Decision Ref:	2018-0148
Sector:	Insurance
Product / Service:	Income Protection and Permanent Health
Conduct(s) complained of:	Rejection of claim - did not meet policy definition of illness Dissatisfaction with customer service Disagreement regarding Medical evidence submitted
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants, a husband and wife, incepted a Serious Illness Cover policy with the Company on 1 May 1995, which at that time provided each of the Complainants with serious illness cover of IR£30,000.

The Complainants' Case

The First Complainant states that *"In June 2000 I had my first experience of heart problems, when I found myself in the coronary department of a Portuguese hospital"*. Later, *"In January 2005* [the First Complainant] *was admitted to [and Irish] Hospital by ambulance as an emergency"* and in his email to this Office dated 29 April 2018 submits that *"the doctors in [the Irish] Hospital…told me that I suffered a heart attack"*. In addition, the First Complainant notes that *"as a result of my hospitalisation in 2005 I was advised by my doctors to seek early retirement, which I did and which was granted"*.

As a result, the First Complainant submitted a specified illness cover claim to the Company on 29 March 2013. stating the illness definition under which he was making the claim as *"HEART ATTACK"* and describing the illness as *"MILD – SEVERE PAIN IN CHEST & UPPER LEFT ARM AND SHOULDER RESULTING IN A HEART ATTACK ON 21/01/05"*.

The Company, however, declined the First Complainant's claim as it concluded from the medical records it received that there was no medical evidence indicating that the First Complainant had at any time suffered a heart attack (myocardial infarction), as defined in the terms or conditions of the Complainants' policy, or any other specified illness listed in the policy.

The First Complainant submits that *"the doctors in [the Irish] Hospital…told me that I suffered a heart attack"* and he seeks for the Company to admit his claim.

The Complainants' complaint is that the Company wrongly or unfairly declined his specified illness cover claim.

The Provider's Case

The Complainants incepted a Serious Illness Cover policy with the Company on 1 May 1995.

Company records indicate that the Company received a specified illness cover claim from the First Complainant on 4 April 2013, which he signed and dated 29 March 2013, stating the illness definition under which he was making the claim as *"HEART ATTACK"* and describing the illness as *"MILD – SEVERE PAIN IN CHEST & UPPER LEFT ARM AND SHOULDER RESULTING IN A HEART ATTACK ON 21/01/05"*.

Paragraph 22, 'Serious Illness Cover', of the Serious Illness Cover Plan Policy Document [7/94] at pg. 11, the terms and conditions of the Complainants' policy defines a heart attack as follows:

> *"The death of a portion of the heart muscle as a result of inadequate blood supply to the relevant area as evidenced by an episode of typical chest, electrocardiographic changes, and by elevation of cardiac enzymes"*.

During its assessment of the First Complainant's claim throughout 2013 and 2014, the Company states that it endeavoured to obtain as much medical information as possible from the First Complainant's doctors in order to determine whether he had suffered a heart attack as so defined by the terms and conditions of the Complainants' policy. The medical information obtained by the Company at that time did not support the First Complainant being given a diagnosis of a heart attack at any time. The medical evidence instead indicated that the Complainant was diagnosed with pericarditis, which is not a specified illness under the policy. As a result, the Company wrote to the Complainants on 3 April 2014, as follows:

> *"During our assessment of your claim we received medical evidence from* [Dr B. C.]*, Consultant Physician. This medical evidence indicates* [the First Complainant] *was diagnosed with pericarditis and subsequently a coronary angiogram was carried out and failed to show any evidence of a recent myocardial infarction. There is no evidence of an infarct. Therefore, the definition of heart attack as set out above has not been fulfilled. It is for this reason that we cannot consider* [the First Complainant's] *claim"*.

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The First Complainant submitted further correspondence to the Company dated 2 July 2014 in which he enclosed letters from a number of doctors he attended. He also indicated that he was in the process of acquiring a copy of his full medical records from [the Irish] Hospital.

The Company, having reassessed the First Complainant's claim at this time for any information which would provide evidence of his having suffered a heart attack, wrote to the Complainants on 11 July 2014, as follows:

> *"The additional information you have provided does not show evidence of a myocardial infarction and we are therefore unable to change our original decision to decline* [your] *claim.*
>
> *I also note that you have stated that you are in the process of obtaining your full records from [the Irish] Hospital. If you forward these to* [the Company] *I will carry out a full review of your file in conjunction with our Chief Medical Officer"*.

Later, on 18 May 2015, via his Financial Advisor, the First Complainant suggested a list of doctors for the Company to write to for details of his heart attack, but did not supply his medical file from [the Irish] Hospital at this time. Throughout the remainder of 2015 and in 2016, the Company again endeavoured to obtain as much medical information as it could from the First Complainant's doctors to determine whether he had suffered a heart attack but this information was not forthcoming.

The First Complainant lodged a formal complaint with the Company in writing on 22 July 2016. Whilst it had made every attempt to obtain information from the First Complainant's doctors, the Company, in order to try and resolve the matter, advised the Complainants by way of correspondence dated 19 August 2016 that it would make a direct request to [the Irish] Hospital for the First Complainant's full medical records.

The Company received the First Complainant's full medical records from [the Irish] Hospital on 19 November 2016. The Company's Chief Medical Officer, Dr S. J., assessed and reviewed the First Complainant's full medical file from [the Irish] Hospital, approx. 250 pages, and the previous medical evidence received with his claim and could find no supportive medical evidence of the First Complainant having been diagnosed with a heart attack (myocardial infarction), as defined in the policy terms or conditions, or any other specified illness listed in the policy. As a result, the Company wrote to the Complainants on 21 November 2016, as follows:

> *"As you are aware we had written to [the Irish] Hospital for a copy of your full hospital records. We expected that to provide us with enough medical information to definitively say whether or not you have had a heart attack as defined in your plan terms and conditions whilst the plan is in force.*
>
> *We are now in receipt of your fill medical records from [the Irish] Hospital and have reviewed them in detail.*

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When we assess a claim for heart attack, we must assess it against the illness definition as per the plan terms and conditions which is as follows:

"Heart Attack - The death of a portion of the heart muscle as a result of inadequate blood supply to the relevant area as evidenced by an episode of typical chest, electrocardiographic changes, and by elevation of cardiac enzymes".

From reviewing your file, there are two episodes under which we considered whether or not you suffered a heart attack.

The first episode; when you suffered a cardiac event in Portugal in 2000.

The medical evidence provided by [the Irish] Hospital included copies of the original notes and test results from your admission to hospital in Portugal, This evidence indicated that you suffered from an episode of sinus bradycardia (a slower than normal heart rate) and not a heart attack. Copies of the electrocardiograph test results were included and showed no evidence of a heart attack.

The second episode; when you was admitted to [the Irish] Hospital in 2005.

The medical evidence provided by [the Irish] Hospital confirms your admittance as an emergency case on 21 January 2015. At the time your cardiac enzymes were noted to be normal. It was stated that you were subsequently transferred to the care of Dr Q. in St Vincent's Hospital with a diagnosis of pericarditis (inflammation of the pericardium, the fluid filled sac that surrounds the heart) and not a heart attack. Subsequent coronary angiograms "failed to reveal any documentary evidence of a recent myocardial infarction" (heart attack).

In addition, there is a further comment in your medical file from the Consultant Cardiologist , in September 2011 confirming that tests at that time "failed to show any inducible myocardial infarction"".

The First Complainant submitted a copy of a Discharge/Transfer Advice Note from the Royal Victoria Hospital, Belfast, where he attended for a pacemaker replacement, dated 14 October 2013 and which states other diagnoses as *"Previous myocardial infarction"*. The Company is satisfied that this statement alone is not confirmation that the First Complainant suffered a heart attack, particularly as there is no supportive medical evidence in his medical records to indicate that he had at any time suffered a heart attack. In addition, the Company wrote to Dr C. W. in the Royal Victoria Hospital, Belfast on the First Complainant's instruction in May 2015 asking for copies of any records relating to his having being treated for a heart attack. Dr C. W. replied on 28 May 2015 stating she had no information regarding this.

The Company is satisfied that throughout its assessment of the First Complainant's claim that it endeavoured to obtain as much medical information as possible from the First Complainant's doctors in order to determine whether he had suffered a heart attack. The Company, however, has declined the First Complainant's claim as it concluded from the medical records it received that there was no medical evidence indicating that the First

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Complainant had at any time suffered a heart attack (myocardial infarction), as defined in the terms or conditions of the Complainants' policy, or any other specified illness listed in the policy.

Accordingly, the Company states that it is satisfied that it declined the First Complainant's serious illness cover claim in accordance with the terms and conditions of the Complainants' policy.

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 Complainants were 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 11 October 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, my final determination is set out below.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the First Complainant's specified illness cover claim. In this regard, the Complainants incepted a Serious Illness Cover policy with the Company on 1 May 1995. The First Complainant states that *"In June 2000 I had my first experience of heart problems, when I found myself in the coronary department of a Portuguese hospital"*. Later, *"In January 2005* [the First Complainant] *was admitted to [an Irish] Hospital by ambulance as an emergency"* and in his email to this Office dated 29 April 2018 submits that *"the doctors in Letterkenny Hospital…told me that I suffered a heart attack"*. In addition, the First Complainant notes that *"as a result of my hospitalisation in 2005 I was advised by my doctors to seek early retirement, which I did and which was granted"*.

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As a result, the First Complainant submitted a specified illness cover claim to the Company on 29 March 2013. stating the illness definition under which he was making the claim as *"HEART ATTACK"* and describing the illness as *"MILD – SEVERE PAIN IN CHEST & UPPER LEFT ARM AND SHOULDER RESULTING IN A HEART ATTACK ON 21/01/05"*.

The Company, however, declined the First Complainant's claim as it concluded from the medical records it received that there was no medical evidence indicating that the First Complainant had at any time suffered a heart attack (myocardial infarction), as defined in the terms or conditions of the Complainants' policy, or any other specified illness listed in the policy.

Serious illness insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. The Complainants' policy is designed to pay a lump sum in the event that one of them develops one of the specified serious illnesses or undergoes one of the specified surgical procedures detailed in the policy terms and conditions.

In this regard, Paragraph 22, 'Serious Illness Cover', of the applicable Serious Illness Cover Plan Policy Document [7/94] provides at pgs. 10 - 11, as follows:

*"**Serious illness cover***

(a) Provided the Policy has not expired and no benefit has been previously claimed in respect of the Life Insured under this paragraph or under Paragraph 23 [Permanent and Total Disablement] *then in the event of receipt of due proof that the Life Insured has a Serious Illness, the Company will pay to the Proposer(s) an amount equal to the Serious Inness Cover specified in the Schedule hereto as increased in accordance with Paragraph 2* [Option to increase benefits] *and/or 3* [Automatic increase in benefits].

(b) Subject to these conditions and payment of all due premiums, Serious Illness Benefit shall be paid to the Proposer, if the Life Insured is still living 14 days after the Establishment Date. The Establishment Date is earlier of:

(i) the date of the Life Insured is diagnosed as having any medical condition(s) listed at 1 to 8 (inclusive) below.
(ii) the date the Life Insured undergoes any surgery described in 9 to 1 2(inclusive) below.

(c) Serious Illness means the Life Insured has undergone the surgery referred to below or is diagnosed and certified (to the satisfaction of the Company's Chief Medical Officer) by a Registered Medical Practitioner acceptable to the Company's Chief Medical Officer as having one of the medical conditions listed below and this surgery or medical condition occurred or was contracted and declared itself after the date of Commencement of the Insurance.

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1. *Heart Attack*

The death of a portion of the heart muscle as a result of inadequate blood supply to the relevant area as evidenced by an episode of typical chest, electrocardiographic changes, and by elevation of cardiac enzymes".

In order for the First Complainant's claim to be valid in this instance, he must have been diagnosed and certified by a Registered Medical Practitioner with a heart attack and satisfy the definition of that specified serious illness contained in the terms and conditions of the Complainants' policy.

I accept from the documentary evidence before me that the Company, throughout its assessment of the First Complainant's claim, endeavoured to obtain as much medical information as possible from the First Complainant's doctors in order to determine whether he had suffered a heart attack, as so defined in the terms and conditions of the Complainants' policy.

I note from the documentary evidence before me that in his correspondence dated 9 June 2006 Dr B. C., Consultant Physician at [the Irish] Hospital advises, as follows:

"This is to testify that [the Complainant] *was admitted as an emergency on 21st January, 2005. At the time of his admission he was sweating and diaphoretic and looked extremely shocked and had severe pain of cardiac origin. ECG's were consistent with an acute infarction and he was thrombolized with Metalyse. Subsequently, it transpired that he had acute peri-carditis. This was confirmed by ECHO scan of the heart and later he was transferred to the care of* [Dr P. Q.], *Consultant Cardiologist, [in a Dublin Hospital].*

[He] *had a very volatile hospital course and was invalided with peri-carditis which was recurrent for the first six months of 2005.*

[He] *also suffered from paroxysmal atrial fibrillation, hyperlipidaemia, peptic ulcer disease and was on treatment with beta-blockers, statins and ACE inhibitors and also required a pacemaker. This was inserted by* [Dr C. W.], *Cons. Cardiologist, Royal Victoria Hospital, Belfast".*

In addition, I note that in his correspondence dated 10 October 2008 Dr B. C., Consultant Physician also advises, as follows:

"[The Complainant] *had a critical illness and recurrent pericardial effusions and also had a cardiac pacemaker. He had considerable pericardial effusions and additionally required the emergency transfer of his care to* [Dr P. Q.], *Consultant Cardiologist in [a Dublin Hospital]".*

Furthermore, I note from the documentary evidence before me that the First Complainant submitted a Hospital Cash Cover claim form to the Company on 3 May 2005 as he had been

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admitted to hospital and advises that the full nature of the illness was *"Pericarditis"* and makes no reference to heart attack. In addition, Dr B. C., Consultant Physician at [the Irish Hospital] advises that the full nature of injury/illness was *"acute pericarditis with pericardial effusion diaphoresis"* with a date of admission 20 January 2005 and discharge 15 February 2005.

While I understand and accept that the Complainant has suffered serious illness, I must accept from the documentary evidence before me that it was reasonable for the Company to conclude that it has received no medical evidence indicating that the First Complainant was at any time diagnosed and certified by a Registered Medical Practitioner as having had a heart attack (myocardial infarction), as defined in and required by the terms or conditions of the Complainants' policy. As a result, I accept that the Company was entitled to decline the First Complainant's serious illness cover claim in accordance with the terms and conditions of the Complainants' policy.

Accordingly, 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

9 November 2018

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.