An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0346
Sector:	Insurance
Product / Service:	Private Health Insurance
Conduct(s) complained of:	Failure to process instructions in a timely manner
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Second Complainant and her late husband incepted a joint health insurance policy with a named Insurer on **1 August 2016**. The Second Complainant is now 93 years of age and suffers with dementia. The First Complainant is the Second Complainant's daughter. The Provider is the health insurance broker that the First Complainant utilised in order to arrange health insurance cover for her parents.

The Complainants' Case

The First Complainant telephoned the Provider on **18 April 2017**. She says that *"in the context of my whole query regarding getting my Dad to a Private Hospital in an emergency situation, I was told that my Dad would be covered in the [X] Clinic"*. In this regard, the First Complainant submits, as follows:

> *"As it happened, shortly after this conversation, I had to call for an ambulance as my Dad had pneumonia and had aspirated liquid. It was at night and the ambulance men refused to bring my Dad to any other hospital other than [Named] Hospital. He was treated there (badly) and I refused to have him admitted. The Consultant asked for my Dad's Policy details, which I gave him and which he accepted would be good enough for cover in the [X] Clinic and referred him to the [X] Clinic who were given his policy details and accepted his admittance. I arranged a private ambulance and*

> *brought my Dad to [X] Clinic. When we got there [X] Clinic A&E was closed and they refused to accept my Dad's Health Policy to cover admittance – they had made a mistake accepting him in first place.*
>
> *I asked them to try and get Dad a place in one of the other Private Hospitals…but over the course of a couple of hours until after 10pm, they could not find a place for him. My Dad was extremely ill and dehydrated at that stage and the only choice I had was to admit my Dad to [X] Clinic so he could get immediate medical care. This had to be done on a private basis. [X] Clinic agreed to a reduced rate due to their mistake. Another place in a private hospital could not be found for my Dad for days and all the while I had to pay almost €1,000 per day. I had to ring the Consultant…and beg him to try and find another Private Hospital for my Dad as we could not continue to pay such huge private rates. Eventually my Dad got a place in [Other Hospital] in Dun Laoghaire. My Dad died a few weeks later on 9th June 2017"*.

The First Complainant maintains that the Provider furnished her with incorrect information during the telephone call on **18 April 2017**, which on **23 April 2017** resulted in her arranging for her father to be taken by private ambulance from [Named] Hospital A&E (where he had been brought by public ambulance) to [X] Clinic, where she was then told by hospital staff that his health insurance policy would not provide cover for his admission and treatment there; she then had to pay for this herself, at a significant cost.

The Provider furnished the Complainants with a transcript and recording of the telephone call the First Complainant made to it on 18 April 2017. The First Complainant notes that *"I enquired about bringing* [my father] *to A&E in the [X] Clinic.* [The Agent] *says that A&E is not covered in any hospital. I then say "Lets say my Dad needed attention, ok, I had to bring him to hospital. Can he be brought to [X] Clinic and would he be covered?" The answer I am given is "yes""*. In this regard, the First Complainant submits, as follows:

> *"If I had got proper advice and information from* [the Provider] *when I rang them, i.e. told straight that in an emergency situation, via ambulance, or indeed any other situation where care was needed which was not a pre planned "special" or accepted procedure, my Dad's policy would not cover his care in the [X] Clinic or indeed other Private Hospitals, I certainly would not have arranged private ambulance to bring my Dad to [X] Clinic and be marooned there for days – all the while paying huge medical fees and getting extremely stressed about the whole situation. What I would have done, would have been to get my Dad referred to a Private Hospital where his health insurance would have covered his bills. Or I would have driven my Dad to A&E in [Y Hospital], where he would have been admitted…I would have found another way"*.

As a result, the Complainants seek for the Provider to reimburse them for health expenses incurred that the First Complainant calculates to be, as follows: *"€1,550 first night + €995 nightly rate (reduced by my own negotiation) in [X] Clinic (6 nights, 23rd April – 29th April 2017) = €1,550 + €4,975 + Private Ambulance from [X] Clinic to [Other Hospital] Dun Laoghaire €190 = TOTAL €6,665"*.

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The Provider's Case

Provider records indicate that the Second Complainant and her late husband incepted a joint health insurance policy with a named Insurer on 1 August 2016. The Second Complainant is now 93 years of age and suffers with dementia. The First Complainant is the Second Complainant's daughter. The Provider is the health insurance broker that the First Complainant utilised in order to arrange health insurance cover for her parents.

The First Complainant telephoned the Provider on 18 April 2017 and states that *"in the context of my whole query regarding getting my Dad to a Private Hospital in an emergency situation, I was told that my Dad would be covered in the [X] Clinic"*. In this regard, the First Complainant notes that *"I enquired about bringing* [my father] *to A&E in the [X] Clinic.* [The Provider agent] *says that A&E is not covered in any hospital. I then say "Lets say my Dad needed attention, ok, I had to bring him to hospital. Can he be brought to [X] Clinic and would he be covered?" The answer I am given is "yes""*.

The Provider notes however that its agent replied to the First Complainant's statement with the response *"Yes, indeed"*, which it considers in the context to be a clear mannerism, one that is identifiable in the script extract and that can be heard in the call recording, and is immediately qualified as follows:

> *"Yes, indeed, basically* [the First Complainant] *with Health Insurance, be it your policy or your father's policy, and I do hope he's ok, but* ***basically A&E is not covered****, not even if you're paying above €5,000 for an adult"*.
>
> ***[Emphasis added]***

Having listened to the recording of this telephone call, the Provider is satisfied that its agent clearly advised the First Complainant during the call that:

(a) A&E is not covered.
(b) A private ambulance is not covered.
(c) Her father had to be referred to a private hospital by a GP or Consultant.
(d) Health insurance is about referrals.
(e) Her father would be covered in the [Y Hospital].
(f) Her father was not covered for all procedures in [X] Clinic and that for more routine procedures she should telephone the Provider to make sure that any procedures were covered.

The Provider is satisfied that the information it provided to the First Complainant during the telephone call on 18 April 2017 was correct, clear and unambiguous and notes that the First Complainant herself states during the call that *"that's great to get that clarity"*.

In addition, the Provider notes that the First Complainant states in her complaint, as follows:

> *"The Consultant* at [Named] Hospital] *asked for my Dad's Policy details, which I gave him and which he accepted would be good enough for cover in the [X] Clinic and*

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referred him to the [X] Clinic who were given his policy details and accepted his admittance. I arranged a private ambulance and brought my Dad to [X] Clinic. When we got there [X] Clinic A&E was closed and they refused to accept my Dad's Health Policy to cover admittance – they had made a mistake accepting him in first place. I asked them to try and get Dad a place in one of the other Private Hospitals…but over the course of a couple of hours until after 10pm, they could not find a place for him. My Dad was extremely ill and dehydrated at that stage and the only choice I had was to admit my Dad to [X] Clinic so he could get immediate medical care. This had to be done on a private basis. [X] Clinic agreed to a reduced rate due to their mistake".

In this regard, the Provider had no part to play in the sequence of events or any of the errors that took place prior to the First Complainant admitting her father to [X] Clinic on **23 April 2017** and in fact, it was not consulted on the matter at all, at that time.

Furthermore, the Provider notes the following exchange during the First Complainant's telephone call to the Provider on 18 April 2017:

First Complainant:	*I'm not going to get an ambulance for him cause he'll end up in [Named] Hospital[and I'm not putting him, that's like going to hell, you know, it just, it really is, like seriously, so he's not going there, you know. So what do I do? Do I get a private ambulance to bring him to em, The [X] or the [Y]?*
Agent:	*But that will never, that won't be covered on the policy.*

The Provider notes that as it transpired, this is exactly the chain of event that took place five day later on **23 April 2017** insofar as the First Complainant's father was taken to St [Named] Hospital by public ambulance and from there, she then organised for a private ambulance to bring him to [X] Clinic.

The First Complainant had been previously advised by the Provider during the telephone call on 18 April 2017 that not all procedures would be covered in [X] Clinic and that she should first contact the Provider to ensure cover. The First Complainant never contacted the Provider in advance of bringing her father to [X] Clinic, despite being advised to do so, and never gave the Provider the opportunity to confirm whether his attendance there would be covered. Furthermore, the Provider is satisfied that the First Complainant was told repeatedly during this telephone call that her parents' health insurance policy would not cover accident and emergency treatments in [X] Clinic.

The First Complainant did not submit a claim to the Provider in respect of her late father's admission and treatment at [X] Clinic as the Provider does not handle or process any claims relating to private health insurance for any policyholders. Instead, such claims would be sent directly from the hospital to the insurer, not to the Provider. As a result, it was only when the First Complainant made a complaint to the Provider that [X] Clinic were charging her for her late father's hospital stay from 23 April to 29 April 2017, that it was first made aware of the incident.

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In reviewing this matter in its entirety, the Provider has reviewed all interactions that it has had with the First Complainant. In this regard, during the initial telephone calls the First Complainant made to the Provider relating to her parents' health insurance on 22 March, 23 March and 7 July 2016 she clearly states that the [Y Hospital] would be the nearest and most relevant hospital for her parents' needs. The [Y Hospital] was fully covered on her parents' policy for special procedures. The Provider is satisfied that the health insurance policy it recommended to the First Complainant for her parents fully met the requirements she outlined and offered them full cover in the hospitals she deemed important at that time.

In conclusion, the Provider is satisfied that the information it gave to the First Complainant during the telephone call on 18 April 2017 was correct, clear and unambiguous. The Provider does however acknowledge that there was a delay in it sending a recording of this telephone call to the First Complainant for her to listen to, and in recognition of this delay it has offered the First Complainant a customer service award in the amount of €500.

Complaint for Adjudication

The Complainants' complaint is that the Provider gave the First Complainant incorrect information regarding her late father's health insurance cover, as a result of which she sustained significant loss.

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 **1 February 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

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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.

Following the consideration of a large number of additional submissions from both parties, the final determination of this office is set out below.

The Complainant indicated in her submission on 11 February 2019 that *" my father was referred to [X] clinic by the A&E Consultant …"* As a result, this office asked the Complainant to furnish a copy of the referral letter in question, from the Consultant, so that the contents could be taken into account in the course of the adjudication of the complaint. Although the Complainant submitted a copy of various medical records regarding her late father, and has also made a number of observations to the more recent submissions from the Provider, this office did not subsequently receive a copy of any referral letter from a treating Consultant referring the Complainant's father to [X] clinic in April 2017.

The complaint at hand is, in essence, that the Provider provided the First Complainant with incorrect information regarding her late father's health insurance cover, as a result of which she sustained significant loss. As outlined above, the Second Complainant and her late husband incepted a joint health insurance policy with a named Insurer on 1 August 2016. The Second Complainant is now 93 years of age and suffers with dementia. The First Complainant is the Second Complainant's daughter. The Provider is the health insurance broker that the First Complainant utilised in order to arrange health insurance cover for her parents.

The First Complainant telephoned the Provider on 18 April 2017. She contends that

> *" in the context of my whole query regarding getting my Dad to a Private Hospital in an emergency situation, I was told that my Dad would be covered in the [X] Clinic"*.

The First Complainant believes that the Provider gave her incorrect information during this telephone call, which 5 days later, on 23 April 2017, resulted in her arranging for her father to be taken by private ambulance from [Named] Hospital A&E, (where he had been brought by public ambulance), to [X] Clinic, where upon arrival she was told by hospital staff that his health insurance policy would not provide cover for his admission and treatment there. She then had to pay for this herself.

A recording of the telephone call the First Complainant made to the Provider on 18 April 2017 has been made available, and I note the following exchange:

First Complainant:	*I'll tell you what, you see, my dad was quite sick there just two days ago. He's actually fine -*
Agent:	*Good*
First Complainant:	*But I was sort of panicking – going oh Jesus I have to get him to hospital, you know, and I rang up, em, The [X] Clinic, right?*

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And I said, my dad is on [named policy]*, can he be admitted to the hospital there if I brought him into A&E and they said no.*

Agent: *A&E will never be covered under any policy.*

First Complainant: *Well, if, well, oh, I see, ok, well let's say, look, let's say my dad needed attention, ok? I had to bring him into hospital. Can he be brought into the [X] Clinic and he would be covered?*

Agent: *Yes, indeed, basically* [First Complainant] *with Health Insurance, be it your policy or your father's policy, and I do hope he's ok, but –*

First Complainant: *He is, yeah*

Agent: *- basically A&E is not covered, not even if you're paying about €5,000 for an adult.*

First Complainant: *Ok.*

Agent: *Now emergencies go to the nearest hospital, alright, regardless, but, if, what health insurance is all about is about referrals, ok? Your father is fully covered for all major procedures in the [X] Clinic, ok?*

Now he's not covered for every procedure because that would require a […] policy so the more routine procedures, not considered major or special; like say an overnight for a bunion or something, like that's a procedure ok but it's not fully covered on [his policy]*, you'd need a […] policy for that, ok?*

First Complainant: *Yeah.*

Agent: *So for more routine procedures…if advised to go for [X], I'd always advise to give us a call just to make sure it is fully covered and falls under special. Alternatively, if it wasn't, he would attend the [Y Hospital] or the [W] or [Z Hospital] or something like that where he would be fully covered.*

First Complainant: *Yeah, how does it work though, cause you see, I'm just kinda like, my parents are very elderly like and I'm thinking God if he has a fall, what do I do? You know, what do I do? Like, I'm not going to get an ambulance for him cause he'd end up in [Named] Hospital and I'm not putting him, that's like going to hell, you know, it just, it really is, like seriously, you know, so he's not going there, you know. So what do I do? Do I get a*

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private ambulance to bring him to, em, like The [X] or the [Y Hospital]?

Agent: *Yeah, but that will never, that won't be covered on the policy.*

First Complainant: *I don't, I don't mind that, I just want to get him into a decent hospital. I don't care about, you know, em, you see, how do I get him into hospital, into a private hospital if he's, if he's seriously ill, you know?*

Agent: *He has to be referred by a GP or consultant.*

First Complainant: *But what about A&E say in the [Y Hospital] or something?*

Agent : *A&E? Yeah, he can go to the [Y Hospital] but the A&E will not be covered. The stay will be -*

First Complainant: *Ah yeah, that's fine, so like you go, you go and pay whatever the Accident and Emergency is and then you're there on site anyway and they stick you in the bed if he needs to be hospitalised?*

Agent: *Indeed. If it's an emergency go to the nearest hospital, whatever hospital you see fit. Like, even if you go into [Named] Hospital there which is a public hospital –*

First Complainant: *They won't let you out, they won't let you out*

Agent: *- you would also have to pay the A&E fee for [Named] Hospital which is about €100.*

First Complainant: *Ok*

Agent: *So I mean –*

First Complainant: *Ok*

Agent *Every hospital, you're going to have to, if you go in by A&E you have to pay the fee, alright?*

First Complainant: *Yes*

Agent: *Now, on his policy, he can get back the A&E fee for public hospitals; but private hospitals, no, alright?*

First Complainant: *Ah well that's fine, yeah, that's great to get that clarity, yeah.*

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Agent:	*Like if it's an emergency, nearest hospital, but if it's not, alright, I would advise trying to get a referral from a GP or a consultant. A GP, more than likely, alright. And then you can be admitted, ok, to the hospital and there'll be cover subject to the excess of €75 regardless of God forbid how long he had to stay for or anything like that, alright?*
First Complainant:	*Yeah. Yeah.*
Agent:	*But yeah, more than likely, if it is an emergency you call an ambulance they're going to bring you to the nearest hospital, be it [Named] Hospital or be it whatever, ok?*
First Complainant:	*I, I, I, well, anyway, we'll kinda, I am completely and utterly set – I'm not doing that –*
Agent:	*Yeah*
First Complainant:	*So I will get a private ambulance to get him to somewhere else, there is no way I am bringing him to [Named] Hospital, but that's just my thing*

Having listened to a recording of this call, I am satisfied that this exchange does not bear out the First Complainant's recollection of her telephone call with the Provider on 18 April 2017. I am satisfied that the Provider agent advised the First Complainant during this telephone call that, *inter alia*, a private ambulance to and a subsequent admission into [X] Clinic in a non-referral accident and emergency situation, was not covered by her parents' policy, that is, *"that will never, that won't be covered on the policy"*. As a result, I am satisfied that the Provider did not provide the First Complainant with incorrect information regarding her late father's health insurance cover during this telephone call.

The Complainant has recently contended that the contents of the telephone call as quoted at pages 7-9 of this Decision, are such that she was misled by the Provider to believe that her father would be covered for admission to [X] Clinic in an emergency situation.

I do not however accept this. Rather I believe that the Complainant was clearly told by the Provider that although her late father was covered for "*major procedures*" at [X] Clinic, he was not covered for every procedure. The Provider therefore made reference to a different hospital for which the Complainant's father had full cover, and it also recommended that in any such situation, the Complainant would telephone the Provider to check.

It is clear to me from the transcript at page 8 above, that the Complainant understood this, but she made it clear that her opinion regarding the quality of the hospital, was more important than any costs that might be incurred.

I note that Section 1, 'Your Contract', of the applicable Health Insurance policy booklet, March 2016, provides, *inter alia*, at pg. 3, as follows:

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> *"**Understanding your cover***
>
> *Health insurance cover can be difficult to understand so to help you check your cover we have set out a checklist below. We understand that it may be difficult for you to figure out whether you are covered yourself so if you're in any way unsure, please call us on XXX XXX XXX and we'll walk you through it. In fact we would always advise you to check your cover with us before undergoing any procedure or treatment or being admitted to a medical facility. When checking your cover with us you will need to tell us where you intend to have the procedure or treatment performed; the name of your health care provider and the procedure/treatment code. You can get this information from your health care provider"*.

It would have been prudent of the First Complainant to have telephoned to check what cover was provided before admitting her father to [X] Clinic on 23 April 2017. She did not however do so.

Finally, the Provider acknowledges that there was a delay in sending a recording of the telephone calls to the First Complainant for her to listen to and it offers the First Complainant a customer service payment in the amount of €500 in recognition of this delay. I note that this offer remained open to the Complainants to accept and the First Complainant has indicated that this offer is in fact accepted. I also note that the Provider has confirmed that these monies (for this limited aspect of the parties' dealings) will be transmitted to the Complainants once this Legally Binding Decision has been issued and this is something that the Provider should action expeditiously.

Accordingly, it is my Decision, 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

24 October 2019

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Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.