ensure that policyholders will clearly understand this limitation.

For the reasons outlined above, I accept that the decision of the Provider to decline cover in respect of the Complainant’s claim, was in accordance with the conditions and exclusions contained under the ‘*delayed departure*’ section of the Complainant’s cover. The terms of the policy define the limits of the events which will give rise to benefit under the policy.

I accept that in respect of travel delays, the policy terms provide that cover will apply to an “*international outbound, connecting or inbound flight*” only. I am satisfied that, the flight in question on **28 December 2019** from [City C] to [City M] did not fall into this category, because it was an internal flight between two cities in the same country, and therefore it was not an international outbound, inbound or connecting flight.

I appreciate that the Provider’s refusal of the claim has been disappointing to the Complainant. However, having had regard to all of the evidence made available to me, I am satisfied that the Provider did not act wrongfully or unreasonably in determining that the Complainant’s claim did not meet its policy criteria within the terms and conditions, and I accept that it was entitled to decline cover for the claim in the circumstances.

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Accordingly, I do not find that there are any grounds upon which it would be appropriate or reasonable to uphold the Complainant's 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.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

10 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.