An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0036
Sector:	Insurance
Product / Service:	Travel
Conduct(s) complained of:	Claim handling delays or issues Dissatisfaction with customer service
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants, husband and wife, incepted a travel insurance policy with the Company on 10 March 2015, with a start date of 31 March 2015, the date they travelled to Spain.

The Complainants' Case

The Complainants travelled to Spain on 31 March 2015 until 22 May 2015.

The First Complainant sets out his complaint, as follows:

> *"On the 19th April* [2015] *while playing golf my back went into a severe spasm. The pain continued for several days and attended* [Dr O.] *at Helicopteros Sanitarios (this is a Private Medical Clinic which we are members of for the past several years). I was given an injection, a prescription for Diazapan and Dolotren. He advised to rest and should the condition reoccur that we would arrange for me to have an MRI.*
>
> *On 2nd May while playing golf my back went into severe spasm, more severe than the 1st time. I was unable to drive and was brought home by one of my playing partners.*
>
> *On Sunday 3rd May I contacted* [the Company] *and advised them of my condition, giving them the full details and to inquire should I require an MRI was I covered. The* [Agent] *I spoke with…advised me that I had only 31 days cover, this I disputed as I*

was aware I was covered for 60 days as stated on the Policy. [The Agent] *advised me to phone Customer Services on* [provided telephone number]. *I called immediately to be advised that it was the Medical Assist Centre and to call [another] number.*

This I done and spoke with [the same Agent again] *explaining she had given me the wrong number. I again reiterated that I had 60 days cover but again she refuted this and said she would put me through to Customer Care. I did not speak to them as they finished at 2.00pm.*

On 5th May I received a call on our landline requesting to speak with [Dr O.]*, I asked was it in connection with* [me]*, she said it was…She informed me that it did appear I had 60 days cover and that a full investigation regarding the phone call on* [3 May] *would take place …*

I continued with the medication and the symptom eased considerably until Thursday 7th May while out walking, my back went into a severe spasm again. I attended [Dr O.] *and was put on a course of injections for a period of 6 days and he arranged to have an MRI on Monday 11th May.*

I contacted [the Company] *to advise them my condition had got worse and* [Dr O.] *had arranged for an MRI. They requested the Medical Reports and these were faxed to them on 8th May.*

On 9th May [Company] *phone call to* [the Second Complainant] *that their Representative would be in contact with* [Dr O.] *to discuss his report and would call back Sunday (I had gone for injection).*

On 10th May [the Company] *called to state that they could not contact* [Dr O.] *and a decision would be made on Monday and that the Reports would have to go to a board for approval.*

On Monday morning 11th May I received several phone calls from a [Dr A.] *representing the Insurance Company to arrange a Neurosurgeon to call to the house to examine me and discuss my condition.* [Dr J. M-C.] *Consultant Neurosurgeon called to our home. No physical examination took place, he enquired about the pain when it happened and to the severity of it. I advised him I was having a scan at 13.30 in CENYT Hospital. He informed me that he was resident there and would review my scan and call me that evening with the result. Approx ½ hour after he left my back went into spasm again I informed him when he called that evening and gave me the results.*

On 12th May I attended with [Dr O.] *regarding the result of the scan as he was my Dr and had arranged it. I informed him that the insurance company had sent a Neurosurgeon to see me on 11th and that no physical examination took place, he was quite surprised. I also asked him was my insurance company in touch with him and he stated that they were not.*

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> *On 15th May I received a call from* [the Company] *regarding repatriation, as the line was quite bad I asked him to call in an hour when I would be home, this was about 14.30 Spanish time. He called back at 21.00 but was of no assistance or gave any advice.*
>
> *On 20th May call to landline inquiring as to my condition.* [The Second Complainant] *went through the same detail, no advice or assistance was given. It was as though the file was being passed from Billy to Jack with the sole purpose to frustrate the situation and drop the case. She stated she would ring back at 14.00 Spanish time, still waiting on the call.*
>
> *Several calls on 22nd May, went through the whole scenario and the stress and frustration they had caused both my wife and myself.* [The Agent] *stated that the whole case was being reviewed by their team leaders. He requested an email address to forward a Doctor Release Form, it came through the 2nd time on* [the Second Complainant's] *email and requested I sign it and return it ASAP. I advised that due to their attitude and mishandling of the case which in my opinion was negligent that I was going to seek a legal opinion"*.

In this regard, the First Complainant attended Dr O. on 23 April 2015 while holidaying in Spain *my back went into a severe spasm"*. Dr O. gave the First Complainant an injection and a prescription for pain relief medication and advised that should the spasms re-occur, he would arrange for an MRI scan.

The First Complainant telephoned the Company on 3 May 2015 to confirm cover in respect of an MRI. The Company however telephoned the First Complainant later that day to advise that the Complainants' policy only provided cover for trips up to 31 days in duration and that as his current trip from 31 March to 22 May 2015 was in excess of this limit he thus had no cover. This was incorrect and the Company telephoned the First Complainant on 5 May 2015 to advise that his policy did in fact provide cover for trips up to 60 days in duration, as he himself had advised the Company on 3 May 2015.

The First Complainant attended Dr O. again on 8 May 2015 with *"severe spasm"* , who then arranged for him to attend for an MRI scan. As a result, the First Complainant had an MRI scan on 11 May 2015 and seeks for the Company to admit his claim in respect of same.

The Company, however, declined this claim as it had arranged for Dr J. M-C., Consultant Neurosurgeon to examine the First Complainant at the Complainants' accommodation on 11 May 2015 prior to his having an MRI scan and he advised that the First Complainant had a *"mild pain which is not stopping him from walking around"* and that in his opinion the pain was *"musculoskeletal and is not serious"* and did not warrant an MRI. As a result, the Company states that it is satisfied that any claim for medical treatment or surgery relating to the First Complainant's condition falls outside the scope of the Complainants' travel insurance policy as it was not an emergency.

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The First Complainant is dissatisfied with the thoroughness and accuracy of the assessment conducted by Dr J. M-C. on 11 May 2015. In this regard, he advises that *"No physical examination took place"* and in his correspondence to this Office dated 9 June 2017 says that when Dr J. M-C. states *"*[I] *stood up and quickly climbed a couple of steps to answer a phone ringing"* that this statement is false as *"there are no steps in this property save for the stairs which extend to 2 bedrooms"*.

The First Complainant has refused to grant the Company access to his medical records and in his email to the Company on 8 June 2015 asked, as follows:

> *"In relation to your request for my Medical Records, what basis in law or in the policy was this request made as there does not appear to be any reference to this in your policy"*.

The First Complainant advises, *"I am still awaiting a reply"*.

Furthermore, the First Complainant complains that he received poor customer service from the Company throughout the claims process and in his email to the Company on 8 June 2015 provides the following examples, namely, *"Unfounded claim by the insurers that I was not covered by the policy…Behaviour amounting to harassment due to the volume of phone calls to my wife and myself…Refusal to follow up the complaint…Totally unhelpful"*.

The Complainants seek for the Company to admit the First Complainant's claim in respect of the MRI scan and associated costs that he had on 11 May 2015 in Spain.

The Complainants' complaint is that the Company wrongly or unfairly declined the First Complainant's claim and that it provided him with poor customer service throughout.

The Provider's Case

The Complainants incepted a travel insurance policy with the Company on 10 March 2015, with a start date of 31 March 2015, the date they travelled to Spain.

Company records indicate that the First Complainant telephoned its emergency medical assistance line on 3 May 2015. He advised that he had experienced a back spasm a week earlier whilst golfing and that there had been no resolve in his symptoms. He also advised that he needed to go for an MRI and understood that he needed authorisation from the Company before he proceeded with the scan. The Agent advised the First Complainant that his medical records would be required in order for the Company to determine if an MRI was warranted and a Medical Release Form was forwarded to him for completion and return.

Later on the same day a Company Agent telephoned the First Complainant to advise that his claim was a possible decline due to there being a trip limit of 31 days applicable to the

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Complainants' travel insurance policy and that their trip, from 31 March to 22 May 2015, was in excess of this limit.

The First Complainant was advised to contact Customer Services regarding the policy wording but the Agent provided him with an incorrect telephone number in this regard. The Company checked these matters and then advised the First Complainant by telephone on 5 May 2015 that there was not a 31 day trip limit applicable to the Complainants' policy and apologies were offered. The First Complainant was also advised again on 5 May 2015 that the Company was awaiting his completed Medical Release Form.

The First Complainant next telephoned the Company on 8 May 2015 stating that the Doctor he was attending was now requesting that he have an MRI scan. The Agent advised that the Company required Medical Reports from the First Complainant's doctor before it could authorise an MRI and was still awaiting same. Later that day, on 8 May 2015, the Company received by fax two Medical Reports, which were quite sparse and lacking in important detail.

On 10 May 2015 the Company advised the Second Complainant by telephone that it was still awaiting the completed Medical Release Form from the First Complainant. Later on that date, in the absence of a detailed medical history and with the First Complainant's agreement, the Company asked a Medical Assistance Firm to arrange a Doctor's appointment for the First Complainant for the following day.

As a result, the First Complainant was examined by Dr J. M-C., Consultant Neurosurgeon on 11 May 2015. Dr J. M-C. asked the First Complainant about his past symptoms and concluded that he had suffered what seemed to be an acute episode of sciatica and associated lumbar discomfort, which had clearly settled by the time Dr J. M-C. saw him. Dr J. M-C. advised the First Complainant that an MRI assessment of his lumbar spine was not immediately necessary. However, as he had already been prescribed one by his own doctor, Dr O. and as an appointment had already been scheduled for later that day, Dr J. M-C. left it to the First Complainant to decide whether to attend for the MRI or not. The First Complainant proceeded with having the MRI, although the Company notes that he had been advised that it was not necessary.

Dr J. M-C. works as a Consultant Neurosurgeon at the hospital where the First Complainant coincidentally attended for his MRI. As a result, the First Complainant's MRI Report was sent to Dr J. M-C. in his capacity there as Consultant Neurosurgeon. Upon viewing the MRI, Dr J. M-C. noted degenerative changes which did not require urgent surgical intervention but which would be amenable to elective surgical decompression. Dr J. M-C. telephoned the First Complainant to reassure him in regards to the pathology and to offer his private services should the Complainant decide to remain in Spain or consider a future surgical path to be undertaken.

In addition, the Company-appointed Medical Assistance Firm advised in its Medical Report dated 11 May 2015 that *"Our opinion is that the MRI scan is not necessary…An MRI scan is recommended when there is a clear neurological involvement to investigate as possible prolapse disk or spinal cord compression. This is not clearly the case"*.

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The First Complainant telephoned the Company on 15 May 2015 to advise that he was still in pain and the Agent again advised that the Medical Release Form was needed in order to review his file so as to determine cover within the remit of the policy and/or to determine what future assistance could be provided. It was also explained that the two initial Medical Reports from Dr O. were very brief, vague and lacking in important medical information and simply referred to the pain as *"pain in the lumbar region"*. As a result, the Agent advised that the Company had arranged for an assessment to be carried out by Dr J. M-C. and the outcome of which was confirmation from Dr J. M-C. that the MRI was not necessary.

The First Complainant was asked again on 17 May, 18 May and 19 May 2015 to return the Medical Release Form and forward the MRI results, whereupon same would be reviewed to determine if special assistance was required for his return flight to Dublin on 22 May 2015.

The Company again sent a Medical Release Form to the Second Complainant's email on 22 May 2015 and receipt of same was confirmed. The First Complainant then advised that he would not complete this form until he spoke with his nephew, a barrister. In addition, the First Complainant also enquired whether it would be in order for him to advise his GP to only release certain aspects of his medical history. The Agent advised that the Company requests all previous medical history but that only aspects pertinent to his case would be reviewed.

The First Complainant then advised the Company on 3 June 2015 of his intention to submit a complaint to the then Financial Services Ombudsman's Bureau. As a result, the Company provided the First Complainant with a Final Response letter on 29 June 2015. This letter acknowledged that the *"quality of information we relayed to you could have been better"* and offered €300 as a gesture of goodwill. This letter also inadvertently read that *"when the specialist who examined you on the 11th of May discovered you had already undergone the scan, he obtained the results"*. The Company notes that it should have read that *"when the specialist who examined you on the 11th of May discovered you had already booked the scan…"*. The First Complainant wrote to the Company on 7 July 2015 highlighting this error and claiming that while Dr J. M-C., the Consultant Neurosurgeon appointed by the Company, had visited him at his accommodation on 11 May 2015, he had not examined him. The First Complainant also rejected the offer of €300.

The Company notes the initial advice received from Dr J. M-C. that the First Complainant had a *"mild pain which is not stopping him from walking around"* and that in his opinion the pain was *"musculoskeletal and is not serious"*, and his subsequent advice following his analysis of the First Complainant's MRI that *"the images revealed chronic degenerative changes in keeping with moderate spinal canal stenosis not requiring urgent surgical intervention, but certainly amenable to elective surgical decompression"*. As a result, the Company is satisfied that any claim for medical treatment or surgery relating to the First Complainant's condition falls outside the scope of the Complainants' travel insurance policy as it was not an emergency.

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The Company accepts that some administrative errors were made when managing certain aspects of the First Complainant's claim and an acknowledgement and apologies have been extended to him in this regard. Assurances have also been given that the Company has taken his complaint seriously from the outset and it has sought to offer appropriate remedies, in the form of a goodwill gesture offer of €300 offered during its own complaints review procedures in June 2015. Furthermore, in March 2017 the Company increased its offer to the First Complainant in respect of its administrative errors to €1,000 and this offer remains open to him to accept.

The Company notes that the First Complainant is dissatisfied with the doctor who attended at the Complainants' accommodation in Spain at the request of the Company. In this regard, prior to the First Complainant having been examined by Dr J. M-C., he had been seen twice in a local clinic by Dr O. on 23 April and 8 May 2015, complaining of back pain. The report from the second visit requested an MRI, which the Company questioned as the reports were very brief and insufficient to justify this request and so it appointed a Medical Assistance Firm to send a local doctor to assess the Complainant. As a result, Dr J. M-C. met with the First Complainant at his accommodation in Spain on 11 May 2015.

The First Complainant has referred to the fact that Dr J. M-C. did not physically examine him, that is, there was no physical contact between Dr J. M-C. and the First Complainant. Instead, Dr J. M-C. asked questions and made notes and the First Complainant was unhappy with this.

In this regard, the Company notes that Dr J. M-C. is a neurosurgeon who is based in Spain but also works regularly in the UK and is fully registered with the General Medical Council. Dr J. M-C. has advised that on the day of the appointment, 11 May 2015, the First Complainant greeted him at the main door and walked effortlessly and courteously lifted one of the heavy chairs and offered it to him. Dr J. M-C. further advised that the First Complainant then sat down and crossed his legs quite easily. Whilst conducting limb extensions upon request, the First Complainant mentioned that he was pleased that his leg pains had not been bothering him very much during the previous five days and that his back pains were also subsiding. During this conversation, the First Complainant stood up and quickly climbed some steps to answer a ringing telephone and when he returned to his seat, he did so without exhibiting any evidence of pain or discomfort.

Dr J. M-C. questioned the First Complainant about his past symptoms and concluded that the he had suffered what seemed to be an acute episode of sciatica and associated lumbar discomfort, which had by then clearly settled. In order to reach this diagnosis, Dr J. M-C. has advised that he used his clinical observational skills, the details obtained from his own anamnesis and history taking abilities, his 19 years of experience as a neurosurgeon, five of which he had been practising as a Consultant, and a great deal of common sense. Dr J. M-C. explained to the First Complainant that he did not consider it necessary to physically examine him because he had already seen enough evidence to be able to exclude the presence of any acute issues concerning his lower back and legs. At that point Dr J. M-C. had already told the Complainant that an MRI assessment of his lumbar spine was not immediately necessary.

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In conclusion, the Company requested from the First Complainant medical information which was necessary to both validate cover and determine the necessity for an MRI scan. This information was not forthcoming and has not been received to date. The initial medical reports furnished from Dr O. were very brief, vague and lacking in important medical information. The Company sought to address this shortfall in medical information by arranging an appointment with a Consultant Neurologist at the First Complainant's accommodation, which the Company met the cost of. The Consultant's findings were clear in that an MRI scan was not deemed to be medically necessary, however the First Complainant chose to proceed with the MRI regardless. It was also clear from the MRI results that surgery was not medically necessary. The First Complainant continued to request medical assistance and was asked on several occasions to forward to the Company all relevant medical documentation and sign the Medical Release Form so that its medical panel could review and determine cover and advise of any assistance that the Company could provide to him and to determine if special assistance would be required for his flight home. To date, this Medical Release Form has not been received. The Company states that it is satisfied that it communicated frequently with the First Complainant and clearly outlined the reasons for requesting details of his medical history.

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 on 18 January 2019, 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.

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In the absence of additional submissions from the parties, I set out below my final determination.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the Complainants' claim in respect of the MRI scan and associated costs that the First Complainant had on 11 May 2015 and that it provided him with poor customer service throughout.

In this regard, the Complainants incepted a travel insurance policy with the Company on 10 March 2015, with a start date of 31 March 2015, the date they travelled to Spain. The First Complainant attended Dr O. on 23 April 2015 as *"my back went into a severe spasm"*. Dr O. gave the First Complainant an injection and a prescription for pain relief medication and advised that should the spasms reoccur that he would arrange for an MRI scan.

The First Complainant telephoned the Company on 3 May 2015 to confirm cover in respect of an MRI. The Company however telephoned the First Complainant later that day to advise that the Complainants' policy only provided cover for trips up to 31 days in duration and that as his current trip from 31 March to 22 May 2015 was in excess of this limit that he thus had no cover. This was incorrect and the Company telephoned the First Complainant on 5 May 2015 to advise that his policy did in fact provide cover for trips up to 60 days in duration, as he himself had advised the Company on 3 May 2015.

The First Complainant attended Dr O. again on 8 May 2015 with *"severe spasm"* , who then arranged for him to attend for an MRI scan. As a result, the First Complainant had an MRI scan on 11 May 2015 and seeks for the Company to admit his claim in respect of same.

The Company, however, declined this claim as it had arranged for Dr J. M-C., Consultant Neurosurgeon to examine the First Complainant at the Complainants' accommodation on 11 May 2015 prior to his having an MRI scan and he advised that the First Complainant had a *"mild pain which is not stopping him from walking around"* and that in his opinion the pain was *"musculoskeletal and is not serious"* and did not warrant an MRI. As a result, the Company states that it is satisfied that any claim for medical treatment or surgery relating to the First Complainant's condition falls outside the scope of the Complainants' travel insurance policy as it was not an emergency.

The First Complainant is dissatisfied with the thoroughness and accuracy of the assessment conducted by Dr J. M-C. on 11 May 2015. In this regard, he advises that *"No physical examination took place"* and in his correspondence to this Office dated 9 June 2017 says that when Dr J. M-C. states *"*[I] *stood up and quickly climbed a couple of steps to answer a phone ringing"* that this statement is false as *"there are no steps in this property save for the stairs which extend to 2 bedrooms"*.

In addition, the First Complainant has refused to grant the Company access to his medical records and in his email to the Company on 8 June 2015 asked, as follows:

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> *"In relation to your request for my Medical Records, what basis in law or in the policy was this request made as there does not appear to be any reference to this in your policy"*.

The First Complainant advises, *"I am still awaiting a reply"*.

Furthermore, the First Complainant complains that he received poor customer service from the Company throughout the claims process and in his email to the Company on 8 June 2015 provides the following examples, namely, *"Unfounded claim by the insurers that I was not covered by the policy…Behaviour amounting to harassment due to the volume of phone calls to my wife and myself…Refusal to follow up the complaint…Totally unhelpful"*.

In respect of the first element of the Complainants' complaint, that is, that the Company wrongly or unfairly declined the Complainants' claim in respect of the MRI scan and associated costs that the First Complainant had on 11 May 2015, I note from a recording of the telephone call that the First Complainant made to the Company on 3 May 2015 at 12.41pm the following exchange:

Agent:	*Has the GP in Spain made an appointment for you to have an MRI scan?*
First Complainant:	*No. Your policy states that you can't do anything without getting confirmation from yourselves.*
Agent:	*Exactly, yeah. That's exactly right.*

I therefore accept that the First Complainant was clearly aware from the outset that he required confirmation of cover from the Company. I note that the Company never confirmed to the First Complainant that he had cover in respect of an MRI scan, though he proceeded to have the MRI on 11 May 2015 regardless.

Travel 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.

In this regard, Section B, 'EMERGENCY MEDICAL AND OTHER EXPENSES', of the applicable Travel Insurance Cover 2015-2016 Policy Document provides at pg. 17, as follows:

> *"**WHAT IS COVERED:***
>
> *We will cover You under this Policy up to the amount shown on Your Schedule of Cover per Insured Person who suffers a sudden and unforeseen Bodily Injury or Illness or dies during a Trip.*
>
> *We will cover the following costs necessarily and reasonably incurred abroad as a result of You becoming ill, sustaining injury or dying outside Ireland during the Period Of Insurance:*

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1. *Emergency medical, surgical, hospital, ambulance and nursing fees and charges incurred outside Ireland and the UK …*

WHAT IS NOT COVERED: *…*

e) Any form of treatment or surgery which in the opinion of the Medical Practitioner in attendance and the Emergency Assistance Service ***can be delayed reasonably until your return to Ireland or the UK****".*

[Emphasis added]

Having had sight of the medical reports from Dr O. dated 23 April 2015 and 8 May 2015, I accept that it was reasonable for the Company to conclude that they *"were quite sparse, and lacking in important detail"*, particularly in terms of the reasons for recommending an MRI scan for the First Complainant. In this regard, I note that the Report from the Company-appointed Medical Assistance Firm dated 10 May 2015 provides, as follows:

*"**Diagnosis***

Sciatica

Current Condition/Progress

Thank you for the second medical report. It doesn't say much really.
[The First Complainant] *was seen on the 24th of April with back pain. At the time he had no neurological deficit. The pain was localised in the lumbar region not even radiated to the leg (no sciatica). He was prescribed some analgesics and muscle relaxants. The gentleman was seen again two days ago on the 8th of May. The report is very brief (I wonder how much* [the Complainant] *paid for that) and says that "he was fine, he played golf and he is feeling bad again". There is not a proper medical examination on the medical report, only saying "pain in lumbar region". The doctor requests a MRI to identify the cause of the pain.*

GP Check

We don't [have] *sufficient information to comment as the medical report does not mention a PMH* [Past Medical History]*. This gentleman has back pain which could be something from the past.*

Our Comments/Recommendations

The medical report is insufficient to justify the request for an MRI. There are no signs of neurological deficit or nerve root compression mentioned on the

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medical report which would justify the MRI. I'm not sure how wise it was to continue playing golf after the first visit.

The cause of the pain is clearly mechanical and unless there is neurological deficit I don't see the point to request an MRI. I am not happy with the quality of the medical reports and I don't think [the First Complainant] *should be seen again at this medical center. He needs a proper assessment by an orthopaedic or neurosurgeon specialist. Requesting tests unnecessarily is not good medical practice.*

I don't have sufficient information to justify the[m].

We could organise a follow up appointment through our office in Spain if [the Company] *is happy with that.*

Next Action Required

Awaiting instructions"

I note from the documentary evidence before me that the Company-appointed Medical Assistance Firm made a number of attempts to contact Dr O. prior to the First Complainant's MRI appointment on 11 May 2015 in order to obtain further information, but it was unable to reach him. As a result, I accept that it was reasonable for the Company to arrange for a local doctor to assess the First Complainant and in this regard, Dr J. M-C., Consultant Neurosurgeon met with the First Complainant at the Complainants' accommodation on the morning of 11 May 2015, prior to the First Complainant attending for his MRI scan. In this regard, I note the Medical Report of Dr J. M-C. provides, as follows:

*"**REASON FOR CONSULTATION***

Lower back pain and right buttock pain.

***ANAMNESIS AND CLINICAL DETAILS** ...*

Reports sudden onset of lower back pain radiated to his right buttock whilst playing golf about 2 weeks ago. He could drive himself to the local healthcare centre and was treated conservatively in the first instance with analgesia and benzodiazepines, being discharged home from local medical emergency services after his symptoms subsided.

About a week later he describes a similar episode, this time more severe, and requiring assistance in order to seek medical attention locally. Once again, the patient recalls sudden onset of similar very severe lower back pain whilst participating in a golf competition with intense right buttock pain, and NO radiation to the lower extremity. There was no loss of sphincter control but the patient reports a small spontaneous ejaculation. Symptoms responded to conventional analgesia,

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but required consecutive injections of steroids/local anaesthetic administered by the local emergency service.

Today the pain has diminished substantially, but the patient's Insurance Company requests a more detailed assessment in order to clarify a definite plan of action. He has not yet taken his daily injection and his symptoms are not present currently, being able to mobilise freely indoors despite a feeling of uncomfortable sensation around the right buttock and lumbar region. He also denies any fluctuation of symptoms and describes his status as stable.

PHYSICAL AND NEUROLOGICAL ASSESSMENT

Excellent general condition with no physical signs to account for. The patient reports minimal pain status, described as 3/10 in the VAS evaluation system.

Cognitive and higher neurological functions intact. Glasgow 15, PEARL3+, Cranial Nerve examination unremarkable.

Neck and Upper Limbs:

Full unrestricted mobility.
Power: R 5/5, L 5/5
Tone: Normal.
Reflexes: Normal.
Sensitivity: Normal.

Pelvis, Spine and Lower Limbs:

Full unrestricted mobility.
Power: R 5/5, L 5/5
Tone: Normal.
Reflexes: Normal.
Sensitivity: Normal.
Lasègue positive around 70º bilaterally. Bragard positive bilaterally.

Rest of physical and neurological evaluation:

NAD

DIAGNOSTIC IMPRESSION

Lumbar pain triggered by musculo-skeletal exertion with no objective focal neurological deficit. Most likely origin is LUMBAR CANAL STENOSIS along with longstanding DEGENERATIVE CHANGES.

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ADDITIONAL COMMENTS

The patient attended one of the local Clinics after our visit in order to undergo Lumbo-Sacral MRI assessment scheduled through a third party. Images have revealed rectification of the physiological lumbar lordosis along with generalised degenerative changes with Modic type I to II findings. There is an increase in the soft tissue component with a substantial degree of lumbar canal stenosis (grade I to II) maximum at L2-L3, which is most likely responsible for his symptoms. No other relevant findings have been described.

RECOMMENDATIONS

1. *The patient can stop his IM injections and continue oral treatment with NSAIDs for a period of two weeks, subject to review by his General practitioner. Recommendation is made for a combination of PARACETAMOL PO 1g/6h and IBUPROFEN PO 600mg/8h along with abundant fluid intake and local physical therapy for the lumbar area.*

2. *Relative rest, avoiding extenuating physical exertion during the next few days followed by gradual return to normal activities within 2 weeks approximately as tolerated.*

NOTE:

Should the patient consider LUMBAR DECOMPRESSION SURGERY in Spain, I can offer full private surgical cover in one of our partner Centres in [Spain]".

In addition, in his email to the Company-appointed Medical Assistance Firm dated 16 May 2015, Dr J. M-C. advises, as follows:

"I am writing to clarify the details of my home visit to the [First Complainant].

1. *The clinical symptoms suffered by the patient were in keeping with* ***acute on chronic back pain*** *secondary to* ***lumbar canal stenosis****.*

2. *At the time of my visit, his symptoms were substantially diminished in comparison to the original presentation, and I could not elicit any definite signs indicating any sort of neurological deficit.*

3. *My recommendations were to continue his regular oral analgesia and to visit his General Practitioner on his return to Ireland scheduled at the end of the month.*

4. *As the patient informed me that there was an MRI scan* ***ALREADY SCHEDULED*** *by the Doctor who had previously seen the patient* [Dr O.]*, I saw nothing wrong with him attending the clinic and undergoing such investigation. But I specifically stated that there was no acute indication for such test to be performed at short notice, especially since his symptoms were responding to his ongoing analgesia.*

/Cont'd…

5. *Incidentally,* [the First Complainant] *attended* ***CENYT HOSPITAL*** *to have his MRI done…*

I attach the MRI report which describes the radiological findings, all of them in keeping with longstanding degenerative changes, particularly elements of stenosis in the lumbar segment, which would certainly improve following surgical treatment".

I accept that it was reasonable for the Company to conclude from the medical information it received that it was not urgent or necessary for the First Complainant to have the MRI scan whilst he was in Spain and that he could reasonably have waited to have had the scan when he returned to Ireland, and that he was advised of this prior to his proceeding with the scan on 11 May 2015.

In this regard, the aforementioned Section B, 'EMERGENCY MEDICAL AND OTHER EXPENSES', of the applicable Travel Insurance Cover 2015-2016 Policy Document provides at pg. 17, as follows:

*"**WHAT IS NOT COVERED:** …*

e) Any form of treatment or surgery which in the opinion of the Medical Practitioner in attendance and the Emergency Assistance Service ***can be delayed reasonably until your return to Ireland or the UK****"*.

[Emphasis added]

As a result, I accept that the Company declined the Complainants' claim in respect of the MRI scan and associated costs that the First Complainant had on 11 May 2015 in accordance with the terms and conditions of the Complainants' travel insurance policy.

In relation to the second element of the Complainants' complaint, that is, that the Company provided the First Complainant with poor customer service throughout his claim, I note the Company acknowledges that some administrative errors were made when managing certain aspects of the First Complainant's claim and it apologies for these.

From the content of the recordings made available of the telephone calls between the First Complainant and the Company in relation to his claim I note that the First Complainant was provided with incorrect information at the outset.

In this regard, the First Complainant telephoned the Company at 12.41pm on 3 May 2015 to query cover in respect of an MRI that at that time he may need in the coming days. I note that a Company Agent telephoned the First Complainant later that day at 2.20pm to advise that the Complainants' policy only provided cover for trips up to 31 days in duration and that as his current trip from 31 March to 22 May 2015 was in excess of this limit that he had no cover.

/Cont'd…

This information was incorrect, however I do note that the Company subsequently telephoned the First Complainant on 5 May 2015 to advise that the Complainants' policy did in fact provide cover for trips up to 60 days in duration, as he himself had advised the Agent on 3 May 2015.

That said, I am satisfied that the First Complainant was very clear and certain in the telephone call at 2.20pm on 3 May 2015 that the travel insurance policy that the Complainants had purchased provided him with cover in respect of trips up to 60 days in duration. From the content of the recording of this call, it is my opinion that the Agent was not just unhelpful but she was also dismissive of the First Complainant's statements and even suggested that he himself had erred when purchasing his policy online.

I also note from recordings of the telephone calls between the First Complainant and the Company, that there were incidences where call backs or follow-up calls did not take place or did not take place at the times stated and that it was clear that some Agents had not reviewed the First Complainant's file notes prior to telephoning him. That said, I do note that some Agents did make great efforts to be clear and of assistance to the First Complainant in later telephone calls.

However, on balance, these calls demonstrate that the Company provided the First Complainant with poor customer service. Administrative errors and poor customer service are unsatisfactory and can cause considerable confusion and frustration, as was the case in this matter. The First Complainant ought to be able to rely on the expertise of the Company with regard to information concerning his policy cover.

Finally, I note that the First Complainant has refused to grant the Company access to his medical records and in his email to the Company on 8 June 2015 asked, as follows:

> *"In relation to your request for my Medical Records, what basis in law or in the policy was this request made as there does not appear to be any reference to this in your policy"*.

The First Complainant advises, *"I am still awaiting a reply"*.

In this regard, I note that the 'Claims Conditions' section of the applicable Travel Insurance Cover 2015-2016 Policy Document provides at pg. 37, as follows:

> *"You must comply with the following conditions to have the full protection of Your Cover.*
>
> *If You do not comply We may at Our option cancel the Cover or refuse to deal with Your claim or reduce the amount of any claim payment …*
>
> *You or Your legal representatives must supply at Your own expense* ***all information, evidence, details of household insurance and medical certificates as required by Us***.

/Cont'd…

We reserve the right to require You to undergo an independent medical examination at Our expense"

[Emphasis added]

As a result, I accept that the terms and conditions of the Complainants' travel insurance policy necessitates that policyholders provide the Company with *"all information, evidence…and medical certificates"* as required by the Company. In this regard, where there is a claim in respect of medical treatment, it is standard insurance procedure that the medical records of the insured is sought and their previous medical history reviewed in order to confirm cover, as claims in respect of pre-existing medical conditions are typically not covered or have limited cover.

The Company offered the First Complainant a goodwill gesture payment of €300 during its own complaints review procedures in June 2015, but he declined this offer. The Company increased its offer to the First Complainant in March 2017 to €1,000 and advises that this offer remains open to the Complainants to accept. I am satisfied that this is a reasonable offer by the Company in its attempt to address and resolve the serious and unacceptable matter of its administrative errors and poor customer service when dealing with the First Complainant's claim. I also note that the Complainants were required, pursuant to the terms and conditions of their travel insurance policy, to provide the Company with *"all information, evidence…and medical certificates"*.

On the basis that this offer of €1,000 remains available to the Complainants, 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

11 February 2019

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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

ensures compliance with the Data Protection Regulation and the Data Protection Act 2018