



<u>Decision Ref:</u>	2019-0174
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Private Health Insurance
<u>Conduct(s) complained of:</u>	Failure to provide correct information Claim handling delays or issues
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

This complaint concerns a unit-linked whole of life policy held with the Provider that was incepted by the Complainant's husband on **6 September 1993**, with the Complainant added as a joint life assured on **15 November 1995**.

As at **11 September 2018**, the policy had a surrender value of €11,034 and was providing life cover benefit in the amount of €101,580, living cover benefit of €63,487 and a hospitalisation living cover benefit of €64 per day, for a monthly premium of €152.37.

The Complainant's Case

The Complainant notified the Provider in October 2014 via Ms K. the Insurance & Investments Manager based in the Complainant's local bank branch at that time, of a pending medical procedure, namely, the removal of her gallbladder by laparoscopy. The Complainant states that the Provider has given her conflicting information as to whether this procedure was covered by the living cover element of the policy. The Complainant underwent the full removal of her gallbladder on **4 November 2014** but the Provider has refused to provide her with living cover benefit in respect of this surgery.

The Complainant notes that the policy provides living cover benefit for bladder surgery and in this regard, she understood that to mean all bladder surgery. The Provider, however, advised in its correspondence dated 3 September 2015, as follows:

“Our Chief Medical Officer...confirmed that there is only one bladder per body and that the gallbladder is a different organ and distinct from the bladder. Therefore, as surgery to the gallbladder is not a covered condition under your Living Cover benefit, a claim for Living Cover benefit as a result of the surgery to your gallbladder is not possible”.

In her correspondence to this Office dated 23 November 2016, the Complainant sets out the complaint, as follows:

“I had an operation on 4/11/2014 which involved having my gallbladder removed and on notification to [the Provider] of a payment due to me of approximately €13,000 or more, I was refused payment and turned down totally. This situation has caused great confusion as my understanding on the issue of the policy [is] that I was covered for certain surgical procedures in relation to the gallbladder. I have spoken to several agents of [the Provider] in the life insurance section and have received conflicting reports from each individual as no one seems to know the circumstances of coverage but yet it states on the policy that I am covered”.

In addition, in her correspondence to this Office dated 19 April 2018, the Complainant submits, as follows:

“My understanding of the policy schedule...was that on the date of issue I was covered for bladder which my understanding was being covered for all bladder surgery, gallbladder and kidney bladder. There was no given breakdown or definition of any bladder specified on the [policy] document...With this in mind, I cannot and will not accept any modern day specifications or alterations of particular surgery to bladders as an excuse...I believe what I received and was written on my policy schedule in the 90’s cannot and should not be compared to today’s technology definition as medical practice was not as advanced as is now and therefore there is no comparison in a 90’s policy and a 2015 explanation”.

As a result, the Complainant seeks for the Provider to provide her with living cover benefit in respect of the gallbladder surgery she underwent on 4 November 2014, which she calculates to be “€13,000 approx. (this figure does not include indexation)”.

The Provider’s Case

Provider records indicate that the Complainant and her husband hold a unit-linked whole of life policy with the Provider that provides them with life cover benefit in the amount of €101,580, living cover benefit of €63,487 and a hospitalisation living cover benefit of €64 per day.

/Cont’d...

The Complainant underwent the full removal of her gallbladder by laparoscopy on 4 November 2014. In this regard, the policy provides that 10% of the living cover benefit of €63,487 (that is, €6,348.70) is paid where a policyholder undergoes surgery to the bladder. As the gallbladder is a separate organ to the bladder, the Provider notes that no cover is provided for surgery to the gallbladder. As a result, the Provider is satisfied that the Complainant was not entitled to any living cover benefit in respect of the gallbladder surgery that she underwent on 4 November 2014.

Provider records indicate that the Complainant telephoned the Provider on 6 July 2015 to request a claim form. The Complainant indicated that she had undergone surgery but would not specify when asked what type of surgery she had had. She also requested that a copy of the policy proposal form and a copy of the policy conditions be posted to her. The Agent confirmed that these would both be posted to her, along with the living cover claim form.

Two days later, on 8 July 2015, the Complainant telephoned the Provider to query the claim form she had received. She was asked to clarify what procedure she had undergone and she initially advised that it was bladder surgery and later clarified that it was gallbladder surgery. The Agent confirmed to the Complainant during this telephone call that whilst bladder surgery is covered under the living cover element of the policy, no living cover benefit was payable in respect of surgery to the gallbladder.

Following this telephone call, the Complainant logged a complaint with the Provider. The Provider wrote to the Complainant on 9 July and 5 August 2015 confirming that the matter was under investigation. A representative of its Claims Department telephoned the Complainant on 21 August 2015 to confirm that a response letter was due to issue shortly. It was also explained to the Complainant during this telephone call that the policy conditions set out what is covered and that gallbladder surgery, which is distinct from bladder surgery, is not listed as one of the covered surgeries. The Provider then wrote to the Complainant and her husband on 3 September 2015, as follows:

“During our telephone conversation on 21 August 2015, you pointed out that surgery to the bladder is covered under your Living Cover benefit and you suggested that the surgery to your gallbladder should be considered under surgery to the bladder. I discussed this point with our Chief Medical Officer, who was very clear in his response. Our Chief Medical Officer noted that surgery to the bladder was covered as a 10% claim under the Living Cover benefit. However, he confirmed that there is only one bladder per body and that the gallbladder is a different organ and distinct from the bladder. Therefore, as surgery to the gallbladder is not a covered condition under your Living Cover benefit, a claim for Living Cover benefit as a result of surgery to your gallbladder is not possible.

I appreciate that this may be very disappointing to you, but I hope that you will appreciate that all claims for benefit must be considered in light of the conditions under which the assurance is provided”.

The Provider notes that when the Complainant herself, along with the additional living cover and hospitalisation living cover benefit were added to the policy on 15 November 1995, the

/Cont’d...

Provider sent confirmation of the revised benefits under the policy to the Complainant and her husband. Whilst the Provider has in recent times provided the Complainant and her husband with a later set of policy conditions, the surgeries covered are the same in each set of conditions and the Provider confirms that no changes have been made to the list of surgeries over the years.

Provider records reflect that the Complainant made an enquiry in September 2011, via Ms X., who was the Insurance & Investments Manager based in the Complainant's local bank branch at that time, as to whether gallbladder surgery was covered under the policy. In this regard, the Provider notes that Ms X. telephoned the Provider on 1 September 2011 to enquire if gallbladder surgery was covered by the policy and she was informed that it was not.

The Provider has no record of any further contact being made by the Complainant in connection with the types of surgery covered under the policy until 22 October 2014, at which time she arranged to meet with Ms K. who was the Insurance & Investments Manager based in the Complainant's local bank branch at that time, to discuss the policy. In advance of this meeting, Ms K. telephoned the Provider to obtain a copy of the policy terms and indicated that the Complainant wanted to discuss a potential surgery she was due to undergo, but she had not at that time provided details of the surgery. It was confirmed to Ms K. that the policy provided cover for certain listed surgeries on a 25% and 10%. In this regard, in the event of the Complainant undergoing one of the listed surgeries, the benefit payable would be either 25% or 10% basis of the amount of living cover benefit provided under the policy, depending on the surgery in question and subject to the policy terms and conditions.

Two days later, on 24 October 2014, the Complainant telephoned the Provider directly and advised that she had met with Ms K., had reviewed the policy conditions and noted that bladder surgery was listed as one of the surgeries covered and wanted to confirm whether gallbladder surgery was also covered. It was confirmed to the Complainant during this telephone call that gallbladder surgery was not covered by the policy. The Complainant was informed, however, that if she was hospitalised for more than three days, she would be entitled to submit a claim for hospitalisation living cover benefit. The Complainant indicated that she had understood that Ms K. was going to confirm the position to her the previous day but she had not heard back from her. The Agent then provided the Complainant with Ms K.'s mobile number so that she could discuss the matter with her directly, if required. The Provider has since spoke with Ms K. and she has confirmed that she recalls meeting with the Complainant and that she outlined to her during that meeting that gallbladder surgery was not covered by the policy.

The Provider does not accept that it has misinterpreted the policy wording relating to bladder or that the Complainant was provided with conflicting information. The Complainant underwent the full removal of her gallbladder by laparoscopy on 4 November 2014. In this regard, the policy conditions provide that 10% of the living cover benefit is paid where a policyholder undergoes surgery to the bladder. As the gallbladder is a separate organ from the bladder, the Provider notes that no cover is provided for surgery to the gallbladder and that it advised the Complainant of this on a number of occasions.

/Cont'd...

Accordingly, the Provider is satisfied that the Complainant is not entitled to any living cover benefit in respect of the gallbladder surgery that she underwent on 4 November 2014.

The Complaint for Adjudication

The complaint is that the Provider refused to provide living cover benefit in respect of the Complainant's gallbladder surgery that she underwent on 4 November 2014.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 20 May 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.

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

The complaint at hand is that the Provider refused to provide living cover benefit in respect of the Complainant's gallbladder surgery that she underwent on 4 November 2014. In this regard, the Complainant and her husband hold a unit-linked whole of life policy with the Provider which provides them with life cover benefit in the amount of €101,580, living cover benefit of €63,487 and a hospitalisation living cover benefit of €64 per day.

The Complainant underwent the full removal of her gallbladder by laparoscopy on 4 November 2014 but the Provider has refused to provide her with living cover benefit in

/Cont'd...

respect of this surgery as it notes that gallbladder surgery is not one of the listed surgeries covered by the living cover benefit provided by the policy.

The policy in question provides living cover benefit in the amount of €63,487 where either the Complainant or her husband is diagnosed with a specified medical condition or undergoes one of the specified operations listed. In addition, in the event of either of them being diagnosed as having one of a different (and relatively less severe) specified medical condition or undergoing one of a different specified list of surgeries, the living cover benefit payable is either 25% or 10% of the amount of living cover benefit of €63,487, depending on the surgery in question and subject to the policy terms and conditions.

In this regard, Section 3, '**Living Cover Benefit**' of the applicable Living Cover Benefit Conditions booklet provides, *inter alia*, as follows:

"3.6.3. *Ten per cent of the amount that the life assured is covered for is paid if the insured life is diagnosed as having one of the following medical conditions:*

(i) *A surgical procedure on the following:*

- *the pituitary and pineal glands*
- *the spleen*
- *the liver*
- *the kidneys*
- *the pancreas*
- *the bladder*

..."

The Complainant acknowledges that the policy provides living cover benefit for bladder surgery but in this regard, she submits that she understood this to mean all bladder surgery. The Provider, however, submits that the gallbladder is a separate organ from the bladder and that as the gallbladder is not listed, no cover is therefore provided for gallbladder surgery.

The crux of this element of the Complainant's complaint is the interpretation of the term "*the bladder*" as it is used within the policy terms and conditions. In this regard, in her correspondence to this Office dated 19 April 2018, the Complainant submits, *inter alia*, as follows:

"My understanding of the policy schedule...was that on the date of issue I was covered for bladder which my understanding was being covered for all bladder surgery, gallbladder and kidney bladder. There was no given breakdown or definition of any bladder specified on the [policy] document".

I note that the Oxford English Dictionary defines the bladder as:-

/Cont'd...

“A muscular membranous sac in the abdomen which receives urine from the kidneys and stores it for excretion.”

The same dictionary defines the gallbladder as:-

“The small sac-shaped organ beneath the liver, in which bile is stored after secretion by the liver and before release into the intestine.”

In those circumstances, I take the view that it is clear that the bladder is the name of a specific organ of the body, one that is distinctly different in purpose from the gallbladder. As a result, I am satisfied that when the terms and conditions of the policy refers to *“a surgical procedure on...the bladder”*, that it is referring to that specific organ only and does not include the gallbladder. In that respect, I accept the position of the Provider that its Chief Medical Officer was of the firm opinion that *“there is only one bladder per body and ... the gallbladder is a different organ and distinct from the bladder”*.

In addition, the Complainant also complains that the Provider has given her conflicting information as to whether gallbladder surgery was covered by the living cover element of the policy. In this regard, in her correspondence to this Office dated 23 November 2016, the Complainant submitted, *inter alia*, as follows:

“This situation has caused great confusion as my understanding on the issue of the policy [is] that I was covered for certain surgical procedures in relation to the gallbladder. I have spoke to several agents of [the Provider] in the life insurance section and have received conflicting reports from each individual as no one seems to know the circumstances of coverage but yet it states on the policy that I am covered”.

Having considered the documentary evidence before me and having listened to the recording of the telephone calls relating to this matter, I am satisfied that the Provider repeatedly advised the Complainant that gallbladder surgery was not one of the listed surgeries covered by the living cover element of the policy.

In this regard, for example, I have listened to a recording of the telephone call that the Complainant made to the Provider on 24 October 2014, prior to her surgery, and I note the following exchange:

Agent: *So the benefit that you have, the additional living cover, the removal of gallbladder is not covered under that, not at that benefit.*

Complainant: *The removal of gallbladder is not on it?*

Agent: *No. No. It's not.*

Complainant: *And it says here bladder, so –*

/Cont'd...

Agent: *No, it's more a serious illness cover...*

Similarly, I have listened to a recording of the telephone call that the Complainant made to the Provider on 8 July 2015 and I note that the Agent advised her during this call that “*on that additional living cover, the one for €63,487, that doesn't actually cover gallbladder surgery, it would only cover just general bladder surgery*”.

I am satisfied in those circumstances that the information made available by the Provider to the Complainant was not confusing in any respect, and that the Provider was clear and consistent in the information it made available to the effect that the Complainant's surgery to the gallbladder was not covered by the policy.

In refusing to provide living cover benefit to the Complainant in respect of the gallbladder surgery that she underwent on 4 November 2014 that the Provider administered the policy in accordance with its terms and conditions. In addition, I am also satisfied that the Provider clearly advised the Complainant by telephone on 24 October 2014, prior to her surgery, that gallbladder surgery was not one of the listed surgeries covered by the living cover element of the policy. Furthermore, I note that there is no evidence before me indicating that the Provider advised the Complainant at any time prior to or after her surgery that gallbladder surgery was covered by the living cover element of the policy.

It is my decision therefore, on the evidence before me that this complaint cannot be upheld.

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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

12 June 2019

/Cont'd...

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.