



<b><u>Decision Ref:</u></b>	2020-0276
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Private Health Insurance
<b><u>Conduct(s) complained of:</u></b>	Claim handling delays or issues
<b><u>Outcome:</u></b>	Rejected

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

The Complainant renewed his health insurance plan with the Provider on 1 July 2018.

#### **The Complainant's Case**

In the Complaint Form he completed on 26 February 2019, the Complainant sets out his complaint, as follows:

*"I was diagnosed with cervical stenosis of the spine. I went to [Consultant Spine Surgeon Mr A.] in the Mater Private in Dublin. I was covered under my [Provider] policy to have my surgery done at the Mater Private in Cork by the above surgeon. However, as the Mater Private in Cork did not have an intensive care unit in Cork, he was unable and unwilling to complete the surgery in Cork.*

*[The Provider] would cover the full cost of my surgery in [the Mater Private] Cork, but refused to take responsibility if anything went wrong and I needed to be in an intensive care unit.*

*In the end, I couldn't take this risk so I paid €22,925 into the Mater Private Dublin and my surgery was carried out on [date] [2018] ...*

*All I asked at the time was for [the Provider] to pay the cost of the surgery in the Mater Private in Cork and I would offset the balance for the cost of the surgery in Dublin. It was a very fair request at the time.*

*Owing to the stress caused in the week directly before my surgery and since in all my correspondence with [the Provider] I now request them to cover the full cost of my surgery - €22,925. No patient should be treated like this, facing into and post major surgery. It is unacceptable”.*

In this regard, in his correspondence to the Provider dated 24 November 2018, Consultant Spine Surgeon, Mr A. advised, *inter alia*, as follows:

*“[The Complainant] has a significant and complex cervical spine problem in that he has three level cervical stenosis at C3/4, C4/5 and C5/6. At each level there is spinal cord compression with signal change present in the spinal cord.*

*Clinically he has signs of gross cervical myelopathy. His neurological condition is deteriorating.*

*I have recommended decompression and stabilisation of his neck from C3-C6. This will most likely require both an anterior and posterior approach. This surgery is complex and carries moderate risk.*

*Unfortunately [the Complainant’s] policy does not cover him for the Mater Private in Dublin but he is fully covered in Cork.*

*I am not happy to perform this level of surgical complexity in Cork as there is no formal Intensive Care Unit or High Dependency Unit and airway management could be a significant factor in this case. [The Complainant] may need to be intubated and ventilated after surgery and therefore the risks of doing this in Cork are too great.*

*[The Complainant] has specifically requested me to perform the surgery as I have more experience in this type of complex surgery than most.*

*I think it would be reasonable if [the Provider] were to consider covering the cost of this surgery in the Mater Private Dublin or perhaps covering it at a discounted level and [the Complainant] could potentially pay the difference”.*

The Complainant underwent spinal surgery (Procedure Code 5307) at the Mater Private Dublin on [date] 2018, having paid the sum of €22,925 a few days earlier, and in his correspondence to this Office dated 6 November 2019 submits

*“I was admitted to the Intensive Care Unit of the Mater Private Dublin in the immediate aftermath of my surgery and I remained in the Intensive Care Unit for over two days post-surgery.”*

In its correspondence to this Office dated 13 March 2020, the Complainant’s Solicitor submits on his behalf, *inter alia*, as follows:

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*“The Provider has highlighted the distinction between the different tiers of hospitals [public (tier 1), private (tier 2) and private hi-tech (tier 3)]. However, it is also recognised that I did enjoy cover for some procedures in these [private hi-tech] hospitals, namely specialist cardiac procedures and specified orthopaedic procedures.*

*It is maintained that I did enjoy cover for some procedures at the Mater Private Dublin. I submit that the Provider did provide some cover for me at the Mater Private Dublin and the refusal of the Provider to cover all, or any of the costs of my medical care, was unreasonable, unjust and oppressive in these specific circumstances.*

*The Provider has suggested...that I could have sought treatment in a different hospital under the care of a different consultant. I respectfully disagree with this position. I understood that my GP referred me to [Consultant Spine Surgeon Mr A.] because of his specific experience in relation to my complaint and this complex type of surgery. It was indicated to me, following on from my initial consultation on the 19<sup>th</sup> November 2018, that time was of the essence in this matter as my condition was deteriorating. [Mr A.] also indicated that the procedure needed to be carried out reasonably soon in correspondence with my GP. [Mr, A.] also highlighted the need to have intensive care facilities nearby in the event of certain medical complications after my surgery. I respectfully submit that all patients trust in their GP when they refer a patient to a particular consultant, and they in turn trust in, and depend on, the expertise of their consultant and the recommendation and concerns of such medical practitioners. The argument of the Provider and its approach to the matter at the time, namely that I could ask to go to another consultant, in light of the medical advice I was receiving and all of...my particular circumstances, was and is unjust and unreasonable in the circumstances.*

*My specific medical needs, the fact the same procedure was covered in Mater Private Cork, the fact that certain orthopaedic procedures were covered in Mater Private Dublin, and [the] fact I was willing to pay the difference between the cover in Mater Private Cork and Mater Private Dublin were individually and collectively compelling reasons to consider an ex gratia contribution ...*

*The Provider seems to argue that it would be unreasonable or unjust to other customers if I was to enjoy cover, or a portion of cover, under my policy. I respectfully maintain that the circumstances of each member of the policy are unique and their potential claims should be treated on a case by case basis ... the Provider had failed to act reasonably and justly in light of my particular and unique circumstances”.*

In addition, in its correspondence to this Office dated 14 April 2020, the Complainant’s Solicitor submits on his behalf, *inter alia*, as follows:

*“The Provider...suggests that I made a choice of my own volition to receive treatment in the Mater Private Dublin. The circumstances at the time were very different. I was under the care of [Consultant Spine Surgeon Mr A.].*

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*I was referred to [Mr A.], as he is an eminent consultant in his medical field. [Mr A.] was the best consultant to treat me in light of my particular medical history and needs. I was at all times guided by the medical judgment and expertise of [Mr A.]. [Mr A.] did not provide a full diagnosis [until] November 2018. I take issue with any emphasis on the telephone calls before my diagnosis was confirmed. [Mr A.] would not carry out the procedure in Cork as the necessary supports, including intensive care facilities, were not available at the hospital. [Mr A.] provided a testimony of his assessment of my particular circumstances at the time ... It is again emphasised that time was of the essence in undergoing the treatment.*

*I did not choose to have the procedure in the Mater [Private] Dublin, rather I deferred to the professional judgment and expertise of my treating consultant, an opinion that was both unfortunately, and fortunately, correct. I did require the additional facilities available in the Mater [Private] Dublin, the supports that were not available in the Mater [Private] Cork. I am thankful that I followed the medical opinion of [Mr A.]. I do not know how my recovery would have progressed if the procedure was not carried out in a medically appropriate facility ...*

*I again maintain that my unique circumstances including my medical complaints and history, the expert advice of my treating consultant and general practitioner, the details of my cover and my offer to pay a portion of the costs should have been relevant considerations for the Provider”.*

The Complainant has sought for the Provider “to cover the full cost of my surgery - €22,925”.

### **The Provider’s Case**

Provider records indicate that the Complainant renewed his health insurance plan with the Provider on 1 July 2018. The Provider sent the Complainant his renewal pack on 30 May 2018 and the cover letter advised, *inter alia*, as follows:

#### **“IMPORTANT INFORMATION**

- ***We have based your renewal on the scheme you currently hold.***
- ***Please contact us if there have been any material changes in your circumstances or in your health insurance needs.***
- ***Please contact us before your renewal date to discuss your health insurance needs as we may have a more suitable scheme for you.***
- ***If you do not contact us prior to your renewal date your current scheme will be renewed for a further 1 year period”.***

The enclosed Benefit Table (effective from 1 July 2018) clearly advised that there is no cover in the Mater Private Dublin, which is classified as a private hi-tech (tier 3) hospital, save for specialist cardiac procedures and certain specified orthopaedic procedures, as follows:

<b>Hospital Cover - Hi-Tech Hospitals, Blackrock Clinic, Mater Private Dublin &amp; Beacon Hospital</b>	
Hi-tech hospital excess	€75 excess for day-case & out-patient surgical & €175 excess for semi-private or private
Day-case/Out-patient surgical	Full cover in Beacon Hospital only. No cover in Blackrock Clinic & Mater Private Dublin
Semi-private	Full cover in Beacon Hospital only. No cover in Blackrock Clinic & Mater Private Dublin
Private	€100 shortfall per night in the Beacon Hospital. No cover in the Blackrock Clinic or Mater Private Dublin
Cover for specialist cardiac procedures in Hi-tech hospitals	Full cover - no excess
Specified Orthopaedic Procedures	Full cover, no orthopaedic shortfall applies

*“This table of benefits and the cover detailed within it is for your guidance and should be read subject to the rules of the scheme. To check that your hospital or Consultant is covered please visit your secure Member Area at [www.\[websitename\].ie/memberarea](http://www.[websitename].ie/memberarea) or call our Customer Care team on 1890 [XXX XXX]”.*

In addition, the enclosed ‘**Take a closer look at what we offer**’ booklet also advised at pg. 5, as follows:

***“If you need to check your cover***

*Whether you need to check your cover for a hospital stay, scan centre or for everyday medical expenses, you can do this on the ‘Check cover’ section on your personalised Member Area. This tool does the same checks as our Customer Care team, this means that you have access to check your cover whenever you need to – 24 hours a day, 7 days a week. It’s important to always confirm your cover before having any treatment”.*

The Provider notes that the Complainant telephoned the Provider on a number of occasions prior to undergoing his surgery in the Mater Private Dublin on [date] 2018, as follows:

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- 21 September 2018: The Complainant was advised that he had cover in the Mater Private Dublin for specialist cardiac procedures and certain specified orthopaedic procedures only.

He asked if he would have cover for a consultation and a possible future procedure with Consultant Spine Surgeon Mr A. and the Customer Service Advisor advised that Mr A. is a Provider registered consultant but clearly stated that *“back surgery would not be covered in the Mater Private in Dublin if a procedure is required”*.

The Complainant repeated back to the Advisor *“back surgery is not covered in the Mater Private”*, to which the Advisor responded *“definitely not on your policy”*. The Complainant was advised that there would be cover if his chosen consultant carried out the procedure in the Mater Private Cork. He was further advised that if he was to upgrade his policy to include cover in the Mater Private Dublin, there would be a waiting period of 2 years before this upgraded cover would apply to any pre-existing conditions. In addition, the Complainant was also advised that he would have cover in other hospitals such as the Galway Clinic and the Bon Secours Galway, as well as the Mater Private Cork, if a procedure was required.

- 15 October 2018: The Complainant asked about Mater Private Cork and Mater Private Dublin cover. The Customer Service Advisor advised that only specialist cardiac procedures and certain specified orthopaedic procedures would be covered in the Mater Private Dublin, whereas the Complainant would have cover up to a semi-private room in the Mater Private Cork. The Complainant explained that he would know later in the month if he required a procedure, but he would prefer to go to the Mater Private Dublin as he had no family close to him in Cork and it would be costly for family travelling to see him and that he had family in Dublin. The Advisor again stated that the Complainant would not have cover in the Mater Private Dublin and that if he were to upgrade his policy to include cover in this hospital, there would be a waiting period of 2 years before this upgraded cover would apply to any pre-existing conditions. The Complainant then asked could he claim any of the costs back if he was to go ahead with the procedure in the Mater Private Dublin and was advised that as he had no cover in the Mater Private Dublin that no part of the costs could be claimed back if he went ahead with the procedure there. The level of cover in the Mater Private Cork was advised, that is, a private room with a €175 excess. The Complainant was advised that a procedure code would be needed to fully confirm cover in any hospital but that there would be no cover in the Mater Private Dublin or the Blackrock Clinic unless it was a specialist cardiac procedure or a specified orthopaedic procedure. The Complainant asked why he would be covered in the Mater Private Cork but not the Mater Private Dublin. The Adviser explained that the Mater Private Dublin is classified as a private hi-tech (tier 3) hospital, whereas the Mater Private Cork is classified as a private (tier 2) hospital. The Advisor also made the Complainant aware that as well as the accommodation not being covered in the Mater Private Dublin, there would also be no cover for the surgery costs there.
- 20 November 2018: The Complainant was again advised that he had no cover in the Mater Private Dublin except for specialist cardiac procedures or certain specified orthopaedic procedures. The Complainant was also advised that the Mater Private

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Cork rates could not be applied to a procedure carried out in the Mater Private Dublin. The Customer Service Advisor checked with management and again reiterated that he would not be covered in the Mater Private Dublin.

The Advisor told the Complainant that his consultant could submit a written request to be reviewed by the Provider's medical practice team but as of that time, the Advisor could not confirm cover in the Mater Private Dublin.

- 28 November 2018: A Customer Service Advisor telephoned the Complainant to advise that the Provider's medical practice team had reviewed the written request received from Consultant Spine Surgeon Mr A. on 27 November 2018 but that the Complainant had no cover in the Mater Private Dublin and that the Mater Private Cork rates could not be applied to the procedure if carried out in the Mater Private Dublin. In addition, a Team Leader also telephoned the Complainant later that day and he was made aware that the Provider could only advise him as to the cover as per his chosen plan and that in this regard, he had no cover in the Mater Private Dublin and that the Mater Private Cork rates could not be applied to the procedure if carried out in the Mater Private Dublin. The Complainant asked for the matter to be escalated to the next level of management.
- 29 November 2018: An Operational Specialist telephoned the Complainant and advised that his request had been reviewed in full but that his chosen plan does not cover the procedure in the Mater Private Dublin, but did provide cover in the Sports Surgery Clinic and the Hermitage Clinic, both in Dublin. She reiterated that the Provider had advised as far back as in September, that he would have no cover with his chosen consultant in the Mater Private Dublin, though the Provider would be happy to pay the claim in a hospital that was covered on his plan. The Complainant was given a list of orthopaedic surgeons who work in the Hermitage Clinic where the Complainant would be covered up to a semi-private room with a €175 excess, as per his chosen plan.
- 30 November 2018: The Operational Specialist returned a missed call to the Complainant and spoke first with a family member, who advised that they had decided that the Complainant would proceed with the procedure in the Mater Private Dublin and pay for it themselves. Again, it was clearly advised that if the Complainant were to be admitted to the Mater Private Dublin, then there would be no inpatient cover and that if he were to upgrade his policy to include cover in this hospital, there would be a waiting period of 2 years before this upgraded cover would apply to any pre-existing conditions.

In addition, the Provider wrote to both the Complainant and his Consultant Spine Surgeon Mr A. on 3 December 2018, as follows:

*"I am writing in relation to your request for approval of cover for spinal surgery for the above member in the Mater Private Hospital, Dublin.*

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*[The Provider] wishes to advise that this request has been reviewed and we wish to note that [the Complainant] does not have access to the Mater Private Hospital, Dublin on his current level of cover ...*

*Therefore in line with [the Complainant's] level of cover and Scheme Rules, [the Provider] are unable to consider this request for surgery in the Mater Private Hospital, Dublin for benefit at this time".*

The Provider is thus satisfied that it clearly explained to the Complainant on a number of occasions in advance of his surgery (Procedure Code 5307) on [date] 2018 that his plan did not provide him with cover for his then pending procedure, in the Mater Private Dublin. The Complainant was also clearly advised that if he had the surgery in the Mater Private Dublin, that no portion of the bill would be covered by applying the Mater Private Cork rates. This was reiterated to the Complainant on a number of telephone calls well in advance of his procedure.

The Provider notes that eligibility for benefit is determined by any waiting periods that a member may be serving, the specific hospital cover available to a member on his or her chosen level of health insurance cover, the specific procedure code and whether or not this code is listed in its Schedule of Benefits as a procedure it covers, and whether or not the member's chosen consultant is a Provider participating consultant. In this regard, the Provider cannot take members' personal circumstances into account, in relation to additional costs family may have to incur when a member is undergoing treatment, such as travel or accommodation costs.

The Provider has three distinct hospital cover classifications, namely, public hospital (tier 1), private hospital (tier 2) and private hi-tech hospital (tier 3), as set out in the applicable General Rules Policy Booklet. The Mater Private Cork is classified as a private hospital (tier 2), whereas the Mater Private Dublin is classified as a private hi-tech hospital (tier 3). Though both hospitals are part of the overall Mater Private Group, each hospital has its own individually negotiated service agreement contract with the Provider, each perform a separate list of procedures and as a result, each charge the Provider different rates for these procedures.

It is for each member to choose a particular level of health insurance cover and the premium charged for each plan is in part a reflection of the degree of access that the member then has, to each category of hospital (as well as the amount they can claim for day-to-day medical expenses and the excess that they are willing to pay themselves). The more enhanced the access to each hospital tier, the higher the premium. The Complainant chose to pay for a particular level of cover that gave him access to private hospitals (tier 2) with an excess, but with limited access only to private hi-tech hospitals (tier 3), for specialist cardiac procedures and certain specified orthopaedic procedures only.

In this regard, the Complainant has access to the tier 2 Mater Private Cork but had no access to the tier 3 Mater Private Dublin for Procedure Code 5307, and cover was declined on that basis. The Provider is satisfied that this distinction was set out to the Complainant in his

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health insurance plan renewal documentation and during the telephone calls he made to the Provider, in advance of his procedure.

The Complainant underwent his surgery in the Mater Private Dublin on [date] 2018, however the Provider first advised the Complainant by telephone on 21 September 2018, over two months prior to the surgery, that he would have no cover in the Mater Private Dublin. This telephone call was also well in advance of the Complainant's first consultation with Consultant Spine Surgeon Mr A. on 19 November 2018.

When a contract is drawn up between the Provider and a private hospital, the onus is on the hospital to ensure that it has the required equipment and facilities in place to carry out any procedures included in the contract. Procedure Code 5307 is included in the Mater Private Cork contract and a similar code has appeared in its contract for a number of years, therefore it would be reasonable to deduce that the hospital is satisfied that it has the facilities necessary to carry out this procedure. In addition, the Mater Private Cork has billed the Provider for Procedure Code 5307 numerous times throughout 2018 and 2019, with some of these procedures taking place before and some after the Complainant underwent his procedure in the Mater Private Dublin on [date] 2018.

The Provider accepts that the Complainant must of course take note of any medical advice given by his consultant but it notes that the Mater Private Dublin was not the only option available to the Complainant if he was unhappy with the facilities available in the Mater Private Cork. In this regard, Procedure Code 5307 also appears on other private hospital contracts that the Complainant would have access to, such as the Galway Clinic, the Bon Secours Galway and the Hermitage Clinic Dublin. The Complainant was advised of these alternatives during the telephone call he made to the Provider on 21 September 2018, which was nearly two months in advance of his initial consultation with Consultant Spine Surgeon Mr A. in November 2018. This gave the Complainant ample time to make alternative arrangements to see a consultant in a hospital where he would have been covered.

While it can in no way dictate where or with whom a member has a procedure carried out, the Provider does need to advise any member on any costs that arise due to a proposed treatment path that he or she has chosen. It is also incumbent on the Provider to advise its members on any alternatives available to them to keep their future costs to a minimum. The Provider is satisfied that the Complainant was advised of all options available to him in advance of his procedure.

The Complainant was advised on a number of occasions prior to his procedure, with the first telephone call being 21 September 2018, many weeks prior to his procedure, that he did not have the cover on his plan for the procedure to be carried out at the Mater Private Dublin. The Provider in no way tries to dictate to members where to have a procedure carried out or to influence where a consultant operates from but in this case, by choosing this particular consultant, the Complainant limited the number of hospitals where this procedure could be performed.

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The Provider is satisfied that it made the Complainant aware by telephone on 21 September, 15 October and 20 November 2018 that he would have no cover for this procedure in the Mater Private Dublin either in part or in full. In spite of this, the Complainant made the decision to undergo the procedure in the Mater Private Dublin and whilst it hopes that this surgery was successful for him, the Provider cannot be held liable for the costs of same. Finally, the Provider notes that the hierarchy of health insurance schemes is predicated on the tiered hospital classification which is fundamental to the integrity of the health insurance schemes. The Provider applies the scheme rules consistently and fairly while adhering to this hierarchy. The Complainant was comprehensively advised on a number of occasions prior to scheduling the surgery that his cover did not extend to the Mater Private Dublin.

The Provider is satisfied that alternative options in private hospitals (tier 2) were available and made known to the Complainant and thus he was not at all unreasonably disadvantaged in cover or access for this procedure on his scheme.

The Provider is satisfied that it acted properly, applied the scheme rules consistently and advised correctly in all its interactions with the Complainant in respect of this matter and consequently it finds no compelling reason to consider an ex gratia contribution towards the cost of his surgery in the Mater Private Dublin. To do so, the Provider submits, would create a precedent that would entirely undermine the integrity of its health insurance schemes. In this regard, all members who choose the plan that the Complainant chose, pay the same premium and are therefore entitled to the same level of cover.

Accordingly, the Provider is satisfied that it declined to cover the cost, or contribute to the cost of the Complainant's surgery (Procedure Code 5307) that he underwent in the Mater Private Dublin on [date] 2018, in accordance with the terms and conditions of his health insurance plan with the Provider.

### **The Complaint for Adjudication**

The complaint is that the Provider wrongly or unfairly declined to cover the cost, or contribute to the cost of the Complainant's surgery, which would have been covered in full had it been performed by the same surgeon but in a different hospital, which the surgeon found to be unsuitable.

### **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.

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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 **16 July 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 an additional submission from the Complainant, the final determination of this office is set out below.

The complaint at hand is that the Provider wrongly or unfairly declined to cover the cost, or contribute to the cost of the Complainant's surgery, which would have been covered in full had it been performed by the same surgeon but in a different hospital, which the surgeon found to be unsuitable.

I note from the documentary evidence before me that the Complainant first attended with Consultant Spine Surgeon Mr A. in November 2018 and subsequently underwent spinal surgery (Procedure Code 5307) in the Mater Private Dublin on [date] 2018 at a cost of €22,925. The Complainant initially sought for the Provider to subsidise the cost of the procedure in the Mater Private Dublin up to the value it would pay if the procedure was carried out in the Mater Private Cork, and that he himself would then pay the difference.

However since that time that Complainant has indicated that, *"owing to the stress caused in the week directly before my surgery and since in all my correspondence with [the Provider], I now request them to cover the full cost of my surgery - €22,925"*, which the Complainant paid in full to the hospital a few days before the surgery.

The Complainant's health insurance plan with the Provider, like all insurance policies, does not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, exclusions and benefits set out in the policy documentation.

In this regard, Section 8, '**What is covered under the scheme**', of the applicable General Rules Policy Booklet provides, *inter alia*, at pg. 11, as follows:

**"(a)** *We will pay benefits for treatment a person receives while they are a member of their scheme. We will pay benefits under the scheme of which they were a*

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*member at the time they received the treatment and according to the rules and Benefit Table of the scheme that applied to them at that time”.*

The Provider will therefore only provide cover for the treatments and services that are listed under the particular scheme that the Complainant opted to pay for, in accordance with the policy terms and conditions.

I note that the Provider sent the Complainant his health insurance renewal pack on 30 May 2018 and that the enclosed Benefit Table (effective from 1 July 2018) clearly stated that there is no cover in the Mater Private Dublin (which is classified as a private hi-tech (tier 3) hospital) except for specialist cardiac procedures and certain specified orthopaedic procedures, as follows:

<b>Hospital Cover - Hi-Tech Hospitals, Blackrock Clinic, Mater Private Dublin &amp; Beacon Hospital</b>	
Hi-tech hospital excess	€75 excess for day-case & out-patient surgical & €175 excess for semi-private or private
Day-case/Out-patient surgical	Full cover in Beacon Hospital only. No cover in Blackrock Clinic & Mater Private Dublin
Semi-private	Full cover in Beacon Hospital only. No cover in Blackrock Clinic & Mater Private Dublin
Private	€100 shortfall per night in the Beacon Hospital. No cover in the Blackrock Clinic or Mater Private Dublin
Cover for specialist cardiac procedures in Hi-tech hospitals	Full cover - no excess
Specified Orthopaedic Procedures	Full cover, no orthopaedic shortfall applies

*“This table of benefits and the cover detailed within it is for your guidance and should be read subject to the rules of the scheme. To check that your hospital or Consultant is covered please visit your secure Member Area at [www.\[websitename\].ie/memberarea](http://www.[websitename].ie/memberarea) or call our Customer Care team on 1890 [XXX XXX]”.*

In this regard, the Complainant telephoned the Provider on 21 September 2018 to check whether his plan provided cover for the Mater Private Dublin. Having listened to the recording of this telephone call, I note the following exchanges:

Complainant: *Does that cover the Mater Private or what kind of cover have I for –*

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Agent: *The Mater Private Dublin, is it?*

Complainant: *Yes*

Agent: *Now, it's limited, ok, so –*

Complainant: *It's limited -*

Agent: *It is. The only cover you have in the Mater Private Dublin is for specialist cardiac procedures to do with your heart or specified orthopaedic procedures, like a knee or a hip replacement -*

Complainant: *Heart or orthopaedic?*

Agent: *Correct. That's it ...*

Complainant: *I'm having back problems and I'm just wondering am I, would I be covered under [Consultant Mr A.]?*

Agent: *Just for consultation, is it?*

Complainant: *Well for consultation and maybe if there was any further procedures to be done or anything like that*

Agent: *Ok, now [Mr A.] first of all, ok, he is a recognised orthopaedic surgeon by ourselves, ok? He only works in the Mater Private in Cork and the Mater Private in Dublin only. Ok?*

Complainant: *Yeah*

Agent: *So back surgery, ok, would not be covered in the Mater Private in Dublin ok, if a procedure was required*

Complainant: *Right, it wouldn't be covered in Dublin?*

Agent: *It definitely wouldn't be, I reassure you of that so –*

Complainant: *That's ok –*

Agent: *My best advice in that scenario is get referred to a different consultant that works out of a hospital that you are covered in God forbid, that a procedure was required*

Complainant: *Right. Ok so. Back surgery is not covered so in the Mater Private*

Agent: *Definitely, 100% not on your policy, no...*

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Complainant: *Not on your policy. And, if – I'm just thinking here – if I took a - if I upped my policy or anything like that is there a scheme that just say covers that?*

Agent: *You wouldn't be able to avail of it for two years you see -*

Complainant: *It wouldn't be available for two years?*

Agent: *Correct*

Complainant: *That's fine, that, that answers that, grand, I don't think there's anything else I need to know, now I was just wondering about that because I had been given his name as a, as a, an orthopaedic and -*

Agent: *Surgeon*

Complainant: *- in the Mater Private and that's why I said I'd give you a ring so, I wouldn't be covered so in the Mater Private?*

Agent: *Definitely not. No. Like, there is even hospitals close to you, like the Galway Clinic now, for example, the Bon Secours in Galway ok, you would be covered in those hospitals, God forbid a procedure was required*

Complainant: *Right, ok, grand, that's fine*

... ..

Complainant: *If I needed a second opinion, I was given the name of this man in the Mater Private and that he was the top man for, for, I suppose, surgery, if I have to have surgery on the back or the spine, or anything like that so –*

Agent: *As I was saying to you, you are, like he's also covered in the Mater Private in Cork, ok, and your policy does cover you in the Mater Private in Cork*

Complainant: *The Mater Private in Cork? And would it cover surgery in the Mater Private?*

Agent: *You're covered up to a private room in the Mater Private in Cork with a 175 excess. [Mr A.] is a fully registered consultant with us, so that means he would be also fine to carry out the procedure in the Mater Private in Cork for you*

... ..

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Complainant: *So you're saying I would be covered in the Mater Private in Cork?*

Agent: *In Cork, definitely*

Complainant: *In Cork. But not under, not under, em, what's this his name, [Mr A.]?*

Agent: *Oh, you are. Because he works in the Mater Private in Cork as well*

Complainant: *He works in the Mater Private in Cork as well?*

Agent: *He does indeed, yes*

Complainant: *So I would be covered in Cork, but not in Dublin?*

Agent: *Correct*

Complainant: *Right, ok, grand, I'm with you now, so – so I'm covered in Cork under him, but not in Dublin.*

Agent: *Correct*

Complainant: *Grand. Grand.*

I am therefore satisfied that the Agent made it clear to the Complainant, and that the Complainant confirmed that he understood, that he had no cover for the procedure if it was carried out in the Mater Private Dublin, though he would have cover if the same procedure was carried out by the same consultant in the Mater Private Cork.

Similarly, having listened to a recording of the telephone call the Complainant made to the Provider on 15 October 2018, I note that he stated,

*"so basically what you're telling me is there is no cover if I had to go in and have [indecipherable] surgery done in Mater Private in Dublin, but in Cork I would be covered"*

thereby indicating once again that he understood that he had no cover for the procedure if it were carried out in the Mater Private Dublin.

Indeed, having listened in full to the recordings of the telephone calls that took place between the Complainant and the Provider on 21 September, 15 October, 20 November, 27 November, 28 November, 29 November and 30 November 2018, I am satisfied that it was repeatedly confirmed to the Complainant that he had no cover for the procedure if it were carried out in the Mater Private Dublin.

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In addition, I note that the reason for this, is that his plan, his chosen level of health insurance cover, did not include cover in the private hi-tech (tier 3) Mater Private Hospital (except for specialist cardiac procedures and certain specified orthopaedic procedures). This was explained to the Complainant on a number of occasions. I am also of the opinion that the different Agents who dealt with the Complainant throughout were at all times courteous and helpful and provided him with the correct and appropriate information.

I am therefore satisfied that the Provider first advised the Complainant by telephone on 21 September 2018, many weeks prior to his first consultation with Consultant Spine Surgeon Mr A. in November 2018, and months before he underwent his spinal surgery (Procedure Code 5307) in the Mater Private Dublin on [date] 2018, that his plan would not provide cover if the procedure was performed in the Mater Private Dublin.

The Complainant advises that his chosen consultant would not carry out the procedure in the Mater Private Cork, where he would have full cover except for the excess, and in this regard, in his correspondence dated 24 November 2018, I note that Consultant Spine Surgeon Mr A. advised the Provider, as follows:

*"I am not happy to perform this level of surgical complexity in [the Mater Private] Cork as there is no formal Intensive Care Unit or High Dependency Unit and airway management could be a significant factor in this case. [The Complainant] may need to be intubated and ventilated after surgery and therefore the risks of doing this in Cork are too great".*

I note, however, that from the outset the Provider presented the Complainant with alternatives, insofar as it confirmed to him by telephone that the same procedure would be covered if it were carried out in, for example, the Mater Private Cork, the Galway Clinic, the Bon Secours Galway and the Hermitage Clinic Dublin (and he was given the names of some of the orthopaedic surgeons working out of those). It was therefore open to the Complainant to have his spinal surgery performed at a number of private (tier 2) hospitals. Nevertheless, the Complainant ultimately chose to have the procedure carried out in the Mater Private Dublin, in the knowledge that his chosen level of health insurance cover, would provide him with no cover in respect of same.

I note that during the telephone calls on 15 October, 20 November, 27 November, 28 November, 29 November and 30 November 2018, the Complainant sought for the Provider to subsidise the cost of the procedure in the Mater Provider Dublin up to the value it would pay if the procedure was carried out in the Mater Private Cork; he suggested that he himself would then pay the difference. Having listened in full to the recordings of these telephone calls, I am satisfied that the Complainant was told on each occasion that this was not possible.

In this regard, the Complainant chose a particular level of health insurance cover with the Provider and I am satisfied that the Provider can only provide cover for the specific treatments and services that are listed under the particular scheme that the Complainant opted to pay for, in accordance with the policy terms and conditions. I do not consider it

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reasonable for the Complainant, having elected for that level of cover, to expect the Provider to make payment on the basis of any other arrangement, other than the parties' agreed contractual terms.

It would be in breach of the insurance arrangement that was in place between the parties at that time, for me to direct the Provider to either cover in full the cost of the Complainant's procedure that was carried out in the Mater Private Dublin on [date] 2018, or to subsidise this cost up to the value it would have paid, if the procedure had been carried out in the Mater Private Cork.

In this regard, I am mindful that the Provider advised the Complainant from the outset that he had no cover for the procedure if it were carried out in the Mater Private Dublin and that it also advised him that there were a number of alternative locations where he could choose to have the same procedure carried out where it would be covered by his level of health insurance cover.

The Complainant opted to have the procedure in a hospital where he was aware he had no cover with the Provider. It cannot be a surprise to him therefore that he is not entitled to benefits under his policy, for the procedure in question, given the limits of the level of health insurance cover that he opted to pay for. I am mindful that there were a number of alternative plans offered by the Provider, albeit that they were understandably more expensive, which would have provided cover for the procedure to have been performed in the Mater Private Dublin. The cover selected by the Complainant however did not do so.

I am therefore satisfied that in declining to cover the cost, or contribute to the cost of the Complainant's surgery (Procedure Code 5307) undergone in the Mater Private Dublin on [date] 2018, that the Provider acted reasonably and justly and in accordance with the terms and conditions of the Complainant's chosen health insurance plan with the Provider.

I do not accept, as suggested by the Complainant that the complaint should be upheld pursuant to **section 60 (2)** of the **Financial Services and Pensions Ombudsman Act 2017**. The Complainant has pointed in particular to subsection (c) which prescribes that a complaint may be upheld on the ground that:

*"although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;"*

I do not accept that the Provider's action in declining the Complainant's claim in this matter was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant. For the avoidance of doubt, it should be noted that neither do I accept that the Provider's conduct in that regard, was otherwise improper.

It is my Decision therefore, on the evidence before me that this complaint cannot 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**

18 August 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.