

Ombudsman Determination

CIFO Reference Number: 17-000045

Complainant: [The complainant]

Respondent: [Company X]

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

The complaint relates to the refusal by [Company X] to cover the claim for the cost of surgical treatment to the complainant, [redacted for anonymisation purposes], right knee, which was declined on the grounds that [the complainant's] condition was pre-existing.

[The complainant] did not agree with the Case Handler's initial view and requested that I issue a determination on the complaint.

Background

On 10 June 2016, [the complainant's] policy with [Company X] commenced. [The complainant] had selected the moratorium underwriting criteria, which provides that if the claim relates to a condition that existed within the 60 months prior to the start of the policy, it would not be covered. In addition, any reinstatement of cover for any such condition would require the condition or symptoms of that condition to be absent for a continuous period of 24 months after cover has started.

As a fair and reasonable resolution to his complaint, [the complainant] sought repayment for prepaid medical costs and payment for ongoing physio and healthcare.

Findings

According to a letter dated 15 October 2016, [redacted for anonymisation purposes], a Consultant Orthopaedic surgeon, [the complainant] had anterior cruciate ligament (ACL) reconstruction surgery performed on his right knee in 1994. A similar operation was carried out on [the complainant's] left knee 10 years later in 2004.

On 26 September 2016, [redacted for anonymisation purposes], [the complainant's] general practitioner wrote to [the consultant orthopaedic surgeon] referring [the complainant] to him in respect of

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

'ongoing right knee pain for the last 8 weeks',

which suggests that the pain began around 1 August 2016. The clear inference from the complainant is that his right knee condition did not exist in the 7 weeks between 10 June 2016 and 1 August 2016.

In [the general practitioner's] letter, when discussing the respective ACL procedures in 1994 and 2004, the doctor stated;

'His left knee seemed to be the more problematic knee and he was seen by you in 2015 with a diagnosis of osteoarthritis.'

I find that this letter establishes that following the respective surgeries, while the left knee was deemed to be the *'more problematic'*, the right knee was not problem free.

According to research², osteoarthritis is significantly more frequent in the ACL reconstructed knee than in the collateral knee and, whether treated surgically or not, is clearly associated with an increase in osteoarthritis.

I find that the ACL surgeries carried out in 1994 and 2004 respectively made it more likely, on a balance of probability, that the complainant would suffer from osteoarthritis in the future.

On 14 December 2015, [the complainant] consulted [the consultant orthopaedic surgeon] about his painful left knee, which he was unable to fully extend. [The consultant orthopaedic surgeon's] letter, referring to both knees, states;

'On examination, he has significant varus deformities of both knees.'

The letter adds:

'The underlying problem is the osteoarthritis.'

Research indicates that knee osteoarthritis with varus deformity is the most common form of bone-on-bone arthritis.³

[The complainant] contends that the varus alignment is not a medical condition; suggesting that it should not be a consideration by [Company X] in its decision to refuse cover. I disagree. In my view, varus alignment is regarded by medical practice as an abnormality or deformity and therefore is a medical condition.

I find that the letter from [the consultant orthopaedic surgeon] establishes that [the complainant] had a medical condition (varus alignment) which made his knees predisposed to osteoarthritis.

² Feller, J, Br J Sports Med 2004; 38:383-384. Barenus et al, The American Journal of Sports Medicine; 2014

³ Thienpont, E and Parvizi, J, 2015, A New Classification for the Varus Knee. The Journal of Arthroplasty (2016) 1-6

A letter from [the consultant orthopaedic surgeon] dated 15 October 2015, states that the x-rays had shown posterior osteophytes on the right knee. Research suggests that, by far, the most common cause of osteophytes is osteoarthritis. The conclusion I draw from this is that, on a balance of probability, osteoarthritis precedes the formation of the osteophytes and therefore would be present in advance of the osteophyte formation.

I acknowledge and accept the opinion presented by the United Kingdom's National Health Service which states;

*'Osteophytes tend to form when the joints have been affected by arthritis.'*⁴

On balance, I consider that [the complainant] was predisposed to osteoarthritis due to both his varus alignment condition and ACL surgery. I find that all the evidence suggests that a diagnosis of osteoarthritis had been made in December 2015 and that the presence of osteophytes on the right knee is supportive of the osteoarthritis condition already being present during the time period 10 June 2011 and 10 June 2016.

I do not find it likely that the osteoarthritis and osteophytes developed independently of any other cause between 10 June 2016 and 26 September 2016, or that the two conditions were unrelated. Medical research indicates that osteoarthritis is a chronic disease meaning that it takes months to years to appear.⁵

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have taken note of further representations made by each party following the case handler's initial conclusions.

In line with my statutory duty to disclose evidence, I have provided copies of the documents which I have relied upon in reaching my decision.

Based on the above, I am of the view that [the complainant's] knee condition existed within the 60 months prior to the start of the policy and that, as the complainant did not have a continuous 2-year symptom-free period after the cover started.

Decision

My final decision is [Company X] have not acted unreasonably in declining his claim.

Next steps for the complainant, [redacted for anonymisation purposes]

You must confirm whether you accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by 13 October 2017. The determination will become

⁴ <http://nhs.uk/conditions/osteophyte/Pages/Introduction.aspx>

⁵ Leopold, S 2011. Osteoarthritis of the Knee

binding on you and [Company X] if it is accepted by this date. If we do not receive your email or letter by the deadline, the determination is not binding. At this point you would be free to pursue your legal rights through other means.

If there are any particular circumstances which prevent you confirming your acceptance before the deadline of 13 October 2017, please contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise you and [Company X] of the status of the determination once the deadline has passed.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: 15th September 2017