



<u>Decision Ref:</u>	2020-0301
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Dental Expenses Insurance
<u>Conduct(s) complained of:</u>	Ending of benefit payment
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the declinature of the Complainant's claim under a "School Pupil Personal Accident Policy" held with the Provider.

The Complainant's Case

The Complainant submits that, when she was a primary school student in **1994** she tripped over the outstretched leg of another student in the school yard, and suffered cuts and grazes to her face and two "broken front teeth" as a result.

The school's personal accident report form dated **24 October 1994**, submitted by the Complainant, states that:

"although teeth are alive at 24/10/94 up to 6 months must be allowed to be reasonably certain that the teeth will remain this way. All basic treatment has been carried out but patient will return to this surgery for continuous monitoring".

The Complainant submits that four scenarios for future treatments for her dental injuries were outlined in a report from her dental surgeon, including the crowns which would "have to be replaced every 8-10 years for the rest of the patient's life". The Complainant states that she furnished this report to her Provider in **1994**, and that the Provider has been aware of the ongoing nature of her claim since then.

The Complainant submits that the Provider paid several claims relating to her resulting dental treatment between **1994** and **2006** including €1600 in **2006** for *“two front teeth crowns”*. She states that the Provider *“on two occasions”* issued cheques *“in full and final settlement”* but that, when queried about this, the Provider re-issued the payments *“in respect of a part payment”*.

The Complainant contends that in **February 2019** her dentist observed *“marginal breakdown and leakage with evidence of secondary decay developing in the marginal space”*. Her dentist recommended replacing the existing crowns and replacing them with new ones *“to achieve a better marginal seal”*. The Complainant submits that this work was carried out on **26 February 2019** and that her dentist advised it was possible that further treatment would be required in future.

The Complainant submits that her claim for these crowns has been wrongfully declined by the Provider, and that the Provider has *“always been aware that this was an ongoing issue and could not be resolved with a full and final payment”*. She further submits that she is not *“seeking any additional gain”* from the policy, but rather to *“receive the benefit that the policy affords”*.

The Provider’s Case

The Provider, in its letter to the Complainant dated **13 March 2019** submits that the Complainant was advised during a phone call with the Provider on **4 February 2019** that it *“would be unable to cover the cost of the replacement crowns as the crowns received in 2006 were considered the permanent resolution and [the Provider does not] cover replacement crowns”*.

The Provider states that it carried out a full review of the claim on foot of submissions received from the Complainant after the above mentioned phone call and it decided that the payment made for crowns in **2006** was the *“full and final settlement of this claim as this treatment is considered the permanent resolution”*.

The Provider further states that the re-issue of the cheque in 2006 *“noting part payment”* was an error on the part of the Provider. It states that *“Replacement crowns required thereafter would be classed as due to general wear and tear”* and were not covered under the policy. The Provider contends that under the policy such cover is only provided *“until permanent treatment can be carried out, i.e. crown”*.

The Provider's Final Response Letter dated **20 March 2019** stated that it *“considered the fitting of crowns in 2006 to be the permanent solution to the work required as a result of the accident and the claim had been closed”*. The Provider asserts that *“the policy will only cover the dental expenses necessary as a result of the trauma and policy limits would apply”*.

The Provider submits that the decision to decline the claim was correct and in line with the cover provided by the policy.

The Complaint for Adjudication

The complaint is that the Provider has wrongfully declined the Complainant's claim.

The Complainant wants the claim in relation to the February 2019 crowns and any future claims relating to this injury to be paid by the Provider.

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 **18 August 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 will not admit and pay the Complainant's claim for replacement crowns that she had fitted in February 2019, and that it will not pay any similar future claims.

The Complainant's school held a School Personal Accident policy with the Provider in **1994**, with insured persons defined as:

"All Students at the above School who are entered on the schedule of Insured Persons and for whom the premium has been received"

It is not in dispute that the Complainant was an insured person under the policy.

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I note that the policy provided cover for specified benefits with limits attaching to each benefit. One such benefit was:

Benefit	Limit
Medical and Dental expenses incurred and not recoverable from any other source	£3,000 [converted to €3,850 to reflect the changeover from punt to Euro]

The peril covered by the policy was Accidental Injury, defined as:

“bodily injury caused by accidental violent external and visible means”.

On **28 September 1994** the Complainant fell at school and broke her front teeth as a result. Her injury and the claims arising out of same was accepted by the Provider and covered under the policy. She underwent a series of dental treatments for which the Provider paid out under the policy as follows (pre 2002 amounts have been converted to Euro):

Date	Payment amount
23 December 1994	€114.28
1 September 1995	€285.69
19 June 1996	€95.23
15 October 1998	€139.67
26 July 1999	€152.37
30 July 2002	€151.75
23 November 2006	€1,600.00
Total	€2,538.99

The note accompanying the cheque from the Provider on **23 December 1994** described it as an *“interim payment under this claim”*.

A memo from the Complainant's father to the Provider dated **28 August 1995** enclosing bills for the previous 8 months described the claim as *“being settled by way of interim payments”*. A similar memo from the Complainant's father dated **13 June 1996** described the claim as *“being paid by way of interim payments”*.

A review sheet generated by the Provider dated **30 September 1997** described the status of the claim as *“awaiting more medical bills”*. A review document generated by the Provider on **1 July 1998** noted future action as *“await medical bills”*.

On **7 October 1998** a memo from the Complainant's father submitted further invoices again noting that the claim is being settled *“by way of interim payments”* and seeking what he described as an *“interim claim”*.

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Similarly, on **10 July 2002** the claim letter from the Complainant's father noted that the claim was being settled by interim payments and sought an interim payment for the most recent dental expenses.

On foot of that July 2002 letter, the Provider issued a cheque with a covering note stating that the payment was *"in full and final settlement"* of the claim. The Complainant's father queried this and a letter was issued by the Provider on **31 July 2002** stating that the cheque

"issued to you incorrectly stated that the payment was in full and final settlement of this claim. We note however that the treatment is ongoing."

On **11 October 2006** the Complainant's father wrote to the Provider seeking to claim €1,600 for *"the fitting of two front teeth crowns"*. On foot of that letter, the Provider issued a cheque for €1,600 with a covering note stating that the payment was *"in full and final settlement of this claim"*. Again, the Complainant's father queried this, and on **23 November 2006** the Provider re-issued a cheque with a covering note stating that the enclosed cheque was *"in respect of a part payment on your claim"*.

On **4 February 2019** the Complainant telephoned the Provider to advise that she needed to get replacement crowns. She was advised on that call that the Provider would not cover the costs of the new crowns because crowns are considered a permanent solution, and replacement crowns are not covered under the policy.

On **26 February 2019** the Complainant received replacement crowns. Her dentist stated that the crowns were necessary due to marginal breakdown and leakage with evidence of secondary decay developing in the marginal space. It appears to be accepted that this procedure can constitute a natural process in the life of crowns – i.e. they may need to be replaced periodically. The Complainant's dentist also confirmed that it is possible these new crowns will need to be replaced in future.

The Complainant submitted a claim to the Provider for the cost of these replacement crowns. The Provider wrote to the Complainant on **13 March 2019** declining her claim. It referred to the telephone call in February 2019 (when the Complainant was advised that the replacements would not be covered), and stated that the payment for the 2006 crowns was in fact in full and final settlement of the claim.

Analysis

The Provider's position is that the crowns fitted in 2006 constituted a "permanent solution" to the injury sustained at school in 1994, and that the replacement in 2019 was necessitated by virtue of normal wear and tear to the crowns and was therefore not covered by the policy.

The Provider has furnished submissions in support of this position. It notes that the policy covers accidental bodily injury caused solely by accidental external and violent means, and relies on this to explain why the replacement crowns were not covered, as they were necessitated by reason of natural wear and tear of the 2006 crowns.

Of course, the Complainant's position is surely that no crowns would have been necessary in the first place were it not for the schoolyard fall, and accordingly the replacement crowns were caused by the fall, as much as the 2006 ones were. The Provider has furnished submissions in support of its interpretation of "permanent", including dictionary definitions, to the effect that "permanent" does not necessarily mean "ever-lasting" or "for all time in the future", but also means "lasting for a long time". It notes that the Complainant's crowns in 2006 would have been considered, medically, to be a permanent solution to a dental problem.

The Provider has explained that its re-issue of the 2006 cheque to the Complainant's father "in part payment" was done "in error", and its position remains that the 2006 payment for crown fitting was in full and final settlement of the claim.

I note that the policy document which governs the level of benefits recoverable by the Complainant, dates from 1994. The policy is notably short and prescribes as follows under the heading "Cover":-

"The insurance provides for the payment of the following benefits in respect of any student sustaining accidental injury resulting in Death or Disablement and Medical or Dental Expenses incurred as a result of such accident."

I note that the policy does not suggest in any manner that the dental expenses to be incurred, are limited in time. Neither is any suggestion made within the policy details that dental expenses will be paid only until such time as the insurer takes the view that "Permanent Treatment" has been concluded.

In my opinion, the policy document does not provide for any exclusion of the nature that the Provider now seeks to apply. It is understandable in that context that there was some difference of opinion between the parties in 2006 when a payment was made by the Provider in the sum of €1,600, towards the cost of the crowns.

It would appear from the evidence available that the consequences of the injuries sustained by the Complainant in 1994 may well continue into the future, requiring intermittent treatment. Be that as it may, it was clear from the time when the injury was sustained that the maximum benefit payable by the Provider was a figure of IR£3,000 (being the equivalent of €3,850).

I note that in March 2019 at the time when the Complainant made the original claim, the Provider turned its attention to this limit, noting that the limit remaining on the policy taking into account the previous payments made, stood at €1,311.02, but that this would "not cover the full payment".

It is unclear why the remaining benefit under the policy was not offered at that time, albeit that it would not meet the full amount of the Complainant's claim. Instead, considerable thought was, in my view, needlessly focused on the communications between the Complainant's father and the Provider in 2006, when a difference of opinion had emerged as to whether the payment made at that time was to finalise the claim or by way of a partial payment.

It is disappointing in those circumstances that a full year elapsed before the Provider wrote to this office in March 2020, after the formal investigation of this complaint had been commenced, at that point offering the remainder of the benefits under the policy, in full and final settlement of the complaint.

I am satisfied, based on the policy wording that in 2019, the Provider remained liable to the Complainant for the outstanding benefits payable under the policy towards dental expenses to replace the crowns, in accordance with the cover which was in place at the time when she sustained the accident in 1994. It is disappointing that the Provider did not make that payment to the Complainant at that time by way of conclusion of the claim.

The Complainant must understand however, that whatever the cost of the dental treatment in 2019, the Provider was liable only to discharge the cost of that treatment up to a figure of €1,311.01, being the remaining benefit payable under the policy in accordance with the maximum benefit payable of IR£3,000 (€3,850).

Accordingly, I consider it appropriate to uphold the complaint that the Provider wrongfully failed to make payment to the Complainant of the remaining policy benefits. Once those policy benefits have been paid in full, the Provider no longer holds any responsibility to the Complainant to make any future payments towards future dental expenses, even if they are required as a result of the 1994 accident. Bearing in mind the very poor response of the Provider however, in early 2019 to what ought to have been a very straight-forward payment of the remaining benefit, I take the view that an additional compensatory payment is warranted.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of, by making the remaining benefit payment to the Complainant in the sum of €1,311.01, and I also direct the Provider to make a compensatory payment to the Complainant in the sum of €1,500, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

- I also direct that interest is to be paid by the Provider on the said benefit payment and compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if these amounts are not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

10 September 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.