An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0432
Sector:	Insurance
Product / Service:	Dental Expenses Insurance
Conduct(s) complained of:	Rejection of claim – partial rejection Delayed or inadequate communication
Outcome:	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant incepted a dental insurance policy with the Provider on **1 August 2017**.

The Complainant's Case

In her letter to this Office dated **13 January 2019**, the Complainant sets out her complaint, as follows:

> *"In December 2017, my upper left second molar cracked. In March 2018, my dentist…advised it was damaged beyond predictable restoration and recommended extraction and implant. He also recommended replacement of my upper left first molar (which had been extracted about three years prior to my taking out the dental policy).*
>
> *On 5th April 2018, I called* [the Provider] *to ask what cover I could expect for the planned implants. I was told there was a contribution of 250 EUR towards the implant plus 600 EUR for the implant supported crown for a tooth that was not yet extracted but there was no contribution towards teeth extracted before the policy was taken out.*
>
> *I had my upper left second molar extracted on 25th April 2018. I sent in my dental treatment plan to* [the Provider] *for pre-approval in May 2018.*

> [The Provider] *replied that they wouldn't pay a contribution towards the implant of either molar as the upper left first molar was extracted prior to the policy (I had no dispute with this) but they also refused cover for the recently extracted upper left second molar as their terms and conditions exclude cover for implants for second molars.*
>
> *This surprised me because this exclusion is not mentioned in the '*[Your] *Cover Explained' information sheet nor in the 'Schedule of Benefits' nor was it mentioned to me during the call with* [the Provider] *on 5th April 2018.*
>
> *I reviewed the Terms and Conditions. There is no mention of this exclusion in '**2) Benefits: Section 6 – Dental Implants**' nor in '**4) Exclusions**' where one might have expected it. I did eventually find the following in '**3) Benefit Rules 8. c**', "Dental Implants placed in the site of a second or third molar are excluded from benefit". While this sentence excludes the implant for the second molar it does not explicitly exclude the implant supported crown itself which are listed as separate benefits in* [the Provider's] *own documentation. Page one under '**1) Definitions – Dental Implants & Fixtures**' defines Dental Implant as the artificial tooth root.*
>
> *I have communicated my concern about the second molar to* [the Provider] *by various means including emails, phone calls, a letter and also in person when a* [Provider] *representative was on an annual visit to my employer's premises. Although I received responses they did not address my questions adequately or answered questions I hadn't asked".*

In addition, in her letter to the Provider dated **20 August 2018**, the Complainant submitted:

> *"When I bought the dental policy it was emphasised in the table of benefits that there is a contribution towards implants and implant supported crowns. There is no footnote or comment that certain teeth are excluded. I have since learnt from your claims department that the second molar is not covered….The second molar is a critical tooth and I cannot understand why* [the Provider] *does not consider it important for dental health.*
>
> *Furthermore the dental plan was promoted in our company as a great benefit, however from EUR 8,000 costs for purely functional, non-aesthetic treatments I am very disappointed that not a single cost other than initial consultation is covered".*

In this regard, the Complainant seeks from the Provider *"payment for implant supported crown for* [the recently extracted upper left] *second molar of EUR 600 – and 250 EUR towards the implant for* [this] *second molar".*

The Complainant's complaint is that the Provider wrongly or unfairly assessed her dental insurance claim.

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The Provider's Case

Provider records indicate that the Complainant telephoned the Provider on **5 April 2018** to check cover. During this call, the Agent advised the Complainant that her consultation would be covered but that her dental insurance policy provided no cover for orthodontic splints, surgical extractions or bone grafts. In addition, the Agent advised the Complainant as to the policy cover for implants, namely, an annual maximum contribution of €250 towards an implant fixture and a separate benefit (up to a maximum of €600) of 70% towards the cost of crowns.

The Provider notes that the Complainant did not specifically mention the 2nd molar during this telephone call and in this regard, the policy does not provide cover for dental implants placed in the site of the 2nd of 3rd molars.

The Provider is satisfied that there was no misleading advice given on 5 April 2018 regarding cover for a 2nd molar implant as the Complainant did not specifically mention the 2nd molar, and the Provider does not consider it reasonable to expect an Agent to read through all of the policy exclusions during a telephone call. In any event, following this telephone call, the Complainant still needed to submit her dental treatment plan to the Provider for a pre-approval assessment. As a result, notwithstanding that the Provider is satisfied that no incorrect or misleading advice was given to her during the course of the telephone call on 5 April 2018, the Provider submits that the advice given would not have affected the course of action for the Complainant and that she still had to furnish her treatment plan for review before any confirmation of cover.

In this regard, on **21 May 2018** the Provider received from the Complainant a treatment plan prepared by her treating dental surgeon dated **19 March 2018**. Following an assessment of this treatment plan, the Provider emailed the Complainant on **24 May 2018**, as follows:

> *"I have listed the cover for your treatments under your dental policy below.*
>
> - *Consultation – covered 100%*
> - *Surgical extractions are not covered under the dental policy.*
> - *Orthodontic Splint is not covered under the dental policy.*
> - *Bone Grafting is not covered under the dental policy.*
> - *Implant Fixture placement is not covered under your dental policy for the teeth 7's and 8's (2nd or 3rd Molars).*
> - *Implant Crown placement is not covered under your dental policy for teeth 7's or 8's (2nd or 3rd Molars.*
>
> *Please note that surgical procedures as a whole are not covered under the dental policy, but may be covered under your healthcare. I have attached a copy of your table of benefits and policy wording for your records"*.

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The Provider notes that the complaint at hand raises the question as to whether the Complainant's dental insurance policy wording is clear that cover for implants in the site of the 2nd molar is excluded. In this regard, the Provider says that the implant fixture and the implant supported crown are the two components that make up the dental implant.

Section 3, '**Benefit Rules'**, of the applicable **Dental - Rules and Conditions** policy document provides, *inter alia*, at pg. 6, as follows:

> ***"8. Dental Implants & Fixtures***
>
> *c) Dental Implants placed in the site of 2nd or 3rd molars are excluded from benefit."*

Whilst the Complainant comments that this exclusion is not mentioned in the applicable Table of Benefits document, the Provider notes that this Table of Benefits document clearly states at the top, *"This Table of Benefits must be read in conjunction with the* [Provider] *Dental Rules – Terms and Conditions"*. The Provider is satisfied that the exclusion of cover for dental implants placed in the site of the 2nd or 3rd molars is clear in the policy wording and that the table of benefits and the policy document need to be read in conjunction with each other.

Accordingly, the Provider is satisfied that it correctly assessed the Complainant's claim in accordance with the terms and conditions of her dental insurance policy.

<u>The Complaint for Adjudication</u>

The complaint is that the Provider wrongly or unfairly assessed the Complainant's dental insurance claim.

<u>Decision</u>

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.

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A Preliminary Decision was issued to the parties on **3 November 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 Complainant is unhappy that because she takes the view that the Provider wrongly or unfairly assessed her dental insurance claim. I note in this regard, that the Complainant incepted a dental insurance policy with the Provider on **1 August 2017**. She underwent dental treatment during **2018** that including a high strength porcelain crown and titanium abutment in the site of her upper left 1st molar and also in the site of her upper left 2nd molar.

The Complainant accepts that there is no cover in respect of the implant in the site of her upper left 1st molar as this tooth was extracted prior to the commencement of her dental insurance policy on 1 August 2017.

However, the Complainant submits that she should be entitled to policy cover in respect of the implant in the site of her upper left 2nd molar which she cracked in December 2017, as this tooth was not extracted until 25 April 2018 and that the Provider did not advise during her telephone call to it to query cover (on 5 April 2018) that the dental insurance policy expressly excluded cover for dental implants placed in the site of the 2nd and 3rd molars.

The Complainant's dental insurance policy, like all insurance policies, does 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. In this regard, Section 3, 'Benefit Rules', of the applicable Dental - Rules and Conditions policy document provides, *inter alia*, at pg. 6, as follows:

> ***"8. Dental Implants & Fixtures***
>
> *c) Dental Implants placed in the site of 2nd or 3rd molars are excluded from benefit."*

The Complainant submits in her email to this Office dated 20 June 2020, that by only using the term *"Dental Implants"* and not the term *"Dental Implants & Fixtures"* in the wording of clause c), that this particular clause only excludes the dental implant, that is, the titanium abutment, and not the fixture to it, that is, the implant supported porcelain crown.

However, I am of the opinion that it is not a reasonable interpretation of clause c) that the dental implant be regarded as two separate items independent of each other, the abutment and the porcelain crown, given that Section 1, 'Definitions', of the Dental Rules – Terms and Conditions policy document defines dental implants and fixtures as one single device at pg. 1, as follows:

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"Dental Implants & Fixtures

A device that replaces the natural roof of a tooth to support the restoration of a missing tooth or group of teeth".

I am therefore satisfied that the Provider correctly assessed the element of the Complainant's dental claim in respect of the implant in the site of her upper left 2nd molar in accordance with the terms and conditions of her dental insurance policy.

I note that the Complainant submits that this exclusion was not specified in the "**Your Cover Explained**" or the **Table of Benefits** documents.

In this regard, I note that the **Your Cover Explained** document is a two page summary of cover that states on pg. 2, as follows:

"Please note: …This document is for guidance only and should be read in conjunction with your Table of Benefits and Rules – Terms and Conditions".

In addition, I note that the **Table of Benefits** document states at the top, as follows:

"This Table of Benefits must be read in conjunction with the [Provider] *Dental Rules – Terms and Conditions"*.

I am satisfied therefore that the two documents referred to by the Complainant, that is, the Your Cover Explained and the Table of Benefits documents, both clearly state that each should be read in conjunction with the Dental Rules – Terms and Conditions policy document. In this regard, I also note that Section 1, '**Definitions**', of the Dental Rules – Terms and Conditions policy document provides, *inter alia*, at pg. 2, as follows:

"Policy

This contract being Our contract with the Policyholder providing the Cover as detailed in this document. The Application forms part of the Policy and must be read together with this document (amended from time to time)".

Accordingly, I am satisfied that the Provider assessed the Complainant's claim in accordance with the terms and conditions of her dental insurance policy.

I note that the Complainant telephoned the Provider on 5 April 2018 to query policy cover in relation to her then impending dental treatment.

Having listened to the recording of this telephone call, I note that the Complainant herself did not mention to the Agent that the site of the proposed implant was her upper 2nd left molar. That said, I also note that the Agent did not ask the Complainant the site of the proposed implant, nor did the Agent advise that there was no policy cover for dental implants placed in the site of the 2nd and 3rd molars.

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As a result, when the Agent advised the Complainant by telephone that the policy cover for implants was an annual maximum contribution of €250 towards an implant fixture and a separate benefit (up to a maximum of €600) of 70% towards the cost of crowns, I am of the opinion that it was understandable for the Complainant to understand from this call, that her policy would provide her with cover in the amount of €850 toward the cost of her implant.

Although I am satisfied that the relevant policy exclusion was clearly and appropriately stated in the Provider's Dental Rules – Terms and Conditions policy document, I am nonetheless of the opinion that the failure of the Agent to ask the Complainant as to the site of the proposed implant, or to alert her to the very pertinent policy condition excluding cover for dental implants specifically placed in the site of the 2nd and 3rd molars, constituted poor customer service.

Whilst I appreciate the Provider's position that it is not reasonable to expect an Agent to read through all of the policy exclusions during a telephone call, I am, however, of the opinion that the Agent should cite policy exclusions that are particularly pertinent and specific to the cover being queried at the time when the policyholder has taken the trouble to make contact, with a view to understanding the extent and limits of cover available. In this instance, I regard the policy condition excluding cover for dental implants specifically placed in the site of the 2nd and 3rd molars to be one such exclusion.

As a result, I consider it fitting, in the circumstances, that the Provider make a compensatory payment to the Complainant for the confusion and inconvenience caused by its poor customer service in this matter and in this regard, it is my intention to direct that the Provider now pay the Complainant a customer service compensatory payment in the amount of €250, to an account of her choosing.

Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially 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 make a compensatory payment to the Complainant in the sum of €250, 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 compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is 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.***

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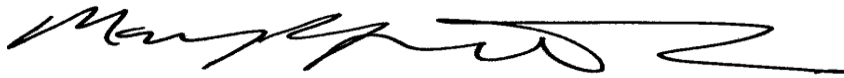
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

25 November 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.