An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0160
Sector:	Insurance
Product / Service:	Private Health Insurance
Conduct(s) complained of:	Complaint handling (Consumer Protection Code)
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainants incepted a joint mortgage protection policy with the Provider on **1 June 2004**, via a Broker.

The Complainants' Case

The Complainants set out their complaint, as follows:

> *"*[The First Complainant] *was diagnosed with uterine cancer in March 2015. We inquired on 3 occasions to our broker did we have critical illness cover. We only discovered on the third occasion in February 2018 that we did in fact have serious illness insurance* [as part of our mortgage protection policy]*. We lodged a claim with* [the Provider] *immediately in February 2018. In April 2018 our claim was accepted and we were issued with a cheque for €121,329. We noted that* [the Provider] *were only accepting our claim from February 2018 when we lodged our claim. We contacted our broker about this matter and he contacted* [the Provider] *on our behalf. We received correspondence to say that unfortunately* [the Provider] *were refusing to accept out claim from the diagnosis date March 2015 when the policy was worth €140,555. Our complaint centres around this failure to accept our claim from March 2015".*

The Complainants submit that they are therefore at a loss of €23,899.88, that is, the €19,226 difference between the claim settlement amount that would have been payable had the Provider backdated their claim to March 2015 when the First Complainant was diagnosed with cancer, and the lower amount they ultimately received in March 2018.

The Complainants also say that they are at a loss of the value of 36 monthly premium payments of €129.83, which they paid to hold the cover in place from March 2015 to February 2018, totalling €4,673.88.

The Provider's Case

The Complainants incepted a joint mortgage protection policy with the Provider on **1 June 2004**, via a Broker. Provider records indicate that the Provider sent to the Complainants directly on 22 June 2004 the relevant policy documentation including the policy terms and conditions, and a copy was also sent to their Broker.

On 8 March 2018, the Provider received a completed Specified Illness Cover Claim Form for Malignant Cancer in respect of the First Complainant's diagnosis of uterine cancer. The Provider also received from the First Complainant's GP on 23 March 2018, confirmation of her diagnosis from her then treating Consultant Gynaecological Oncologist, Dr F., on **12 May 2015**.

Section 1, '**Cover Provided'**, of the applicable Mortgage Term Plan Policy Conditions booklet provides, *inter alia*, as follows:

> *"**B.** **Serious Illness Cover** …*
>
> *The amount payable by the Company shall be the Serious Illness Benefit then in force at the date of receipt of satisfactory proof of the occurrence of the event"*.

Following its assessment, the Provider admitted the Complainants' claim and issued them a claim settlement cheque in the amount of €121,329 on **5 April 2018**, this representing the sum assured as at 23 March 2018 when it first received medical confirmation of the First Complainant's diagnosis.

The Provider understands that the Complainants' grievance is that the claim settlement amount payable in March 2018 was less than the sum assured when the First Complainant was diagnosed in March 2015. In this regard, the Provider notes that the sum assured on the Complainants' policy decreases on an annual basis to reflect the anticipated mortgage balance. Whilst the Provider appreciates that the First Complainant was diagnosed with uterine cancer in March 2015, the Complainants did not notify the Provider of this until March 2018, by which time the sum assured had then most recently reduced to €121,329 on 1 July 2017.

The Provider is satisfied that the terms and conditions of the Complainants' policy clear state that the amount payable shall be the serious illness benefit amount then in force at the date of receipt of satisfactory proof of the occurrence of the event, which the Provider only received from the First Complainant's GP on 23 March 2018. In this regard, the Provider is bound by the policy terms and conditions and it is not in a position to be selective when applying these terms and conditions, as this would compromise the basis of the insurance contract.

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As a result, the Provider is satisfied that it correctly settled the Complainants' serious illness claim in respect of the First Complainant's cancer diagnosis in accordance with the policy terms and conditions.

The Complaint for Adjudication

The Complainants' complaint is that the Provider wrongly or unfairly admitted their serious illness claim in respect of the First Complainant's cancer diagnosis, with effect from March 2018, when they made the claim, rather than agreeing to backdate the claim to March 2015, when she was first diagnosed, thereby resulting in financial 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 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 30 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.

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

The complaint at hand is that the Provider wrongly or unfairly admitted the Complainants' serious illness claim in respect of the First Complainant's cancer diagnosis, with effect from March 2018, when they made the claim, rather than agreeing to backdate the claim to March 2015, when she was first diagnosed, thereby resulting in financial loss.

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In this regard, the Complainants incepted a joint mortgage protection policy with the Provider on 1 June 2004, via a Broker.

I note that the First Complainant sent a completed a Specified Illness Cover Claim Form for Malignant Cancer, to the Provider on **22 February 2018** advising, *inter alia*, as follows:

> *"**What type of cancer have you been diagnosed with?***
> *Uterine Cancer …*
>
> ***When did you first seek medical advice in connection with these symptoms?***
> *February 2015"*

I also note from the documentary evidence before me that on 23 March 2018 the First Complainant's GP furnished the Provider with a letter from the First Complainant's treating Consultant Gynaecological Oncologist, Dr F. dated 12 May 2015 which confirmed the First Complainant's diagnosis as *"Grade 1 endometrioid carcinoma"*.

Mortgage protection 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 agreed between the parties.

Section 1, '**Cover Provided'**, of the applicable Mortgage Term Plan Policy Conditions booklet provides, *inter alia*, as follows:

> *"**B.** **Serious Illness Cover** …*
>
> *The amount payable by the Company shall be the Serious Illness Benefit then in force at the date of receipt of satisfactory proof of the occurrence of the event. The Serious Illness Benefit chosen at the outset by the policyholder decreases at each Policy Anniversary in line with a repayment mortgage repayable annually in arrears at an interest rate as specified on the quotation illustration"*.
>
> [Emphasis added]

I am therefore satisfied that the terms and conditions of the Complainants' policy clearly state that the claim settlement amount shall be the sum assured, which decreases annually, at the date that the Provider receives satisfactory confirmation of the insured event.

As a result, irrespective of the actual date of her diagnosis, I am satisfied that the operative claim settlement date, according to the policy, is the date when the Provider first received appropriate confirmation of the First Complainant's diagnosis. I note from the documentary evidence before me that it was 23 March 2018, when it received from the First Complainant's GP, a letter from her then Consultant Gynaecological Oncologist, Dr F. dated 12 May 2015 some three years earlier, which confirmed the First Complainant's diagnosis as *"Grade 1 endometrioid carcinoma"*.

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I am therefore satisfied that in issuing the Complainants with a claim settlement cheque in the amount of €121,329 on 5 April 2018, (being the sum assured as at 23 March 2018, when it first received medical confirmation of the First Complainant's diagnosis) the Provider administered and settled the Complainants' serious illness claim in respect of the First Complainant's cancer diagnosis in strict accordance with the terms and conditions of the Complainants' policy.

Accordingly, I can find no evidence of wrongdoing on the part of the Provider and therefore, it is my Decision on the evidence before me that this complaint cannot be upheld.

Conclusion

My Decision is that this complaint is rejected, pursuant to ***Section 60(1)*** 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.

MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

24 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.