



<u>Decision Ref:</u>	2018-0205
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Private Health Insurance
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant was a named person on her husband's health insurance policy, which his then Employer, as part of a remuneration package, subsidised on his behalf. The Complainant's husband received notification from his Employer on 14 January 2016 of a move of their health insurance from the then current provider to the Company that is the subject of this complaint.

The Complainant's Case

In her correspondence dated 18 February 2017, the Complainant sets out the first elements of her complaint, as follows:

"Attempt...made by [the Company] to "sell" [the health insurance policy] to [the Complainant] "after the event" ...

[The Company has] failed to acknowledge the potential/actual "Conflict-of-Interest" inherent in this matter, and have failed to provide any evidence to support mitigation/independence".

In this regard, the Complainant submits in correspondence to the Company dated 28 January 2016, as follows:

“There is a clear “Conflict of Interest” in this case in that whereas our current health insurers are a company not associated with [my husband’s employer], [the Company] are owned by [my husband’s employer], and have Directors in common. Under the Consumer Protection Code a regulated entity is expected to avoid Conflicts of Interest, and in the event that a conflict cannot be avoided the regulated entity must inform customers, and get their agreement in writing before proceeding. This did not take place”.

In addition, in her correspondence dated 18 February 2017, the Complainant sets out the remaining elements of her complaint, as follows:

“[The Company] failed to acknowledge the complaint within five working days and other requirements surrounding initially dealing with a complaint as set out in the Consumer Protection Code

[The Company] despite they also having all the available facts at their immediate disposal, failed to avail of the opportunity to handle the complaint speedily efficiently and fairly, and they didn’t apologise at all”.

In this regard, in correspondence dated 28 January 2016 the Complainant submits, as follows:

“At a subsequent meeting with [Mr D. O’R.] Non-Executive Director of [the Company]...[the Complainant’s husband] informed him that [the Complainant’s husband and the Complainant] had made a verbal complaint against [the Company] and that [he] expected that it would be dealt with within the provisions of the Consumer Protection Code.

[The Complainant’s husband] reiterated again in fact that [the Complainant’s husband and the Complainant] had made a complaint to [Ms P. H.] and [D. O. O’C.] of [the Company] on Monday 25 January.

An acknowledgement of our complaint has not been received within 5 Business Days as required by the Code”.

In this regard, the Complainant’s complaint is, as follows:

1. The Company tried to “sell” the Complainant and her husband a new health insurance policy after the policy had been inceptioned.
2. The Company failed to acknowledge that there was a conflict of interest in taking over the provision of the Complainant and her husband’s health insurance, insofar that the Complainant submits that the Company is owned by her husband’s then Employer and that this ought to have been disclosed prior to the policy inception and that the failure to do so was in breach of the Consumer Protection Code.

3. The Company failed to comply with the provisions of the Consumer Protection Code for dealing with a complaint insofar that it failed to handle the complaint in an efficient manner.

The Provider's Case

The Company disputes that the Complainant was ever an eligible consumer for the purpose of this complaint. In this regard, the Company received from the Complainant's husband's then Employer an instruction to set up an employer paid policy in the names of the Complainant's husband and the Complainant, to take effect in January 2016. The Company notes that on the subsequent instructions of the Complainant's husband no health insurance policy was incepted, therefore no health insurance policy ever existed in the name of the Complainant or with her listed as a named person therein.

In addition, the Company notes that there was no meeting between the Complainant and any Company healthcare representative. A Company Healthcare Manager attended a group presentation at the offices of the Complainant's husband's then Employer on 19 January 2016 and he was present. The Company acknowledged that the Complainant's husband was making a complaint during an individual meeting held after the group presentation on 19 January 2016 however, it was considered at that time that the matter was closed and it was agreed that no further action was required beyond the feedback to the Account Manager.

Despite its understanding that the complaint was closed, the Company's Customer Service Manager received a letter from the Complainant and her husband, dated 28 January 2016, on 29 January 2016. The Company sent an acknowledgement to the Complainant's husband on that day, 29 January 2016, a subsequent letter dated 17 February 2016 and a final response letter on 10 March 2016. In this regard, the Company is satisfied that all of the relevant timelines as set out in the Consumer Protection Code were met.

Furthermore, the Company does not believe that it, by virtue solely of being owned by the firm that the Complainant's husband worked for at that time, had any interests that could corrupt or potentially corrupt its motivation in providing, maintaining or paying a claim on a health insurance contract to the Complainant should a policy have issued in her name.

The Company continues to acknowledge that this matter must be upsetting for the Complainant and it takes all such matters very seriously. Whilst the Company remains of the view that it has acted within all guidelines and codes in relation to this matter, it would still offer the Complainant a full and sincere apology if she believes that any of the matters complained of could have been handled in a more sensitive way.

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

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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 16 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 Complainant was a named person on her husband's health insurance policy, which his then Employer, as part of a remuneration package, subsidised on his behalf. The Complainant's husband received notification from his Employer on 14 January 2016 of a move of their health insurance from the then current provider to the Company.

The complaint at hand is, as follows:

1. The Company tried to "sell" the Complainant and her husband a new health insurance policy after the policy had been inceptioned.
2. The Company failed to acknowledge that there was a conflict of interest in taking over the provision of the Complainant and her husband's health insurance, insofar that the Complainant submits that the Company is owned by her husband's then Employer and that this ought to have been disclosed prior to the policy inception and that the failure to do so was in breach of the Consumer Protection Code.
3. The Company failed to comply with the provisions of the Consumer Protection Code for dealing with a complaint insofar that it failed to handle the complaint in an efficient manner.

In relation to the first element of this complaint, that is, that the Company tried to "sell" the Complainant and her husband a new health insurance policy after the policy had been inceptioned, I note that the Complainant's husband received notification from his Employer on 14 January 2016 of a move of their health insurance from the then current provider to the

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Company. A Company Healthcare Manager attended a group presentation at the offices of the Complainant's husband's then Employer on 19 January 2016 and whilst her husband was present, I note that the Complainant was not.

In this regard, the Company notes that it had received from the Complainant's husband's then Employer an instruction to set up an employer paid health insurance policy in the names of the Complainant's husband and the Complainant, to take effect in January 2016, but that on the later instructions of the Complainant's husband no health insurance policy was incepted. As a result, the Company is satisfied that no health insurance policy ever existed in the name of the Complainant or with her listed as a named person therein.

In her email to this Office dated 9 April 2018, the Complainant submits, "*I don't know how [the Company] can say 'No policy ever existed'". However, I note that the Complainant has not been in a position to provide any documentary evidence that she or her husband held a health insurance policy with the Company and in this regard I am satisfied that it would have been reasonable and prudent of her to have expected to have been provided with or request from the Company important details such as a policy number, the level of cover provided and the terms and conditions of such cover if she held a policy with the Company. In this regard, I am satisfied that there is no documentary evidence before me indicating that the Complainant had health insurance cover with the Company.*

With regard to the second element of the complaint, that is, that the Company failed to acknowledge that there was a conflict of interest in taking over the provision of the Complainant and her husband's health insurance, insofar that the Complainant submits that the Company is owned by her husband's then Employer and that this ought to have been disclosed prior to the policy inception and that the failure to do so was in breach of the Consumer Protection Code 2012, I note that there is no evidence before me indicating that there was a policy incepted in the names of the Complainant's husband and/or the Complainant in the first instance. In addition, I accept as reasonable the Company's position in this regard, that is, that the Company did not, by virtue solely of being owned by the firm that the Complainant's husband worked for at that time, have any interests that could corrupt or potentially corrupt its motivation in providing, maintaining or paying a claim on a health insurance contract to the Complainant should a policy have issued in her name. I am further satisfied that the Complainant has not advanced any grounds that could be considered a conflict of interest in this regard.

In relation to the third element of the complaint, that is, that the Company failed to comply with the provisions of the Consumer Protection Code for dealing with a complaint insofar as it failed to handle the complaint in an efficient manner, I note that Chapter 10, 'Errors and Complainants Resolution' of the Consumer Protection Code 2012 sets out, among other things, the following requirements for handling complaints:

"COMPLAINTS RESOLUTION

10.7 A regulated entity must seek to resolve any complaints with consumers.

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10.8 *When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process.*

10.9 *A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:*

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

i) the outcome of the investigation;

ii) where applicable, the terms of any offer or settlement being made;

iii) that the consumer can refer the matter to the relevant

Ombudsman, and

iv) the contact details of such Ombudsman".

I note that a Company Healthcare Manager attended a group presentation at the offices of the Complainant's husband's then Employer on 19 January 2016. Whilst I note that it acknowledged that the Complainant's husband was making a complaint during an individual meeting held after the group presentation on 19 January 2016, the Company submits that

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it was considered at that time that the matter was closed and it was agreed that no further action was required beyond the feedback to the Account Manager. However, in her email to this Office dated 9 April 2018, the Complainant submits, *"I asked my husband about the meeting and he said there was no agreement that the matter was closed"*. I note that the Complainant was not in attendance at this meeting. As there is no minutes available of this meeting, it is not possible for me to ascertain with certainty what was discussed or agreed upon at this meeting.

However, I note from the documentary evidence before me that the Complainants then wrote to the Company on 28 January 2016, setting out in writing for the first time their complaint. The Company sent an acknowledgement of this correspondence to the Complainant's husband the next day when it received this letter, that is, on 29 January 2016.

I note that this acknowledgement was within the five business days allowed by the provisions of the Consumer Protection Code 2012.

In addition, the Company wrote to the Complainant's husband on 17 February 2016 regarding the complaint, which I note was within the 20 business days allowed by the provisions of the Consumer Protection Code 2012. Furthermore, the Company wrote to the Complainant's husband on 10 March 2016 setting out its full and final response to the complaint, which was within the 40 business days of having received the complaint on 28 January 2016 allowed by the provisions of the Consumer Protection Code 2012. This was also within 40 business days of the individual meeting the Complainant's husband attended on 19 January 2016, wherein it acknowledged that the Complainant's husband was making a complaint albeit that the Company considered at that time that the matter was closed and it was agreed that no further action. As a result, I am satisfied that the Company dealt with the complaint within the timeframes allowed for in the Consumer Protection Code 2012.

For the reasons set out above, 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.