An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0123
Sector:	Insurance
Product / Service:	Private Health Insurance
Conduct(s) complained of:	Claim handling delays or issues
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a health insurance policy which the Complainant holds with the Provider.

The Complainant's Case

The Complainant states that on **12 November 2018** he requested indemnity from the Provider for a medical procedure, namely stem cell treatment. He advised that he would be attending a third party healthcare provider's clinic for this treatment and was told to get the procedure code and the consultant name before cover could be confirmed.

The Complainant contacted the Provider on **12 November 2018** for a second time after he had spoken to the third party healthcare provider. The Complainant states that at this point in time the third party healthcare provider informed the Complainant that the Provider did not cover stem cell therapy but was considering covering it in the future.

The Complainant stated, in his complaint form, that he has held health insurance for *"twenty six years in all* [and] *I have never made a claim"*. He also states that *"the first time I need* [health insurance]*, it's not available to me"*.

The Complainant's broker contends in an email to the Provider dated **28 March 2019** that he was advised approximately *"2 months ago"* that stem cell therapy is not included in the above policy, however, he notes that *"…when* [the Complainant] *made an enquiry with* [the Provider] *approx. 6 months ago…he was advised that cover was applicable"*. The Complainant's broker sought clarification from the Provider regarding this and requested that any call recordings be checked to see what was discussed at the time.

The Complainant's broker emailed the Provider again on **2 April 2019** stating that the Complainant's procedure had been postponed from **April 2019** to **May 2019** and was due to take place in the UK. The broker advised that the Complainant had requested a procedure code from his UK consultant but was advised that there is none, as insurers in Ireland do not cover the treatment. The broker requested information from the Provider regarding whether the UK consultant was on the Provider's approved list, the extent of the cover available for stem cell therapy and also requested a call from the Provider's Chief Medical Officer to the Complainant directly, to discuss the position in regard to stem cell treatment as the Complainant *"is unable to have conventional treatment to his cardiac position"*.

The Complainant, in his complaint form, contends that the stem cell treatment which he has requested cover for was *"the only option"* available to him, due to the fact that he is unable to *"have surgery because* [he is] *cardio vascular on* [his] *left side and…chances are 100-to-1* [he would] *bleed out"*. The Complainant has indicated that his medical condition has deteriorated and that he *"now can barely walk"*.

The Complainant made further submissions to this Office on **24 May 2020** when he stated that stem cell treatment is *"modern day science with positive results for me and thousands of other patient stem cell should be noted as not covered"*.

The Complainant made further submissions to this Office on **5 June 2020** when he stressed that he was extremely ill, he had paid health insurance for all of his working life and had never made a claim before. The Complainant was insistent in this submission that it should have been clearly set out in the membership handbook that stem cell treatment was not covered for the purposes he required it for.

The Complainant made further submissions to this Office on **8 July 2020**. He queried why his broker was not informed that the medical director would not be contacting him and stressed that it was not stated anywhere in the membership handbook that stem cell treatment for the purposes required by the Complainant, was not covered. The Complainant states that *"a huge amount of Ireland's population"* is receiving stem cell treatment for the same purpose he is, and therefore he queried why this was not recognised anywhere in the Provider's material.

The Complainant wants the Provider to pay his claim for the requested medical procedure (€4,500). The Complainant also complains that the Provider was slow to respond to his broker.

<u>The Provider's Case</u>

In response to the broker's email of **28 March 2019**, the Provider responded by way of email dated **29 March 2019** stating that it was seeking to retrieve the calls but from *"the comms logs it looks like the member was asked to get the procedure code number & consultants name"* and that the Complainant had indicated that the procedure was going to be carried out in the clinic of a third party healthcare provider.

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In response to the broker's email dated **02 April 2019**, the Provider responded by way of email dated **03 April 2019** stating that as far as it knew the UK consultant was a registered fully participating consultant with the Provider, but that stem cell treatment is not classified as a surgical procedure and therefore would not be covered under the overseas elective benefit. The Provider issued a Final Response Letter dated **5 April 2019** stating that it does not provide benefit payments for stem cell therapy. The Provider contends that it does:

> *"not cover this treatment as it is treatment that is not clinically proven and there is no medical evidence/research to support the alleged outcomes…also…*[the Provider has] *no plans to cover such procedures."*

In its Final Response Letter the Provider stated that it was issuing the letter further to a call that took place on **5 April 2019** between the Provider and the Complainant. The Provider noted in its Final Response Letter that during that call, the Complainant was unhappy that stem cell therapy was not noted in the membership handbook as a treatment which was not covered. The Provider acknowledged that the Complainant was correct in this regard but stated that the:

> *"membership handbook is designed to tell you what* [the Provider does] *cover, and the terms and conditions around the benefits.* [the Provider] *would also advise our members to call us prior to the procedures to check the cover, as you did last November."*

The Provider states that it *"understands* [the Complainant's] *frustration that* [he] *is not covered for this type of treatment, and that* [he] *had a procedure booked, however having reviewed* [his] *file* [he was] *aware that this wasn't covered last November"*.

The Provider made submissions to this Office on **18 May 2020**. The Provider states that members are advised to confirm with the Provider if they are covered for a particular procedure or treatment prior to receiving that procedure or treatment.

On page 3 of the **December 2017** membership handbook, the Provider states that there is a section entitled '**Ground Rules**' which advises

> *"we will only cover the costs of medical care which our medical advisors believe is an established treatment which is medically necessary."*

The Provider also states that on page 22 of this handbook, there is an '**Exclusions from Cover'** section which lists a number of exclusions to its Health Insurance policies:

> *"We do not cover the following (subject to compliance with Minimum Benefit Regulations):*
> *The cost of medical care our medical advisors believe is not an established treatment;*
> *Any costs associated with treatments and benefits that are not listed in the Schedule of Benefits.*

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The Provider states that an *"established treatment"* is defined in the membership handbook as *"a treatment or procedure that is, in the opinion of our medical advisors, an established clinical practice for the purpose for which it has been prescribed, is supported by publication in Irish or international peer reviewed journals and is proven and not experimental"*.

The Provider clarifies in its submissions that the Table of Cover contained within the membership handbook is *"not a comprehensive list of what is and is not covered under our Health Insurance policies, it is a summary of the overall level of cover on the plan and should be read in conjunction with the membership handbook"*.

The Provider states that *"it would not be possible, given medical advances and developments, to include a definitive list of procedures that are not covered by* [the Provider]*"*. In addition, the Provider states that stem cell treatment would be considered a procedure and not a benefit under its health insurance policies and therefore would not be in the Table of Cover. The Provider states that its schedule of benefits provides a list of what procedures are and are not covered under its health insurance policies. The Provider states that stem cell transplantation is covered for members with acute leukaemia, chronic leukaemia, non-Hodgkin's lymphoma, Hodgkin's disease, severe aplastic anaemia, myelodysplasia or multiple myeloma. The Provider states that the type of stem cell treatment requested by the Complainant is not covered by the Provider.

The Provider's medical director provided evidence of the current research on using stem cell treatment for the purpose outlined by the Complainant. This research primarily demonstrated that *"long term clinical effectiveness is unknown"* and there was *"insufficient evidence"* to support the use of stem cell treatment in the manner the Complainant intended to. The Provider also confirmed that its current position in relation to stem cell treatment is unchanged.

The Provider denies that there was any delay in corresponding/communicating with the Complainant.

The Provider made further submissions to this Office on **27 May 2020** when it stated that it does recognise and provide cover for stem cell treatment in respect of certain illness but it does not provide cover for the purpose for which the Complainant wishes to avail of stem cell treatment, as it is *"not clinically proven"*.

<u>The Complaint for Adjudication</u>

The complaint is that the Provider wrongfully declined the Complainant's claim under his policy for the cost of a stem cell procedure and proffered poor customer service to him throughout.

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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 **9 April 2021**, 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 additional submissions from the parties, the final determination of this office is set out below.

I note that the following terms from the Complainant's health insurance policy are relevant to this complaint:

- A section entitled '**Ground Rules'** which advises that the Provider

  > *"will only cover the costs of medical care which our medical advisors believe is an established treatment which is medically necessary"*.

- A section entitled '**Exclusions from Cover'** which states:

  > *"We do not cover the following (subject to compliance with Minimum Benefit Regulations):*
  > *…*
  > *The cost of any medical care that our medical advisors believe is not an established treatment;*
  > *…*
  > *Any costs associated with treatments and procedures that are not listed in the Schedule of Benefits."*

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- I note that an *"established treatment"* is defined at page 28 of the membership handbook as

> *"a treatment or procedure that is, in the opinion of our medical advisors, an established clinical practice for the purpose for which it has been prescribed, is supported by publication in Irish or international peer reviewed journals and is proven and not experimental"*.

- I also note the section on *"elective overseas referrals"* on page 16 of the membership handbook which states that

> *"all elective medical care received abroad must be pre-authorised by* [the Provider*]"*.

The Provider has made available a comprehensive extract from a report of its Medical Director which comprehensively analyses the most recent research papers in applying stem cell treatment to the condition the Complainant is suffering from. These papers, as described by the medical director, indicate that the *"long term clinical effectiveness is unknown"* and there is *"insufficient evidence"* to support the use of stem cell treatment in the manner for which the Complainant intended to utilise it.

The Complainant has not proffered any medical evidence to support his first-hand account that a large number of people are receiving stem cell treatment for his condition and that it is proving beneficial for them.

Furthermore, I note that the Provider's position in respect of stem cell treatment for the Complainant's condition has been communicated clearly and consistently to the Complainant throughout the parties' interactions since November 2018. Contrary to the Complainant's assertion, he was never informed that stem cell treatment for his condition was covered; in fact, when the Complainant first enquired about cover on **12 November 2018**, he was told that he *"should be covered for it"* but the Provider needed the consultant's name and the procedure code to be *"100% certain"* that it did cover stem cell treatment, in the manner intended by the Complainant.

When the Complainant called back approximately an hour later on **12 November 2018**, subsequent to contacting the third party healthcare provider, he told the Provider that the third party healthcare provider had informed him that he might not be covered by the Provider for the stem cell treatment. Again, it was clear from this second call that the Provider needed a procedure code to be certain as to the level of coverage for the treatment intended by the Complainant.

I note that when the Complainant's broker raised further queries on **28 March 2019** and **2 April 2019**, the Provider responded promptly by way of email dated **3 April 2019**, a phone call on **5 April 2019** and Final Response Letter dated **5 April 2019**. Therefore, there is no evidence of any delay on the part of the Provider.

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While I accept that the Complainant has been a long-term holder of health insurance and it is notable that he has not made any claim over the entirety of his lifetime, this does not, in and of itself, confer a right to recover policy benefits in these circumstances.

It is important to understand that health insurance policies, like all insurance policies, do not provide cover for every possible eventuality. I note that the cover offered by the Provider was set out clearly in the terms, conditions, endorsements and exclusions set out in the policy documentation which did not suggest that the procedure referred to by the Complainant, would be covered. The Complainant makes the point that nowhere in the handbook is it stated that the use of stem cell treatment for his particular condition is not covered. I do not accept however that there is an obligation on the Provider, or any health insurance provider, to list every possible treatment for every condition, which is not covered by the policy. Indeed, this seems likely to be a practically impossible task. The purpose of the policy terms and conditions is to provide clear information to policyholders regarding the cover which is made available by the policy, and I find no fault with the Provider regarding the manner in which that information was presented.

On the basis of the evidence available, I accept that the Provider was entitled to refuse to cover the Complainant's stem cell treatment on the basis that it was not an *"established treatment"* as outlined in the membership handbook. Accordingly, as there is no evidence of wrongdoing by the Provider, I take the view that there is no reasonable basis upon which it would be appropriate 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 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

5 May 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—

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(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.