



<b><u>Decision Ref:</u></b>	2022-0109
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Private Health Insurance
<b><u>Conduct(s) complained of:</u></b>	Delayed or inadequate communication Miscellaneous
<b><u>Outcome:</u></b>	Rejected

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

This complaint relates to the provision of information on the Provider's website.

#### **The Complainant's Case**

The Complainant submits that the Provider's website does not provide clear or unambiguous information. She states that the process of checking policy cover is overly complicated "*in order to deliberately confuse and mislead customers*".

The Complainant describes the process by which she can check her cover. A customer can check their cover either with the code for their specific procedure, or through a search function designed to check hospitals, GPs, and consultants. To access this latter option, she says that the customer presses a button titled '**Check hospital or consultant**'.

The Complainant says that this wording is misleading, as she must, in fact, check that the policy covers the hospital, the procedure, the date of the symptoms, and that the consultant is participating.

The Complainant provided this Office with a video of her navigation of the Provider's website. This shows the search function to check policy cover for hospitals, GPs, and consultants, which provides the customer with a number of separate categories to search. The Complainant clicked on the tab titled 'Consultants, GP & Dentists'. As an example, she entered her consultant's name, and the County and hospital that they work in. This search result showed that the Complainant's consultant was 'participating' with the Provider.

The Complainant states that, as she is logged in to the Provider's website, it is reasonable to believe that her policy covers an appointment with that consultant. However, the Complainant learned that she must also check whether the hospital that the consultant works in, is covered by her policy. The search function that the Complainant illustrated in her video determined only whether a consultant was participating. The Complainant says that if the consultant's hospital is not covered by the policy, an appointment with the consultant in that hospital will not be covered.

The Complainant submits that there is no reason why the hospital search and consultant search could not be amalgamated into one. In a submission to this Office of **27 August 2021**, the Complainant questioned why there was a box in the 'consultant search' option for the name of a hospital, if the information relating to the hospital is "*irrelevant*".

The Complainant states that the Provider also requires customers to check their procedure code in order to confirm their coverage. However, this is not possible before meeting with a consultant and determining the required procedure.

The Complainant notes that there is a disclaimer on the Provider's website on the consultant search page which states that the search only shows whether the consultant is participating with the Provider. It advises customers to check that the hospital where the consultant works is also covered by their policy. However, the Complainant says that there is no link in this disclaimer to the page where this information can be checked. She states that the hyperlink in the disclaimer simply brings the customer back to the member's area of the Provider's website. She also notes that the disclaimer is coloured blue and in a smaller font.

The Complainant submits that checking cover is the most important function on the Provider's website. As a result, she believes that it needs to be clear, easy to use, and unambiguous.

The Complainant states that, as a result of the Provider's misleading website, she made an appointment with a consultant in a hospital ('the hospital') that was not covered by her policy. She states that the Provider's policy is deliberate "so that I ended up paying for the consultant and procedure myself". The Complainant says that she found out that she was not covered after paying for her consultation and booking in for a procedure. She had taken time off work for this consultation, and at the time when she made the complaint, she said that she would now have to wait for another consultation with another hospital for her procedure.

The Complainant is seeking reimbursement for the cost of this appointment and wants the Provider to update its website.

In response to the Provider's submissions to this Office, the Complainant made further submissions by way of email on **19 August 2021**. She noted that the Provider referred to a number of interactions between her and the Provider, regarding whether a particular hospital was covered by her policy. On each occasion, the Complainant was informed that her hospital was not covered by the policy. This was the same hospital in which the Complainant's appointment was made.

The Complainant submits that these interactions ranged from two to four years before this matter. She states that she should not be expected to memorise information provided years ago. Additionally, she noted that her plan has changed since its inception.

In response to the Provider's submission that she had used the procedure code XXXX to check her coverage 10 times on the Provider's website, the Complainant says that she could not be expected to remember a specific code over the course of years. She also notes that four of those searches post-date her appointment with her consultant. She says that the submission of the Provider that she used the procedure code to check coverage on her appointment, and the subsequent submission that the Complainant attended at her consultation, was an attempt by the Provider to "discredit" her character. The Complainant checked the coverage of her procedure following her appointment of the same day.

The Complainant says that the Provider's website is designed poorly and, depending on the browser, a customer may not even see the information that their consultant is 'not participating'. She says that the search gives rise to a number of interpretations and that it should not exist, if it gives false information.

### **The Provider's Case**

The Provider submits that the Complainant took out a policy with the Provider in **December 2014**. At this point, the Complainant was emailed to advise her that her policy documents were available on the Member Area on the Provider's website. These documents included a benefit table, which stated that there was no cover for 'the hospital'.

The Provider says that on **17 January 2017** the Complainant called the Provider to check cover for a procedure code [XXXX]. The Provider's Agent explained that there was no cover under this code, as it was with 'the hospital'.

The Provider says that on **30 March 2017** the Complainant changed her policy with the Provider, via telephone, to a different plan. The Provider's Agent told the Complainant that her coverage would grow, but she would not have access to two hospitals, including 'the hospital'. The Complainant was emailed on **31 March 2017** to inform her that her new policy documents were available in the Member Area. The benefit table included in the Complainant's policy documents noted that there would only be coverage in 'the hospital' for certain specialised procedures. The Provider says that, therefore, there is no cover for procedure code XXXX.

The Provider states that on **1 May 2019**, the Complainant used the search function to check her coverage with the procedure code XXXX. The result informed her that she was not covered by the policy. The Complainant contacted the Provider via webchat to query this, and was informed that 'the hospital' was not covered by her policy.

The Provider contacted the Complainant on **15 October 2020** to advise that the policy documents for the upcoming renewal were available to view in the Member Area of the Provider's website. The benefit table in the policy documents states that there would only be coverage in 'the hospital' for certain specialised procedures. As a result, there is no cover for procedure code XXXX.

The Provider states that on **25 January 2021**, the Complainant used the website to check the coverage for procedure code XXXX in 'the hospital'. The result of the search was that the Complainant's policy did not cover this procedure. On the same day the Complainant attended an appointment with a consultant in 'the hospital'. The Complainant called the Provider to state that she had been informed by 'the hospital' that her insurance policy did not give her coverage. The Provider's Agent explained that her policy only covered certain specialised procedures in that hospital.

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The Provider set out the steps that the Complainant was required to take to ascertain whether she was covered for treatment. It stated that the Complainant had been provided with a **General Rules** booklet in **2017**, which advised the Complainant to call the Provider regarding any upcoming treatment. It noted that the Provider should be told the name of the hospital and the consultant, to confirm cover.

The Provider states that it must have the following information to inform a customer of their cover:

- The name of the consultant;
- The hospital where the procedure will take place;
- The date that the symptoms of the condition first occurred; and
- The name of the procedure or the procedure code.

This information allows the Provider to confirm that the consultant is participating, the hospital is in the customer's policy, the waiting periods are satisfied, and the procedure is listed in the schedule of benefits. The Provider notes that this can be checked via telephone, webchat, email, or the online cover checker.

The Provider says that if the Complainant had known the above information, she could have checked her coverage using the search function on the website titled '**Specific procedure**'. The Complainant however used the other search function, and search on the tab titled 'Consultants, GP & Dentists'.

The Provider submits that there is a disclaimer directly below the search field on this tab, in the centre of the page, which states that the consultant search, only shows whether a consultant is participating with the Provider. It states that customers should check that the hospital where that consultant works is also covered by their policy. In those circumstances, the Provider is satisfied that the Complainant was made aware of the information required in order to check cover for a procedure.

The Provider states in an email of **31 August 2021** that the fields on the consultant search assist customers in narrowing the search for a consultant.

The Provider rejects the Complainant's submission that their website is overly complicated and deliberately designed to mislead. It states that the function of the search tool on the website is to "*put the power back in the Member's hands*", so that coverage can be checked when call centres are closed. The Provider has sought to make the process as simple as possible.

The provider says that if the customer knows all of the required information, it can be checked simultaneously using the 'Specific procedure' search. If the customer does not have all of the information, the consultant and hospital name can be searched separately on the website. The Provider notes that the Complainant has used both search options in the past, and was clearly advised as to whether she was covered for this particular procedure.

In relation to the disclaimer, the Provider submits that it has complied with its regulatory obligations insofar as it is written in plain English, and is easy to understand. The Provider notes that the coverage of her policy was also brought to her attention by way of email noting that her policy documents were available in the Member Area.

The Provider notes that, as the consultant that the Complainant attended with was participating, the Complainant is entitled to claim back the cost of €40 (forty Euro).

### **The Complaint for Adjudication**

The complaint is that the Provider failed to provide clear and unambiguous information on its website to the Complainant when she sought to ascertain whether she was covered for a medical procedure and consultant fees in **January 2021**.

The Complainant set out what she is seeking in resolution of her complaint:

*"I subsequently went to see this consultant, paid 200 euro and was booked in for a procedure when the hospital rang me and said I was not covered. This was a waste of my time (a day off work) and my money and now I have to wait a long time for another appointment with another consultant from another hospital in order to get a procedure which I will have to wait even further for again. I think it fair that I am reimbursed this money.*

*I also think that [the Provider needs] to put some effort into their website and update their technology and move with the times".*

### **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.

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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 **3 March 2022**, 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.

### **Evidence**

The disclaimer on the search engine of the Provider's website reads as follows:

*"The Consultant search ONLY shows whether or not a Consultant is participating with [Provider]. When you find your chosen Consultant you should note that they may/may not work out of a hospital covered by your scheme. Please ensure that your hospital cover includes the hospital where your preferred Consultant works..."*

### **Analysis**

I note that the Complainant contends that the disclaimer on the Provider's website is in smaller text and in blue colouring. The Provider maintains that it complies with its regulatory obligations because it is in clear language, and centred in the page.

I consider that, although the text is small, it does not appear to be considerably smaller than the other text on the search page. The change in colour in my opinion, does not have the effect of making the text more difficult to read. On the contrary, a differing colour can make the text easier to read. I accept that the language of the disclaimer is clear and simple.

Although, as the Complainant notes, the disclaimer does not have a hyperlink to a specific source that would allow her to check the specific coverage of her policy, I note that there is a tab in the same search function, to check whether particular hospitals are covered by a plan.

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I also note that the Member Area of the Provider's website contains the Complainant's policy documents. The Complainant's policy documents clearly state that 'the hospital' is not covered in the Complainant's plan.

I can understand that the Complainant may have been confused by interpreting the search result of a consultant 'participating' with the Provider, as meaning that any procedures provided by that consultant would be covered by the Provider's policy. However, the Provider's policy documentation has clearly distinguished between participating consultants, and coverage provided to hospitals. This is also referred to in the disclosure beneath the search function. Whilst it is always possible for the Provider to be even more clear in bringing this to the customer's attention, I do not believe that the Provider's current disclaimer is unclear or misleading.

I note that the Complainant has queried why a number of fields cannot be searched simultaneously to determine whether a procedure has coverage, to prevent the ambiguous answer provided by the consultant search option. The Provider has stated that this is in fact provided under '**Specific procedure**' search function, which requires customers such as the Complainant to input all of the necessary information. The consultant search function simply assists customers in determining the sole issue of whether a consultant is participating with the Provider.

In those circumstances, I accept the Provider's submission that the search functions on its website were clear, and were not misleading to the Complainant in January 2021. I note that each type of search has its own function, and the consultant search bar includes a disclaimer that warns members to take further steps to determine whether a procedure is covered.

In regard to the Complainant's situation, I consider that the Complainant was on clear notice that her policy did not cover 'the hospital'. It is not necessary to look to previous interactions between the Provider and the Complainant via telephone or webchat in this regard. The Complainant was provided with this information in her policy documentation. Additionally, the disclaimer on the consultant search function highlighted that a participating consultant may work in a hospital that was not covered by the Complainant's policy. It advised the Complainant to take further steps to determine that the hospital was also covered by her plan.

In those circumstances, I do not believe that the evidence supports the Complainant's contention that the Provider's website was unclear and misleading to her and accordingly, I do not consider it appropriate to uphold the complaint.

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## 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**  
**Financial Services and Pensions Ombudsman (Acting)**

29 March 2022

## **PUBLICATION**

### **Complaints about the conduct of financial service providers**

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.

### **Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.