An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

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| **Decision Ref:** | 2022-0157 |
| **Sector:** | Insurance |
| **Product / Service:** | Travel |
| **Conduct(s) complained of:** | Rejection of claim - pre-existing condition<br>Dissatisfaction with customer service<br>Disagreement regarding Medical evidence submitted<br>Rejection of claim - non-disclosure |
| **Outcome:** | Rejected |

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

This complaint concerns a travel insurance policy which the Complainant renewed in **November 2018**.

In **August 2019**, the Complainant booked a trip for **September 2019**, for herself, her husband and her daughter.

### The Complainant's Case

The Complainant submits that in **June 2019** she was informed that her daughter, who is named on her policy, had an eating disorder. The Complainant says that her daughter's medical condition was not confirmed, until **October 2019** when she was admitted to a hospital by a psychiatrist.

The Complainant contends that her daughter was not diagnosed with anxiety, until the day she had to cancel the trip and that she was not diagnosed as suffering from any psychological or psychiatric conditions prior to the travel insurance being renewed or the flights being booked. The Complainant asserts that

> *"only a Psychiatrist can diagnose someone suffering from a Psychiatric problem."*

**The Provider's Case**

In its Final Response Email dated **24 January 2020**, the Provider submits that the claim was declined because the Complainant's daughter was diagnosed with an eating disorder in **June 2019** and that she was attending an Eating Disorder Clinic, since **June 2019**, and this is the reason the trip was cancelled, and a claim was made on the policy.

The Provider contends that the General Exclusions, in the policy, were applied directly to this complaint and it concluded "*that the eating disorder did exist prior to the booking of the flights"* and that "*you were aware of it and that your daughter was receiving treatment and care for it"*.

The Provider asserts that the reason for the cancellation was directly, or at least indirectly, related to this.

**The Complaint for Adjudication**

The complaint is that the Provider wrongly rejected a claim made by the Complainant on her travel insurance policy in **September 2019** and that it proffered below par customer service and complaint handling throughout the course of this complaint.

The Complainant wants the Provider to refund the cost of flights in addition to compensation because the Provider put her "*through so much grief"*.

**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.

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A Preliminary Decision was issued to the parties on **6 April 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

**Chronology of Events**

- **20 November 2018:** Renewal of Complainant's travel insurance policy.
- **6 June 2019:** First consultation took place in respect of the eating disorder, according to the medical certificate completed by the Complainant's daughter's doctor.
- **5 August 2019:** Complainant books the trip to the UK for herself, her daughter and her husband, with a departure date of **13 September 2019** and a return date for the Complainant and her husband of **24 September 2019.**
- **6 September 2019** – Claim Form completed by the Complainant.
- **23 September 2019:** Provider receives correspondence in respect of the lack of response to the Complainant's emails. A claim was opened and a claim form was sent to the Complainant.
- **21 October 2019:** Correspondence between the Provider and Complainant in respect of outstanding documentation required to process the Complainant's claim.
- **22 October 2019:** Provider sends an email to the Complainant acknowledging receipt of the documentation and noting that the processing of the documents would take a period of 5 to 10 working days.
- **31 October 2019:** The claim is reviewed by the Provider and an email is sent to the Complainant requesting the original booking invoice for the relevant flights due to a discrepancy between dates in documentation already received.
- **1 November 2019:** Email and booking invoice are received from the Complainant.
- **4 November 2019:** Provider issues the Complainant with an acknowledgment email.
- **7 November 2019:**

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  - Provider's agent endeavours to telephone the Complainant, but there is no answer and the agents leaves a voicemail. The Provider sends an email to the Complainant confirming that her claim has been declined.
  - The Complainant responds by email acknowledging receipt of the rejection email and advises that the matter will be referred to her solicitor and the reasoning behind this.

- **25 November 2019:** Provider's agent notifies Complainant via email that the claim has been referred to the Insurer for review.

- **25 November 2019:** Provider's agent notifies Complainant that the Insurer has confirmed that the original rejection of the claim still stands.

- **26 November 2019:** The Complainant responds noting that she wishes to appeal the decision.

- **2 December 2019:** Provider's Complaints department writes to the Complainant confirming that a thorough investigation into the matter will be conducted.

***Evidence***

*(i)* *The Complainant's Original Claim submitted to the Provider's Claims Department on **17 September 2019** via email*

The Complainant states as follows:

> *"Our daughter* [X] *was due to start college in* [University] *and we booked 3 outgoing flights with* [Airline] *for Friday 13th September and 2 returning flights a week later – due to an illness we were advised by the GP that it was unsafe for* [X] *to be abroad at this time hence the cancellation of our flights, car hire, hotels, etc. I have managed to be able to cancel and get a refund on some of our bookings."*

*(ii)* *Complaint Form submitted by the Complainant to the Provider's Claims Department on **11 November 2019***

The Complainant states as follows:

> "*An Eating Disorder has to be diagnosed by a Psychiatrist (Reference Bodywhys – The Eating Disorders Association of Ireland). Prior to booking our trip our Daughter had not been diagnosed as having an Eating Disorder by a Psychiatrist (in fact she has yet to be diagnosed) and until this happens we are assuming that she has an Eating*

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*Disorder. With regards to Anxiety – this was not disclosed to us by the GP until after the flights were booked. Hence saying our claim is not valid is incorrect."*

*(iii)* <u>*Medical Declaration from the Complainant's Daughter's GP*</u>

This declaration was included as part of the Complainant's Claim Form. On this form, the GP confirms by a ticked box that she is the GP at the patient's regular practice. It is confirmed that she was not consulted in relation to the patient's intention to travel when the trip was initially booked. Despite this confirmation, the GP answers the question "*If no, please state reason"* with the following: "*Patient felt fine at the time of booking"*.

In response to the question '*State (a) the medical condition(s) or (b) the cause of death, which resulted in this claim'*, the GP writes: "*Anxiety, low bone density, eating disorder".*

Beside '*Date of first consultation for the condition(s)*, the GP writes the following:

"*6/6/19 Eating Disorder*
*6/9/19 Low bone density"*

In response to the question "*At the time of issue of the insurance, did the patient have any symptoms for which he/she was awaiting investigations/consultation, and/or where the underlying cause had not been established? If yes, provide full details below",* the GP wrote "*None known to me"*.

*(iv)* <u>The Policy</u>

The relevant part of the policy is within its '*General Requirements'* section under '*Medical Health Requirements'*:

"*You are not covered if, when you took out this insurance or when you booked your trip, you or any person to be insured under this policy:*

1. *has been put on a waiting list for which they are still awaiting inpatient treatment or investigation by a hospital department; or*

2. *has received treatment as a hospital in-patient or out-patient, or been under the care of a specialist consultant within the past 12 months: or*

3. *has been diagnosed with a terminal illness or treated for a malignant condition or any type of cancer; or*

4. *has been treated for any breathing problem that has required steroid or nebulized drugs in the past two years; or*

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5. *has ever been treated for a heart related problem (including angina but with the exception of high blood pressure or high cholesterol in isolation) which has involved surgery or regular treatment with any kind of medication; or*

6. *has suffered a stroke or required treatment for a circulatory condition which has involved surgery treatment with any kind of medication; or*

7. *"Has been previously diagnosed as suffering from any Psychological or Psychiatric Disorders including Anxiety"*

*(iv)* *Final Response Letter issued by the Provider on* ***24 January 2020***

The Provider wrote as follows:

*"I am sorry to hear that your daughter was unable to take up her place at* [redacted] *University and I wish her well with her treatment.*

*Your claim was declined because prior to booking your flights, your daughter had been diagnosed with an Eating Disorder in June 2019 and was attending the* [redacted] *Eating Disorder Clinic since June 2019. Your flights were booked in August as you were travelling with your daughter to support her.*

*The travel insurance policy you have, restricts cover for any existing medical conditions that exist before booking a trip. Your policy states:*

*"General Exclusions – You are not covered for*
*Anything directly or indirectly caused by:*

*3) any loss where at the time of taking out this insurance or at the time of booking each trip:*
*a) You or any person insured under this policy"*
[…]

*"ii) has received treatment as a hospital inpatient or outpatient, or been under the care of a specialist consultant within the past 12 months; or"*
[…]

*"vii) has previously been diagnosed as suffering from any psychological or psychiatric disorder, including but not limited to anxiety, stress or depression; or…"*

*You stated that the condition was not formally diagnosed by a psychiatrist until October 2019. The medical certificate completed by your GP states that the first consultation was on the 6th June 2019 and you confirmed that your daughter was attending a clinic for eating disorders before the trip was booked. We would have to conclude that the Eating Disorder did exist prior to the booking of the flights, you*

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*were aware of it and your daughter was receiving treatment and care for it. As the reason for cancellation is directly, or at least indirectly related to this, the exclusion would have been applied correctly."*

**Analysis**

In considering this issue, I am mindful that exclusion clauses are, generally speaking, included in an insurance policy in order to limit the level of risk that the Insurer is willing to accept under the contract with the customer. Insurance policies are structured around this concept of risk, and the likelihood that an insured event will occur, which will require the Insurer to pay a claim. The cost of a premium for an insurance policy is determined by reference to the risks to be covered. If an individual named on the policy is undergoing treatment for a medical condition, this will increase the risk that a person may have to cancel a trip, due to health-related issues.

It is clear that the Complainant had a valid policy of multi-trip travel insurance with the Provider, which had been renewed on **20 November 2018**. The sections of this policy that apply to this particular set of circumstances are set out more fully above. In summary, the Complainant was informed upon entering the policy of the general condition that she would **not** be covered for:

*"… anything directly or indirectly caused by:*

*(3) any loss where at the time of taking out this insurance or at the time of booking each trip:*

*a) you or any person insured under this policy:*

*[…]*

*ii) has received treatment as a hospital in-patient or out-patient, or been under the care of a specialist consultant within the past 12 months; or…*

*vii) has previously been diagnosed as suffering from any psychological psychiatric disorder, including but not limited to anxiety, stress or depression;"*

A medical certificate was completed by the Complainant's daughter's doctor who stated that the first consultation with the Complainant's daughter in respect of the eating disorder took place on **6 June 2019.** This was confirmed by the Complainant in her letter to the Provider on **1 November 2019** when she stated the following:

*"It was confirmed in June of this year that* [Complainant's daughter] *had an Eating disorder.*
*She was receiving weekly treatment at the* [County] [redacted]*Clinic"*

On **5 August 2019**, the Complainant booked a trip to the United Kingdom for herself, her husband and daughter in order to accompany their daughter to university on **13 September**

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**2019**. Return flights to Ireland were booked for both the Complainant and her husband for the **24 September 2019**.

It is the Complainant's assertion that her daughter's eating disorder had not been diagnosed at the time of the booking. She says this on the basis that, in her opinion, *"only a Psychiatrist can diagnose someone suffering from a Psychiatric problem"*.

The potential success of this argument turns on the meaning of diagnosis in the terms of the Provider's policy. It is noted that no specific definition is given for the term 'diagnosis' under the 'Definitions' section of the policy. The terms of General Exclusion (3)(vii) do not set out what type of professional the relevant diagnosis must be given by. It simply states that if such a diagnosis has occurred, claimants directly or indirectly affected by it, will not be covered.

The Provider's assertion is that because the Complainant first attended her General Practitioner in respect of the eating disorder on **6 June 2019** and had been attending an eating disorder clinic on a weekly basis, a diagnosis had been made. The Provider makes reference to the following Cambridge Dictionary definition of 'diagnosis':

> *"a judgment about what a particular illness or problem is, made after examining it".*

The Provider also refers to the website of an American body, the National Cancer Institute, which defines the term diagnosis as:

> *"the process of identifying a disease, condition, or injury from its signs and symptoms. A health history, physical exam, and tests, such as blood tests, imaging tests and biopsies, may be used to help make a diagnosis".*

In my opinion, in the absence of a specific policy definition of the term 'diagnosis' in the Provider's policy, it is appropriate to apply the ordinary meaning of the word as generally understood by the general public, and I consider it appropriate to reference two other definitions from commonly used and reliable resources.

1. In a presentation issued by the HSE entitled '*Diagnosis and Beyond',* the term 'diagnosis' is defined as "*the act of identifying a disease, illness, or problem by examining someone or something"*.

2. The Merriam-Webster English dictionary defines 'diagnosis' as "*the art or act of identifying a disease from its signs and symptoms"*.

It appears from each of these definitions that the meaning of the word, taken at its height, is the identification of a disease, condition, illness, injury or problem, made after examining its signs or symptoms, which may require tests and studies. I am satisfied from a consideration of the facts that the Complainant's daughter was diagnosed with, insofar as she was recognised as suffering from, an eating disorder on **6 June 2019**. She attended her primary care physician and subsequent to this attendance, she commenced receiving weekly

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treatment for the disorder at a clinic solely devoted to the provision of services to individuals with eating disorders.

The Complainant asserts that a diagnosis of an eating disorder can only be made by a psychiatrist, and notes that her daughter only attended a psychiatrist in **October 2019**.

The Provider contends that "*a diagnosis can come from a suitably qualified person, and this is not limited to a psychiatrist"*. The Provider quotes from a resource on eating disorders published by the Mayo Clinic in the United States which states:

> "*Diagnosis:*
>
> *Eating disorders are diagnosed based on signs, symptoms and eating habits. If your doctor suspects you have an eating disorder, he or she will likely perform an exam and request tests to help pinpoint a diagnosis.* ***You may see both your primary care provider and a mental health professional for a diagnosis*****"**
>
> [Emphasis added by the Provider]

The Provider also makes reference to the 'BodyWhys' website, to which the Complainant has also referred in her submissions. The Provider identifies the BodyWhys publication entitled '*Eating Disorders: A Resource for General Practitioners'* which I have considered and note the following statement included in its introduction:

> "*GPs are uniquely placed to the early detection and management of eating disorders, offer intervention and help co-ordinate and monitor treatment".*

I also accept the observation of the Provider that *"…It is also questionable whether BodyWhys can state who can or cannot make a diagnosis…"*.

The Health Service Executive (HSE) have a similar webpage available with information about eating disorders:

> "*Getting help for an eating disorder:*
>
> *If you think you may have an eating disorder, even if you aren't sure, see your GP as soon as you can.*
>
> *Your GP will ask you questions about your eating habits and how you're feeling. They'll also do a full health check.*
>
> *If you have an eating disorder, your GP should refer you to an eating disorder specialist."*

I am not satisfied on the basis of the evidence submitted as part of the complaint that a diagnosis of an eating disorder, for the purposes of this travel insurance policy, must have come from a psychiatrist. It appears to me that the purpose of General Condition (3)(vii) is

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to exclude cover from claimants who have received the general type of diagnosis as that set out above, which I am satisfied the Complainant's daughter had received in advance of the booking of the flights on **5 August 2019.**

Having received the diagnosis on **6 June 2019**, in my opinion, it was reasonable to expect that at the time of booking eight weeks later, on **5 August 2019**, the Complainant's daughter's symptoms could give rise to a claim. I am not convinced that the Complainant, upon reading General Condition (3) (vii) at the renewal stage of her policy in **November 2018,** could reasonably have considered that only a psychiatrist could have provided such a diagnosis.

The Provider also asserts that because the Complainant's daughter had been attending an eating disorder clinic where she was cared for by a '*specialist'* in the 12 months preceding the purchase of the policy, General Exclusion (3)(ii), set out above, also applied. The Complainant makes reference to the description of the relevant eating disorder clinic featured on the 'BodyWhys' website, where it is linked as a treatment centre. The clinic is described as "*a dedicated and specialist outpatient treatment centre for those people living with eating disorders / eating distress".*

I am not convinced by this particular element of the Provider's response. The provision the Provider refers to applies to individuals who have:

> "*received treatment as a hospital in-patient or out-patient, or been under the care of a specialist consultant within the past 12 months; or…."*

I believe the ordinary meaning of the term 'specialist consultant' refers to a doctor who has attained the medical title of 'consultant', and in this instance such a consultant would specialise in the area of eating disorders. I appreciate that the clinic at which the Provider's daughter attended for treatment, could be regarded as a 'specialist' in terms of the singular services it provides to those affected by eating disorders. However, I am not entirely convinced that this treatment falls into the category of the policy wording as set out at General Condition 3 (ii), as there is inadequate evidence available in this instance, that the Complainant's daughter was under the care of a specialist consultant at that centre.

Compliance with the Consumer Protection Code (2012) as amended

In respect of the Provider's compliance with the relevant provisions of the Consumer Protection Code 2012 (as amended), I am satisfied that the Provider has discharged its obligations. In my opinion, the Provider acted honestly, fairly and professionally and in the best interests of its customer. Although the Complainant wrote to the Provider on a number of occasions in January 2020 in reference to the delay in receiving a response in relation to her complaint, it is apparent that the Provider at all times adhered to the time limits prescribed by the appropriate complaint procedure. In the Provider's letter of **2 December 2019** which was the Provider's official acknowledgement of the complaint and confirmation that it would be investigated, it stated:

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> "*Once we have completed this, we will write to you again, this should be no later than 40 working days from the date of this letter to advise you of our findings*".

It may have been the case that the Complainant expected a similar period, as the claim review process, within which to receive an update. I am mindful of the fact that this apparent delay may have contributed to the distress caused to the Complainant. However, I am satisfied that the Provider adhered to the time limits for correspondence with the Complainant and when the complaint had not been resolved within the 40 day limit, its agent wrote to the Provider on **22 January 2020** advising her of this, and notifying the Complainant of her right to refer the matter to this Office.

I am satisfied that the terms of this policy were brought to the attention of the Complainant in advance of the booking of the flights to the United Kingdom. The policy is written clearly, accurately and in plain English and therefore this discharges the Provider of its obligations under 4.1 of the Consumer Protection Code 2012 (as amended).

Furthermore, I am satisfied that the Provider complied with its obligations under the Code when communicating to the Complainant that her claim would not be paid. It set out the reasons for the rejection clearly and referred to the relevant provisions of the policy.

In all of the circumstances, on the basis of the evidence and in particular on the basis of the medical evidence available, I am satisfied that the Provider was entitled to decline the Complainant's claim, on the basis that the claim arose directly or indirectly from the Complainant's daughter's diagnosis of an eating disorder in June 2019.

Accordingly, in the absence of wrongdoing on the part of the Provider I take the view that this complaint cannot reasonably be upheld.

**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)**

6 May 2022

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**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.