

**Ombudsman Determination**

**CIFO Reference Number: 17-000367**

**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.<sup>1</sup>

[The complainant] made a complaint about the decision by [Company X] to decline a claim made under a medical insurance policy.

**Background**

*Respondent*

The respondent is [Company X] but the policy was actually written by a Protected Cell within [Company X], the [redacted for anonymisation purposes]. On 10 April 2017, the Cell converted to [Company Y] as a standalone company. As a consequence, all liabilities, assets and duties of the Cell transferred in whole to [Company Y] effective 10 April 2017.

A further [jurisdiction 2] company, [redacted for anonymisation purposes], is the Insurance Manager and General Representative of both [Company X] and [Company Y]. [The insurance manager] responded to CIFO's request for information as part of the investigation.

*Factual background*

In February 2016, [the complainant] purchased a medical insurance policy with [Company Y]. He completed his application form with his broker [overseas].

In this form, [the complainant] was asked by [Company Y] to provide details about his medical history, including pre-existing medical conditions, in order for [Company Y] to underwrite the policy and apply any necessary exclusions.

[The complainant] informed [Company Y] that he suffered a detached retina in 2013 which was fixed subsequently by a doctor. He did not provide any information on the application form or tick any other box regarding pre-existing conditions.

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

In March 2017, [the complainant] submitted a medical claim of £7,040. As part of this submission, [the complainant] wanted to claim for the medical costs incurred to treat a swollen scrotum. He mentioned that he had previously suffered from a Urinary Tract Infection (UTI), and the insurer checked his application form.

[Company Y] settled £5,276.44 of the claim; however, the remainder was not paid. This was because [the complainant] had not provided details about his previous UTI to [Company Y] on the application form; he was, therefore, advised that this part of his claim was excluded.

[The complainant] complained to [Company Y] as he felt he had been incorrectly advised when completing the application form with his broker and had been penalised by the exclusions added. When his complaint was not upheld, he referred it to CIFO.

The case handler did not uphold [the complainant's] complaint. He considered that the completed application form had not made reference to the previous UTI condition for which [the complainant] had claimed; therefore, [Company X] had not acted unreasonably in rejecting the claim.

### **Subsequent submissions**

[The complainant] did not agree with the case handler's conclusions. He wrote to CIFO on 22 April 2018 and suggested that the application form provided to him was unclear. He further claimed that he had informed his broker [overseas] about his previous conditions, including UTI and malaria, but the broker had advised him not to include these on the form.

### **Findings**

In the *Membership Guide and Policy Conditions* given to [the complainant] by [Company Y], he was informed about the extent of coverage. It is specified that

*“existing conditions as defined unless otherwise declared on the application form and expressly confirmed acceptance by [Company Y]”*

would not be covered.

According to his medical report, [the complainant] suffered from a UTI in January 2014 and July 2015. He also suffered acute pyelonephritis in April 2016.

I acknowledge [the complainant's] assertion that he informed his broker about his UTI; however, he did not disclose these conditions in his application form to the insurer. [Company Y] remained unaware of these issues until the claim was made.

Subsequently, [Company Y] added various policy exclusions all related to the previously non-disclosed pre-existing conditions. One of these was that no benefit would be payable for any investigations and treatment related to urinary trouble and any underlying cause and conditions arising from or associated with it.

Given that there was no disclosure to the insurer, I do not consider that [Company Y] has acted unreasonably by applying exclusions in the circumstances.

The website of the National Health Service in England confirms that swollen scrotum can be caused by an infection. The insurer has confirmed that, even if the application form had made reference to these conditions when completed in February 2016, the exclusions would have still applied.

The issues raised by [the complainant] in his letter of 22 April 2018 relate to the conduct and advice given by his broker. This service was provided by the broker [overseas] rather than [jurisdiction 2]. Under [jurisdiction 2] law, the broker cannot be construed as the agent of the insurer. In these circumstances, I cannot determine whether the actions of the broker were fair and reasonable and any complaint by [the complainant] should be directed to the appropriate authorities [overseas].

## **Final decision**

My final decision is that I do not uphold this complaint.

[The complainant] must confirm whether he accepts this determination either by email to [ombudsman@ci-fo.org](mailto:ombudsman@ci-fo.org), or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **21 June 2018**. The determination will become binding on [the complainant] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainant] would be free to pursue his legal rights through other means.

If there are any particular circumstances which prevent [the complainant] confirming his acceptance before the deadline of 21 June 2018, he should 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 both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville  
Principal Ombudsman and Chief Executive

Date: 21<sup>st</sup> May 2018