An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0138
Sector:	Insurance
Product / Service:	Private Health Insurance
Conduct(s) complained of:	Rejection of claim - non-medical necessity Claim handling delays or issues Delayed or inadequate communication
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant, a [nationality redacted] national residing in Ireland as a dependant of her husband who is currently undertaking a PhD in Ireland, became an insured person under a group student personal medical expenses insurance policy with the Provider on 1 October 2015 and remains under cover until 24 May 2019. This group policy is a specific form of travel insurance provided to a number of embassies and language schools in Ireland designed to benefit non-EEA students and their dependants whilst studying in Ireland, in order to ensure that such insured persons are able to meet the medical expenses requirements of their Irish residency permission. The purpose of the policy is to provide basic and emergency medical cover for students and their dependants from overseas who are studying in Ireland.

The Complainant's Case

The Complainant's Consultant Ophthalmic Surgeon, Mr F. K. advises in his correspondence dated 25 July 2016, as follows:

> *"I saw* [the Complainant] *with vision of 6/6 with a myopic astigmatic prescription right eye and 6/24 left eye with evidence of bilateral cataract formation.*
>
> *She needs bilateral phaco with either a monofocal or multifocal implant"*.

I note the cost of a monofocal implant was €4,810 and the multifocal was €6,500.

The Complainant sought for the Provider to confirm cover for this procedure but it declined to do so by way of email to the Complainant's husband on 29 July 2016.

The Complainant then submitted to the Provider for its further consideration additional correspondence from her Consultant Ophthalmic Surgeon, Mr F. K. dated 9 August 2016, wherein he advised the Complainant, as follows:

> *"You have significant cataract formation left eye with a reduction in vision to 6/24 whereas the vision remains at 6/6 in your right eye. Cataract extraction with implant left alone will simply cause an imbalance and consequently you need bilateral extraction with implant for medical reasons to improve your vision"*.

Following a review of this additional report, the Provider upheld its decision to decline cover on 12 August 2016.

In this regard, the Complainant sets out her complaint, as follows:

> *"I have medical problem in my eyes that the specialist decided to make operation on both eyes and I have claimed to* [the Provider] *to cover medical, the claim was declined, then I complained, which was declined, and* [the Provider] *did not send me written explanation of the reason behind* [its] *decision"*.

The Complainant seeks for the Provider to admit her claim so she can *"have the operation as quick as possible"*.

The Complainant's complaint is that the Provider wrongly or unfairly declined her insurance cover and that it did not then provide a written explanation for its declinature.

The Provider's Case

Provider records indicate that the Complainant, a [nationality redacted] national residing in Ireland as a dependant of her husband who is currently undertaking a PhD in Ireland, became an insured person under a group student personal medical expenses insurance policy with the Provider on 1 October 2015 and remains under cover until 24 May 2019. This group policy is a specific form of travel insurance provided to a number of embassies and language schools in Ireland that is designed to benefit non-EEA students and their dependants whilst studying in Ireland, in order to ensure that such insured persons are able to meet the medical expenses requirements of their Irish residency permission. The purpose of the policy is to provide basic and emergency medical cover for students and their dependants from overseas who are studying in Ireland. The Provider states that It is not private medical insurance and it is not marketed or described as such.

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The insured persons under a group student personal medical expenses insurance policy with the Provider are typically studying in Ireland for a finite, temporary period of time, typically three to four years but may, in some cases, be up to seven years, according to the different student visas available. Due to the unique demographic of the insured persons, the policy is tailored to include benefits such as repatriation cover that would not ordinarily be available by way of private medical insurance.

The policy also explicitly excludes cover for medical procedures that could wait for the insured person to return to their country of origin. In any event, the Provider notes that this is often the preferred option for the insured person, as they would be near to family and friends when receiving such treatment.

The [nationality redacted] Embassy purchased the group insurance policy from the Provider and made it available free of charge to those [nationality redacted] students who are sponsored by the Embassy and studying in Ireland and their dependants who may reside here with them, as is the case with the Complainant. By way of comparison, the other method of distribution in Ireland is via group policy arrangements with colleges where students have to pay for the cover. Where students chose to subscribe to a group student personal medical expenses insurance policy with the Provider, the typical premium payable is in the region of €150 per year. The Provider states that this is a fraction of the typical premiums for comprehensive private medical insurance but the Provider is able to offer the product at this price point precisely because it is not comprehensive private medical insurance.

Provider records indicate that the Complainant's husband telephoned the Provider on 17 July 2016 to advise that the Complainant required surgery to her eyes. The Complainant then submitted correspondence from her Consultant Ophthalmic Surgeon, Mr F. K. dated 25 July 2016, which advised, as follows:

> *"I saw* [the Complainant] *with vision of 6/6 with a myopic astigmatic prescription right eye and 6/24 left eye with evidence of bilateral cataract formation.*
>
> *She needs bilateral phaco with either a monofocal* [€4,810] *or multifocal* [€6,500] *implant"*.

As part of its claims assessment, the Provider instructed one of its medical specialists, Dr J. J. M. to review the information provided by the Complainant. In this regard, Dr J. J. M. noted on 27 July 2016 that *"the* [Complainant's] *right eye has good acuity and a myopic/astigmatic refractive error which could be corrected with glasses"* and that cataract surgery to her left eye is *"merited, subject to cover"*. He also indicated that multifocal implants are expensive and should in no way be regarded as a necessity and would only be available privately as an elective procedure. Dr J. J. M. also advised that cataracts are slowly developing and are *"certainly not an illness requiring hospitalisation…they never require acute admission and elective surgery is possible as a day case"*.

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As a result, the Provider declined cover by way of telephone and email to the Complainant's husband on 29 July 2016 on the basis that the policy excludes cover for an injury or illness where a Doctor has not confirmed the treatment to be medically necessary and also cover for treatment which can reasonably wait until the insured person has returned to their country of origin. The Provider then received a telephone call from the Broker on 2 August 2016 wanting to know on behalf of the Complainant why cover was declined.

In this regard, the Provider emailed the Broker on 3 August 2016, as follows:

> *"*[The Complainant] *has consulted and been advised by a private clinic in Ireland that she requires Bilateral Cataract extraction at a cost of EUR 6,500. The case has been reviewed by one of* [the Provider's] *in-house doctors and the treatment is not medically necessary and is considered elective. The treatment is not usually available on the NHS but is available by patient choice in the private sector, but can never be regarded as a necessity. Based on the policy exclusions below, the case is declined*
>
> *a) expenses incurred without the confirmation of a qualified medical practitioner that the treatment was medically necessary;*
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> *i) dental or optical expenses other than those incurred in providing the minimum treatment necessary to relieve pain and discomfort for the duration of the Journey following an injury or Illness which required In-patient treatment;*
>
> *l) expenses in respect of treatment which could reasonably wait until the Insured Person has returned to their Country of Origin.*
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> *We hope that this email provides some clarification on the matter. If the policy holder is not happy with the decline and has any further medical information or is suffering from further symptoms, we can get our medical team to re-review the case and then refer it to the underwriters"*.

The Complainant then submitted to the Provider for its further consideration additional correspondence from her Consultant Ophthalmic Surgeon, Mr F. K. dated 9 August 2016, wherein he advised the Complainant, as follows:

> *"You have significant cataract formation left eye with a reduction in vision to 6/24 whereas the vision remains at 6/6 in your right eye. Cataract extraction with implant left alone will simply cause an imbalance and consequently you need bilateral extraction with implant for medical reasons to improve your vision"*.

As part of its assessment of this additional information, the Provider instructed one of its medical specialists Dr H. R. to review all the information provided by and on behalf of the Complainant.

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In this regard, Dr H. R. notes on 12 August 2016 that *"eventually all cataracts will need surgery, however, there is no risk to* [the Complainant's] *health and there will be no permanent long term damage to her eye/vision by waiting until returning to her country of origin"*. Dr H. R. also notes that cataracts take several years to develop and that *"*[the Complainant] *is likely to have had deteriorating vision for some time. This does not happen acutely unless the cause is trauma of which there is no mention"*. In addition, Dr H. R. indicates that if cover was to be accepted by the Provider it should be in respect of the Complainant's left eye only with monofocal implant, but notes that this would not be an inpatient procedure as cataract surgery is done as a day case and *"there is no hurry from a medical point of view for this procedure"*.

As a result, the Provider telephoned the Complainant's husband on 12 August 2016 to advise that following a review of the additional information provided, its position remained to decline cover and that it had previously provided its decision and rationale in writing to him by way of its email on 29 January 2016. In addition, the Provider emailed the Broker on 16 August 2016 advising, among other things, as follows:

> *"Cover is limited in this case to "injury resulting in death or disablement" and "medical expenses following illness requiring hospitalisation or following an accident". Cataracts will have been slowly developing (whether or not they were already known), are arguably not an illness, and certainly not an illness requiring hospitalisation. They never require acute admission and elective surgery is possible as a day case.*
>
> *Unfortunately I must therefore suggest that the terms of insurance are not met and that cover is declined"*.

While the Provider accepts that the Complainant's husband clearly believed there to be an urgency to the Complainant's condition, its medical specialists Dr J. J. M. and Dr H. R. have agreed that the cataracts the Complainant has would have developed over a period of years and do not require emergency treatment. In this regard, the Provider states that the policy terms and conditions clearly exclude cover for optical expenses other than those incurred in providing the minimum treatment necessary to relieve pain and discomfort for the duration of the journey following an injury or illness which required in-patient treatment. It also excludes expenses in respect of treatment which could reasonably wait until the insured person has returned to their country of origin.

The Provider states that it is satisfied from the comments it received from its medical specialists Dr J. J. M. and Dr H. R. that there is no clear point of origin or incident which can be attributed to the cause of the Complainant's cataracts and that the extent of the treatment recommended by her Consultant Ophthalmic Surgeon goes beyond what would be medically necessary or *"the minimum treatment necessary to relieve pain and discomfort"*. In addition, the fact that there has been no hospitalisation for this incident and the surgery would be performed on an out-patient basis illustrates that it does not meet the criteria for cover under the policy.

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As part of a further review of her case, the Provider arranged for the Complainant to be assessed by Dr J. M., a Specialist at the Ophthalmic Unit, [Clinic] on 31 January 2018. In her ensuing Report dated 31 January 2018, Dr J. M. advises, *inter alia*, that *"in my opinion, the cataract in her left eye…would be a visually significant cataract and could be removed. The vision in the right eye is relatively well preserved…and the 2lens changes in this eye would not be considered visually significant, and cataract extraction in this eye would not usually be undertaken…The procedure is not urgent. The cataract change, even in the left eye, is still early. Cataract change tends to progress very slowly. I feel that this procedure could be postponed with monitoring without any adverse effect"*. In addition, the Provider notes from the Complainant's own description of her symptoms that there is no indication that she is being caused pain or any physical discomfort.

The Provider is satisfied that on review all correspondence it issued to the Complainant and her husband and the Broker was clear. Where the Broker or the Complainant's husband asked for it to clarify or elaborate, the Provider is satisfied that it explained the situation clearly and unambiguously. Furthermore, the Provider states that it is satisfied that the policy terms and conditions are clear and unambiguous regarding the cover provided. Accordingly, the Provider is satisfied that it correctly declined cover in respect of the cataract treatment that the Complainant was seeking to have done as it did not meet criteria set out in the applicable policy terms and conditions.

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 17 April 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 that the Provider wrongly or unfairly declined the Complainant insurance cover and that it did not then provide a written explanation for its declinature. In this regard, the Complainant sets out her complaint, as follows:

> *"I have medical problem in my eyes that the specialist decided to make operation on both eyes and I have claimed to* [the Provider] *to cover medical, the claim was declined, then I complained, which was declined, and* [the Provider] *did not send me written explanation of the reason behind* [its] *decision"*.

I note that the Complainant's Consultant Ophthalmic Surgeon, Mr F. K. advised in his correspondence dated 25 July 2016, as follows:

> *"I saw* [the Complainant] *with vision of 6/6 with a myopic astigmatic prescription right eye and 6/24 left eye with evidence of bilateral cataract formation.*
>
> *She needs bilateral phaco with either a monofocal* [€4,810] *or multifocal* [€6,500] *implant"*.

In addition, I also note that Mr F. K. advised the Complainant in his correspondence dated 9 August 2016, as follows:

> *"You have significant cataract formation left eye with a reduction in vision to 6/24 whereas the vision remains at 6/6 in your right eye. Cataract extraction with implant left alone will simply cause an imbalance and consequently you need bilateral extraction with implant for medical reasons to improve your vision"*.

The Complainant seeks for the Provider to admit her claim so she can *"have the operation as quick as possible"*.

I note the policy under which the Complainant is covered is a group policy that is a specific form of travel insurance provided to a number of embassies and language schools in Ireland designed to benefit non-EEA students and their dependants whilst studying in Ireland. The purpose of the policy is to provide basic and emergency medical cover for students and their dependants from overseas who are studying in Ireland.

In this regard, the Complainant's group student personal medical expenses insurance policy with the Provider, like all insurance policies, does 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.

I note that the Policy Summary states, as follows:

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"The [policy] *covers Insured Persons, aged under 60, whose Country of Origin is outside the EEA and who, whilst in Ireland for the purpose of attending an academic course with the Insured, during the period of insurance, suffer an injury resulting in death or disablement; incur medical expenses following illness requiring hospitalisation or following an accident; or require to be indemnified should they become liable for some unintentional injury, illness or damage to the property of another …*

Significant or Unusual Exclusions of Limits applicable to Section A **[Medical and other travel expenses]**

This section does not cover: …

- *Injury/illness where a Doctor has not confirmed the treatment to be medically necessary …*
- *When treatment could have waited until return to country of origin"*.

In addition, I note that the 'What this Policy does not cover' section of the applicable Student Personal Medical Expenses Insurance Policy document provides, among other things, as follows:

"[The Insurer] *will not pay any claim under Section A (Medical Expenses) of this Policy for:*

a) expenses incurred without the confirmation of a qualified medical practitioner that the treatment was medically necessary …

i) dental or optical expenses other than those incurred in providing the minimum treatment necessary to relieve pain and discomfort for the duration of the Journey following an injury or illness which required In-patient treatment …

l) expenses in respect of treatment which could reasonably wait until the Insured Person has returned to their Country of Origin".

I note from the documentary evidence before me that the Provider arranged for the Complainant to be assessed by Dr J. M., a Specialist at the Ophthalmic Unit, [Clinic] on 31 January 2018 and that she advised in her ensuing Report dated 31 January 2018, as follows:

"Ocular History: … [The Complainant] *is myopic (short sighted) and has been wearing glasses since childhood.*

She was aware of reduction in vision in her left eye for many years. She attended [F. K.]*, Ophthalmologist, in*

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the [Clinic] in early 2016 with regard to this. She was advised she had cataracts, more so in the left than the right eye, and as far as I understand, left eye surgery was advised. This has not been carried out to date.

Current Complainants: *Her current ocular symptoms are of:*

1. *Decreased visual acuity in her left eye.*
2. *Floaters (opacities within the vitreous gel that expands the posterior aspect of the eyeball). These floaters are more prominent in her right eye, but also present in her left eye.*

Functional Limitations: *1. She tells me that she has difficulty cooking and particularly using the oven.*
2. When she watches TV her vision becomes "confused" after approximately an hour …

Opinion and Prognosis: [The Complainant] *has early onset of lens change (early cataract) in both eyes.*

She was seen and assessed by [F. K.] *early in 2016 and she tells me that he felt she was suitable for a cataract extraction in the left eye.*

This procedure would involve removing the cataract and replacing it with an intraocular lens.

In my opinion, the cataract in her left eye where best corrected vision is reduced to 6/15 (75% of normal) would be a visually significant cataract and could be removed. The vision in the right eye is relatively well preserved at 6/7.5 (96%) and the lens changes in this eye would not be considered visually significant, and cataract extraction in this eye would not usually be undertaken.

…The procedure is not urgent. The cataract change, even in the left eye, is still early. Cataract change tends to progress very slowly. I feel that this procedure could be postponed with monitoring without any adverse effect …

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She does have some mild floaters (condensations) within the vitreous jelly that expands the posterior aspect of the eyeballs.

These changes are degenerative and occur spontaneously, particularly in the presence of myopia. They are permanent and a nuisance, but would not cause blindness".

I accept that the Provider was entitled to decline the claim as the cover sought by the Complainant in respect of her cataracts was not in respect of optical treatment following an injury or illness that had required in-patient treatment, as clearly required by the policy terms and conditions.

In addition, I accept that it was not unreasonable for the Provider to conclude from the medical evidence before it that there was no urgency to the Complainant having her cataracts removed and thus the cover she sought was not medically necessary and that such treatment could be postponed until the Complainant returned to her country of origin at a later date.

I note that the Complainant complains that the Provider did not provide a written explanation for its declinature. I note from the documentary evidence before me that the Provider emailed the Complainant's husband on 29 July 2016, as follows:

"As discussed before on the phone, please find below the terms and the condition basis that we have declined the cover for your wife's surgery:

Significant or Unusual Exclusions of Limits applicable to Section A

This section does not cover: …

- *Expenses incurred without the authorisation in advance of* [the Insurer]
- *Amounts recoverable from any free national health scheme*
- ***Injury/illness where a Doctor has not confirmed the treatment to be medically necessary***
- *Expenses incurred in the Insured Person's Country of Origin except as specifically covered.*
- *When the purpose of the trip is to receive medical treatment, cosmetic treatment, or medical advice*
- *When treatment could have waited until return to country of origin*
- *When travelling against the advice of a medical practitioner.*

Please be advised that our doctor assessment for the medical report is the surgery can never be regarded as a medical necessity.

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> *Also please be aware that your wife can still be seen at the public hospital in Ireland and you can show the* [proof] *of your study in Ireland to get the ordinary rate, not Non-EU rate"*.

I note that the Provider did not advise the Complainant in this email of the policy condition that there is no cover available for any optical expenses other than those incurred in providing the minimum treatment necessary to relieve pain and discomfort following an injury or illness which had required in-patient treatment. The inclusion of this policy exclusion in the declinature email might have made the matter clearer for the Complainant, particularly as she had not received in-patient treatment in relation to her cataracts. However, I note that the Provider also emailed the Broker on 3 August 2016, as follows:

> *"*[The Complainant] *has consulted and been advised by a private clinic in Ireland that she requires Bilateral Cataract extraction at a cost of EUR 6,500. The case has been reviewed by one of* [the Provider's] *in-house doctors and the treatment is not medically necessary and is considered elective. The treatment is not usually available on the NHS but is available by patient choice in the private sector, but can never be regarded as a necessity. Based on the policy exclusions below, the case is declined*
>
> > *b) expenses incurred without the confirmation of a qualified medical practitioner that the treatment was medically necessary;*
> >
> > *i) dental or optical expenses other than those incurred in providing the minimum treatment necessary to relieve pain and discomfort for the duration of the Journey following an injury or Illness which required In-patient treatment;*
> >
> > *l) expenses in respect of treatment which could reasonably wait until the Insured Person has returned to their Country of Origin.*
>
> *We hope that this email provides some clarification on the matter. If the policy holder is not happy with the decline and has any further medical information or is suffering from further symptoms, we can get our medical team to re-review the case and then refer it to the underwriters"*.

Accordingly, while I note the inappropriate reference to the UK Health System rather than the Irish Health System, I accept that the Provider advised the Complainant in writing that it had declined cover as it did not consider her cataract treatment medically necessary, that such treatment could be postponed until she returned to her country of origin and that there was not cover for optical expenses unless such expenses incurred following an injury or illness that had required in-patient treatment, which was not the case in this instance.

For the reasons outlined above, I do not uphold this complaint.

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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

13 May 2019

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.