An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2018-0084
Sector:	Insurance
Product / Service:	Personal Accident
Conduct(s) complained of:	Rejection of claim – partial rejection
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant was an insured person under a Student Private Medical Expenses Insurance Policy, which provided medical insurance cover for non-EU students travelling to Ireland. The policyholder was the English language school that the Complainant was enrolled with. The insurance was sold through a Broker on a group policy structure and once enrolled with the English language school, the Broker issued students with an individual Certificate of Insurance. The Complainant signed a Certificate of Insurance on 15 February 2011, which provided her with cover for *"a maximum of 7 days after completion of the course* [detailed on the Certificate of Insurance as 31 October 2011] *or to the date of exit from Ireland if earlier"*.

The Complainant's Case

The Complainant was struck by a car on 17 April 2011 and suffered *"multiple injuries"*. She later submitted to the Company, via the Broker, medical receipts incurred as a result of the injuries obtained from this accident and the Company provided her with cheque payments in the amounts of €3,776.56 on 4 November 2011 (after the €100 policy excess was deducted), €965.61 on 9 December 2011, €117.26 on 30 April 2012 and €242.78 on 2 July 2012.

The Complainant next submitted a batch of receipts to the Broker on 18 November 2014, all of which were dated from May 2012 onwards, in respect of further medical expenses she incurred totalling €1,807.30 in Ireland and ¥5007.60 in China, arising from the injuries she had obtained from the accident.

In its correspondence dated 27 November 2014, the Broker advised the Complainant, as follows:

> *"To enable us to proceed with the claim further we would be grateful if you could arrange for the enclosed claim form to be completed. Please confirm the amount that you have paid*
>
> *Accordingly, to consider this case further the insurers would confirm that an additional policy excess of €100 may apply towards these additional costs submitted"*.

The Complainant wrote to the Broker questioning why an additional policy excess may apply, given that the medical expenses being claimed for were in relation to the accident on 17 April 2011, for which the Company had previously deducted the €100 policy excess from its initial claim settlement to her on 4 November 2011.

In its correspondence dated 13 January 2015, the Broker advised the Complainant, as follows:

> *"Please note that your…policy covers you for any expenses incurred within 12 months from the date of your accident. Please note the further expenses you have submitted will not be covered under your previous policy. Insurers have advised that should you have a recent policy that is in force with ourselves they would be happy to look at the expenses under this policy, however the policy excess will be deducted from this"*.

The Complainant is dissatisfied that the Company has limited cover for her medical expenses arising from the injuries obtained to those costs incurred up to 12 months after the date of the accident, i.e. to 17 April 2012, and states that this restriction is not detailed in the Certificate of Insurance that she signed on 15 February 2011.

In this regard, the Complainant states that *"my injuries arising out of the accident in question are ongoing and it is likely that I will incur further medical expenses. If* [the Company] *can't establish the restriction limiting expenses to those incurred within 12 months from the date of the accident in the policy, then I am entitled to all the medical expenses incurred by this accident"*.

In addition, the Complainant submits that as the Company provided cover for medical expenses incurred beyond the policy termination date of 31 October 2011 insofar that it *"added another 6 months on to that period"*, that it should then consider providing cover for further expenses. In this regard, the Complainant has submitted receipts to this Office on 8 April 2018 detailing that since her last claim settlement from the Company on 2 July 2012, she has incurred further medical expenses of €4,082.13 in Ireland and ¥5007.60 in China as a result of injuries obtained from the accident.

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The Complainant's complaint is that the Company wrongly or unfairly ceased payment of her medical expenses claim.

The Provider's Case

Company records indicate that the Complainant was an insured person under a Student Private Medical Expenses Insurance Policy, which provided medical insurance cover for non-EU students travelling to Ireland. The policyholder was the English language school that the Complainant was enrolled with. The insurance was sold through a named Broker on a group policy structure and once enrolled with the English language school, the Broker issued students with an individual Certificate of Insurance. The Complainant signed a Certificate of Insurance on 15 February 2011, which provided cover for *"a maximum of 7 days after completion of the course* [detailed on the Certificate of Insurance as 31 October 2011] *or to the date of exit from Ireland if earlier"*.

The Complainant was injured on 17 April 2011 when she was struck by a car. She submitted a claim to the Broker on 26 October 2011 for medical expenses incurred as a result of the injuries she obtained from this accident. In this regard, the Company notes that its Claims Department was in direct contact with the Broker only and not with the Complainant, and that the information supplied by the Broker in its correspondence to the Complainant was based on the advice the Broker received from one of its Claims Handlers.

Company records indicate that the Company settled four medical expenses claims by way of cheque payments to the Complainant in the amount of €3,776.56 on 4 November 2011 (after the €100 policy excess was deducted), €965.61 on 9 December 2011, €117.26 on 30 April 2012 and €242.78 on 2 July 2012. In addition, the Company also settled an invoice from St. James' Hospital in the amount of €506 with the hospital directly.

The Company notes that the Complainant later contacted the Broker on 18 November 2014 seeking for further medical expenses to be covered. The Broker responded on 27 November 2014 to say that *"the policy covers medical expenses incurred within 12 months of the incident date"*, which was correct. However, this correspondence also advised that *"to consider this case further the insurers would confirm that an additional policy excess of €100 may apply towards these additional costs submitted"*, which was incorrect.

In this regard, the Certificate of Insurance that the Complainant signed on 15 February 2011 states, as follows:

> *"If during the period of insurance…an Insured person shall necessarily incur Medical Expenses as a direct result of bodily injury or becoming ill the Company will indemnify the insured in respect of such expenses up to the Sum Insured stated overleaf and subject to the terms, Conditions and Exclusions of master policy IAS 84420"*

The Company notes that this Certificate of Insurance provides a brief summary of the cover and refers all insured persons to the master policy for the full terms and conditions of the insurance cover.

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In this regard, the section 'What this Policy covers' of the Student Personal Medical Expenses Insurance Policy booklet provides at pg. 9, as follows:

> *"*[The Company] *will only pay for any one loss under this Section for expenses up to one year from the date of injury or commencement of illness up to the sum Insured shown in the Schedule less the deduction of any Excess provided that other than in the case of an emergency where immediate action is required to avert serious health or life threatening consequences, the Insured or the Insured Person must first contact* [the Company] *Assistance for advice and assistance to be taken prior to incurring any costs"*.

As a result, the Company says it is satisfied that its decision to decline cover in respect of any medical expenses that the Complainant incurred after 17 April 2012, that is, one year from the date of loss, was correct and in accordance with the terms and conditions of the insurance policy.

In addition, the Complainant submits that as the Company provided cover for medical expenses incurred beyond the policy termination date of 31 October 2011 that it should now consider providing cover for further expenses. However, the Company is satisfied that the Complainant's cover was not extended any further than the policy terms and conditions allow. In this regard, whilst the period of insurance itself ended on 31 October 2011, meaning that the Complainant no longer had cover under the policy for any new loss after that date, she was entitled to cover for medical expenses incurred within 12 months of any loss that is suffered during the policy term. The Complainant's accident occurred on 17 April 2011 and so, in line with the policy terms and conditions, the Company covered the cost of all medical expenses incurred until a year after that date, that is, 17 April 2012. The Complainant is seeking to claim for medical expenses which were incurred from May 2012 onwards and the Company is satisfied that these costs do not fall within the scope of her cover.

The Company is satisfied that it administered the Complainant's policy in accordance with its terms and conditions and that it set out its position clearly to her in its Final Response letter dated 24 June 2015. However, having reviewed this matter again, whilst the Company is satisfied that the policy does not extend to cover costs incurred after 17 April 2012, that is, one year from the date of loss, it accepts that the correspondence sent to the Complainant on 27 November 2014 could be considered misleading insofar that it suggested further benefits after the date of May 2012 could be considered on receipt of a further policy excess. The Company notes that this was incorrect and that the correspondence should have clearly stated that all benefits the Complainant was entitled to under her policy for the loss in question had been paid. That said, the Company is satisfied that this correspondence also clearly stated that *"The policy covers medical expenses incurred within 12 months of the incident date"*. In consideration of this, as a gesture of goodwill, the Company, in its correspondence dated 20 September 2017 to this Office, offer the Complainant a payment of €2,474.34, reflecting all medical expenses incurred, both in Ireland and China, between the dates of May 2012 and 19 March 2015 and that this offer was made in full and final settlement of the matter.

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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 28 June 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

The complaint at hand is, in essence, that the Company wrongly or unfairly ceased payment of the Complainant's medical expenses claim.

In this regard, the Complainant was an insured person under a Student Private Medical Expenses Insurance Policy, which provided medical insurance cover for non-EU students travelling to Ireland. The policyholder was the English language school that the Complainant was enrolled with. The insurance was sold through a named Broker on a group policy structure and once enrolled with the English language school, the Broker issued students with an individual Certificate of Insurance. The Complainant signed a Certificate of Insurance on 15 February 2011, which provided her with cover for *"a maximum of 7 days after completion of the course* [detailed on the Certificate of Insurance as 31 October 2011] *or to the date of exit from Ireland if earlier"*.

The Complainant was struck by a car on 17 April 2011 and suffered *"multiple injuries"*. She later submitted to the Company, via the Broker, medical receipts incurred as a result of the injuries obtained from this accident and the Company provided her with cheque payments in the amounts of €3,776.56 on 4 November 2011 (after the €100 policy excess was

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deducted), €965.61 on 9 December 2011, €117.26 on 30 April 2012 and €242.78 on 2 July 2012.

The Complainant next submitted a batch of receipts to the Broker on 18 November 2014, all of which were dated from May 2012 onwards, in respect of further medical expenses she incurred totalling €1,807.30 in Ireland and ¥5007.60 in China, but the Company declined to provide cover for these expenses.

The Complainant is dissatisfied that the Company has limited the cover for her medical expenses arising from the injuries obtained from her accident on 17 April 2011 to those costs incurred up to 12 months after the date of the accident, i.e. to 17 April 2012, and states that this restriction was not set out in the Certificate of Insurance that she signed on 15 February 2011.

In her correspondence to this Office dated 28 October 2015, the Complainant states that this Certificate of Insurance *"no where stated the restriction limiting expenses to those incurred within 12 months from the date of the accident…*[the Company] *quote from the Master policy, however, I have never had sight of this policy, nor was I directed to it at any stage"*.

In this regard, I note that the Certificate of Insurance states, as follows:

> *"If during the period of insurance…an Insured person shall necessarily incur Medical Expenses as a direct result of bodily injury or becoming ill the Company will indemnify the insured in respect of such expenses up to the Sum Insured stated overleaf and subject to the terms, Conditions and Exclusions of master policy IAS 84420"*.

I am satisfied that this Certificate of Insurance clearly refers all insured persons to the Master Policy IAS 84420 for the full terms and conditions of the cover. In addition, in signing the Certificate of Insurance on 15 February 2011, I note that the Complainant also signed directly beneath the following Declaration:

> *"I declare that…I have read and understood the terms, conditions and events which are not covered by this insurance"*.

With reference to the Master Policy IAS 84420, the section 'What this Policy covers' of this Student Personal Medical Expenses Insurance Policy provides at pg. 9, as follows:

> *"*[The Company] *will only pay for any one loss under this Section for expenses up to one year from the date of injury or commencement of illness up to the sum Insured shown in the Schedule less the deduction of any Excess provided that other than in the case of an emergency where immediate action is required to avert serious health or life threatening consequences, the Insured or the Insured Person must first contact* [the Company] *Assistance for advice and assistance to be taken prior to incurring any costs"*.

As a result, I accept that the decision of the Company to decline cover in respect of any

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medical expenses that the Complainant incurred after 17 April 2012, that is, one year from the date of her loss, was in accordance with the terms and conditions of the insurance policy.

In addition, the Complainant submits that as the Company provided cover for medical expenses incurred beyond the policy termination date of 31 October 2011 insofar that it *"added another 6 months on to that period"*, that it should then consider providing cover for further expenses. In this regard, the Complainant has submitted receipts to this Office on 8 April 2018 detailing that since her last claim settlement from the Company on 2 July 2012, she has incurred further medical expenses of €4,082.13 in Ireland and ¥5007.60 in China as a result of injuries obtained from the accident.

However, I note from the documentary evidence before me that the Company only provided cover for medical expenses incurred up to 17 April 2012. Whilst the period of insurance itself ended on 31 October 2011, meaning that the Complainant no longer had cover under the policy for any new loss after that date, I am satisfied that she was entitled to cover for medical expenses incurred within 12 months of any loss that is suffered during the policy term.

As the Complainant's accident occurred on 17 April 2011, I am satisfied that the Company covered the cost of all medical expenses incurred by the Complainant until a year after that date, that is, 17 April 2012, in accordance with the policy terms and conditions. The Complainant is seeking to claim for medical expenses which were incurred from May 2012 onwards, but I accept that these costs do not fall within the scope of her insurance policy.

The Complainant notes that following her presenting further medical receipts to the Broker on 18 November 2014 that the Broker, in its correspondence dated 27 November 2014, advised her, as follows:

> *"To enable us to proceed with the claim further we would be grateful if you could arrange for the enclosed claim form to be completed. Please confirm the amount that you have paid.*
>
> *The policy covers medical expenses incurred within 12 months of the incident date.*
>
> *Accordingly, to consider this case further the insurers would confirm that an additional policy excess of €100 may apply towards these additional costs submitted"*.

The Complainant submits that this correspondence suggested that the Company would provide cover for further medical expenses. Whilst I accept that it was reasonable for the Complainant to infer from this correspondence that the Company may provide cover for the additional medical expenses receipts that she submitted to the Broker on 18 November 2014, I am also mindful that it clearly and correctly states that *"The policy covers medical expenses incurred within 12 months of the incident date"*, as provided for in the policy terms and conditions. I also note from the documentary evidence before me that when the Complainant sought further clarification that the Broker wrote to her on 13 January 2015, as follows:

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> *"Please note that your…policy covers you for any expenses incurred within 12 months from the date of your accident. Please note the further expenses you have submitted will not be covered under your previous policy. Insurers have advised that should you have a recent policy that is in force with ourselves they would be happy to look at the expenses under this policy, however the policy excess will be deducted from this"*.

Given that the terms and conditions of the insurance policy provided no cover for medical expenses incurred by the Complainant after 17 April 2012, I accept that she suffered no financial loss as a result of the contents of the correspondence dated 27 November 2014.

Accordingly, I accept that the Company administered the Complainant's insurance cover in accordance with the policy terms and conditions.

Nevertheless, the correspondence sent to the Complainant on 27 November 2014 could be considered misleading insofar that it incorrectly suggested that further benefits after the date of May 2012 could be considered on receipt of a further policy excess. As a result, I note that the Company, in its correspondence to this Office dated 20 September 2017, as a gesture of goodwill offered the Complainant a payment of €2,474.34, reflecting all medical expenses incurred, both in Ireland and China, between the dates of May 2012 and 19 March 2015, which in light of the foregoing I consider to be a reasonable approach to the matter at hand.

The Complainant, however, advised this Office by email dated 8 May 2018 that she does not wish to accept this offer.

However, since my Preliminary Decision issued to the parties, the Complainant informed this office that she had decided to accept the offer of €2,474.34 and the Provider has recently advised this Office that the payment has in fact now been made to the Complainant. In those circumstances, I do not uphold this 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

19 July 2018

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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.*