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Osiguranje i finansijska zaštita britanskih turista od nesolventnosti krajnjih pružalaca usluga

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Apstrakt

Moderno razvijena sabraćajna i turistička infrastruktura, a pogotovo raznovrsnost ponude za odmor, zabavu, sport i rekreaciju prevazilaze specifične želje i interesovanja pojedinaca. Učestalost putovanja britanskih turista se zadržava na visokom nivou, a raznovrsnost rizika sa kojim je povezana organizacija i realizacija putovanja ponekad onemogućava uživanje u ugovorenim turističkim uslugama. Jedan od rizika putovanja u inostranstvo odnosi se i na nesolventnost pružalaca usluga, zbog čega britanski putnik može da pretrpi finansijsku štetu. Njihova finansijska zaštita sprovodi se preko šema uspostavljenih pri Upravi za civilno vazduhoplovstvo i Udruženju britanskih turističkih agencija za slučaj nesolventnosti avio-prevoznika i turističkih agencija za plaćene paket aranžmane. Mi u ovom radu razmatramo osiguranje putnika od nesolventnosti krajnjih pružalaca usluga i finansijsku zaštitu putnika za plaćanja kreditnom i platnom karticom na tržištu Velike Britanije.

Ključne reči: pružalac usluga, nesolventnost, kreditne i platne kartice, osiguranje, troškovi, Služba Ombudsmana za finansijska tržišta

1. UVOD

Engleski katolički sveštenik i putopisac Lasels navodi kako su se neki oblici putovanja u doba antičkog Rima vezivali za običaj da se deca šalju u inostranstvo na odrastanje pod pažnjom guvernanti, pri čemu su sa deset godina slata u Toskaniju da se uče religiji, a posle toga u Grčku da studiraju filozofiju (Lassels, 1670, 2). Njegovo delo „Putovanje Italijom" iz 1670. godine, obiluje i drugim aspektima putovanja uopšte, a posebno detaljima u vezi sa putovanjem kroz Italiju.

Nezavisno od Laselsovog dela ili baš zahvaljujući njemu, preteča modernog doba turizma u Engleskoj vezuje se za putovanje mladih lica u pratnji svojih roditelja ili pratilaca. Takva putovanja plemstva i bogatih pojedinaca, javila su se krajem 17. veka i odvijala su se tokom 18. i početkom 19. veka. Za članove britanskog plemstva to se smatralo nekom vrstom obreda prelaska iz detinjstva u punoletstvo. Mur i saradnici navode da su mnoge „velike turiste" pratili vodiči, koji su bili angažovani prvenstveno u obrazovne svrhe, a često su putovali sa prijateljima ili porodicom. Pored toga, oni tvrde da su nekadašnji pratioci na putovanjima donekle slični savremenim turističkim vodičima koji pružaju kulturni kontekst modernim razgledanjima (Moore, *English Heritage curators*, n/a).

Vremenom je i tehnološki napredak na uvođenju novih prevoznih sredstava i prevoznih puteva značio dalji napredak putovanja. Tako je železnica omogućila ljudima da putuju dalje, brže i jeftinije. Železnica je omogućila ljudima da žive dalje od svojih radnih mesta, doprinosila je širenju gradova, obezbeđujući jeftin prevoz hrane, kao i cigle, škriljca i drugog građevinskog materijala. Prema sajtu Parlamenta Ujedinjenog Kraljevstva o putevima i železnici, početak izgradnje železničke mreže pruga u Velikoj Britaniji desio se u prvoj polovini 19. veka kada su otvorene linije Mančester – Liverpul 1830. godine i London – Dover 1844. godine (*UK Parliament*, n/a).

Današnji infrastrukturni uslovi, brojnost pružalaca turističkih usluga, a pogotovo raznovrsnost ponude za odmor, zabavu, sport i rekreaciju prevazilaze specifične želje i interesovanja pojedinca. Iako različite ekonomske okolnosti kao što je kurs funte i stalni pritisak na raspoloživi prihod domaćinstava utiču na želju za putovanjima, Udruženje britanskih turističkih agencija (*ABTA Limited*) je, na osnovu ankete sprovedene tokom 2025. godine, utvrdilo da u periodu 2025. – 2026. više od dve trećine Britanaca planira da putuje u ino-

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stranstvo, a da 84% planira da potroši isto ili više na odmor sledeće godine kao i 2025. godine (*ABTA Travel Limited*, 2025a). Prema nekim procenama, očekivalo se da će inostrana putovanja britanskih turista u 2025. godini dostići 92 miliona, što je najveći ikada zabeležen broj i rast od 3,6 puta u periodu od 2021. do 2025. godine (Dubakova, 2025). Statistička kompanija *IBISWorld* očekuje da će skoro 97 miliona Britanaca putovati na inostrane destinacije u 2026. godini (*IBISWorld*, 2025). Evropske destinacije od 2023. godine stabilno stoje na 52% svih putovanja, dok su sve druge destinacije zabeležile manji rast (*ABTA Travel Limited*, 2025a, 3). Evidentno je da se posle pandemije Kovida 19, turistički sektor ponovo postavio kao glavni deo britanske ekonomije, a putovanja u inostranstvo su ponovo ključni pokretač zapošljavanja i rasta (*ABTA Travel Limited*, 2025b). Udruženje britanskih turističkih agencija tvrdi da su turistička putovanja britanskih turista u inostranstvo, u 2024. godini, vredela 52 milijarde funti ili 2,1% bruto dodate vrednosti, podržavala više od 800 hiljada radnih mesta i doprinela budžetu Velike Britanije sa 9,9 milijardi funti različitih poreza (*ABTA Travel Limited*, 2025a, 3–4).

Visoka učestalost i raznovrsnost rizika sa kojim je povezana organizacija i realizacija putovanja ponekad onemogućava uživanje u ugovorenim turističkim uslugama. Oni se kreću od ličnih rizika putnika (hospitalizacija, nezgoda, krađa dokumenata, stvari, novca itd.) do rizika na strani pružalaca usluga, zbog čije nesolventnosti putnik može da pretrpi finansijsku štetu. Njihova finansijska zaštita sprovodi se preko šema uspostavljenih pri Upravi za civilno vazduhoplovstvo i Udruženju britanskih turističkih agencija za slučaj nesolventnosti avio-prevoznika i turističkih agencija za plaćene paket aranžmane. Međutim, u ovom radu mi razmatramo osiguranje putnika od nesolventnosti krajnjih pružalaca usluga i finansijsku zaštitu putnika za plaćanja kreditnom i platnom karticom na tržištu Velike Britanije. U svakom delu ćemo izložiti nekoliko ilustrativnih slučajeva i odluka Službe Ombudsmana za finansijska tržišta Velike Britanije.

2. OSIGURANJE OD NESOLVENTNOSTI PRUŽALACA USLUGA

2. 1. Predmet osiguranja i osigurani slučaj

Ova vrsta osiguranja spada u kategoriju putnog osiguranja, posebno kao vrsta zaštite od nesolventnosti. Njegov značaj se ogleda u tome što pruža finansijsku zaštitu pojedincu koji samostalno organizuje svoje turističko ili drugo putovanje kada rezerviše pojedine delove odvojeno, a ne u sklopu paket turističkog aranžmana čiji su klijenti zaštićeni Uredbom o paket putovanjima i povezanim turističkim aranžmanima Velike Britanije iz 2018. godine i šemom dozvola organizatoru vazdušnih putovanja (*Air Travel Organisers' Licensing – ATOL*).[1]

Osiguranje pokriva gubitke nastale kao neposredna posledica nesolventnosti privrednog subjekta koji poseduje i upravlja avio-kompanijom sa linijskim letovima, hotelom, železničkim operaterom, uključujući *Eurostar*, trajektima za automobile, vilama u inostranstvu i vikendicama u Velikoj Britaniji, autobuskim prevoznicima, kompanijama za iznajmljivanje automobila ili kampera, kampovima za karavane, kampovima, mobilnim kućicama, safarijima, izletima, Eurotunelom, tematskim parkovima ili atrakcijama, u svojstvu krajnjeg pružaoca usluga samostalnih, a ne paket putnih aranžmana koji se kupuju preko turističkih agencija (*International Passenger Protection*, 2019). Reč je o osiguravajućem pokriću koje se pruža u kombinovanim polisama putnog osiguranja ili kada je posebno ugovoreno uz osnovno putno osiguranje. Na tržištu su zastupljena i pokrića isključivo nesolventnosti avio-prevoznika, a ne i ostalih, gore pobrojanih privrednih subjekata. Prema uslovima osiguranja društva *Allianz Assistance*, osiguranje od nesolventnosti avio-prevoznika i ostalih pružalaca usluga pruža se isključivo u najvišem nivou pokrića (*AWP P&C*, 2023).

Pokriće se uobičajeno pruža uz određeni iznos franšize, ali ju je moguće otkupiti odgovarajućim doplatkom na premiju. Na tržištu se mogu pronaći osiguravači koji ne predviđaju franšizu za neke tipove troškova, dok je ona kod drugih obavezna.

Predmet pokrića su troškovi nastali uplatama osiguranika pružaocu usluga pre njegove nesolventnosti i nesolventnosti nastale posle polaska osiguranika na put. U prvom slučaju nadoknađuju se puni iznosi ali najviše do sume osiguranja, pod uslovom da su nepovrativi. U drugom slučaju nadoknađuju se dve vrste troškova: (1) dodatni (pro rata) troškovi koje je osiguranik imao prilikom zamene tog dela bilo kog putnog aranžmana prevozom sličnog standarda kao i pre skraćenja ili smanjenja, nastali kao posledica nesolventnosti pružaoca usluge i (2) troškovi povratnog prevoza do Velike Britanije sličnim standardom prevoza, gde je skraćivanje odmora bilo neizbežno zbog nesolventnosti pružaoca usluge (*International Passenger Protection*, 2019). Radi se o nadoknadi neiskorišćenih troškova prevoza i smeštaja u iznosima plaćenim za zamenske karte, nove rezervacije i slično, ako pružalac usluga prestane sa radom. U gore navedenim slučajevima, neki osiguravači uslovljavaju pokriće obavezom osiguranika da pribavi saglasnost osiguravača pre nego što je napravio neki od

[1] Više o pomenutom propisu i *ATOL*, videti: Jovanović, 2026.

tih troškova, doduše samo onda kada je to izvodljivo (*White Horse Insurance Ireland dac*, 2017, Section 17). Jedno od velikih društava za osiguranje Velike Britanije pruža pokriće ne samo za slučaj nesolventnosti pružalaca usluga prevoza i smeštaja, već i potraživanja osiguranika od izdavalaca kreditnih i platnih kartica, *PayPal*-a i u slučaju da osiguranik ne može iz nekog razloga da ostvari nadoknadu po šemama *ATOL*, Udruženja britanskih turističkih agencija i sličnih organizacija (*Aviva Insurance Limted*, 2025, 23). Ipak, treba imati u vidu da se radi o izuzetnim slučajevima u kojima su ispunjene relevantne okolnosti o čemu uslovi osiguranja mogu da ostave osiguravaču pravo da odluči da li da prihvati ili odbije takav odštetni zahtev pozivom na odgovarajuću klauzulu o isključenju (*Aviva Insurance Limited*, 2025, 7, 23, 39). Mogućnost subrogacije putem koje bi osiguravač uspeo da povrati iznos koji je nadoknadio osiguraniku predstavljao bi razlog da prihvati odštetni zahtev. Međutim, postojanje ovog prava uslovljeno je određenim ograničenjima, pri čemu na njega utiču pravila prava pravičnosti, odredbe polise osiguranja i ugovora osiguranika sa trećim licima (Clarke, 1997, 31-2A, 31-3C, 31-5A).

Osigurani slučaj nastaje kada pružalac usluge postane nesolventan, nije u mogućnosti da pruži ugovorene usluge ili kada bude imenovan stečajni upravnik. Pomenuta formulacija bi trebalo da podrazumeva i trenutak kada Uprava za stečaj podnese predlog za pokretanje stečajnog postupka ili prinudne likvidacije. U nekim drugim uslovima osiguranja ne opisuju se slučajevi kada nastaje nesolventnost, već se navodi da je to trenutak kada pružalac usluge prevoza ili smeštaja postane nesolventan (*Aviva Insurance Limited*, 2025, 23).

2. 2. Isključenja i ograničenja obaveze osiguravača

S obzirom da se radi o osiguranju od nesolventnosti krajnjeg pružaoca usluge, iz pokrića su isključeni odštetni zahtevi protiv onih pružalaca usluga prevoza ili smeštaja koji su osigurani kod drugog osiguravača ili imaju finansijsku zaštitu putem obveznica preko nekog udruženja. Iz istog razloga neće biti pokriveni odštetni zahtevi zbog nesolventnosti turističke agencije, turoperatera i njihovih podagenata.

Tipična ograničenja obaveze osiguravača odnose se na to da putovanje ili smeštaj moraju biti rezervisani od strane lica koja žive na teritoriji Velike Britanije, Ostrvu Men, Kanalskim ostrvima ili Irskoj pre polaska. Sledstveno tome, pokriće se uslovljava time da se mesto polaska i mesto povratka nalaze na teritoriji Velike Britanije. Pored zakonskih isključenja pokrića, pokriće ne postoji u slučaju nesavesnosti osiguranika, posebno kada su osiguraniku bile poznate okolnosti pre zaključenja polise osiguranja ili rezervacije putovanja, za koje se razumno moglo očekivati da budu razlog za podnošenje odštetnog zahteva, odnosno da će uticati na plan putovanja osiguranika (*Aviva Insurance Limited*, 2025, 19; *AWP P&C*, 2023). Neki drugi osiguravači proširuju mogućnost oslobođenja od obaveze zbog nesavesnosti osiguranika na objektivan način, odnosno i onda kada je mogućnost nastupanja nesolventnosti *bila široko poznata javnosti* pre zaključenja ugovora o osiguranju (*International Passenger Protection*, 2019; *White Horse Insurance Ireland*, 2017, *Section* 17). Takva jedna klauzula o isključenju glasi:

„Odštetni zahtev u vezi sa bilo kojim događajem, incidentom ili okolnostima ako je, u trenutku kada ste kupili polisu ili kada je osiguranik rezervisao putovanje (šta god nastupi kasnije), osiguranik znao ili se razumno moglo očekivati da je znao da

• se događaj ili incident već dogodio ili će se dogoditi,

• okolnosti su već postojale ili će postojati,

i da se razumno moglo očekivati da će događaj, incident ili okolnosti uticati na planove putovanja osiguranika” (*Aviva Insurance Limited*, 2025, 39).

Ipak, ovo isključenje se može premostiti ako je osiguranik prethodno o pomenutim okolnostima obavestio osiguravača i tražio saglasnost (*AWP P&C*, 2023).

Preduslov obaveze osiguravača je da su troškovi direktna posledica nesolventnosti pružaoca usluge. Iz pokrića su isključene sve posredno nastale štetne posledice. To znači da posredno nastale štete i troškovi, kao što je gubitak zarade nastao zakasnelim povratkom sa putovanja, neće biti pokriven. Osim toga, izgubljeni iznosi na ime propalih rezervacija i karata u slučaju dobrovoljne likvidacije firme pružaoca usluga zbog odluke o prestanku obavljanja delatnosti, predstavlja rizik koji, po pravilu, ne bi bio pokriven ovim osiguranjem.

2. 3. Neki primeri iz prakse Službe Ombudsmana za finansijska tržišta

U slučaju postavljanja odštetnog zahteva prema osiguravaču zbog nesolventnosti pružalaca usluga, prvenstveno se polazi od tumačenja limita i uslova polise osiguranja. Zbog toga se, neretko, dešavaju nesporazumi u vezi sa razumljivošću saveta izdavaoca kreditne kartice o širini osiguravajućeg pokrića. U jednom sporu pokrenutom pred Ombudsmanom, osiguranik po polisi osiguranja imalaca kreditnih kartica smatrao je, da u slučaju nesolventnosti avio-prevoznika od kojeg je kupio kartu, treba da mu bude nadoknađen trošak prevozne karte plaćene nesolventnom avio-prevozniku, ali i trošak neiskorišćene karte za nastavak putovanja. Osnovni problem je bio u tome što polisa osiguranja nije pokrivala nesolventnost krajnjeg pružaoca usluge, već rizike kašnjenja, otkazivanja ili prebukiranja kao i dodatne troškove nastale kao njihova posledica. Međutim, polisa osiguranja nije pokrivala neiskorišćene unapred plaćene troškove za putovanje na koje osiguranik nije mogao da stigne zbog otkazivanja prvog dela putovanja. Ako iz polise osiguranja, izričito ili prećuzno, proizlazi da sve što nije navedeno kao osigurani rizik nije pokriveno, a „nesolventnost krajnjeg pružaoca usluge" nije pomenuta, Ombudsman, će verovatno zaključiti da je osiguravač postupio razumno kada je odbio odštetni zahtev. To se i desilo u opisanom slučaju, zbog čega pritužba osiguranika nije prihvaćena (*Financial Ombudsman Service*, 2025).

Slično prethodnom, dokazivanje postojanja pokrića od nesolventnosti krajnjeg pružaoca usluge (operator brodskih putovanja) putem slanja osiguravaču snimka ekrana sa sajta posrednika, ne mora značiti i da konkretni osiguravač pruža takvu vrstu pokrića. Izgledalo je da je ovo pokriće uključeno u kasniju verziju proizvoda koji je nudio posrednik, a koji nije osiguravao predmetni osiguravač. Zbog toga osiguranikova pritužba na osiguravačevo odbijanje odšetnog zahteva nije prihvaćena (*Financial Ombudsman Service*, 2022a).

U vezi sa pitanjem da li se pokriće od nesolventnosti kranjeg pružaoca usluge aktivira već imenovanjem stečajnog upravnika ili posle okončanja stečajnog postupka, naišli smo na jednu odluku Ombudsmana u kojoj se zauzima stav da je izraz „otkazan od strane operatera" toliko širok da bi odštetni zahtev veoma retko mogao da se postavi. U konkretnom slučaju, avio-prevoznik je otkazao let osiguraniku koji je imao dodatne troškove alternativnog leta, sa obrazloženjem da je to zbog operativnih razloga. Dva dana po povratku osiguranika sa puta, avio-prevoznik je postao nesolventan, ali po tumačenju osiguravača, rizik otkazivanja leta zbog nesolventnosti nije bio pokriven. Međutim, to nije nigde u uslovima osiguranja bilo izričito navedeno. S obzirom da uslovi osiguranja nisu bili jasni po pitanju uzroka otkazivanja leta, Ombudsman je odlučio da podrži prigovor osiguranika i obaveže osiguravača na isplatu nadoknade (*Financial Ombudsman Service*, 2020b).

U kasnijoj praksi Obmudsmana ponovo je istaknut značaj jasnoće formulacija u klauzulama uslova osiguranja. U jednom kasnije razmatranom prigovoru u polisi osiguranja nigde nije izričito bilo navedeno da se pokriće aktivira posle okončanja stečajnog postupka, kako je tvrdio osiguravač koji je odbio odštetni zahtev. Radilo se o tome da su vlasnici objekta za venčanja odlučili da likvidiraju svoje poslovanje, a da je firma koja je organizovala venčanja postala nesolventna. Zbog toga je osiguranik morao da učini nove troškove za reorganizaciju venčanja, a odštetni zahtev je postavio osiguravaču u trenutku kada nad pružaocem usluge još nije okončan stečajni postupak. Ombudsman je smatrao da je osiguranik u pravu i obavezao je osiguravača da isplati odštetni zahtev i dodatan iznos od 200 funti zbog uznemirenosti i neprijatnosti prouzrokovane osiguraniku zbog nezakonitog odbijanja potraživanja (*Financial Ombudsman Service*, 2021).

Ponekad uplata „sveobuhvatnih" (*all inclusive*) aranžmana koji traju više dana neće se smatrati paket odmorom zbog jasnih formulacija uslova polise osiguranja. U konkretnom slučaju, osiguranici su kupili odmor na krstarenju brodom, ali je ono otkazano zbog pandemije Kovid-19, da bi kasnije iste godine brodarska kompanija pala u bankrot. Osiguravač je odbio odštetni zahtev osiguranika za nepovratno plaćen iznos zbog toga što uslovi polise izričito ne predviđaju pokriće za putovanja krstarećim brodovima – kruzerima. Drugi razlog odbijanja odnosio se na to da „sveobuhvatni" aranžman ne predstavlja paket aranžman koji bi se sastojao od dva ili više putovanja. Iz navedenih razloga Ombudsman nije prihvatio prigovor osiguranika (*Financial Ombudsman Service*, 2022b).

3. FINANSIJSKA ZAŠTITA IMALACA NOVČARSKIH KARTICA (PLATNIH I KREDITNIH)

Ističemo da se institucionalna zaštita korisnika finansijskih usluga u Velikoj Britaniji sprovodi na više nivoa, pri čemu je Služba Ombudsmana za finansijsko tržište ključna za alternativno rešavanje sporova. Radi se o instituciji za alternativno rešavanje sporova korisnika finansijskih usluga sa bankama, društvima za osiguranje i investicionim firmama, pre pokretanja postupka pred sudom. Obrazloženja data u odlukama ove Službe su od preporučenog, ali ne i obavezujućeg, značaja za stranke u sporu. Oni odluke donose primenom principa poštenja i razumnosti u datim okolnosti svakog pojedinog slučaja (*Financial Ombudsman Service*, 2020a). S obzirom da ulagač prigovora ima obavezu da se izjasni da li prihvata ili odbija odluku Ombudsmana, to utiče i na njegovo pravo da pokrene parnicu ako smatra da nije ostvario potpuno obeštećenje. Prema odluci Apelacionog suda iz 2014. godine, ako se ulagač prigovora saglasio sa odlukom Ombudsmana, nema pravo da pokreće parnicu povodom istog pravnog osnova zbog principa *res judicata* iz sistema *common law*. I obrnuto, jedino ako je odbio odluku Ombudsmana, imaće pravo da pokrene parnicu (*Clark & ANR v. In Focus Asset Management & Tax Solutions Ltd* [2014] *EWCA Civ* 118).

U ovom delu rada ukratko ćemo izložiti okolnosti nekih sporova i način primene pojedinih pravila u vezi sa primenom Zakona o potrošačkim kreditima iz 1974. godine (*Consumer Credit Act* 1974) i šemom dobrovoljnog povraćaja sredstava u proceduri regulisanoj pravilima izdavaoca kartica.

Treba imati u vidu da se zaštita klijenata od nesolventnosti turističke agencije u Velikoj Britaniji može ostvarivati i putem zaštite imalaca kreditnih kartica u smislu pomenutog Zakona. Iako je pomenuti zakon pretrpeo brojne izmene od stupanja na snagu 1974. godine, pitanja pokrenuta tokom tekuće reforme u 2025. godini i ciljevi koji se reformom žele postići izmenama i dopunama, nisu predmet pažnje autora. Zato naše dalje izlaganje zasnivamo na stanju tog zakona na dan 22. jula 2025. godine i to samo u pogledu odredbi Zakona koje su relevantne za ovaj deo rada.

Prema Zakonu o potrošačkim kreditima, ugovor o kreditu sa ograničenom upotrebom je regulisani ugovor o potrošačkom kreditu radi finansiranja transakcije između dužnika i trećeg lica van tog ugovora, koje je pružalac određenih usluga. Odgovarajućim odredbama ustanovljena je solidarna odgovornost banke kao poverioca po ugovoru o kreditu (kreditnoj kartici) i trećeg lica – pružaoca neke usluge prema dužniku – licu na koga glasi kreditna kartica. U slučaju da pružalac usluge izvrši lažno predstavljanje bitnih činjenica ili povredi ugovor sa licem koje je kreditnom karticom izvršilo predmetno plaćanje, kreditor ima pravo da zahteva nadoknadu gubitka koji je pretrpeo ispunjavajući svoju obavezu prema pružaocu usluge ili isporučiocu dobra, uključujući troškove koje je razumno imao u odbrani od postupaka koje je pokrenuo dužnik po ugovoru o kreditu (*Consumer Credit Act*, 1974, čl. 75, st. 1 i 2). Pomenuta pravila primenjuju se bez obzira na eventualno prekoračenje kreditnog limita ili povredu ugovora o kreditu, pod uslovom da se radi o transakciji od najmanje 100 funti, ali ne većoj od 30.000 funti (*Consumer Credit Act*, 1974, čl. 75, st. 3 i 4). Klijent banke koji je kreditnom karticom platio nepružene turističke usluge ili neisporučena dobra ima zakonsko pravo da od banke zahteva povraćaj plaćenih sredstava u slučaju nesolventnosti pružaoca / dobavljača i u slučajevima kada: (a) se pružalac usluge ili dobavljač stvari ne može pronaći, (b) je dužnik kontaktirao pružaoca usluge ili dobavljača, ali on nije odgovorio, (c) pružalac usluge ili dobavljač stvari je postao nesolventan, ili (d) je dužnik preduzeo razumne korake da ostvari svoj zahtev protiv pružaoca ili dobavljača, ali nije ostvario namirenje svog zahteva (*Consumer Credit Act*, 1974, čl. 75A, st. 2). U sklopu zahteva za povraćaj sredstva po članu 75 Zakona o potrošačkom kreditu, potrošač može imati pravo da zahteva nadoknadu i određenih posrednih gubitaka. To su plaćanja za zamensku uslugu, iako nisu svi takvi gubici pokriveni (*Financial Conduct Authority*, 2020, 1.11). U tom smislu, punovažni su odštetni zahtevi za kupovinu nove avio-karte, posle stečaja avioprevoznika, iznajmljivanje drugog hotela ili pansiona zbog prestanka rada onog koji je rezervisan i plaćen ili jednostavno nepružanja ugovorene usluge zbog lažnog predstavljanja činjenica itd. U navedenim slučajevima, nadoknada može biti potpuna ili delimična u zavisnosti od uslova ugovora sa pružaocem usluge i njegovih uslova poslovanja. Međutim, iznosi plaćeni preko obrađivača platnih transakcija kao što su *PayPal* i sl., neće biti pokriveni. Takođe, onlajn uplate, čekovi, krediti maloprodavca na mestu prodaje, kao i neke druge okolnosti i metode plaćanja neće biti obuhvaćeni čl. 75 pomenutog zakona (*UK, Finance*, n/a). Zaštita se pruža za sva kvalifikovana plaćanja obavljena preko Interneta, na teritoriji Velike Britanije ili na prodajnom mestu u inostranstvu, kao i u slučajevima povrede ugovora ili netačnog predstavljanja činjenica. Prethodno pomenuti sistem zaštite primenjuje se bez obzira da li se radi o trostranom (dužnik – imalac kartice, pružalac turističke usluge i poverilac – izdavalac kartice) ili četvorostranom odnosu u kojem, pored prethodno pomenutih, postoji i posrednička finansijska institucija koja se stara o odobravanju, obradi i bezbednom kliringu elektronskih plaćanja između pružalaca usluga i banke izdavaoca kartica. Takvu primenu čl. 75 Zakona potvrdila je i sudska praksa (*Office of Fair Trading /Respondents/ v Lloyds TSB Bank plc and others /Appellants/ and others / Respondents/* [2007] *UKHL* 48, *31 October 2007*).

Kada se turističke usluge plaćaju platnim karticama, situacija je bitno drugačija. U tom slučaju reč je o zakonom neregulisanoj mogućnosti da oštećeno lice zahteva povraćaj plaćenog iznosa trećem licu za usluge koje mu nisu pružene, neisporučena dobra, uključujući i materijalne nedostatke ispunjenja obaveze i nesolventnost trećeg lica. Tada banka oštećenog lica može pokušati da vrati novac od prodavca u ime svog klijenta. Ipak, mogućnost povraćaja plaćenog novca preko banke koja je izdavalac platne kartice neće biti uvek izvesna. To će se desiti ako banka izdavalac kartice, mimo svoje volje, nije u mogućnosti da obavi povrat novca ili ako pružalac usluge ili dobavljač dobra ne prihvati zahtev za povraćaj sredstava. Potrošači sa teritorije Engleske, Velsa i Severne Irske moraju podneti zahtev u roku od šest godina od dana kupovine robe ili usluga ili, ako ih nisu primili, u roku od šest godina od kada su ih trebali primiti (*Limitation Period Act*, 1980, čl. 5), dok je u Škotskoj rok zastarelosti za sve obligacije i potraživanja, uključujući i ugovorna, pet godina računajući od dana kada je dospela obaveza plaćanja za isporučena dobra ili izvršene usluge (*Prescription and Limitation /Scotland/ Act*, 1973, čl. 6, *Schedule 2*, čl. 1, st. 4).

Imalac kreditne ili platne kartice koji zahteva zaštitu na osnovu čl. 75 treba da izdavaocu kreditne kartice dostavi bitne informacije banci izdavaocu kreditne kartice za uspešno zastupanje imaoca kreditne kartice u postupku povrata plaćenih sredstava za nepruženu uslugu. To su podaci: o pružaocu usluge, datumu plaćanja, ugovoru ili uslovima poslovanja koji su dati imaocu kreditne kartice, informacije primljene od pružaoca usluge tokom ugovaranja ili pokušaja da se reši problem, kao i sve druge podatke koji se u datim okolnostima mogu smatrati relevantnim (*UK Finance*, n/a). Isto kao i u slučaju postavljanja odštetnog zahteva prema osiguravaču, i u ovom slučaju klijent je dužan da dokaže svoj zahtev.

Pored prethodno opisanog mehanizma zaštite zasnovanog na zakonu, imaoci kreditnih i platnih kartica imaju na raspolaganju i mogućnost upućivanja zahteva za povrat sredstava. Glavni uslov za povraćaj novca putem povraćaja je dokaz da je došlo do povrede ugovora. Bitna razlika je da su uslovi i procedura, u ovom slučaju, regulisani opštim uslovima poslovanja izdavaoca kreditne ili platne kartice i da ne postoji solidarna odgovornost izdavaoca kartice i njenog imaoca. Zbog toga što se odštetni zahtev zasniva na povredi ugovora, pružalac usluge ima pravo da odluči da li je i u kojoj meri odštetni zahtev opravdan. Opravdani odštetni zahtevi imaoca kartice odnose se na slučajeve naplate većih iznosa od ugovorenih, dvostruke naplate istog iznosa ili naplate ugovorenog iznosa posle prijema otkaza usluge.

U nastavku navodimo nekoliko primera iz prakse Službe Ombudsmana za finansijska tržišta Velike Britanije. Kada se radi o naplati značajno većeg iznosa taksi usluge od njene stvarne vrednosti u jednom sporu gospodin „M" nije uspeo sa povraćajem sredstava od svog izdavaoca kreditne kartice, jer je Služba Ombudsmana smatrala da se ne radi o povredi ugovora, a to što je gospodin „M" uneo PIN i odobrio transakciju plaćanja taksi usluge ne uvidevši da se radi o stostruko većem iznosu od njemu rečenog, nije dovoljan razlog da se prihvati zahtev za povraćaj sredstava. Sa druge strane, u istom sporu odštetni zahtev po čl. 75 Zakona o potrošačkim kreditima nije prihvaćen jer je cena taksi usluge bila manja od minimuma propisanog navedenim zakonom (*Financial Ombudsman Service*, 2024a). Međutim, kada usluga uopšte nije pružena ili je pružena usluga drugačijeg kvaliteta ili standarda, onda je faktičko i pravno pitanje u kojem iznosu britanski turista ima pravo na naknadu. Ako izdavalac kartice ne prihvati validnost zahteva i odbije da ga plati, imalac kartice može zatražiti „pismo o zastoju" kako bi spor pokrenuo pred Službom Ombudsmana za finansijska tržišta (*Financial Ombudsman Service*, 2023).

Iako je nadoknada štete zbog delimičnog neispunjenja ugovora opravdana, visina srazmerne nadoknade ostaje predmet procene Ombudsmana u svakom konkretnom slučaju. Tako je u sporu o kojem je rešavala Služba Ombudsmana za finansijska tržišta, odlučeno je da gospođa „L" koja je uplatila paket aranžman od šest noći, trpela kašnjenje autobuskog prevoza od nekoliko sati i jednu noć provela u sobi koja nije imala pogled na more, ima pravo na srazmerno umanjenje i nadoknadu od jedne šestine vrednosti aranžmana (*Financial Ombudsman Service*, 2020a). Slično prethodnom, u drugom sporu pružalac usluge – izdavalac kuće garantovao je određenu temperaturu vode u bazenu. Iako je vlasnik smeštaja nekoliko puta podešavao temperaturu, od prvog dana do prestanka boravka voda nije prelazila obećanu minimalnu temperaturu od 100 Farenhajta (približno 38 stepeni Celzijusa). Gospođa „V" kaže da je bazen bio previše hladan za korišćenje i da ne bi rezervisali smeštaj da su znali da će temperatura bazena biti najviše 72 stepena Farenhajta (22 stepena Celzijusa) tokom njihovog boravka. Očigledno se radilo o povredi ugovora i netačnom predstavljanju činjenica. Ombudsman je smatrao da bazen nije bio neupotrebljiv, jer je u njemu bilo vode iako njena temperatura nije dostizala ugovorenu. Osim toga, upotreba bazena nije bio jedini deo zabavnih sadržaja u kući. Konačna odluka uzela je u obzir da je upotreba bazena predstavljala samo manji deo ukupnog sadržaja tokom boravka u iznajmljenoj kući, pa je utvrđena obaveza izdavaoca kreditne kartice da naknadi 400 funti (što je predstavljalo 6% od vrednosti zakupa), uvećane za 8% kamate od trenutka kada je tuženi odbio zahtev gospođe „V" pa sve do dana isplate (*Financial Ombudsman Service*, 2024b).

4. ZAKLJUČAK

Osiguranje od nesolventnosti kranjih pružalaca turističkih usluga predstavlja samo jedan od mehanizama finansijske zaštite britanskih turista. Kada uslovima osiguranja nije obuhvaćen neki događaj zbog kojeg je došlo do gubitka, osiguranicima stoji na raspolaganju mogućnost da zahtevaju povraćaj sredstava preko banaka koje su im izdale kartice. Zbog toga osiguranici moraju da pažljivo čitaju uslove osiguranja, provere da li oni ispunjavaju njihove potrebe i, ako je potrebno, dokupe dodatne vrste pokrića. Finansijska zaštita imalaca novčarskih kartica preko izdavaoca kartice koji pokreće i realizuje proceduru povrata uplaćenog novca od krajnjeg pružaoca usluge može da bude efikasna ako su ispunjeni određeni uslovi. Prilikom rešavanja prigovora Služba Ombudsmana, razmatra činjenice svakog konkretnog slučaja u vezi sa vrstom usluge, uslovima osiguranja, korespondencijom između stranaka i odlukom firme na čije postupanje je uložen prigovor. Ulagač prigovora nije dužan da prihvati odluku Ombudsmana ako je smatra neprihvatljivom i može pokrenuti parnicu samo ako je prethodno izrazio svoju nesaglasnost sa odlukom. Zbog toga, lica koja ulažu Ombudsmanu prigovor na postupanje učesnika na finansijskom tržištu moraju voditi računa o tome da li se odlukom Ombudsmana u potpunosti namiruje njihov odštetni zahtev kako, u suprotnom, ne bi izgubili pravo na pokretanje parnice. Radi se o doslednoj primeni principa prestanka prava na pokretanje tužbe po pravnim podsistemima *common law* i pravičnosti.

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Insurance and financial safeguard for UK tourists against and service provider insolvency

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Abstract

Modern transport and tourism infrastructure, along with diverse vacation, entertainment, sports, and recreation options, meet a wide range of individual preferences and interests. Frequent travels by UK tourists and various risks in trip planning can sometimes prevent them from enjoying services they expected. A potential risk for British travellers going abroad is losing money if a service provider becomes insolvent. Their financial protection is provided through the schemes administered by the Civil Aviation Authority and the ABTA Limited (ABTA – The Travel Association), ensuring cover in case of airlines and travel agents insolvency for prepaid package tours. This paper examines passenger insurance against end provider failure and financial protection for credit and debit card payments in UK.

Key words: service provider, insolvency, insurance, expenses, credit and debit cards, Financial Ombudsman Service

1. INTRODUCTION

According to Lassells, an English Catholic priest and travel writer, certain types of travel in ancient Rome involved sending children abroad to be raised by governesses. Around the age of ten, these children would go to Tuscany to study religion, and then to Greece to learn philosophy (Lassells, 1670, 2). His work "Travel in Italy", authored in 1670, is rich in diverse aspects of travel overall and offers details regarding the experience of traveling through Italy.

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Regardless of Lascelles' influence, the origins of modern tourism in England are commonly linked to the travels undertaken by young individuals accompanied by their parents or guardians. Journeys undertaken by members of the nobility and affluent individuals began in the late seventeenth century and continued throughout the eighteenth and early nineteenth centuries. For members of the British nobility, it was considered a kind of rite of passage from childhood to adulthood. According to Moore and colleagues, numerous "grand tourists" were accompanied by guides engaged primarily for educational reasons and frequently travelled alongside friends or family members. Additionally, they argue that ancient travel companions are somewhat like modern tourist guides who provide cultural context to modern sightseeing (Moore, English Heritage curators, n/a).

As technology advanced, new transportation means and routes led to continued improvements in travel. Thus, the railway enabled people to travel further, faster and cheaper. The railway allowed people to live further from their workplaces, contributed to the expansion of cities, providing cheap transportation of food, as well as bricks, slate and other building materials. According to the UK Parliament's roads and rail website, the development of Great Britain's railway network commenced in the early nineteenth century with Manchester to Liverpool line in 1830 and the London to Dover line in 1844 (UK Parliament, n/a).

Current infrastructure, numerous service providers, and a wide range of vacation, entertainment, sports, and leisure options exceed individual preferences and interests. Although various economic circumstances such as the pound exchange rate and constant pressure on household disposable income affect the desire to travel, the Association of British Travel Agents (ABTA Limited), based on a survey conducted in 2025, found that in the period 2025-2026, more than two-thirds of Britons plan to travel abroad, and that 84% plan to spend the same or more on vacation next year as in 2025 (ABTA Travel Limited, 2025a). According to some estimates, overseas trips by British tourists were expected to reach 92 million in 2025, the highest number ever recorded and a 3.6-fold increase between 2021 and 2025 (Dubakova, 2025). IBISWorld, a statistics company, predicts that nearly 97 million people from the UK are expected to travel abroad in 2026 (IBISWorld, 2025). European destinations have remained stable at 52% of all trips since 2023, while all other destinations have seen smaller growth (ABTA Travel Limited, 2025a, 3). Following the Covid-19 pandemic, tourism has regained its important role in the British economy, and international travel has returned to being a significant force for job creation and economic growth (ABTA Travel Limited, 2025b). ABTA claims that the British tourists' overseas travel was worth £52 billion in 2024, or 2.1% of gross value added, supporting more than 800,000 jobs and contributing £9.9 billion in various taxes to the UK budget (ABTA Travel Limited, 2025a, 3–4).

The frequent and diverse risks involved in planning and carrying out travel often prevent tourists from fully enjoying the services booked. Risks include personal issues like hospitalization, accidents, and theft of documents, things, or money, as well as financial losses from service provider insolvency. Passengers are financially protected by schemes from the Civil Aviation Authority and the Association of British Travel Agents if airlines or travel agencies become insolvent during paid package tours. However, this paper will examine travel insurance against final service provider insolvency and financial protection for credit and debit card payments in the Great Britain market. Each section will feature sample cases and decisions from the UK Financial Markets Ombudsman Service.

2. INSURANCE AGAINST SERVICE PROVIDER INSOLVENCY

2. 1. Object of insurance and insured event

This insurance is considered a form of travel insurance, primarily designed to provide protection against insolvency. Its importance lies in offering financial protection to individuals who arrange their own travel components separately, unlike those covered under the UK Package Travel and Related Travel Arrangements Regulations 2018 and the Air Travel Operator Licensing Scheme (*Air Travel Organisers' Licensing – ATOL*).[1]

The insurance covers losses directly caused by the insolvency of a company that owns and operates scheduled travel services, such as airlines, hotels, rail operators (including Eurostar), car ferries, overseas villas, UK holiday homes, bus operator, vehicle rentals, campsites, mobile homes, safaris, tours, Eurotunnel, theme parks, or attractions, when acting as the end supplier, not as part of a package bought from travel agencies (International Passenger Protection, 2019). This refers to insurance coverage included in comprehensive travel insurance policies, or when purchased separately alongside basic travel insurance. On the market, some policies specifically cover airline insolvency, but not insolvencies of other types of businesses mentioned earlier. *Allianz Assistance* insurance policy provide coverage against the insolvency of airlines, but only in the top tier of protection for other service providers (AWP P&C, 2023).

Insurance policies typically include a deductible, which can be bought out at an additional premium. Certain insurers on the market offer policies with no deductible for specific expenses, while requiring a deductible for others.

Coverage includes costs paid to the service provider by the insured before insolvency, as well as expenses incurred after the insured's trip began. Firstly, full reimbursement is provided up to the insured amount, if the expenses are non-refundable. Secondly, two categories of expenses are covered: (1) additional pro rata costs incurred by the insured to replace part of a travel arrangement with transportation of a similar standard as before the curtailment or reduction, due to service provider insolvency, and (2) the cost of return transport to the UK using similar quality transport, when an unavoidable shortening of the holiday occurs because of service provider insolvency (International Passenger Protection, 2019). It is about compensation for unused travel and accommodation expenses, including payments made for replacement tickets or new bookings, if the original service provider stops operating. In such circumstances, certain insurers require that the insured obtain the insurer's consent prior to incurring any related expenses, provided that doing so is practicable (White Horse Insurance Ireland dac, 2017, Section 17). A major British insurance company covers not only transport and accommodation providers' insolvency, but also claims against credit card issuers, *PayPal*, and situations where the insured is unable to obtain compensation through *ATOL*, the *Association of British Travel Agents*, or similar travel schemes (Aviva Insurance Limted, 2025, 23). However, it is important to remember that these

[1] More on this regulation and *ATOL*, see: Jovanović, 2026.

are rare instances where specific conditions apply, since the insurance policy terms may allow the insurer to determine whether to approve or deny such claims by invoking the relevant exclusion clause (Aviva Insurance Limited, 2025, 7, 23, 39). The insurer might accept the claim if, by way of subrogation, it can recover the amount paid to the insured. However, the existence of this right is conditioned by certain limitations, whereby it is affected by the rules of the law of fairness, the provisions of the insurance policy and the contract of the insured with third parties. However, this right has specific limitations, including equity principles, the insurance policy terms, and any contractual obligations of the insured with third parties (Clarke, 1997, 31-2A, 31-3C, 31-5A).

The insured event occurs when the service provider becomes insolvent, is unable to provide contracted services or when a bankruptcy administrator is appointed. This wording should also cover the point at which the Bankruptcy Administration requests beginning of the bankruptcy proceedings or enforced liquidation. Certain insurance terms do not specify precisely when insolvency happens but instead define it as the point at which the transport or accommodation provider becomes insolvent (Aviva Insurance Limited, 2025, 23).

2.2. Exclusions and limitations of the insurer's liability

As this insurance covers insolvency of the end service provider, it does not apply to claims against transport or accommodation providers who already have insurance with another insurer or financial protection through association bonds. Therefore, claims arising from the insolvency of travel agents, tour operators, or sub-agents are also not covered.

Typical limitations of the insurer's liability are that travel or accommodation must be booked by persons resident in Great Britain, the Isle of Man, the Channel Islands, or Ireland prior to departure. Consequently, coverage is conditional on the place of departure and the place of return being in UK. Besides the legal exclusions, coverage is also not provided if the insured acts negligently, especially if they knew about circumstances before buying the insurance policy or booking the trip that could reasonably lead to a claim or impact their travel plans (Aviva Insurance Limited, 2025, 19; AWP P&C, 2023). Some insurers exempt themselves from liability for the insured's objective negligence when the risk of insolvency *was widely known* before taking out an insurance policy (International Passenger Protection, 2019; White Horse Insurance Ireland, 2017, Section 17). One such exclusion clause reads:

"Any claim in relation to any event, incident or circumstances if, at the time you purchased your policy or the insured person booked a trip (whichever is later), the insured person knew that, or could reasonably be expected to have known that

– the event or incident had already occurred or was going to occur,

– the circumstances existed, or were going to exist, and that the event, incident, or circumstances could reasonably be expected to affect the insured person's travel plans" (Aviva Insurance Limited, 2025, 39).

However, this exclusion will not apply if the insured has notified the insurer of these circumstances and requested consent (AWP P&C, 2023).

The insurer is only obligated if the costs result directly from the service provider's insolvency. Indirect detrimental consequences are excluded from the coverage. Consequently, indirect damages and expenses, including lost income resulting from delayed returns, are not covered. Furthermore, losses resulting from unsuccessful reservations and tickets arising from the voluntary liquidation of the service provider following a decision to cease operations generally constitute a risk that is not typically covered under this insurance policy.

2.3. Selected Case Studies from the Ombudsman Service for Financial Markets Practice

A compensation claim against the insurer for service provider insolvency depends mainly on how the insurance policy's terms and limits are interpreted. Consequently, misunderstandings often arise concerning the clarity of information provided by credit card issuers about the scope of insurance coverage. In a case before the Ombudsman, a credit card insurance holder expected compensation for both their ticket with an insolvent airline and any unused tickets required to finish their trip. The primary issue was that the insurance policy excluded insolvency of the end service provider and only covered risks like delay, cancellation, overbooking, and related extra costs. However, the insurance policy excluded coverage for prepaid, unused expenses if the insured was unable to take the trip because the initial portion of the voyage was cancelled. If the insurance policy states, either expressly or tacitly, that only specified risks are covered, and "insolvency of the end service provider" is not listed, the Ombudsman will likely determine that the insurer was justified in rejecting the claim. That is what happened in the described case, so the complaint of the insured was not upheld (Financial Ombudsman Service, 2025).

Like the previous one, sending a screenshot from the broker's website to prove coverage against a cruise operator's insolvency does not confirm that the insurer provides this coverage. The cover appeared to be part of a later version of the product from the broker, not underwritten by the insurer. Therefore, the insured's complaint regarding the insurer's claim rejection was not upheld (Financial Ombudsman Service, 2022a).

Regarding the question of whether the coverage against the insolvency of the end service provider is triggered by the administrator appointment or after the end of the bankruptcy proceedings, we found an Ombudsman decision stating that the term "cancelled by the operator" is so broad that a compensation claim could very rarely be made. In this case, the airline cancelled the insured's flight due to operational reasons, resulting in additional costs for an alternative flight. Two days after the insured's return, the airline became insolvent, but in the insurer's interpretation, the flight cancellation due to insolvency was not covered. However, this was not explicitly stated anywhere in the policy. Given that the insurance terms were vague regarding the cause of the flight cancellation, the Ombudsman decided to uphold the insured's complaint and oblige the insurer to provide compensation (Financial Ombudsman Service, 2020b).

The Ombudsman's ongoing practice has reinforced the significance of precise language in the insurance policy clauses. In a complaint reviewed later, the insurance policy was not specific that the coverage triggers after the bankruptcy proceedings' completion, as claimed by the insurer that rejected the claim. It was about the owners of the wedding facility who decided to pull out of the business, and that the wedding company became insolvent. Consequently, the insured faced new expenses related to the wedding's reorganization and made a claim against the insurer prior to the conclusion of the bankruptcy proceedings on the service provider. The ombudsman determined that the insured was right, requiring the insurer to pay compensation as well as an extra £200 for the distress and inconvenience suffered because the claim had been wrongfully denied (Financial Ombudsman Service, 2021).

Sometimes the payment of "all-inclusive" several-days-arrangements will not be considered a package holiday due to the clear insurance policy wording. In this case, the insured bought a vacation on a cruise ship which was cancelled due to the Covid-19 pandemic, and later the same year the shipping company went bankrupt.

The insurer rejected the insured's claim for the non-refundable amount due to the policy terms that do not expressly provide cover for trips on cruise ships. Another reason for refusal was that the "all-inclusive" arrangement may not constitute a package consisting of two or more trips. For the above reasons, the ombudsman did not uphold the insured complaint (Financial Ombudsman Service, 2022b).

3. FINANCIAL PROTECTION OF DEBIT AND CREDIT CARDHOLDERS

We emphasize that the institutional protection for financial service users in the UK operates on multiple levels, with the Financial Markets Ombudsman Service serving as the main body for alternative dispute resolution. This institution provides an alternative way for users of financial services to resolve disputes with banks, insurance companies, and investment firms before taking the matter to court. The reasons in the decisions of this Service are of recommended, not binding, significance for the parties in dispute. They make decisions based on what is fair and reasonable in each individual case (Financial Ombudsman Service, 2020a). Given the complainant must state whether he accepts or rejects the Ombudsman's decision, this also affects his right to initiate litigation if he believes that he is not fully indemnified. According to the Court of Appeals decision from 2014, if the complainant agreed with the Ombudsman's decision, he is not allowed to initiate litigation on the same grounds due to the *res judicata* principle from the common law. And vice versa, only if he rejected the Ombudsman's decision, he could initiate litigation (Clark & ANR v. In Focus Asset Management & Tax Solutions Ltd [2014] EWCA Civ 118).

In this section, we will briefly outline the circumstances of some disputes and the way certain rules are applied in connection with the implementation of the Consumer Credit Act 1974 and the chargeback scheme regulated by the card issuer's rules.

It should be noted the UK clients can safeguard themselves against the travel agent insolvency through credit cardholders' protection provided by the mentioned Act. Although the law has been amended multiple times since 1974, this article does not focus on the issues or objectives of the 2025 reform. For this reason, we present the current state of the law as of July 22, 2025, focusing solely on the provisions relevant to this section of the work.

By the Consumer Credit Act, a restricted-use credit agreement is a regulated consumer credit agreement for financing a transaction between the debtor, as a provider of certain services, and a third party outside the agreement. Relevant regulations provide for joint and several liability of a third-party service provider and the bank, acting as a creditor under the loan arrangement (credit card) towards the debtor (credit cardholder). If the service provider makes a misrepresentation or breaches the contract with the person who made the payment by a credit card, the creditor shall be entitled to compensation for the loss suffered in fulfilling his obligation to the service provider or the supplier of goods, including the reasonable defence costs against proceedings instituted by the debtor (Consumer Credit Act, 1974, Article 75(1&2)). The mentioned rules apply regardless of the possible exceeding of the credit limit or the breach of the credit agreement, provided transaction ranges between 100 and 30,000 pounds (Consumer Credit Act, 1974, Article 75(3&4)). Should the provider or supplier become insolvent, a consumer who paid unfulfilled tourist service or undelivered goods by credit card is entitled to a refund from the bank where: (a) the supplier cannot be traced, (b) the debtor has contacted the supplier, but the supplier has not responded, (c) the supplier is insolvent, or (d) the debtor has taken reasonable steps to pursue his claim against the supplier but has not obtained satisfaction for his claim (Consumer Credit Act, 1974, Article 75A(2)). As part of the request for refund under Article 75 of the Consumer Credit Act, the consumer may have the claim for certain indirect losses. These are payments for replacement service, although not all such losses are covered (Financial Conduct Authority, 2020, 1.11). Therefore, claims for the purchase of a new airline ticket, following the airline's bankruptcy, the rental of another hotel or guesthouse due to the closure of the one reserved and paid for or simply the non-provision of the agreed service due to misrepresentation, etc., are valid. In the mentioned cases, compensation may be complete or partial depending on the contract with the service provider and its business terms. However, amounts paid through payment processors such as *PayPal* etc. will not be covered. Also, online payments, checks, retailer credits at points of sale, as well as some other circumstances and payment methods will not be covered by Art. 75 of the mentioned law (UK, Finance, n/a). Protection is provided for qualifying payments made over the Internet, in the UK or at an overseas point of sale, as well as in cases of breach of contract or misrepresentation. The mentioned protection system applies regardless of whether it is a three-party (debtor – cardholder, tourist service provider and creditor – card issuer) or four-party relationship in which, in addition to the above, there is also an intermediary financial institution approving, processing and safe clearing of electronic payments between service providers and the card issuing bank. UK court practice also confirmed such application of Art. 75 (Office of Fair Trading /Respondents/ v Lloyds TSB Bank plc and others /Appellants/ and others /Respondents/ [2007] UKHL 48, 31 October 2007).

When tourist services are paid for by debit cards, the situation is significantly different. Accordingly, option non-regulated by law for the injured party is to request return of the amounts paid to a third party for unsupplied services, undelivered goods, including performance material deficiencies and the third-party insolvency. Then the consumer's bank can initiate a chargeback procedure to retrieve the funds from the seller for the consumer. However, the possibility of refunding the money paid through the issuer bank will not always be certain. This will happen if the issuer bank, against its will, is unable to process the refund or if the service provider or supplier of the goods does not accept the refund request. Consumers in England, Wales and Northern Ireland must make a claim within six years of the purchase of the goods or services or, if they were not provided for, within six years of when they should have received them (Limitation Period Act, 1980), while in Scotland, the statute of limitations for obligations and claims, including contractual ones, is five years from the day when the obligation to pay for the delivered goods or services is due (Prescription and Limitation /Scotland/ Act, 1973, Article 6, Schedule 2, Article 1(4)).

Credit or debit cardholder who requires protection based on Article 75 should provide the card issuer with essential information for his successful representation in the procedure for the return of funds for the non-provided service. These are: data about the service provider, the payment date, the contract or business terms given to the cardholder, information received from the service provider during negotiating or trying to solve the problem, and any other data that may be relevant in the given circumstances (UK Finance, n/a). The same as in the case of a claim against the insurer, in this case too the client must prove the claim.

In addition to the previously described protection based on the law, credit and debit cardholders also have the option of requesting a refund. The main requirement for a refund through a refund is proof that there has been a breach. The essential difference is that the general terms and conditions of the card issuer regulate procedure and that there is no joint and several liability of the card issuer and its holder. Because the claim is based on a breach of contract, the service provider is entitled to decide whether and to what extent the claim is justified. Justified claims of the cardholder refer to cases of charging larger amounts than agreed, double charging or charging of the agreed amount after service cancellation.

Below are some examples from the practice of the UK Financial Ombudsman Service. In a dispute regarding excessive taxi charges, Mr. "M" was denied a refund by his credit card issuer, because the Ombudsman ruled that there was no breach of contract, and Mr. "M"'s approval of the transaction by entering the PIN and not realizing it was a hundred times more than what he was told, was deemed insufficient for a refund. On the other hand, the claim was not accepted because the price of the taxi service was lower than the minimum prescribed under Article 75 of the Consumer Credit Act (Financial Ombudsman Service, 2024a). However, when a service is not provided at all or is provided with different quality or standard, then the question of fact and law is to what extent the British tourist has a claim. If the card issuer does not accept the claim, the cardholder can request a "standstill letter" to bring the matter to the Financial Ombudsman Service (Financial Ombudsman Service, 2023).

Although compensation of the non-fulfilment of the contract is justified, the amount of proportionate compensation remains subject to the Ombudsman discretion in each case. Thus, in a dispute resolved by the Financial Ombudsman Service, it was decided that Mrs. "L", who paid for a six-night package deal, suffered a bus trip delay of several hours and spent one night in a room without a sea view, has the right to a proportional reduction and compensation of one-sixth of the deal value (Financial Ombudsman Service, 2020a). In another dispute, the service provider – the owner of the house guaranteed a certain water temperature in the pool. Although the owner of the accommodation adjusted the temperature several times, during entire stay the water did not exceed the promised minimum of 100 Fahrenheit (approximately 38 degrees Celsius). Ms. "V" says the pool was too cold to use and they would not have booked the accommodation if they had known the pool temperature would be a maximum of 72 degrees Fahrenheit (22 degrees Celsius) during their stay. It was clearly a contract breach and a misrepresentation of facts. The ombudsman believed the pool was not unusable, because there was water in it even though its temperature was not the one promised.

Besides, the use of the pool was not the only amenity in the house. The ultimate decision acknowledged that the swimming pool constituted only a minor portion of the overall stay in the rented property, hence the card issuer's duty to compensate 400 pounds (equating to 6% of the rental value) increased by 8% interest from the moment the defendant rejected Mrs. "V"'s claim until the payment date (Financial Ombudsman Service, 2024b).

4. CONCLUSION

Insurance against the end tourist service providers insolvency is one of the mechanisms of financial protection for British tourists. When the insurance policy does not cover an event that caused a loss, the insured has the option to request a chargeback through the banks that issued their cards. Therefore, policyholders must carefully read the insurance terms, check whether they meet their needs and, if necessary, buy additional coverage. Financial protection of cash cards holders through the card issuer, which initiates and implements the chargeback procedure from the final service provider, can be effective if certain conditions are met. When resolving a complaint, the Ombudsman considers the facts of each case regarding the type of service, insurance policy, correspondence between the parties and the respondent company's decision. The complainant may not accept the Ombudsman's decision if he finds it unacceptable and can initiate a lawsuit subject to prior express disagreement with the decision. Therefore, those who complain to the Ombudsman about actions of market participants must ensure that their claims are fully resolved by the Ombudsman's decision, otherwise they will not lose their right to litigation. This is consistent with the principle of termination of the right to a lawsuit under the common law and equity.

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