



<u>Decision Ref:</u>	2019-0208
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Travel
<u>Conduct(s) complained of:</u>	Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

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

Background

The Complainants are husband and wife. On **22 June 2016**, they purchased a policy of travel insurance, with the Provider which provided insurance cover for each of them for the period **22 June 2016** to **07 July 2016**. Whilst abroad, the Second Complainant became seriously ill and required hospitalisation on **01 July 2016**.

The Complainants submit that after the Second Complainant was admitted to hospital, it took a long time, during which they received a lot of contradictory information from the Provider, before it decided to cover the Second Complainant's surgery abroad. The Complainants submit that having initially advised them that they should return home to have the operation, it subsequently informed them that in fact that the operation could go ahead abroad.

The Complainants submit that the very poor communications on the part of the Provider caused them a great degree of stress during what was already a very difficult period.

The Complainants' Case

The Complainants' complaint concerns the extreme difficulty experienced in communicating with the Provider during the time the Second Complainant was hospitalised, between **01**

July 2016 and 06 August 2016. The First Complainant submits that she waited “*days and days*” for the Provider to contact her when her husband was hospitalised.

The First Complainant submits that she asked the Provider to ring her with any updates or information that it had, irrespective of what time of the day it was, but that instead, it regularly emailed her saying we can't ring you because it would be the middle of the night for you (given the location).

The First Complainant submits that despite the doctors in the hospital advising that he required surgery immediately, the Provider had initially informed them that the Second Complainant should travel home to undergo an operation, and that as a result, she had packed and was ready to travel. The Complainant submits that she heard nothing further in this regard until she phoned the Provider on **16 July 2016** and was told that, in fact, the Provider had made the decision that the operation was to go ahead, abroad. She submits she was subsequently told that this decision had been made by the Provider on **15 July 2016** but that nobody had informed either her, or the hospital, that this was the case.

The Complainant submits that “*the number of people in 5 weeks I had to deal with was mind boggling to me with the stress and anxiety I had being in a foreign country and dealing with non English speaking people for most of the time. A phone call from [the provider] would have been a hugh [sic] deal to me.*”

The Complainant submits that she would wait for “*hours and sometimes days*” for a phone call from the Provider but, despite the promises it made to call her, the calls did not materialise. She submits that she had numerous different email addresses for the Provider, from the people who contacted her and was confused at times as to who was the appropriate person to contact.

The Complainant submits that she “*became totally dependent on emails and was confined to the hospital 24/7 as I was using their internet and as the phonecalls were not forthcoming I had no choice. It was my choice to stay in hospital room rather than hotel but I didn't want not to be able to go out in case I missed an important email.*” She submits “*I would sit all day and night with my phone charged and in my hand (never out of my hand) to get an email saying too late now to phone don't want to bother you.*”

The Complainants submit that as a result of not being informed by the Provider as to what was happening and the generally poor level of communication on its part, that they suffered considerable stress and inconvenience over the period that the Second Complainant was seriously ill. The First Complainant submits that she spent €400 on food and €100 on phone credit and would like some compensation for the very poor service she received over the four weeks her husband was in hospital.

The Provider's Case

The Provider submits that it does not dispute that its communication with the Complainants “*was not always of a high standard*”. It submits that email was the preferred method of

/Cont'd...

communication due to the 5 hour time difference between the parties. The Provider says that it was often deemed inappropriate to contact the First Complainant at night and submits that it advised the First Complainant to make contact by telephone if she wished to speak to someone. The Provider submits that that it appreciates that *“given the circumstance social calls during [location] daylight hours would have been appropriate and beneficial”* and it submits that following its investigation into the Complainant’s complaint, it upheld this aspect of her complaint.

The Provider has submitted that the decisions which were made by its medical team were justified and it submits that it *“is evident that the patient’s well being and safety was taking precedence over anything else”* and that *“the medical team acted in the best interests of the patient at all times.”* It submits that it is *“disappointing”* that the First Complainant was receiving contradictory information from the treating doctors abroad but it submits that *“this is not a reason to agree with their recommendations when the clinical evidence suggested otherwise.”*

The Provider has offered a goodwill gesture in the amount of €400, to compensate the Complainants for the distress and inconvenience caused to the Complainants.

The Complaint for Adjudication

The Complainants’ complaint is that the Provider offered them a very poor standard of communication and a very poor service during the period that the Second Complainant was in hospital, abroad.

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 20 June 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.

Submissions dated 01 and 11 July 2019 from the Provider and submissions dated 11 and 13 July 2019 from the Complainants were received after the issue of a Preliminary Decision to the parties. These submissions were exchanged between the parties and an opportunity was made available to both parties for any additional observations arising from the said additional submissions. The content of those submissions have been taken into account for the purpose of this Decision.

The Complainants are husband and wife. They purchased a policy of travel insurance on **22 June 2016**, which provided insurance cover for each of them for the period **22 June 2016 to 07 July 2016**. Whilst abroad, the Second Complainant became seriously ill and required hospitalisation on **01 July 2016**.

As a preliminary point, I would note that there is no dispute regarding the cover under the relevant policy of insurance and I note that the Provider has discharged the relevant fees which arose as a result of the Second Complainant having become ill, to the third parties directly. Rather, the Complainants' complaint arises from the manner in which they submit they were treated by the Provider, including a very poor standard of communication and conflicting information regarding the Second Complainant's proposed course of treatment.

I note the following timeline of events which, in the absence of a detailed narrative by the Provider, have been largely gleaned from the Provider's internal notes, and from Medical Reports which issued from the treating Hospital and furnished as part of the within complaint.

01 July 2016 – Whilst on holiday the Second Complainant was hospitalised and admitted to intensive care after presenting with vomiting and faintness. The contemporaneous case notes of the Provider on this date recorded a diagnosis of "*Gall Stones Pancreatitis*".

02 July 2016: A Case Note of the Provider stated that it had called the First Complainant and told her that it was working on evacuating the Second Complainant to a "better hospital". The Note states that, "*I told her in the morning (our time) we should have news and as soon as we have got an update we will let her know, she thanked for the help and will wait for our call.*"

04 July 2016: A Case Note of the Provider identifies that it tried unsuccessfully to contact the First Complainant ("*Subject: CALL BACK. OUTSTANDING: No Answer: will try again later*").

On this date, the Provider sent an email to the First Complainant, as follows:

/Cont'd...

Dear [First Complainant]

I've tried contacting you by phone earlier on today but unfortunately it is too late to call you.

We urgently need a document from you, ie, the booking confirmation of your flights. Would you be so kind to forward this booking confirmation to our email address including your case reference number.

A further Internal Case Note of the Provider of this date, **04 July 2016**, stated:

"As per the medical report, the patient is recommended to undergo JNJ Laparoscopic cholecystectomy once the abdominal pain is subsided and pancreatic enzyme is decreased.

The estimated cost for the procedure is [local currency] 225,000-247,500+/-10%.

The procedure will be performed in the next 3-5 days. Please confirm coverage for the procedure with the main insurance and keep us update."

05 July 2016 –The Provider sent an email to the First Complainant, confirming receipt of the booking confirmation and advising her that it was waiting on the Complainants' GP to send the Second Complainant's previous medical history, telling her, *"As soon as we have an update we will call you."*

07 July 2016 – An Internal Case Note of the Provider stated:

Dear Team,

Please find attached updated cost until to date for [local currency] 422,073.39.

Patient will plan to repeat CT abdomen on 6 July 2016.

Please advise for coverage of JNJ Laparoscopic cholecystectomy

Kindly advise us your coverage for above procedure and also extend your coverage for relative's room.

08 July 2016 - An Internal Case Note of the Provider set out the medical details of the Second Complainant.

Case Log Notes: Re First Medical report

Pax presented with acute epigastric pain, N+V for 3 days, initial CT abdomen at [location] hospital... lap Chole was recommended. Hence he was referred to [location] hospital for further management.

...

/Cont'd...

Treatment plan: ICU admission

:CBD stone obstruction with cholangitis and pancreatitis diagnosed.

:Urgent ERCP with stone removal recommended

...

CBD stone was removed successfully with complete CBD clearing.

There was no intra-procedure problem.

: treatments include IVAB, IVI, pain control by IV.

:further treatment plan: continue to observe, once abdo pain disappears and pancreatic enzyme decreased, elective lap chole will be considered.

09 July 2016 - The First Complainant emailed the Provider, asking for an update, stating, "No one is keeping me up to date. Is the hospital keeping you up to date on costs. Did the report from my doctor in Ireland get seen to yet?"

10 July 2016 – The First Complainant sent an email to the Provider, asking "can someone provide me with an update please."

11 July 2016 – The First Complainant sent an email to the Provider stating "I am waiting for some contact with you since 5th of July. I am sitting in a [foreign] hospital on my own wondering why I have heard nothing from you regarding anything."

11 July 2016 – A "Progress Report" issued from the Second Complainant's treating Hospital and included the following recommendation:

As per surgeon [Doctor's name] was highly recommended to perform laparoscopic cholecystectomy as soon as possible as further management (not an elective) after pancreatitis and infection condition were controlled, to prevent risk of recurrent CBD stone and recurrent pancreatitis which 30% risk if delayed surgery in 6 weeks. This procedure should be considered as soon as possible according to American college of gastroenterology guideline.

[underline added]

11 July 2016 – Having asked the First Complainant about whether she held other medical insurance, an internal Case Note of the Provider records that she reverted advising that she had no other insurance, saying, "I have no other insurance available to me. Thanks for update"

11 July 2016 – An Internal Case Note of the Provider notes that it considered the Laparoscopic cholecystectomy to constitute elective surgery and that as such, it was not covered under the policy of insurance:

Subject: R LLN CALL PAX / Inform that SX not covered
Laparoscopic cholecystectomy is elective, NOT COVERED

Case Log Notes:

Phone call To [First Complainant]

/Cont'd...

I informed her that all Medex and repat are covered but our MT considers the Laparoscopic cholecystectomy elective, and therefore NOT COVERED cause it can wait when pax is at home. She understood

I told her we are now waiting for info from the hospital in order to have updates and as soon as we have some news we will contact her back.

She thanked but underlined that she has been writing us from monday and received very few answers. Furthermore she discovered that the case is covered only today with my email.

I apologized and explained sometime we have too many calls to be able to contact them back but also added that was no justification and we will be more present from now on.
[emphasis added]

A further Case Log Note of this date stated:

We need to ensure that any elective surgery is not covered and made clear to pax and our auditors (when the final bill comes in) etc.

[emphasis added]

Apart from that please proceed with coverage on the case.

There appear to have been some miscommunication within the Provider as on **11 July 2016**, a Log Note indicated that the Second Complainant was due to undergo the procedure in question at 3pm that day.:

"Please be informed that patient plans to have procedure for JNJ Lap Cholecystectomy on 11 July 2016 at 1500 hrs. Estimate cost is [local currency] 225,000 +/- 10 % Kindly advise coverage of surgery and extend coverage for pax relative room."

And then a further Note which stated:

"MT already seen and commented on this ELECTIVE SURGERY is NOT COVERED OR MEDICALLY RECOMMENDED"

A further Note of **11 July 2016** recorded that:

Phone call received from [First Complainant]

Very worried, the surgeon visited her husband and told her the surgery must be done or there is a 30% of relapse and pax would go back to stage one.

The partner is really worried and wants her husband to do the operation.

I explained to her that TD said that surgery is elective and read to her the paragraph of their policy dealing with this theme "The cost of treatment which, in the opinion of our Chief Medical Officer, can safely be delayed until your return home."

/Cont'd...

She was desperate and started crying, I told her there would most likely be a nurse on the plane who will monitor him but it was not enough for her, she was shocked by the words of the surgeon.

I talked with the TL and got back to her saying we need a MR saying clearly that that surgery is absolutely necessary and why.

She asked me to keep on calling her and keeping her update [sic], I said I will monitor her case and call her as soon as I have updates and necessary MR
[emphasis added]

Further notes of the Provider of this date indicated that it had again discussed the matter with [its medical consultant] who indicated that surgery was not authorised and the Provider recommended that the Second Complainant return home:

*Sx is not authorised
Pax should return home on new HAP tickets
- Prem Economy upgrade and WCHS*

Case Log Note of 11 July 2016:

MT

Please call pax and give reassurance that he may travel back to Ireland and have surgery there. Pax has been told by surgeon (not TD) that surgery is urgent. Alternatively, please liaise with surgeon [name]

Case Log Note of 11 July 2016

Subject: *R LLN Chase Ops / SC*

Pax to SC pax and inform of extent coverage and advise that Laparoscopic cholecystectomy is elective, NOT COVERED.

Case Log Notes:

Pax informed but pax does not agree based on Surgeon's advise. Requested MT to liaise with pax/surgeon

Case Log Notes:

MT will call pax tomorrow

11 July 2016 - The Provider sent an email to the Second Complainant

Re – Update on your case

We hope this finds you well. We write to confirm that your case has been covered.

Please note we are waiting for an update Medical report and a possible Discharge date from the hospital so we can start looking for options for your repatriation.

...We hope you are recovering well and stay at your disposal should you have any doubt or question.

/Cont'd...

11 July 2016 - Email from Provider to the Complainant stating, *"We tried to get in touch to communicate you that our Medical Team will call you tomorrow."*

Case Log Notes of the Provider dated **12 July 2016**:

Case Log Notes:

called to pax- spoke with pax wife- she requested a call back as TD's were about to complete a ward round.

MT - will call back

Case Log Notes:

*- spoke with pax wife
- told us that she received a misscall from us*

Subject: R please see notes

- please see call notes and give pax wife a ring

Case Log Notes:

I have seen a note on [Name] indicating that the pax and surgeon are not in agreement with us with respect to the laparoscopic cholecystectomy.

I have spoken to the medical team and they will tell the TD that this has been noted as "elective" and is not urgent or emergent (medically necessary).

Kind regards,

*[Name]
Claims Control Executive*

Subject: Medical Review Details by [Name]

Case Log Notes:

From medical side the laparoscopic cholecystectomy is not urgent!! It should be done as an elective surgery when patient is back at home and has recovered from the infection and the cholecystitis/pancreatitis.

13 July 2016 - Email from the First Complainant to the Provider, stating, *"I phoned yesterday and again today and I was told someone from your medical team would be phoning me today"*.

13 July 2016 - Internal Notes of the Provider, set out the following:

Subject: CALL BACK

/Cont'd...

Case Log Notes:

No Answer:

Called pax again but no answer.

Case Log Notes:

Received a call from pax wife, she asked to speak to the CH. Passed to [name].

Case Log Notes:

Called from pax wife, passed DPA.

Asked how is pax doing she said is getting worst. [sic] Pax wife waiting for a phone call from MT that since 3 days they did not contact. Told her they tried yesterday she said yes but she was busy with TD. **Told her I will ask to MT to call her today as she wants all the situation clear regarding surgery or not as pax getting sicker.** [emphasis added]

Case Log Notes

Subject: Please see TL Note

Please [name] can you call this pax later on, we need to give pax more updates and have more communication with pax

Thanks

Case Log Notes

Subject: R LLN SX NOT COVERED Chase MT

Case Covered, but surgery not covered.

MT to liaise with pax/surgeon to explain sx is not urgent

Case Log Notes:

Seen updates.

- Pax is getting worse according to family.

OPS;

- Please chase an updated MR.

- Chase MT as they need to speak to pax asap. (There is no need to wait for an updated MR)

Case Log Notes:

Pax wife called I tried to pass it to MT

I called to MT but CH at MT was not available

pax wife hung up the call

MT will call her back asap

Note

Subject: A - Please call pax asap

The family would like to understand why the surgery is not urgent and what the risks are. I have seen your latest note advising that you would call the pax once you have received an updated MR, but **I do not think that we should delay this call as you are aware of what surgery and treatment is required.**

Please call the pax asap to avoid a complaint.

[emphasis added]

/Cont'd...

Case Log Notes:

Pax's wife called in again to chase phone call she is very upset. I have explained that we are going to ring MT to get a phone call for her and i will call her back. I called her back once to explain that we are still dealing with this and she appreciated being phoned.

Case Log Notes:

Called pax's wife and updated her that we are still chasing her phone call for her.

Note

Subject: A - PLEASE see MT comment re non-urgent surgery

Previous case notes clearly document why pax's surgery is NOT urgent and can wait until return to UK.

We are not disagreeing that he does need surgery but this can be performed once infection has settled and back in the UK

Case Log Notes:

Seen comment but wife still needed to be contacted to give her reassurance from a medical perspective. It's now 22:30 in [location] so we need to call asap or customer will start calling tonight for the same purpose.

14 July 2016 – The First Complainant sent a fax to the Provider attaching a Medical Report from the Hospital and a cover note which stated: *“Please read doctors recommendation on final page. As we are now entering week 3 of treatment you can imagine my concerns on my husband health. Please deal with this immediately and stop the procrastination that is leaving my husband health at risk and the lack of communication is very upsetting to all concerned.”*

On the last page of the Progress Report dated **14 July 2016** it was stated:

[Doctor's name] surgeon highly recommended performing laparoscopic cholecystectomy as soon as possible. The condition of acute pancreatitis and intra-abdominal infection had partially improved at this time.

Hence laparoscopic cholecystectomy should be considered as soon as possible within the 2nd week post acute pancreatitis, to prevent risk of recurrent CBD stone construction and recurrent pancreatitis.

If the operation is delayed to 3rd to 6th weeks after pancreatitis, the operation is difficult and more potential risk of complication from the operation due to adhesion.

According to American college of gastroenterology guideline.

Final Diagnosis: CBD stone obstruction with acute cholangitis

Status post ERCP with stone CBD stone removal on July 3, 2016.

Multiple gallstones.

Plan laparoscopic cholecystectomy due to potential risk of recurrent CBD stone obstruction and recurrent pancreatitis.

[original emphasis]

14 July 2016 – The Provider emailed the First Complainant, stating as follows: *“Re Medical Records. We have received your fax with updated medical reports well, and the have been*

/Cont'd...

reviewed by our medical team. They discussed the case with our doctors in Munich, and they advise only to have the surgery after 6 weeks because of risk of surgery now. We will contact you tomorrow, as it is too late now, to discuss the matter fully.”

The Provider’s Notes from **14 July 2016** provide as follows:

Subject: A - Please urgent call to paxs wife
To give her a reassurance from a medical perspective
As she is asking for it since 3 days we will need you to call to avoid a complaint
[emphasis added]

Case Log Notes:

Call to pax wife,

Pax wife expressed she was very unhappy with [Provider] refusing her husband Sx-
She further states a new MR -recommends emergency service.

I advised Dr [Name] would review this case tomorrow as he had been involved in the case, she wanted the case to be reviewed today.

MT- have requested Munich Dr to review case for Sx

Ops- **Please update Pax's wife with any new information and please acknowledge any email or documents received from her and this can be acknowledge via email.**

[emphasis added]

Subject: A - Please urgent call to paxs wife
To give her a reassurance from a medical perspective
As she is asking for it since 3 days we will need you to call to avoid a complaint

Case Log Notes:

Hi [name],

I note that you have been in discussion with Dr [Name] on this case.

Please see the below evaluation of pax medical requirements from Dr [name];

Hi all,

I’ve looked at this case. **Recommendations are now to have earlier gallbladder removal than later – these are recent changes. I am looking further to see if this is true after an episode of pancreatitis.**

More importantly, the price given for the operation is 225000 [local currency] or about \$6300 US or about 4500 GBP. **If he can have this done and then return home normally in eco, that will be much less than sending out an escort to bring him home sooner. I don’t know if we were planning that.** It seems he is still not totally asymptomatic, so I wasn’t sure we felt he could return home without an escort in his current state.

/Cont’d...

Please compare the options . Surgery will be cheaper than an escorted repat.

Please can you do a cost comparison to see whether it would be more economical for pax to have the surgery etc.

[emphasis added]

Internal Notes of the Provider dated **15 July 2016** provide as follows:

Subject: SMS TEXT SENT TO 3538xxxxxxx

Case Log Notes:

Hi from [Provider]

We will call you later today to give you the promised updates.

We apologize for the delay, we are working to have defined news on your case.

Case Log Notes:

Hi team,

I have spoken to the medical team (Name).

[Name] has provided the following instructions on pax medical treatment:

Hi all,

I consulted a top surgeon in Chicago on this and he said that regarding the decision on early vs late surgery, there is no consensus and is an individualized thing. **The advice the patient is getting may be correct.**

Again, considering the cost and assuming after he has been operated, after 1-2 weeks, he could travel home without assistance, compared to the cost of an escorted repat, the surgery in [location] may well be less costly. If this is so, no need to set ourselves up against the local TD with the patient in the middle.

Please proceed accordingly and keep us updated.

[emphasis added]

Subject: R difference of costs GBP 4,704.25

cost of sx locally after 6 weeks: 4500 GBP

repat in business class with escort nurse £9,204.25

Notes: HOLDING THE ABOVE OPTION. CLEARANCE REQUIRED, BA CLOSE AT 6PM TODAY FOR CLEARANCE. PLEASE ADVISE IF YOU WOULD

Please note that until now we have insisted a lot with the client saying that sx was not necessary and should have waited in the UK. Also in our last email that is promising a phone with full updates today.

[emphasis added]

/Cont'd...

A **Note** dated **15 July 2016** by the Provider's Medical Expert stated as follows:

Case Log Notes:

...

My opinion is that this is still a high risk transfer

> pt needs IV morphin (will need drx escort)

> pt might worsen during flight > new stone in CBD > **what is left of pancreas could be lost + cost of potential flight diversion**

TD is willing to operate on pt (most drx in [location] are trained in US or at least follow US guidelines)

Pt and wife are apparently happy to have surgery locally

Post surgery > pt can recover to level where he can fly back unescorted

From the above I would recommend that we follow [foreign] drx recomm for op in [location] TCO to advise

[emphasis added]

16 July 2016 - Email from the First Complainant to the Provider stating, "Yet again following your email 24hrs ago no one contacted me. The hospital tell me arrangements are being made for us to go home so I would certainly like some info on this. Please stop leaving me out of the loop. I need to know what is going on please."

Internal Case Notes of the Provider dated **16 July 2016:**

Case Log Notes:

OPs

Please proceed to GOP for surgery in [location]

Please update DZ and pax

Case Log Notes:

call received from wife

had to logg an EOD

she was getting really frustrated with the whole situation

she got an email from us to say that we would arrange flights, then we are now telling her that pax has to have the operation locally

she keeps having to call us for updates, each time she calls we apologize but then the same thing happens.

the hospital Dr did not know the operation had to take place locally

she then said she would not hang up till we spoke to a supervisor

call passed on to TL

17 July 2016 - Email from the First Complainant to the Provider stating, "Reference to my phone call to you sat 16th where you verbally confirmed your decision to have my husband

/Cont'd...

operated on her in [location]. I am still waiting on the email confirmation I asked you to send to me."

The Complainant has submitted as part of the complaint that at this time she was "all packed and ready to go home. I phoned again on Sat 16th to see about flight information to be told they decided on the 15th to go ahead with op. No one told me or the hospital about this. When I told our [doctor] this she was as confused as myself."

18 July 2016

Case Note of the Provider

Subject: EOD, SC pax wife

How is pax? why surgery hasn't taken place?

Case Log Notes:

Spoke to pax wife, she started to tell me that she had been waiting for somebody to send an email to her since Saturday, she complaint [sic] about lack of communication and speaking to lots of different people and nobody calling her back. She also complaint [sic] about being told that they were going home to have surgery and then, only after begging us, the surgery is covered and nobody is even informing them of it, she had to ring us to find out I listened to her, explained that it has been difficult to make that decision and that MT have been discussing the case many times as they wanted to make sure they were doing the right thing for the patient. I told her that because of her not being happy with the assistance provided so far I had decided to take over the case and I promised her I would call her back every day, she finds that hard to believe but she is happy with the idea

Asked her how pax is and when the surgery was supposed to be taking place, she told me that it was scheduled for tomorrow afternoon local time, told her that we will be chasing post surgery MR and MT will be monitoring the case, she then also complaint about being put on hold for 25 minutes last week when she was transferred to speak to MT, she eventually decided to hung up, apologised again for it told her that I can't change what happened in the past but that things will be different from now on and that I hope she changed the opinion she had till now about the assistance we are providing

Asked her where she was staying, she said that she is staying at the hospital, told her that we will be happy to find a hotel for her if she changed her mind about staying at the hospital, she said that she is OK there, that isn't an issue, the only thing she is complaining is the lack of communication, told her I will make sure that won't be an issue any more as I will be contacting her, either by mail or phone on daily basis

Told her I will give her a ring tomorrow and that I will send the email she was requesting since Saturday confirming that the case is covered, told her that this would make feel her better about the assistance she is getting from us, she said she is and thanked.

18 July 2016 - Email from Provider to the First Complainant stating "As discussed over the phone, we would like to confirm that the surgery for your husband has been approved and payment has been sent to the hospital."

/Cont'd...

18 July 2016 - Email from the First Complainant to the Provider, saying: *"I have had 2 txt messages from you that I can't reply to. [Agent] says she was trying to make contact with me but I have no missed calls. Please make contact with me."*

Internal Case Log Notes of the Provider, dated **18 July 2016**:

Case Log Notes:

Surgery will take place tomorrow

Case Log Notes:

Spoke to pax wife, pax is still having surgery

Told her I will give her a ring tomorrow, hopefully by then we will have post surgery MR

Asked her if she had received the email I sent her yesterday, she confirmed she had and thanked.

19 July 2016 – the Second Complainant underwent laparoscopic cholecystectomy.

Having undergone surgery the next step was for the Complainants to return home. In this regard, I note the following communications which occurred between the parties.

21 July 2016 Internal Case Note of the Provider:

Subject: R.G2 EOD Await MO and SC wife

Case Log Notes:

Spoke to pax wife, told her that we have received MR and it seems that pax is doing well but still in alot of pain, we are expecting to have an upadted MR on Monday

Told her that DZ are taking care of extending their visa, she confimed that as they requested her passport today

She asked how long would it take for us to take them home once pax is FTF, told her that depends of the assistance he will need that more assistance the longer it takes, usually between 2 or 3 days

Asked her if she was ok at the hospital, or wanted us to book a hotel for her, she said that she prefers to stay with pax

Told her that we don't expect to have any news till Monday so I won't be contacting her again till then, told her to contact us if there was anything she needed before Monday.

She thanked

25 July 2016 - Email from Provider to the First Complainant, stating:

"I have decided to send you an email instead of giving you a ring as it is a bit late now in [location] and I don't want to bother you.

Our medical team have reviewed the medical information received from the hospital today. They are a bit surprised that the doctors consider that your husband is fit to fly

/Cont'd...

now. That is why they have requested further medical information which we are hoping to get tomorrow. We are aware that both you and your husband, are desperate to go home but our medical team have to make sure that everything is in order and take all the necessary precautions before putting him on a plane.”

The Complainant has submitted with regard to the statement that the Provider didn't want to bother her with a call as it was late, that *“I wanted to be bothered. I was begging them to bother me.”*

25 July 2016 – Email from the First Complainant to the Provider stating, *“Thank you for the email even though I did request you phone me no matter what time. Will be waiting for you to contact me tomorrow.”*

26 July 2016: Email from the First Complainant to the Provider stating, *“I'm sure your doctors are being sure that we are travelling safely but I think the recommendations of the doctors treating my husband must be taken into account. Your doctors also recommended he go home 11 days ago and have the operation in Ireland so excuse me for not being 100 percent sure there [sic] recommendations are in my husbands best interests. I am rather confused by it all.”*

26 July 2016: Email from Provider to the Complainant, stating *“We understand your concerns. Of course the doctors recommendations are being taken into account, that is why we have requested further information from them to understand, why in their opinion, your husband is now fit to fly. As soon as that decision is medically justified by a medical report we will start the necessary arrangements to take you both home. As soon as we receive information that we have requested from the hospital we will let you know.”*

27 July 2016: Email from the Complainant to the Provider asking, *“Have you any update for me. I'm surprised to hear you have a local office here in [location]. Would it not have been easier for me to have been dealing with them time difference wise would have made a hugh [sic] difference to me and the hospital. Look forward to update.”*

27 July 2016: Email from Provider to the Complainant stating *“We have just received an updated medical report, which we have now passed to our medical team to review. It seems that your husband is much better. I will keep you updated.”* The Complainant responded saying *“Please let me know as soon as you can. Thanks”*

27 July 2016: Email from Provider stating *“the medical report has been reviewed by our medical team and it is now with our chief medical officer for final revision. We will send you an email as soon as we hear from him. Thank you very much for your patience, we just want to make sure that we are doing the right thing.”*

27 July 2016: Email from Provider stating “[Agent] had asked me to update you regarding our medical team review of your case this evening. Unfortunately I have not yet got an update for you.

[Agent] will be chasing it again in the morning and update you when she has some more information.”

28 July 2016

Case Log Notes:

Subject: A.URGENT for opps, Please see below

Could a member of the medical team contact pax wife and explain why pax isn't FTF? She has requested it and I think it could be a good idea, they have been in hospital for a very long time and desperate to go home. Her phone number is 003538xxxxxxx
Thank you very much for your help

Case Log Notes:

Hi Ops,

Please be advised that patient is in a very good facility in [location] however patient would be at high/great risk of developing complications in flight currently coupled with the fact that no commercial airline would be happy for him to fly at present given his blood results which are not normalising.

This is why all members of the MT have agreed that patient is not able to fly commercially at present. Needs further monitoring and treatment in [location].

29 July 2016: Email from Provider stating “thank you for attending the Drs yesterday, we can confirm receipt of the test result and the medical team have them to review. I understand your frustration with the decisions being made on your husbands behalf however our medical team advised that previously your husband’s blood levels were not at an acceptable level to fly. Our medical team deal with repatriations every day and they understand the requirements needed for long flights- medically and from the airline – and your husband would not be accepted by any airline as medically fit to fly with the blood results he previously held.

I hope that the new results are more favourable as firstly this would mean your husbands condition was much improved and secondly we could start to get you both home. We will need to wait for the medical reviews by our doctors.

I would like to apologise that you have not received a call from us. I understand that speaking personally to someone can be much more reassuring at a stressful time and emails do not provide such comfort. However, each day we wish to have an update to tell you but by the time it arrives it is late in [location] and we don't want to call you in the middle of the night, so we sent emails. I will ask my colleague who is in tomorrow to call you with or without an update so you can speak to someone.”

/Cont'd...

30 July 2016

Subject: R.EOD, CALL PAX WIFE

*Please call and give update
re MT*

Case Log Notes:

*-Spoke with pax wife and updated her on the MT notes
-Pax wife is not happy with this and demands to speak with the MT. Pax wife asked this already various times (saw that this was noted on the case) but never got a call from the MT.
-I told pax wife that I understand her frustrations and that I will step a nwe not to or MT to call pax wife. Pax wife told me it was day or night she wants to speak with MT.
-I will now leave a step again to the MT to call pax wife asap
-Mutual thanks*

30 July 2016

Case Log Notes:

...

*Wife is having conflicting information from us and TD and confused
She is also upset that people say they will call her and they don't
People say they will email her and they don't
The message for the MT has been the same all week but she says that no one has told her this*

*They just keep saying the MT will call her and explain
OPPS PLEASE DO NOT KEEP TELLING THE WIFE MT WILL CALL – WE WILL REVIEW THE MR
AND BLOODS AND GIVE RECS – WE WILL CALL WHEN THE PAX IS READY AGAIN TO BE REPAT
[original emphasis]*

Internal Notes of the Provider dated **31 July 2016:**

Subject: R-EOD-Call pax wife

Case Log Notes:

*-Spoke with pax wife
-I told pax that I saw the MT spoke with her, pax confirmed and was happy with the call but still could not understand why pax is NTF. I told pax I understand her situation it is very difficult to hear from TD that pax is FTF and or MT that is based in the UK and did not see pax fiscally is saying that pax is NTF. But the MT just wants the best for pax. **Pax wife understood and is happy that at least now we are calling her for some moral support.***

-Mutual thanks and today pax has new blood test step already made to chase NMR

[emphasis added]

/Cont'd...

Internal Notes of the Provider dated **02 August 2016**:

Pax wife called asking to speak with the CH. She's not here yet, I asked if I could help her. She said she wants to speak with CH or otherwise with [Name]. I'll ask to [Name] to call her back.

Subject: CALL BACK

Case Log Notes:

Completed: Call Notes: -Spoke with pax wife

-Explained that or MT spoke with TD and requested to TD to repeat blood test and a MR stating that pax is not on IV.

-Pax wife asked me to make note in Epa so it is done today, I informed pax wife that I will do that.

-Pax wife started again about that this is taking too long and that she doesn't understand the point from NTF from or FTF. I informed pax wife again the same that I told pax wife in or previous confirmation.

-Pax wife requested that I call her back tomorrow, I informed that I am out of the office but that I will update my colleague [name] about the case.

03 August 2016: Email from the Provider to the First Complainant, stating: *"We are expecting to get updated medical information from the hospital soon. We hope that this time the results will show an improvement which will allow us to take you home, hopefully this weekend. We have already requested flight options. [The Second Complainant] will be flying business class with a doctor, oxygen and wheelchair assistance. We will keep you updated."*

04 August 2016 - Email from the First Complainant to the Provider asking *"Have you any update for me"*.

05 August 2016: Email from a third party to the Provider confirming that it had organised for an ambulance to collect the Complainants from the airport and transfer them to hospital.

06 - 07 August 2016 – Complainant discharged from hospital abroad, flew back to Ireland and admitted to hospital in Ireland.

09 August 2016 Email from the Provider to the Complainants, *"We would like to know how you both are and how the flight back to Ireland went. If you have any expenses to claim for contact the claims department on [phone number]."*

The First Complainant responded by email of the same date that *"the evacuation went well and he is now comfortable in [location] university hospital. The only expenses I have are my*

/Cont'd...

daily living costs in [location] food drink etc. I will send these to you if you forward an address."

The Complainant has submitted in this regard that as she had not been advised by the Provider previously to keep receipts that she had not known that she was entitled to claim food expenses during the relevant period.

With regard to the expenses which the First Complainant submits that she incurred during this period, I consider that it would have been reasonable of the Provider to have advised her at the outset to keep receipt of expenses incurred, rather than when she was already home.

As noted at the outset, I understand that the cost of treatment and associated costs were settled by the Provider under the policy of insurance and there is no issue in this regard, from the Complainants' point of view.

As regards the communication issues which the Complainant experienced, the Provider within its Final Response Letter, acknowledged and apologised for its poor communication with the Complainants, stating:

"I am extremely sorry that you were not kept informed and that expectations were not set throughout. It is disappointing that the decisions and recommendations of the Medical Team were not conveyed to you, offering understanding and clarity. I appreciate that becoming seriously unwell abroad is an exceptionally anxious time and I am sorry that our communications and management of the case let you down.

In summary, I am unable to uphold your complaint in relation to the decisions and recommendations of the Medical Team; however I agree that the communication and management of expectation was not of the high standard that you should expect from [the Provider] and I am upholding this aspect of the complaint."

I note that the Provider has offered the Complainants €400 in recognition of its failings in this regard.

It did not uphold the Complainants' complaint about the "*changing decisions by the medical team*" and in its Final Response Letter the Provider advised that:

"I appreciate that plans and recommendations did change throughout the process; however I must reassure you that this was always in response to the clinical picture that was being provided...Your health and safety was always the most important consideration."

However, having had regard to the Notes of the Provider after the Second Complainant was admitted to hospital and prior to the approval of cover in respect of the procedure, it appears from these, that the issue of the costs involved were of similar concern, if not more, to its wanting to "*make sure that they were doing the best for the patient*". I refer in this regard to the internal notes of the Provider which stated, for example, that:

/Cont'd...

We need to ensure that any elective surgery is not covered and made clear to pax and our auditors (when the final bill comes in) etc.” (11 July 2016)

Recommendations are now to have earlier gallbladder removal than later – these are recent changes. I am looking further to see if this is true after an episode of pancreatitis.

...

More importantly, the price given for the operation is 225000 [local currency] or about \$6300 US or about 4500 GBP. **If he can have this done and then return home normally in eco, that will be much less than sending out an escort to bring him home sooner.**

...Please compare the options . Surgery will be cheaper than an escorted repat.

Please can you do a cost comparison to see whether it would be more economical for pax to have the surgery etc. (On 14 July 2016):

I note also the following note of the Provider dated 15 July 2016:

Subject: R difference of costs GBP 4,704.25

cost of sx locally after 6 weeks: 4500 GBP

repat in business class with escort nurse £9,204.25

Again, considering the cost and assuming after he has been operated, after 1-2 weeks, he could travel home without assistance, compared to the cost of an escorted repat, the surgery in [location] may well be less costly. If this is so, no need to set ourselves up against the local TD with the patient in the middle.

[emphasis added]

In deliberating upon the matter of evacuation, the considerations of cost appears to have been at least some of the reason as to why the Provider had been setting itself “up against the local treating doctors” in circumstances where the Complainant was seriously unwell.

I note that whilst the Policy of travel insurance sets out, at Section B, the cover available in respect of “Emergency medical and other expenses”, it also sets out “what is not covered” and this includes at Point (7) “The cost of treatment which in the opinion of our Chief Medical Officer can safely be delayed until your return home.” However, having regard to the considerations which appear to have been employed by the Provider as to whether to evacuate the Complainant or provide cover for the operation, as per the case note of 15 July 2016:

“> pt might worsen during flight > new stone in CBD > what is left of pancreas could be lost + cost of potential flight diversion”

it is not clear to me how such a scenario was, for a time, taken by the Provider to constitute a safe delay of treatment until the Complainant’s return home.

Overall, in terms of its dealings with the Complainants, I am mindful in this regard of the following provisions of the Consumer Protection Code 2012:

/Cont’d...

*A **regulated entity** must ensure that in all its dealings with **customers** and within the context of its authorisation it:*

*2.1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;*

*2.2 acts with due skill, care and diligence in the best interests of its **customers**;*

On the basis of the evidence before me, I am not satisfied that the Provider at all times acted in accordance with these provisions and am of the opinion that the Complainants' complaint should be upheld. I am aware that the Provider has previously offered the Complainants the sum of €400 in recognition of its low standard of communication with the Complainants. However, taking into account the severity of the situation which the Complainants found themselves in (with the Second Complainant having been hospitalised for over a month, from **02 July to 06 August 2016**, within an intensive care unit from **02 July to 11 July 2016**), the stress and inconvenience occasioned to the Complainants by the Provider's actions, inactions and ongoing failure to keep the First Complainant as she put in "in the loop", as well as the out of pocket expenses which the First Complainant incurred, I consider that the sum of €4,000 is a more appropriate sum to direct by way of compensation.

Whilst the Provider has submitted, since the Preliminary Decision was issued on 20 June 2019, that it believes that the figure of €4,000 by way of compensation, is excessive, I am satisfied that the said compensation I have directed is appropriate, taking into account the Provider's numerous failings over such an extensive period, as outlined in detail above.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b) and (g)**.
- Pursuant to **Section 60(4) and Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €4,000, to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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.

/Cont'd...

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

29 July 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.