Decision Ref:	2021-0027
Sector:	Insurance
Product / Service:	Private Health Insurance
Conduct(s) complained of:	Rejection of claim
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's refusal to fully cover a claim made by the Complainant on her health insurance policy in relation to treatment carried out in another EU Country.

The Complainant's Case

The Complainant applied to the Provider on **6 January 2015** to be covered for s specific treatment for a particular condition in another EU Country.

The Complainant telephoned the Provider on **11 March 2015** to enquire about the status of her application.

The Provider wrote to the Complainant rejecting her claim on **25 March 2015**. The Complainant was not at home during **March 2015** and requested on **13 April 2015** that the Provider email its decision to her. The Provider emailed the Complainant on **14 April 2015** with a copy of the letter of **25 March 2015** and the Complainant replied by email on **15 April 2015** indicating her intention to appeal this decision. In this email, the Complainant states that she does *"not expect the board of doctors or directors to understand as they know nothing about [her condition] or most rare diseases and dismiss anything got to do with [treatment] with no regard for the patient or the impact it is having on their lives"*.

By way of her complaint form dated **15 March 2016**, the Complainant explains that she had an aggressive, rapid form of [condition redacted] which left her *"totally disabled within a short period of time"*.

The Complainant states that she [symptoms redacted]. She states that she needed assistance rapidly and the Provider left her *"high and dry"*.

The Complainant made further submissions to this Office on **3 August 2016** providing further details of her complaint. She also enclosed letters and documentation with these submissions which she states show that the treatment she received in [the other EU Country] *"was a medical necessity"*. The Complainant states that the treatment she received, known as [redacted], has *"been shown in many clinical trials…to be a successful therapy"* and *"is a viable option is [her condition] as recently shown in the World Journal of [journal title redacted]"*. The Complainant also states that *"a poor outcome is assured in the absence of [treatment]"* and that a *"delay in treatment would have seriously jeopardised* [her] *life – affect* [her] *ability to regain maximum function & subjected* [her] *to severe & intolerable pain"*. The Complainant also states that she is aware that the HSE sent another woman to London for the exact same treatment and queries why the Provider does *"not have to follow suit"*.

The Complainant also states that the *"Directive on Patient's Rights in Cross-Border health care came into force throughout the EU. Under this directive patients can avail of healthcare in another EU country"* and that *"[treatment] has been performed all over the world including numerous European countries & if you are a citizen you are entitled to it automatically"*.

The Complainant states that Provider should pay for her treatment as she had *"tried all conventional treatment"* and she *"just continued to get worse & worse"*. The Complainant states that since her treatment abroad, she is getting her life back on track. She describes how [list of improved symptoms redacted].

The Complainant submitted a figure for her claim costs to this Office on **19 May 2016** which came to a total of €67,778.03.

Ultimately, the Complainant wants the Provider to compensate her for her treatment expenses relating to her treatment abroad and her associated expenses (e.g. flights, rental accommodation and taxi fares).

The Provider's Case

The Provider wrote to the Complainant on **27 January 2015** acknowledging receipt of her application for treatment abroad and stating that a panel of medical advisors was reviewing her case and would revert shortly to her.

The Provider wrote to the Complainant on **3 February 2015** stating that her case was being reviewed by a panel of medical advisors and it would revert to her within ten business days with its decision.

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The Provider wrote to the Complainant again on **12 March 2015** stating that her case was being reviewed by a panel of medical advisors on **19 March 2015** and it should be in receipt of their report by the end of **March 2015**. The Provider apologised for the delay in making a final decision on the Complainant's case.

The Provider wrote to the Complainant on **25 March 2015** in respect of her proposed treatment abroad. The Provider states that it held the Complainant's file for review and detailed discussion at a medical advice group meeting and thus apologies for the delay in obtaining a decision for her. The Provider refers to section 7 of its rules for treatment outside Ireland, which it says states:

> *"we will not provide cover if a member travels abroad to get treatment. We will in certain circumstances and subject to prior approval and satisfaction in full of specified criteria".*

The Provider states that one of the specific criteria which must be fulfilled in order for it to provide cover is that *"the treatment abroad is considered by* [the Provider's] *Medical Director to be generally accepted as a proven form of treatment"*. The Provider further states that it notes *"the details of the proposed treatment, [redacted] for treatment of [condition redacted]"* and that *"unfortunately no benefit will be payable in respect of this proposed treatment in accordance with our rules. This treatment does not meet with* [the Provider's] *criteria to be considered a proven form of treatment and in accordance with* [the Provider's] *ground rule 16 '*[the Provider] *does not provide benefit for procedures or services that are considered as being experimental or investigational"*. The Provider states that it only provides benefit for procedures that are considered to be proven forms of treatment in accordance with is established criteria as follows:

> *"- there is reliable evidence that the procedure has been the subject of well controlled studies with clinically meaningful endpoints, which have determined its safety and efficacy compared with standard treatments.*
>
> - *there is reliable evidence that the consensus amongst experts regarding the procedure is that further studies or clinical trials are not necessary to determine its safety or effectiveness as compared with standard treatments.*
>
> - *Long term outcomes are available, defined as 5-year follow up."*

The Provider states that based on the information it has received to date the treatment is not consistent with a proven form of treatment in accordance with its rules.

The Provider states that, in particular, there are no studies with 5 year follow up nor is there *"reliable evidence there is reliable evidence that the consensus amongst experts regarding*

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the procedure is that further studies or clinical trials are not necessary to determine its safety or effectiveness as compared with standard treatments."

The Provider wrote to the Complainant on **28 May 2015** stating that its medical advisors had carried out a review of her case but that it was unable to alter its decision and reiterates the rationale from its email dated **25 March 2015**. In addition, the Provider states that *"Rule 7(k) of the attached Rules-Terms and Conditions of Membership states: 'In addition t* (sic) *cover limitations mentioned elsewhere, we will not pay benefits for any of the following k) Experimental drugs and treatments"*.

The Provider made further submissions to this Office, dated **21 October 2016**, wherein it states that it is satisfied that it fully informed the Complainant by way of letters dated **25 March 2015** and **28 May 2015**, in advance of her planned treatment abroad in **July 2015**, that no benefit would be payable for her planned treatment abroad under the terms of the contract. The Provider states that the Complainant suffers from a [type of illness redacted] and she sought prior approval for treatment to treat her condition to be carried-out abroad. The Provider states that it does not provide benefit for transplantation to treat the Complainant's condition but it does provide benefit for transplantation to treat leukaemia, severe aplastic anaemia, myelodysplasia, multiple myeloma and lymphoma. The Provider states that the Complainant's application for benefit for her planned treatment abroad was considered under Contract Rule 1(a), Cover Outside Ireland Rule 6(c) and Exclusions Rule 7(k) and that it was not in a position to allow benefit as *"the treatment is not consistent with a proven form of treatment in accordance with* [the Provider's] *established criteria"*.

The Provider states that the issue of providing benefit for the treatment sought to treat the Complainant's condition was discussed by its medical advice group on **19 March 2015** and all available literature was reviewed when considering the application. The Provider states that the group agreed that the treatment was not consistent with a proven form of treatment for the Complainant's condition, in accordance with the Provider's established criteria and that there is not consensus that the treatment sought to treat the Complainant's condition is a proven form of treatment. Furthermore, the Provider states that there is no reliable evidence that the consensus amongst experts regarding the procedure is that further studies or clinical trials are not necessary to determine its' safety or its' effectiveness as compared with standard treatments. The Provider states that there is no further information in publicly available medical literature since this review which would alter its decision.

The Provider states that the Complainant has advised that she might have incurred out-patient/day-to-day medical expenses and if it was to receive the original expenses for her out-patient medical expenses and a completed day-to-day medical expenses claim form, it would consider the eligible out-patient medical expenses in accordance with Section 9 of its Table of benefits (subject to an excess of €250.00).

The Provider states that it is satisfied that it has complied with the provisions of the Consumer Protection Code 2012 (as amended) in dealing with the Complainant's case. It

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does not believe that it has been unreasonable, unjust, oppressive or improperly discriminatory in its application of the rules in respect of the Complainant's case. It states that the Complainant's application for prior approval for treatment abroad was fully considered at the time of the original application and on every occasion since that time and that the decision was made is in accordance with the terms of the Complainant's contract with the Provider. The Provider also submitted the medical information and decision of its panel of medical advisors with this submission dated **21 October 2016**.

The Provider made a further submission to this Office dated **5 December 2016** wherein it essentially repeats the arguments made in support of its rejection of the claim as outlined in its prior correspondence.

The Complaint for Adjudication

The complaint for adjudication is that the Provider incorrectly/wrongfully declined to cover the treatment undertaken by the Complainant abroad.

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 8 January 2021, outlining my preliminary determination 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.

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In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

I have carefully considered the terms & conditions of the Complainant's policy that are applicable to the assessment and payment of the claim in question.

In particular, I note section 6(c) of the terms and conditions which states:

> *"We will in certain circumstances and subject to prior approval and satisfaction in full of specified criteria, pay benefit if the customer travels abroad to get a therapeutic procedure performed"*

I note that the Provider states that the specific criteria referred to under Rule 6(c) which must be fulfilled in order for it to provide cover include conditions that *"the treatment abroad is considered by* [the Provider's] *Medical Director to be generally accepted as a proven form of treatment"* and that *"there is an urgent medical necessity for treatment for the condition"*. I note that no documentation setting out these criteria appears to have been provided to this Office by the Provider.

I note the glossary section on page 17 of the policy's Terms and Conditions which states that 'medically necessary' means:

> *"treatment or a hospital stay which in the opinion of our Medical Director is generally accepted by the medical profession as appropriate with regard to good standard of medical practice and is:*

…

I note that the Provider states that in addition to the above, the procedure should be in a proven form of treatment with:

(i) Reliable evidence that the procedure has been the subject of well-controlled studies with clinically meaningful endpoints, which have determined its safety and efficacy compared with standard treatments;

(ii) There is reliable evidence that the consensus amongst experts regarding the procedure is that further studies or clinical trials are not necessary to determine its safety or its effectiveness as compared with standard treatments;

(iii) Long term treatments are available, defined as 5-year follow-up.

Again, I note that no documentation evidencing the requirements for a treatment to be in *"proven form"* appears to have been supplied by the Provider to this Office.

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I note that pursuant to section 7(k) of the terms and conditions, the Provider does not cover *"experimental drugs and treatments"* and the Provider relies on this section, thereby giving the clear implication that it regards the treatment the Complainant undertook abroad as *"experimental"*.

I note that the Provider has furnished this Office with the minutes from the meeting of the medical advice group dated **19 March 2015**. These minutes state that:

> *"The Group commented that this is a particularly difficult case as the disease is very rare (a factor that mitigates against long phased clinical trials). They noted that in this case the disease was 'rapidly progressive despite aggressive immunosuppression and consultations with experts in the UK'. It was agreed that there is no other treatment available to this patient and that this is palliative care. The Group expressed concern as to whether the patient may not be fit enough to travel to the teaching hospital [location redacted] and concluded that given the risks involved, it would be most important for the transplant clinician to speak to the patient in advance of travelling.*
>
> *…regarding* [the Provider's] *liability in the case of a claim,* [named redacted] *confirmed that this is limited to €65,000 in accordance with the terms and conditions of the member's health insurance plan.*
>
> *In conclusion, it was agreed that more information was needed to determine whether or not this case met* [the Provider's] *criteria and that we should proceed with caution"*

It is notable that these minutes comprise half of one page in length and do not reference or discuss any medical studies or literature.

It is disappointing that given the Provider's medical advice group's request for more information, there is no evidence that any further information was provided to the group before the Provider came to its decision dated **24 March 2015** and communicated to the Complainant on **25 March 2015** by letter. Furthermore, the minutes of the group make no mention of the *"experimental"* nature of the Complainant's proposed treatment and also explains that long phased clinical trials are unlikely given the rarity of the disease. It is further remarkable, given the minutes of the medical advice group that the Provider's decision dated **24 March 2015** states that the treatment requested by the Complainant is experimental and uses the lack of any long term study as a reason for denying the claim.

In response to the complaint made to this Office, the Provider has furnished a much more fulsome, detailed explanation of its decision to refuse the Complainant's claim wherein it discusses several clinical trials/medical studies, including those submitted by the Complainant, before coming to the decision that the treatment sought by the Complainant does not meet the Provider's criteria to be considered a proven form of treatment.

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In this decision, dated **3 June 2016**, the Assistant Medical Officer states *"there is not consensus that the treatment is a proven form of treatment nor is there reliable evidence that the consensus amongst experts regarding the procedure is that further studies or clinical trials are not necessary to determine its safety or its effectiveness as compared with standard treatments"*.

The Provider has furnished no evidence that a review by its medical advisors of the Complainant's case took place between **March** and **May 2015**.

In light of the above, I believe that the Provider's decision to reject the Complainant's claim for the treatment she received abroad was unreasonable and unjust in that:

(i) the Provider made its decision to reject the Complainant's claim despite the Medical Advice Group's express request for further information to determine the claim;

(ii) the Provider furnished no evidence that it reviewed the Complainant's claim as stated in its letter dated **28 May 2015**;

(iii) the Provider only came to a reasoned decision as to the Complainant's claim on **3 June 2016** subsequent to the rejection of the Complainant's claim.

I am also particularly concerned by the manifestly incorrect assertion made by the Provider in its letter dated **21 October** to this Office that on **19 March 2015** the medical advice group considered all available literature and agreed that the treatment suggested by the Complainant was not consistent with a proven form of treatment for [illness redacted] and furthermore, the Provider states that there is no reliable evidence that the consensus amongst experts regarding the procedure is that further studies or clinical trials are not necessary to determine its' safety or its' effectiveness as compared with standard treatments.

I further note that the Provider delayed for a period of over three and a half months in communicating its decision to refuse the Complainant's claim. This delay is especially egregious given the precarious health of the Complainant and the urgency she faced in receiving appropriate medical treatment. I further note that in its letter dated **25 March 2015** to the Complainant, the Provider incorrectly cited section 7 of its rules for treatment outside Ireland, wherein it stated:

> *"we will not provide cover if a member travels abroad to get treatment. We will in certain circumstances and subject to prior approval and satisfaction in full of specified criteria"* .

Pursuant to section 2.2 of the Consumer Protection Code 2012 (as amended), the Provider is under a duty to act *"with due skill, care and diligence in the best interests of its customers"*.

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By failing to assess the Complainant's claim promptly and by citing the provision incorrectly, I accept that the Provider contributed to the uncertainty facing the Complainant at an extremely difficult time for her.

Accordingly, I accept that the Provider arrived at its decision to reject the Complainant's claim in an unacceptable and unjust manner and therefore its conduct in refusing to compensate the Complainant for the cost of the treatment she received abroad, was unreasonable.

For the reasons outlined in this Decision, I uphold the Complainant's complaint and direct the Provider to admit the Complainant's claim and recompense her for the medical and ancillary expenses incurred as a result of her treatment abroad, subject to any excess/financial limitations on the Complainant's policy.

I also direct that the Provider pay the sum of €2,000 to the Complainant for the inconvenience caused.

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) & (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 Complainant's claim and recompense her for the medical and ancillary expenses incurred as a result of her treatment abroad, subject to any excess/financial limitations on the Complainant's policy. I also direct the Provider to make a compensatory payment to the Complainant in the sum of €2,000, 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

2 February 2021

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.