



<u>Decision Ref:</u>	2021-0174
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Private Health Insurance
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a health insurance policy.

The Complainant's Case

The Complainant contends that he availed of the Provider's *"Consultant Connections virtual second opinion benefit"* under this policy, in order to obtain a second opinion on *"MRI scans [that] we wanted reviewed"*. The Complainant states that he has availed of similar services with previous insurers and that *"in 2006... we had a far better experience"*.

The Complainant states that, on this occasion, the Provider's process took 9 weeks *"to eventually get a credible opinion"*. The Complainant goes on to state that *"it took 4 weeks from when [the Provider] had the scans to get the first opinion on them"*.

The Complainant contends that he provided MRI scans and medical documentation to the Provider in order to obtain the required second opinion. He says that the MRI scans had gone *"missing from Feb 23 [2019]"* and that this information had not been *"forthcoming"* from the Provider. The Complainant asserts that he queried *"multiple times"* why the Provider was not sending soft copies or using a courier to transmit the medical information to its Reviewer.

The Complainant asserts that he received a preliminary report from the Provider on **4 March 2019** which he contends has “*no credibility*”, stating as follows:

- *How could a neurologist review a brain tumour without seeing scans of it?*
- *In the report [the Reviewer] queried ‘if there was an open surgical resection’ when the limited documentation supplied with it was stated 4 times that there was.*

The Complainant states that he was extremely frustrated by the Provider’s process to obtain the second opinion, citing:

- Extreme difficulty in getting to talk to the Provider regarding this issue, despite sending multiple emails and making numerous phone calls;
- The poor quality (in the Complainant’s view) of the report that was ultimately obtained;
- The lack of insight by the Provider’s staff when attempting to assist the Complainant, and its failure to acknowledge that the scan discs had gone astray.

The Complainant asserts that he “*found the process [that the Provider has] in place for a customer getting a 2nd opinion to be not for purpose and indeed can be a mess*”. The Complainant states that he wants the service to be analysed and improved by the Provider, and in that context, he wants his feedback be taken on board.

The Provider’s Case

The Provider stated in its Final Response letter that the “*clinical documentation*” was transmitted to its “*Reviewer*” through its “*secure online portal*” and that the MRI discs were “*sent by registered post on Tuesday 19 February [2019]*”. The Provider acknowledged the Complainant’s dissatisfaction with the credibility of the UK neurological surgeon’s review and at that point, the Provider intended to obtain a review from another, US based, “*reviewer*”.

The Provider stated that it was sorry if the Complainant believed its customer service has been unsatisfactory, that some issues were due to delays with the UK Royal Mail, and that the Complainant’s case was being “*actively dealt with on an ongoing basis*”.

The Provider has set out what it describes as “*a comprehensive timeline*” of the interactions between the Complainant and the Provider over the relevant period, which the Provider says details the regular email contact, as well as an indication of the medical evidence exchanged which gives context to the Preliminary Report issued by the Reviewer on 4 March 2019.

The Provider seeks to clarify that the Complainant was never left waiting for a response and it wishes to clarify that no medical information was ever “*missing*”. It points out however, that there was a delay in the U.K. postal service.

The Provider is conscious of the Complainant's statement that the problem as he sees it, is a lack of resources in the form of the absence of software to transfer softcopy scans in addition to a shortage of trained staff. The Provider does not agree that the absence of software to transfer softcopy scans inhibited the progress of the Complainant's request. It says that the "*consultant connections*" service is primarily based on the provision of medical notes by the relevant member of the health insurance scheme, and this was explained to the Complainant at the outset, as well as subsequently.

The Provider refutes the assertion that the service is inadequately resourced and it points to the specific and dedicated consultant connections co-ordinator who was appointed to liaise with the Complainant directly and to manage the case.

The Provider points out that the Complainant was advised that medical notes were a pre-requisite and that once the Provider was in receipt of the medical notes or clinical information, the service could proceed efficiently. The Provider points out that the Complainant was advised both during the initial call on 29 January 2019, and subsequently on 31 January 2019 and again on 6 February 2019, that the notes submitted to the Provider at that point, lacked clinical detail in order for its reviewers to provide a comprehensive review of the position. The Provider also points out that it took a number of weeks (until 15 February 2019) for the MRIs to be collated and received by the Provider, from the various MRI centres. The Provider points to its close contact with the Complainant during that period, but it also points out that it cannot be held responsible for any perceived delay between 29 January 2019 and 15 February 2019.

The Provider explains that MRI scan disc copies must be posted, as these are usually high-resolution images, which are required by the Consultant Reviewer. In addition to the high-resolution, the size of these images are also too large to pass through the portal. The Provider explains that it is not possible for it to split the content of a disc, without compromising the content and the image resolution. The Provider explains that it is only in the last 20 years or so, that digitalisation of radiological images has taken place in Ireland and this has been piecemeal, particularly in the public system.

The Provider says that an appropriate Reviewer in the U.K. was identified on 18 February 2019 and the MRI discs were posted to the U.K. address by way of registered post on the following day, 19 February 2019. It was in a position to confirm receipt of that package in the U.K., on 23 February 2019 and it advises that it followed up regularly for updates from that point. It was only on 28 February 2019 that the Provider became aware that the Reviewer was still not in receipt of the hard copy scans. Ultimately, on 4 March 2019, a preliminary report from the U.K. Reviewer was issued to the Complainant, followed by that U.K. Reviewer's full report on 19 March 2019. Ultimately, a further U.S. Reviewer's report was issued to the Complainant on 1 April 2019.

Finally, the Provider says with reference to the Complainant's mention of a "far better experience" when availing of a second opinion service in 2006, that it cannot comment on the service made available by other insurance providers, but it is satisfied that its current review service, offers an excellent service to its members.

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The Complaint for Adjudication

The complaint is that the Provider's service in offering "*Consultant Connections virtual second opinion benefit*" is, as stated by the Complainant, "*broken, not adequately resourced and indeed can be a mess*".

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 **12 March 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.

In considering the complaint, I have noted the following timeline of events:-

The Complainant held a policy of health insurance with the Provider which was inceptioned on **12 August 2018**. A benefit under the policy (General Rules) is the "*Consultant Connections*" benefit, which is described in the policy as follows:

"[The Provider] Consultant Connections benefit offers members with certain serious illnesses access to a review of their medical case by an international specialist. A list of serious illnesses considered for referral is available on request.

Any benefit payable under the Consultant Connections benefit is subject to the terms and conditions of your scheme rules."

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The Benefit Table for the Consultant Connections benefit listed the benefit as *“Full cover – subject to prior approval”*.

On **29 January 2019** the Complainant contacted the Provider seeking to avail of this benefit on behalf of his wife who was also covered by the policy. An agent of the Provider was assigned to the case and a benefit “pack” was sent to the Complainant by email on **30 January 2019**.

On **30 January 2019** the Provider and the Complainant’s agent talked through the process. At 17.04 that day, the Complainant emailed the Provider asking whether the Provider had access to the medical notes, as in his experience, those notes would be sent for review in addition to the MRI scans.

On **4 February 2019** the Complainant sent a follow up email asking if there was any progress.

On **6 February 2019** the Provider’s agent updated the Complainant stating that consent was required from the patient (the Complainant’s wife) before the hospital would release her MRI scans and that the records he referred to in his prior email, would contain “little clinical detail” for the review.

The following day – **7 February 2019** – the Complainant replied stating that a GP letter would be furnished to the Provider that day or the next day and that the necessary consent had been made available. He expressed some frustration that the process had become *“bogged down in admin”*. This was the 7th working day since the Complainant had first enquired about the benefit.

On **8 February 2019** (a Friday) a number of emails were exchanged. Ultimately, the Complainant emailed to state that they had “hit a snag”, in that pre-2008 imagery from some of the hospitals was not available. On **12 February 2019** the Provider responded to reassure the Complainant that this *“isn’t a problem really”*, and suggested sending what they had to the reviewer, and then obtaining more information if necessary. The Provider’s agent also suggested obtaining radiology reports for the imagery that was now not available from the hospitals.

At 17.58 on Tuesday **12 February 2019**, the Complainant furnished radiology reports from one hospital and a GP letter, as per earlier emails, and asked whether the Provider had received the discs containing the scan imagery from other hospitals yet.

The following day, on **13 February 2019** the Provider’s agent emailed to say that she had not yet received any imagery discs in the post.

On **14 February 2019**, two of the three awaited discs arrived and the Provider’s agent emailed that morning to let the Complainant know. The Complainant sent emails following up on the 3rd disc, and was also in touch with the hospital concerned. The Complainant was frustrated that his emails and calls went unanswered that day.

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The Provider's agent later explained that she had been in meetings all day. She was on leave the following day (Friday) and she told the Complainant that she would ask someone else to check her post for the 3rd disc, as the Complainant did not want to have to wait until the following Monday, for an update.

On **15 February 2019**, notwithstanding the fact that the Provider's agent was on leave, she emailed the Complainant to confirm that a third disc had arrived in the post. The Complainant responded to (i) ask if the disc was from the outstanding hospital, (ii) furnish further medical records, and (iii) ask to have an input into which specialist the Provider would engage, to review the records.

On **22 February 2019** the Provider's agent confirmed that she had only instructed one specialist as she could only post the discs to one person at a time. The Complainant replied to ask whether the reviewer could copy the discs and send them to other specialists. He advised that his wife was very ill but there was no point in bringing her to hospital, as they did not know what was wrong with her.

On **23 February 2019** – as confirmed in a later email – the discs, which had been sent by registered post, were showing up as received in the UK.

On **25 February 2019** the Provider's agent advised that she hoped to have the first reviewer's opinion back in "*the coming days*". The Complainant passed on further details about his wife's most recent bout of illness, and the Provider's agent in turn forwarded this on to the reviewer.

On **27 February 2019** the Complainant followed up asking if the opinion would be available in the next day or two, as his wife had been severely ill over the previous week. The Provider's agent sympathised, and explained that the delay could be down to the fact that the discs had to be posted. The Complainant noted that ideally the images would have been sent electronically. The following day the Complainant noted that in 2006, the process with another provider had been more efficient – paperwork had been couriered and computer files had been sent electronically, resulting in 3 opinions from abroad, being provided within 8 days.

On **Thursday 28 February 2019** the Provider's agent was informed by email that the reviewer had not received the discs. The reviewer stated "*I have had problems with mail being returned back to sender (the Royal Mail are investigating this)...*"

On **Friday 1 March 2019** the Complainant sought an update. The Provider's agent was on leave that day, but nonetheless informed the Complainant that the discs had been sent by registered post "last week" and they had been "received in the UK" on 23 February 2019.

On **Monday 4 March 2019**, the first report was received. The Complainant attempted to call on a number of occasions that day, but did not get through. The Provider's agent ultimately emailed to confirm that she had been in meetings for the day. The report was described as a preliminary report, based on the limited clinical notes provided and in the absence of the hard copy MRI discs.

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The Complainant was informed that the discs had not been received by the reviewer. The Provider's agent stated that she was following up to see why the hard copy MRIs had not been seen by the reviewer, when they appeared to have been received in the UK on 23 February 2019.

On **Tuesday 5 March 2019** the Complainant emailed seeking an update, noting that he had called but did not get through. The Provider's agent replied to state that she would have another member of staff call him. After that call, the Complainant emailed again to state that he felt the process was "a mess". The Provider's agent replied saying that she was available for the next 30 minutes if he wanted to discuss, and that she felt the process was "very clear". The Complainant replied at 21.36 having just seen the previous email. At 17.24 the following day the Provider's agent asked if there was a time that suited to talk that evening.

On **Friday 8 March 2019** the Complainant was informed of the status of certain discs with scan imagery from different hospitals. One hospital would not release patient information without it being requested by a consultant or GP. The Complainant responded itemising the discs that were required for the review. He asked to know how the Provider proposed to obtain the imagery from the hospital that required the request to come from a GP or consultant. He asked that the Provider confirm that it would be sending the discs by courier or electronically, and that a second reviewer in the USA would be used.

On **12 March 2019** the Complainant emailed 4 times and called, seeking a response to his email of the 8th. The Provider's agent emailed at 19.33 to advise that she had no update for him but could talk between then and 20.15. A call took place which, apparently due to it being out of hours, was not recorded.

On **13 March 2019** the hospital which had been unable to send the imagery discs did so, in the form of discs, by post to the Complainant's address. On **15 March 2019** those discs were received by the Complainant who forwarded them, by post, to the Provider.

On **19 March 2019** the discs were received by the Provider. Later that day, an updated report from the reviewer in the UK was sent to the Complainant.

On **20 March 2019** the Complainant set out his issues with the UK reviewer's report. In essence, he did not accept its quality. It was confirmed to the Complainant that the process of obtaining a report from the USA was underway, and he would be kept informed.

On **1 April 2019** a report was received from the USA reviewer. It seems that the Complainant was satisfied with its contents.

This Office has been supplied with recordings of some, but not all of the telephone calls which took place between the Complainant and the Provider during this period. For the purpose of the investigation of this complaint, notwithstanding the Complainant's submission that some emails and call recordings have not been provided, I am satisfied that the above timeline represents a fair and representative summary of the interactions between the Provider and the Complainant between 29 January 2019 (when the Complainant sought to utilise the Consultant Connections benefit) and 1 April 2019 (when a second report was received, this time from the USA).

On review of the foregoing timeline, a number of matters arise.

Firstly, the jurisdiction of this office pursuant to **Section 44** of the **Financial Services and Pensions Ombudsman Act 2017** extends only to investigation of the conduct of a **financial service provider** (in this case, the Provider). The FSPO is therefore not in a position to make any findings regarding the conduct of:

- the hospitals from which records were being sought;
- a medical professional / reviewer who prepared any report;
- a postal service.

It is absolutely understandable that the Complainant wanted urgent responses, and that he felt the need to email and telephone the Provider repeatedly. This understandable sense of urgency was borne out of concern for his wife's condition.

Between 29 January 2019 and 15 February 2019, the Provider and the Complainant were attempting to gather the relevant records from the hospitals. The records were sent to the specialist in the UK, with discs being sent by registered post, and recorded as being "received" on 23 February 2019.

On 28 February 2019 however, it became apparent that the discs had gone astray in the post. The Complainant was advised of this on 4 March 2019 – the first business day after 28 February 2019 when the Provider's agent was in work (she had been on leave on 1 March 2019).

A preliminary report was provided by the UK reviewer on 4 March 2019, in the absence of the imagery discs. The Complainant was dissatisfied with its contents.

Between 4 March 2019 and 15 March 2019 the Provider and Complainant were again awaiting disc imagery from a hospital. On 19 March 2019, the Provider received the imagery from the Complainant (received at his address from the hospital and immediately forwarded by post).

An updated report was furnished by the UK reviewer on the same day that the discs were received. The process of procuring a report from the USA was then put in motion on the 20 March 2019, and the report was received 8 business days later, on 1 April 2019.

In analysing the above timeline I must take account of the periods of time when the onus was on the Provider to act (rather than when responses or actions were awaited from hospitals or physicians, or when post was in transit). Having done so, I can find no unreasonable delay in the responses of the Provider, during the period from 29 January 2019 to 1 April 2019. In fact, the Provider's agent was very responsive to the Complainant's inquiries, assisting him when she was on leave or indeed, after hours.

In my preliminary decision I indicated my view that there was no point at which I could reasonably determine that in early 2019, at the time of the events giving rise to this complaint, the Provider had been in possession of important information but had delayed before furnishing it to the Complainant, or that the process had been held up by its conduct.

Since the preliminary decision was issued to the parties, the Complainant has reiterated his dissatisfaction with the service received from the Provider, in particular from 28 February 2019. He has pointed out that on that date in question the Provider was informed early in the morning, that the reviewer had not received the scans. He is very dissatisfied because he sent an email at 9:40am to the Provider querying the delay in getting the review, and he points out that this was 90 minutes after the Provider had discovered that the reviewer was not in possession of the scans. The Complainant queries:-

"Why wasn't I given this crucial and most important piece of information? And more damningly why was I only told that [the scans] had been received in the UK – this was deliberately misleading. As noted from the outset, it was agreed that the opinion would be on the actual scans only."

I am conscious that this period of time was particularly stressful for the Complainant and the evidence before me indicates that the Provider's agent was mindful of this position. Whilst the Complainant considers it *"unforgiveable"* that the Provider's agent did not advise him on Thursday February 28, that the reviewer had not received the scans, I am conscious that the Provider had no information as to the whereabouts of the scans which, after all, had been transmitted by way of registered post for the attention of the reviewer. I believe that it would not have been unreasonable for the Provider's agent to have taken the view on that whatever the difficulty in the reviewer gaining possession of the scans, that difficulty was likely to be overcome in the short-term given that these had arrived in the UK, 5 days earlier.

I do not accept that the information given to the Complainant regarding the scans' arrival in the UK on 23 February 2019, was *"deliberately misleading"*. In my opinion this was the only definitive factual information available to the Provider, as it was unaware as to what had transpired between that date, and why the discs had apparently not been received by the reviewer in the intervening period. I am very conscious in this regard that the Provider had taken prudent steps to preserve the important discs, by transmitting them by registered post to the intended recipient. In circumstances where the question mark surrounding the whereabouts of the scans was hopefully one to be resolved throughout that day or perhaps on the following day, I consider it understandable that the Provider's agent did not wish to cause the Complainant further and potentially needless upset, if it could be avoided.

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There was no obligation whatsoever on the Provider's agent to provide the Complainant with an update on Friday 1 March 2019, given that she was on leave. I consider that the steps taken by the Provider's agent in that regard went above and beyond what should have been expected from her in the lead-up to the weekend; I can only assume that this was because she was very mindful of the Complainant's position.

I note that on the following Monday, at that point, the Complainant was informed that a Preliminary Report had been issued by the reviewer who had not received the discs. Understandably, the Complainant considers this event to have been "*astounding*", given that it had been agreed that the review would be of the MRI discs. The Complainant points out in that regard that "*this type of report/review was neither requested, discussed or agreed*".

I accept the Complainant's position that, in his opinion, the reviewer's preliminary report was unlikely to have been of much benefit to him, given that the review had been specifically requested of the MRI discs themselves. I do not however consider it appropriate to call into question either the qualifications or the ability of the reviewer to offer a report of a preliminary nature on the basis of the information which was to hand at that point, given the difficulties encountered by the reviewer in gaining possession of the relevant discs as a result of some difficulty which it appears may have been attributable to the Royal Mail.

It is of course understandable that the Complainant was utterly frustrated by this experience, given the gravity of his personal circumstances and his desire for a suitable review. It is clear that the logistics of the review process were slower than the Complainant would have wished for. His desire for the opinion of the reviewer was urgent and it was no doubt frustrating for him that it took such a period to transfer the hard copy discs, so that the reviewer would be in possession of the best images.

I accept that Complainant's position that it would be optimal for the Provider to send imagery electronically, or by courier, but there is no obligation under the policy for it to do so. In this instance, it appears that the Provider transmitted the information in the format in which it had been received from the hospitals. I am not satisfied that in doing so, it acted in any wrongfully or unreasonably or in a way which would ground a finding against the Provider.

Certainly, on the basis of the chronology as it is understood, it appears that a number of circumstances militated against the Complainant receiving the review he requested in a timely fashion. On the basis of the evidence available however, I do not consider it appropriate to determine that it was the Provider which was primarily responsible for the delays which the Complainant encountered. The evidence in my opinion, illustrates that the Provider consistently sought to bring the process to a conclusion, so that the report which had been requested by the Complainant would be made available to him, but many events which gave rise to delay, fell outside of its control.

I note that ultimately, the UK reviewer's finalised report was made available on 19 March 2019 and following the Complainant's dissatisfaction, a further review was secured from the reviewer in the USA by Report dated 1 April 2019 which satisfied the Complainant's requirements.

Finally, the Complainant has also indicated a concern regarding "*how accurate, safe and secure are customer/patients' data and information with [the Provider]?*". Any complaint regarding data security or a potential data breach is however not a matter for this Office and instead must be referred to the Data Protection Commission.

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**

1 June 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.