



<u>Decision Ref:</u>	2020-0359
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Personal Accident
<u>Conduct(s) complained of:</u>	Refusal to insure - failure to renew policy Failure to provide product/service information Disagreement regarding Medical evidence submitted
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The policyholder, a named school, holds a School Personal Accident policy with the Provider. An insured person is defined in the 'Definitions' section of the applicable School Personal Accident Policy Document, as follows:

"Insured Person means

(a) Where all pupils of the School are to be covered by this Policy this will be indicated by the reference All Pupils in the Schedule. Any pupil attending the School whose name appears on the School's register of pupils, will be covered provided such Insured Person is not less than 2 years and 6 months or more than 22 years of age at the commencement of the Period of Insurance".

As a registered pupil with the named school, the Complainants' daughter is an insured person under the terms and conditions of the policyholder's School Personal Accident Policy.

The Complainants' Case

The Complainants' daughter suffered an injury to her left knee in May 2018 whilst playing an U16 championship camogie match for her Camogie Club.

The Complainants advise that ice was applied to their daughter's knee and that she took painkillers, then had an x-ray 2 days later and, following physiotherapy, was referred to Consultant Orthopaedic Surgeon Mr F., who operated on the knee 7 months later in December 2018. In this regard, in his letter dated 9 July 2019, Mr F. states, as follows:

“This is to confirm that [the Complainants’ daughter] who has had surgery under my care originally injured her left knee while playing a camogie match in May 2018. Her left foot was fixed in dry hard ground and during the process of deceleration and turning at speed she ruptured her left anterior cruciate ligament. This ligament would not have torn without sudden accidental violent external forces”.

The Complainants, via the policyholder, submitted a claim to the Provider under the policyholder’s School Personal Accident Policy in **May 2019**. This policy provides cover for Accidental Bodily Injury, which is defined as *“bodily injury caused solely by accidental violent external and visible means”*.

Following its assessment, the Provider declined the Complainants’ claim as it concluded that their daughter’s injury was not as a result of accidental violent external and visible means, insofar as there was no other player or no external factor involved in her injury.

The Complainants disagree with the Provider’s declination and submit, *inter alia*, as follows:

*“[Our daughter] ran across the pitch at speed and turned quickly twisting her knee and fell to the ground in excruciating pain, she felt a crunch and her knee swelled up immediately. We believe when this accident is broken down into precisely what happened it is exactly the type of accident that is intended to be covered by the [Provider] definition of **Accidental Bodily Injury** as follows:*

- *With her foot stuck in the dry hard ground she turned quickly and twisted her knee – **Accidental and Violent**.*
- *Her foot stuck in the ground was an **External** cause as well as her body twisting while her foot was stuck in the ground applying an **External** force to her anterior cruciate ligament.*
- *The **Accidental, Violent, External means** twisting her knee was clearly **Visible** to all at the Match, the Referee stopped the Match for some time while [our daughter] was attended to on the pitch and was carried off.*

*What is described above has been confirmed by [Mr F.], Consultant Orthopaedic Surgeon in his letter dated the 9th July 2019 as being the cause of [my daughter’s] injury: **“This ligament would not have torn without sudden accidental violent external forces”**.*

We are at a loss to understand how [the Provider] can take the view “it is not in dispute that [the Complainant] suffered an accidental injury”. And then suggest it was not as a result of “Accidental violent external visible means...”

*Anyone who has ever witnessed a player tearing their anterior cruciate ligament during a game will agree it is certainly **Accidental, Violent** in the extreme, **External** in the unnatural twisting of the knee required to inflict such an injury and clearly **Visible** in the excruciating pain suffered with this injury ...*

/Cont’d...

We believe with the evidence we have now provided in Referees Report, eyewitness accounts, weather station reports and report from [Mr F.] on the cause of this injury that we have demonstrated beyond all reasonable doubt that this is an Accident which should be covered by this Policy”.

In addition, in their letter to this Office dated **13 May 2020**, the Complainants submit, *inter alia*, as follows:

“[Our daughter’s] injury occurred in a split second, a blink of an eye, [we] were both at the match, [our daughter] suffered this extremely painful injury and anyone of the three of us cannot say with 100% certainty how exactly this injury occurred or at exactly what point / milli-second the ligament actually tore. Perhaps it was when her knee hit the ground? All we know for 100% certain was that [our daughter] finished up on the ground in unbearable pain, went through months of physio and eventually had to have surgery, recovery from which was painful, slow and difficult for [our daughter] and a cost of €6,460.72 to [us]”.

As a result, the Complainants seek for the Provider *“to pay the claim in full”*, in the amount of €6,460.72.

The Provider’s Case

The Provider’s records indicate that in May 2019, the Provider received a Pupil Personal Accident Claim Form from the policyholder detailing that during a camogie match in May 2018, the Complainants’ daughter *“turned quickly and fell to ground with excruciating pain”*. Enclosed were receipts of the costs incurred by the Complainants following their daughter’s injury, as follows:

Date of Invoice	Details of Invoice	Amount
May 2018	Taxi	€10.00
May 2018	Taxi	€10.00
1 May 2018	[Named] Clinic - MRI	€52.36
30 May 2018	Taxi	€7.00
13 June 2018	Taxi	€8.00
12 August 2018	[Named] Clinic - MRI	€52.36
14 November 2018	Consultation	€200.00
7 December 2018	[Named] Hospital - Surgery	€3,800.00
13 December 2018	[Named] Hospital - Radiology	€44.00
18 December 2018	Post-Operative Consultation	€100.00
20 December 2018	Anaesthetist	€645.00
9 January 2019	[Named] Hospital - Consultation	€1,222.00
22 January 2019	Follow-up Consultation	€100.00
19 March 2019	Follow-up Consultation	€100.00
14 May 2019	Follow-up Consultation	€100.00
No Date	Taxi	€10.00
TOTAL		€6,460.72

/Cont’d...

The Provider wrote to the Complainants on 16 May 2019 asking for confirmation of whether the medical costs incurred for their daughter's medical treatment were recoverable from any other source, such as a private medical insurance policy. In addition, the Provider also wrote to the Complainants on 22 May 2019 asking them to provide more details regarding the circumstances of the incident in May 2018 involving their daughter.

The Provider received a letter from the Complainants dated 6 June 2019 in which they detailed the circumstances of the incident, advising that their daughter *"ran across the pitch to get the ball, she turned quickly and fell to the ground holding her knee and screaming with pain. There was no other Player involved or no external factor involved in [her] injury"*. Enclosed was a letter from the Complainants' private medical insurance provider dated 22 May 2019 confirming that their daughter's medical procedure on 7 December 2018 was not indemnifiable under the policy, as their health insurance cover was only upgraded on 1 November 2018.

After investigating the details on file, the Provider wrote to the Complainants on 2 July 2019 to advise that it was declining their claim on the basis that the injury sustained by their daughter was not as a result of an accidental bodily injury as defined by the School Personal Pupil Accident policy, as follows:

*"Accidental Bodily Injury means bodily injury caused solely **by accidental violent external and visible means**".*

[Emphasis added]

Following receipt of the Complainants' letter of dissatisfaction regarding the claim declination dated 15 July 2019, the Provider reopened and reinvestigated the file.

New information was submitted advising that the camogie club for which the Complainants' daughter was playing for did not cover the medical costs incurred following the incident on 6 May 2018. Two statements from witnesses of the incident were also forwarded. In this regard, a statement letter from the camogie team manager stated that he *"saw [the Complainants' daughter] suddenly fall to the ground in obvious pain"*.

In addition, a statement letter from the camogie club fitness coach stated that the Complainants' daughter had *"collapsed immediately on the pitch screaming with unbearable pain"*.

Following its analysis of the file including this new information, the Provider upheld its decision to decline the claim in its letter to the Complainants dated 9 September 2019.

It is not in dispute that the Complainants' daughter suffered a painful injury in May 2018. In his letter dated 28 May 2019, the Consultant Orthopaedic Surgeon Mr F. diagnosed the injury as being a *"tear involving her left anterior cruciate ligament and injury to medial meniscus"*. The Provider notes that this type of injury is localised on the knee area.

/Cont'd...

In regard to how this type of injury occurs, in his letter of 9 July 2019 the Consultant Orthopaedic Surgeon Mr F. advised that the Complainants' daughter's *"left foot was fixed in dry hard ground and during the process of deceleration and turning at speed she ruptured her left anterior cruciate ligament"*. Whilst it appreciates his comments as to how this type of injury could occur, the Provider does challenge the Consultant Orthopaedic Surgeon's opinion that the *"ligament would not have torn without sudden accidental violent external means"*.

The Provider notes that some of the witnesses of the incident, as it happened in May 2018, have made statements to the Provider. In this regard, the Complainants themselves advise that their daughter *"turned quickly and fell to ground with excruciating pain"* and that she *"ran across the pitch to get the ball, she turned quickly and fell to the ground holding her knee and screaming with pain. There was no other Player involved or no external factor involved in the [her] injury"*. In addition, the camogie team manager states that *"[the Complainants' daughter] suddenly fall to the ground in obvious pain"* and the camogie club fitness coach stated that *"[she] collapsed immediately on the pitch screaming with unbearable pain"*.

The Provider does not contest the fact that the Complainants' daughter sustained an unfortunate painful bodily injury which was accidental in nature. The School Personal Accident policy states that cover is provided in situations where the bodily injury is a result of factors that are accidental, but concomitantly violent, external and visible. Based on the statements provided, the Provider notes that the Complainants' daughter's injury was not caused by any accidental violent external and visible factors. The tear in the anterior cruciate ligament in the knee happened when she was running and whilst making a sudden turn. The Provider notes that the pain caused by the tear in the ligament due to the sudden movement, made the Complainants' daughter fall to the ground in agony. In this regard, the Provider concluded that the tear in the ligament was not caused by an impact from any external visible factors, like, for example, her knee coming into contact with the ground or a camogie stick.

The Provider points out that the School Personal Accident policy does not define specific situations when a claim for an accidental bodily injury would be indemnifiable. Each case is investigated and analysed based on the evidence and the details provided by the claimant. For illustrative purposes, examples of how a bodily injury caused by accidental violent external and visible factors could occur during a camogie match would be an injury sustained following accidental impact with the ground, with a camogie stick, with a camogie ball, or with another player, to name a few. More generic illustrative examples on how this type of injury could occur are, as scoured from www.medicinenet.com/torn_acl/article.htm, as follows:

"Most anterior cruciate ligament injuries occur due to injury, usually in a sport or fitness activity. The ligament gets stretched or tears when the foot is firmly planted and the knee locks and twists or pivots at the same time. This commonly occurs in basketball, football, soccer, and gymnastics, where a sudden change in direction stresses and damages the ligament. These injuries are usually noncontact, occur at low speed, and occur as the body is decelerating".

/Cont'd...

The Provider notes that these examples were not considered in investigating and deciding on the outcome of the Complainants' claim; rather this claim was assessed and declined in strict adherence to the terms, conditions and definitions of the School Personal Accident policy.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unfairly declined the Complainants' claim relating to their daughter's accidental bodily injury under the policyholder's School Personal Accident Policy.

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 **24 September 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 declined the Complainants' claim in respect of their daughter's accidental bodily injury under the policyholder's School Personal Accident Policy.

In this regard, the policyholder, a named school, holds a School Personal Accident policy with the Provider. The Complainants' daughter is a registered pupil with this school and is therefore an insured person under the terms and conditions of the School Personal Accident Policy.

/Cont'd...

The Complainants' daughter suffered an injury to her left knee in May 2018 whilst playing a camogie match. The Complainants advise that ice was applied to their daughter's knee and that she took painkillers, then had an x-ray 2 days later and following physiotherapy was referred to Consultant Orthopaedic Surgeon Mr F., who confirmed that the Complainants' daughter had ruptured her left anterior cruciate ligament and he operated on her knee in December 2018.

The Complainants, via the policyholder, submitted a claim to the Provider under the policyholder's School Personal Accident Policy in May 2019. This policy provides cover for Accidental Bodily Injury, which is defined as "*bodily injury caused solely by accidental violent external and visible means*". Following its assessment, the Provider declined the Complainants' claim as it concluded that their daughter's accidental injury was not as a result of accidental violent external and visible means, insofar as there was no other player or no external factor involved in her injury. The Complainants disagree with this declination and seek for the Provider to admit their claim for the costs they incurred following their daughter's injury, in the amount of €6,460.72.

The policyholder's School Personal Accident Policy, like all insurance policies, does not provide cover for every eventuality; rather the cover is subject to the terms, conditions, endorsements and exclusions set out in the policy documentation.

I note that the '**Definitions**' section of the applicable School Personal Accident Policy Document provides, *inter alia*, as follows:

"Accidental Bodily Injury means bodily injury caused solely by accidental violent external and visible means and which directly and independently of any other cause results within 12 calendar months in: ...

(e) Medical, surgical or optical expenses including hospital nursing treatment and ambulance hire not recoverable from any other source".

In this regard, in order to claim for an accidental bodily injury, the accidental bodily injury must be caused "**solely by accidental violent external and visible means**".

I note that in his letter dated 9 July 2019, Consultant Orthopaedic Surgeon Mr F. states, as follows:

"This is to confirm that [the Complainants' daughter] who has had surgery under my care originally injured her left knee while playing a camogie match in May 2018. Her left foot was fixed in dry hard ground and during the process of deceleration and turning at speed she ruptured her left anterior cruciate ligament. This ligament would not have torn without sudden accidental violent external forces".

I note that in his undated statement letter, the camogie team manager Mr X. states, *inter alia*, as follows:

/Cont'd...

“During the match I saw [the Complainants’ daughter] suddenly fall to the ground in obvious pain”.

I also note that in her undated statement letter, the camogie club fitness coach, Ms Y. states, amongst other things, as follows:

“During a camogie match [the Complainants’ daughter] suffered a cruciate ligament injury which is a major and devastating injury for any player. [She] collapsed immediately on the pitch screaming with unbearable pain”.

I also note the statements of those present at the camogie match on 6 May 2018, when the Complainants’ daughter injured herself. In this regard, the Complainants themselves state in their letter to the Provider dated 6 June 2019, *inter alia*, as follows:

“[Our daughter] ran across the pitch to get the ball, she turned quickly and fell to the ground holding her knee and screaming with pain. There was no other Player involved or no external factor involved in [her] injury”.

I note that in responding to this complaint the Provider has concluded that the tear in the Complainants’ daughter’s ligament was not caused by an impact from any external visible factor, like, for example, her knee coming into contact with the ground or a camogie stick.

It is unclear to me whether the Complainants’ own reference to *“no external factor”* caused the Provider to form this opinion that because the Complainants’ daughter’s injury was not caused by an *“impact”* with the ground or a camogie ball, it was not covered by the policy. In my opinion, the Provider’s rationale in that regard is misplaced. Nowhere in the policy wording explaining the meaning of *“Accidental Bodily Injury”* is there any requirement for the injury to be caused by an impact, in order to meet the definition outlined in the policy that such an injury should be caused solely by *“accidental violent external and visible means”*.

I do not believe in those circumstances that the Complainants’ reference to the absence of *“an external factor”* can be taken to mean that the injury sustained was not by external means, i.e. by means which occurred outside of her body. I am satisfied based on the information made available to the Provider at the relevant time that the Provider acted wrongfully in coming to the decision that the injury in question did not meet the policy criteria which are outlined above.

Accordingly, I take the view that the Provider wrongfully declined the Complainants’ claim in respect of their daughter’s accidental bodily injury contrary to the terms and conditions of the policyholder’s School Personal Accident Policy.

If, for any reason, I am incorrect in that regard, I am conscious that **Section 60(2) (c)** of the ***Financial Services and Pensions Ombudsman Act 2017*** empowers this office to make a decision that a complaint is upheld, substantially upheld or partially upheld on the basis that:-

/Cont’d...

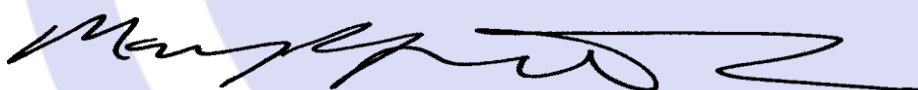
“Although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the Complainant;”

Accordingly, whilst I am satisfied that it is appropriate to uphold this complaint against the Provider, without reliance on the said **sub-section (c)**, I nevertheless consider it appropriate also to take that provision of the governing legislation into account in reaching my decision to uphold this complaint.

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)(b)(c) and (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 admitting the Complainants’ claim for payment of benefit, as expeditiously as practicable.
- 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**

16 October 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.