



<u>Decision Ref:</u>	2020-0132
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Private Health Insurance
<u>Conduct(s) complained of:</u>	Rejection of claim
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, age 68, holds a health insurance policy with the Provider.

The Complainant's Case

The Complainant contacted the Provider in **January 2018** to confirm cover for liposuction treatment to her lower left leg under general anaesthetic, at a cost of €2,425; however the Provider declined cover.

The Complainant sets out her complaint, as follows:

"I had surgery before for a vein in my lower leg which after I got very bad infection. Since then, my leg has swollen around the knee area and groin which is very painful and preventing me to go walking and doing my daily duties at home. As I live alone, it is really very upsetting.

[The Provider] have refused me to have surgery which is very unfair just because my doctor said there is no code, so I am asking you to please help me, as I am not in a position to pay for surgery myself – that is why I have private health insurance and now [the Provider] say they are not able to cover me. This is really unfair and is upsetting me as it is preventing me from doing daily duties and things I want to do myself and from taking a walk every day".

In this regard, her Consultant Plastic Surgeon, Mr A. advised the Complainant in his correspondence dated 25 July 2018, as follows:

“Unfortunately [the Provider] are not in a position to provide cover for the procedure to your left lower leg. Unfortunately there is very little I can do as a consequence. I have explained to [the Provider] that this was not a cosmetic procedure but they have declined to cover this procedure”.

In her letter to this Office dated 3 October 2018, the Complainant advises, as follows:

“[The Provider] have refused to carry out a day procedure as there is no code my doctor can give, so I am left in awful pain, taking 8 tablets a day for relief. Also finding it very hard to walk, going up the stairs and so on. All I’m doing is sitting on a chair and going to bed”.

In addition, in her correspondence to this Office dated 12 October 2018, the Complainant advises, as follows:

“It is not a cosmetic issue. I had surgery on this leg before and now I have serious bad pain in my leg and a swelling around the knee area at the side, it is preventing me from doing my everyday duties at home as I live alone. I am paying health insurance all my life. It’s so unfair they won’t allow me have the day procedure. If I had the money I would have had it long ago, at this age in my life I am still trying to pay my mortgage”.

Furthermore, the Complainant’s GP, Dr S. advises in correspondence dated 8 February 2019, as follows:

“[The Complainant] is suffering from ongoing swelling and pain in her left leg. She has previously seen a consultant plastic surgeon who advised liposuction – again not as a cosmetic procedure but as a therapeutic procedure to control symptoms.

Currently [the Complainant] is using a combination product of paracetamol & codeine, non-steroidal anti-inflammatory medication and compression to aid symptoms. These medication are not without side effects and not advised on a long term basis. Intervention is important at this stage”.

The Complainant seeks for the Provider to confirm cover for her medical procedure.

The Provider’s Case

Provider records indicate that the Complainant telephoned the Provider in **January 2018** to confirm cover for liposuction treatment to her lower left leg under general anaesthetic, at a cost of €2,425, under the care of Consultant Plastic Surgeon Mr A. The Provider declined this request for benefit for a number of reasons, as follows:

Schedule of Benefits: The Provider notes that liposuction is not a treatment or procedure that is listed in its Schedule of Benefits for Professional Services. While much of this Schedule

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of Benefits is derivative of the minimum benefits legislation (Statutory Instrument No. 83/1996, the Health Insurance Act 1964), the Provider does update the Schedule annually with new or innovative procedures which may be medically necessary or which may have become the standard of care. The Provider advised the secretary to Consultant Plastic Surgeon Mr A. by telephone on 1 August 2018 of the opportunity to submit information in order to have a new procedure considered for addition to its Schedule of Benefits, however no such submission has since been received.

Medical Necessity: The Provider could not conclusively establish medical necessity for the treatment that the Complainant was seeking cover in respect of. The presenting complaint was described as medial thigh swelling which appeared to be a subcutaneous deposit of adipose tissue. The Provider was concerned that the liposuction request was in contravention of its Scheme Rules that specifically excludes benefit for cosmetic treatment. In this regard, the Provider notes from a number of communications between Consultant Vascular Surgeon Mr E. and Consultant Plastic Surgeon Mr A. that the requirement for the liposuction was aesthetic and that there was no venous incompetence.

Whilst Consultant Plastic Surgeon Mr A. advised the Complainant by way of letter dated **25 July 2018** that he had explained to the Provider that it was *"not a cosmetic procedure"*, the Provider notes this is at variance to his previous correspondence of **24 January 2018** to Consultant Vascular Surgeon Mr E., wherein he described the swelling in the Complainant's leg as *"uncomfortable and also aesthetically displeasing"*.

In addition, the Provider notes that Mr E. referred to the Complainant's medial left thigh swelling as *"mainly a cosmetic concern"* in his correspondence to Mr A. of **5 July 2018**, wherein he also described the saphenous vein as *"fully competent"*. The Provider did not note from the correspondence reviewed between the clinicians in this case, any debilitation to the extent described by the Complainant in her complaint. Whilst the letter from Mr A. dated **10 July 2018** described the swelling of the Complainant's lower leg as *"quite painful and affecting her ability to carry out her activities of daily living"*, the Provider notes that this debilitation was not corroborated in his communications with Mr E.

Intended Treatment Location: In addition, the Provider notes that the proposed liposuction treatment was to be carried out at Hospital [Q.], a private hospital for which the Complainant's health insurance policy does not provide benefit.

Whilst eligibility for benefit is determined by the Scheme Rules, the Provider notes that any pre-authorisation requests are comprehensively reviewed on a case-by-case basis, taking factors such as medical necessity and standards of care, as well as other and alternative treatments available, into account in its consideration of the request. In this case, liposuction treatment was not a procedure provided for in the Provider's current Schedule of Benefits, it received no submission from the Consultant Plastic Surgeon in support of the addition of the procedure to its Schedule and the Provider could not conclusively establish medical necessity for the treatment based on the medical information provided.

The Provider notes that the correspondence between the clinicians describe liposuction as one of the treatment options to the Complainant and in this regard, it would certainly review any other treatment request in conjunction with the Complainant's Scheme Rules and the considerations already outlined.

Accordingly, the Provider is satisfied that it declined cover in respect of the Complainant's desired medical procedure in accordance with the terms and conditions of her health insurance policy.

The Complaint for Adjudication

The Complainant's complaint is that the Provider has wrongly or unfairly declined cover in respect of her desired medical procedure.

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 **27 March 2020**, 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.

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

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The complaint at hand is that the Provider wrongly or unfairly declined cover in respect of the Complainant's desired medical procedure. The Complainant, who holds a health insurance policy with the Provider, telephoned the Provider in **January 2018** seeking to confirm cover for liposuction treatment to her lower left leg under general anaesthetic, at a cost of €2,425; however the Provider declined cover.

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

"I had surgery before for a vein in my lower leg which after I got very bad infection. Since then, my leg has swollen around the knee area and groin which is very painful and preventing me to go walking and doing my daily duties at home. As I live alone, it is really very upsetting.

[The Provider] have refused me to have surgery which is very unfair just because my doctor said there is no code, so I am asking you to please help me, as I am not in a position to pay for surgery myself – that is why I have private health insurance and now [the Provider] say they are not able to cover me. This is really unfair and is upsetting me as it is preventing me from doing daily duties and things I want to do myself and from taking a walk every day".

Health insurance policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

Section 9, 'What is not covered under the scheme', of the applicable General Rules Policy Booklet provides, *inter alia*, at pgs. 12 – 15, as follows:

"We will not pay benefits for the following ...

- d) Cosmetic treatment, except the correction of accidental disfigurement or significant congenital disfigurement or significant disfigurement due to disease ...*
- r) Any treatment not specified in the minimum benefit regulations or in our Schedule of Benefits unless we agree to include it".*

I note that in his correspondence to the Provider dated **10 July 2018**, Consultant Plastic Surgeon Mr A. H. advised, as follows:

"[The Complainant] was referred by [Dr E.], Consultant Vascular Surgeon with regard to a swelling on her lower leg. This is quite painful and affecting her abilities to carry out her activities of daily living. Ultrasonically she would appear to have a collection of added post tissue which is causing this. This would be best treated by liposuction and I would be grateful if you could let me know whether this could be covered by [the Complainant's] health care plan. There is no procedure code that I can find that fits this particular procedure".

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I note that in his earlier correspondence to Consultant Vascular Surgeon Mr E. dated 24 January 2018, Consultant Plastic Surgeon Mr A. advised, as follows:

"[The Complainant] had surgery on varicose veins...a number of years ago...She developed problems with infections after surgery and also was treated for a deep venous thrombosis in that leg. She has been referred with swellings in her leg which she finds uncomfortable and also aesthetically displeasing.

She has two areas, one near her right groin and the other near her left lower leg. She also appears to have some incompetence of her veins and I would be grateful if you could assess her from this view point. I have discussed the options of treatment with her today which would include liposuction but I have explained the limitations of this".

In addition, in his correspondence to Mr A. dated **5 July 2018**, Mr E. advised, as follows:

"I reviewed [the Complainant] in March for swelling medial lower left thigh which is mainly a cosmetic concern. She had previous varicose vein surgery but does not have much evidence of recurrent varicose veins and we performed a venous incompetence duplex scan to investigate her underlying veins. This shows no evidence of recurrence in the thigh and while the great saphenous vein is visible below the knee, it is fully competent. There is some evidence of previous thrombophlebitis which I don't believe is relevant to her current problem and also the small saphenous vein has some proximal incompetence but without any recurrent varicose veins in this territory which would be the calf and well below the area in question.

In summary, I don't think [the Complainant] would benefit from any venous intervention at present and I have reassured her that the incompetent small saphenous vein can be looked at again if she were to develop recurrent varicose veins in the future.

She is keen to explore the option of liposuction and plans to make an appointment to see you again".

I am satisfied that the terms and conditions of the Complainant's health insurance policy clearly exclude cover in respect of cosmetic treatment, such as liposuction, except where such treatment is for the *"correction of accidental disfigurement or significant congenital disfigurement or significant disfigurement due to disease"*, the need for which would have to be supported by the medical evidence.

In addition, I note the Provider's position that liposuction is not a treatment or procedure that is listed in its Schedule of Benefits for Professional Services.

Having considered the documentation provided by the parties, which includes correspondence between the Complainant's treating Consultants, I am satisfied that it was reasonable for the Provider to conclude that the evidence before it did not establish a medical necessity for the treatment that the Complainant was seeking cover for.

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I note that in his correspondence to the Provider dated 10 July 2018, Consultant Plastic Surgeon Mr A. advised, *“There is no procedure code that I can find that fits this particular procedure”*. In this regard, having listened to the recording of the telephone call the Provider made to Mr A.’s offices on 1 August 2018, I note that the Agent advised, *inter alia*, as follows:

“It’s in relation to a procedure that we have rejected covering, ok, and I just wanted to follow up with yourselves in relation to that, I suppose. We’re not covering it there because it’s not something that is under our Schedule of Benefits, that particular procedure. Now, we have been advised there that if the Consultant [Mr A.] wants to send in a request for a new benefit for that particular procedure that he can do so...

Consultants can send in a request for a new benefit to be added to the Schedule of Benefits...so like, it is an option there. It is not a procedure that we cover, but I suppose, down the line...medical information and everything would have to be sent in to us to be reviewed and potentially, like, it could be something in the future that could be added to the Schedule of Benefits”.

A health insurance policy is a contract like any other, it is based on the legal principles of offer, acceptance, and consideration. Each year, a Provider may offer terms which can be accepted by those seeking insurance, who then elect to pay the premium requested, which represents the consideration aspect of the contract. I am satisfied that it is a matter for the Provider, as part of the terms it is offering, to set out in its Schedule of Benefits for Professional Fees, what procedures it is willing to cover.

Since the Preliminary Decision was issued to the parties, on 27 March 2020, the Complainant has submitted additional documentation which refer to the series of surgeries she underwent between 2002 and 2006, none of which appear to have been satisfactory to her needs; it seems that the subsequent surgeries were intended to alleviate the consequences of the first surgery in 2002.

In that regard I note that the Complainant has had a really difficult time, as a result of these procedures. However, the procedure which she is now seeking to claim benefit for, from the Provider, in accordance with her medical insurance, is not one for which she is covered, by the terms and conditions of her health insurance policy.

Accordingly, whilst one must have every sympathy for the Complainant, having considered the evidence available, there is no reasonable basis upon which this complaint against the Provider can be upheld.

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Conclusion

My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017*** is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

27 April 2020

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.