

Before the Arbiter for Financial Services

Case ASF 181/2023

ZR ('Complainant')

vs

Atlas Healthcare Insurance Agency
Limited (C 32603)

('Service Provider'/'Atlas')

Sitting of 28 March 2024

The Arbiter,

Having seen the Complaint, whereby the Complainant disputes the Service Provider's actions, inactions, and wrongful decision to repudiate her claim for dental treatment received.

The Complainant argued that, between July 2022 and February 2023, she was working at RiskCap International Company and was offered an *Atlas Standard Private Full Cover Hospital Plan*.

In December 2022, she decided to get her teeth fixed due to constant toothache. She reached out to the Service Provider to enquire about the dental treatments covered under her health insurance plan. Atlas informed her that the policy is a health policy and dental treatments are limited to four oral surgeries, being:

'1. Reinsertion of your own teeth following a trauma (does not require admission to OSN facility)

2. Surgical removal of impacted teeth

3. Surgical removal of buried teeth and complicated buried roots

4. Enucleation (removal) of cysts of the jaw if the surgery is one of the above¹.

The Complainant stated that she had chosen to get the necessary dental treatment in her home country of Lithuania because the prices in Malta were higher. She also claimed to having the right to receive the same treatment in any EU country, which was also confirmed by Atlas. The latter was advised of her travel arrangements to Lithuania on the 28 December 2022 and provided them with details of the dental clinic where she would be receiving treatment.

She insisted that the trip to Lithuania was organised due to the urgent requirement to undergo the dental treatment in question. Claimed that she *'... had pain in the teeth 46 since December 2022 and the doctor told me during the consultation that the removal of impacted and buried teeth, and complicated buried roots surgical needed to be done. Also, tooth 38 was broken.'*²

Upon arrival in Lithuania, she consulted with two dental doctors who both re-examined her teeth, determined the condition, and made a new treatment plan. On that same day, a procedure was performed on tooth 38 which involved *'... the removal of complicated buried roots of tooth 38 under local and regional anaesthesia.'*³ Few days later, that is, on 2 January 2023, the procedure on tooth 46 was carried out in the same dental clinic. This involved the *'... surgical removal of complicated buried roots of 46 tooth under local and regional anaesthesia.'*⁴

The Complainant insisted that, based on the applicable health policy, and the dental treatments quoted to her by Atlas's representative, the dental treatments/operations she had undergone, totalling Euro 890, were eligible for reimbursement.

However, when submitting the claim, she was advised that the treatment she had undergone was not covered by the policy and this as previously explained to her in previous correspondence. She stated that *'I am shocked and categorically disagree with such a decision from Atlas because the dental*

¹ P. 3

² *Ibid.*

³ P. 4

⁴ *Ibid.*

*treatment performed on me clearly corresponds to the dental treatment case previously approved by Atlas in my health plan.*⁵

The Complainant argued that the same representative who decided to repudiate the claim was the one who had previously explained which dental treatments are covered under the health insurance plan.

She insists that the Service Provider denied her claim without providing any explanation, despite her providing them with all the evidence. She claims that she was accused of having a pre-existing medical condition due to a consultation at Demajo Dental Clinics in Malta. The Complainant admits that she had enquired about the dental treatment options and prices in Malta. Based on the high prices, which were double those usually charged in Lithuania, she decided '*... to go to Lithuania in the future to have my teeth fixed there.*'⁶ She emphasised that it is illogical to decide on dental treatment procedures based on a dental check-up she had for nine months prior, as health problems change over time and new essential treatments may become necessary.

Referring to paragraph 23 of the *Plans and Benefits*, she also requested the Service Provider to reimburse her for the expenses incurred to travel to Lithuania, another European Union country, specifically for the dental treatment in question, which expenses amount to Euro 80.23. However, she claimed that such request had also unreasonably been denied for bad faith reasons.

The Complainant insists that she strongly disagrees with Atlas's repudiation of her claim and the answers to her complaint for the following reasons:

'1. The decision not to satisfy my request for compensation for my dental treatment and the rejection of my complaint once again confirms Atlas's illegal, subjective, discriminatory, illogical, decision-making that is not supported by evidence.

2. The dental treatment is covered by the insurance plan and Atlas refuse to compensate my dental treatment without any logical explanation and proof of the reason for the refusal.

⁵ P. 4

⁶ P. 5

3. *There were no pre-existing conditions in my dental treatment, which is to be compensated.*

4. *The dental treatment was performed based on the dental problems that occurred in December 2022 and the new treatment plan made by a professional dentist.*

5. *Atlas unreasonably associate past information regarding the request for dental treatment in Malta with the treatment performed. They won't connect with anything.*

6. *The teeth 38 and 46 had been impacted, no treatment has been performed on these teeth before the treatment of the teeth mentioned in the complaint.*

7. *There is no logic for me to think that two teeth can be extracted (especially with such a difficult operation as mine) if there is no need to do so.*

8. *Atlas made a false, prejudiced conclusion against me that my dental treatment is not included in the compensated treatment, not based on any evidence.*

9. *In the meantime, a request to compensate me for dental treatment is based on evidence and professional dental opinion and actions.*

10. *In the entire time since the dental treatment was performed until now, Atlas has not contacted the dental clinic in Lithuania, where the treatment was performed, in order to obtain more information if Atlas have any doubt. That clearly confirms the discrimination, due to my citizenship and that the treatment was performed in the country, not in Malta.⁷*

She insists that *'Surgical removal of buried teeth and complicated buried roots of my 38 and 46 teeth dental operations must be reimbursed.'*⁸

In light of the above, she requests Atlas to reimburse her with the sum of Euro 970.23 – Euro 890 in respect of the dental treatment and Euro 80.23 for the travel expenses incurred to travel to Lithuania where such dental treatment was performed.⁹

⁷ P. 7

⁸ *Ibid.*

⁹ P. 8

Having seen the reply¹⁰ by the Service Provider, which is also the final reply to the Complaint lodged by the Complainant, and submits that:

‘...

Following my acknowledgement of your complaint on 24th February, I looked into your complaint in detail, reading your letter carefully and ensuring that I have looked into all your points.

1. Dental treatment that is covered by insurance. *You acknowledge in your letter that you have Private Hospital Full Cover Plan and we agree that. Under this policy we exclude dentistry in general however we say that we will pay for a list of accepted oro surgical procedures which are available on demand and on 15 December 2022 we sent you that list.*

a. We note that from May 2022 you had been enquiring about crowns, bridges and implants on the teeth in question, being 36,38 & 46 (see below). You were at the time insured under a different employer, with a different policy that included dental cover and the conversations at that time in May 2022 referred to that policy under your previous employer.

b. On 12th July you were no longer insured with your employer of May 2022 and joined a new group, Risk Cap. The policy was a different one and under that policy there was no dental cover.

c. In early August 2022 (between 1st and 8th), you enquired about dental treatment and what your cover was and we replied that dental treatment was not covered under this new policy. People taken on under the Risk Cap policy are accepted on “Fully medically underwritten” basis, which means that any pre-existing conditions would be excluded. By this we mean not covered by this insurance policy. We also sent you a list of the only 4 oro surgical procedures covered under the policy, which are:

i. Re-insertion of your own teeth following a trauma (does not require admission to OSN facility)

¹⁰ P. 64

and even more seriously deny any form of racial discrimination or inequality. We listened and replied to your questions politely at all times. We answered all your emails in a timely manner and were extremely clear in stating that the dental procedures you were going to have were not covered by the policy in force at the time. We find it offensive that you would make such an accusation without substantiation.

3. Return airfares for a member receiving in-patient treatment in Europe.

- a. *We definitely replied to your email of the 20/12/2022 on the 21/12/2022. So much so that your attachment of this particular 20th December 2022 email contains a fragment of our reply but unfortunately you only included your own email to us and not our reply where we stated clearly that you were not covered for the treatment you were proposing on the 28/12/2022: “In this instance in May 2022 whilst you were under your previous policy you had already contacted us to advise that dental implants were required within two teeth and these would reflect to teeth 36 and 38 and hence these would be pre-existing and not covered. Moreover, teeth 36 and 38 are not impacted and hence the surgical removal of these teeth would not fall under our oro-surgical procedures. Furthermore with regards to the removal of your buried tooth 46 this will also most probably not be eligible for cover since according to our dental advisors this seems to be a pre-existing condition. This is also because the tooth has already been treated with a root canal which even more so proves that the dental condition was pre-existing.” Please compare the email attached to your original complaint “Atlas email – enquiry from ZR regarding Health.pdf” and our attachment “Re: Website enquiry from ZR regarding Health” – the former contains a fragment of the reply which is represented in full in the latter.*
- b. *As regards your flights, please see below the Plans and Benefits for which you asked in early August and we sent you by email:*

...”¹¹

Hearings

During the first hearing of the 23 January 2024, the Complainant submitted that:

“I say that I have submitted a complaint with all evidence and all details against Atlas and, according to the Convention of the Protection of Human Rights, Insurance Business Act of Malta and European Customer Law which concerns customer protection within Europe, I state that Atlas has been acting unreasonably in refusing to pay the amount of my claim, i.e., €890.00 They deny my claim for purely bad-faith reasons.

And, an insurance company has the duty to treat me fairly and evaluate my potential claim in good faith.

I claim that Atlas Insurance Company behaves unfairly, inconsistently and dismissively in processing my claim, and I strongly disagree with Atlas’s answer in rejecting my claim, my complaint.

For these reasons, the decision doesn't satisfy my request for compensation for my dental treatment; and the rejection of my complaint once again confirms that Atlas’s illegal, subjective, discriminatory, illogical decision making is not supported by evidence.

The dental treatment is covered by the insurance plan, and Atlas refused to compensate my dental treatment without any logical explanation and proof of the reason for their refusal.

There were no pre-existing conditions of my dental treatments for which I am seeking compensation.

The dental treatment was performed based on the dental problems which occurred in December 2022, and the new treatment plan is made by a professional dentist.

Atlas unreasonably associate past information regarding the request for dental treatment in Malta with the treatment performed.

¹¹ P. 66 - 68

The teeth, 38 and 46, have been impacted. No treatment has been performed before. There is no logic for me to think that the two teeth can be extracted if there is no need to do it.

And Atlas made a false prejudiced conclusion against me that my dental treatment is not included in the compensated treatment and that it is not based on any evidence.

In the meantime, I request them to compensate me for dental treatment based on evidence and professional dental doctor opinion and actions.

And Atlas has not contacted the dental clinic in Lithuania, and, for this reason, I think that this is discrimination of my nationality in general.

Removal of buried teeth and complicated buried roots of my 38 and 46 teeth dental operation must be reimbursed in accordance with the Legal Act of European Union and Malta, which protects the right of customer in insurance relations. And, taking into account the circumstances established in this complaint and the evidence presented, I claimed that Atlas insurance company behaves unfairly, inconsistently and dismissively in processing my claim.

I demand a re-examination of my request based on this complaint in accordance with my Atlas private hospital plan and reimburse these expenses:

- 1. the €890 for the dental treatment which was performed in Lithuania in accordance with Atlas Plans and Benefits;***
- 2. the travel expenses incurred by travelling to Lithuania for the total of €80.23;***
- 3. to compensate all losses and expenses incurred as a result of litigation with Atlas regarding my complaint together with the submission fees of €25.***

So, this is my case against Atlas.¹²

The Arbiter requested the Service Provider to clarify what ‘impacted’ means and if this involves any accidents, and Ms Hili Caruana on behalf of the same Service Provider explained that:

“An impacted tooth (what we call in Maltese ‘id-darsa tal-ghaqal’) is a tooth which is horizontally buried in the gum and has to be surgically extracted. It

¹² P. 131 – P. 133

will not be on the gums so it cannot be extracted normally by a dentist or a dental surgeon, but it has to be surgically extracted because it would be inside the gums. And that requires a procedure, a surgical procedure. That is what we refer to as impacted. And no, it does not involve any accident.

It is a tooth embedded into the bone so it could not be extracted by pulling out.”¹³

During the cross-examination, the Complainant stated that:

“It is being said that when I sent them the documents in December 2022, I sent them an email including an X-ray, including the information about my flights and also a quotation. The service provider would like to clarify whether the X-ray I submitted in that same email was the X-ray taken at Demajo Clinics earlier that year, or if this was taken in another dental clinic or by another dental specialist.

I say that on December 2022, I decided to fix my teeth because I had big pain, and yes, I sent an email to Atlas because I wanted to clarify in which case my let's say treatment can be compensated.

Atlas sent me an answer from Claims Associate, Sabina Spiteri, stating:

‘Referring to your query below, please note that your policy is a health policy and dental treatment is limited to 4 oro surgeries ...’.

So, two of them, included surgical removal of impacted teeth and surgical removal of buried teeth. To this I got an answer and, based on it, I decided to do my treatment in another country in Lithuania because the price in general in Malta is double the price for all dental treatments.

So, I informed them about my decision that I wanted to go to Lithuania. Before I went, I sent an email to Atlas informing them about it because I knew the procedure that I needed to do beforehand. And I needed to inform the insurance company, so, yes, I sent an email with this information.

It is being said that in my email of December 2022, I sent Atlas an X-ray explaining what needed to be done including the information about my flights and a quotation. Asked who took the X-ray and in which clinic was that X-ray taken (whether it was taken in Malta and by which dental

¹³ P. 133

surgeon/specialist/practitioner was it taken), I say that I haven't had any treatment in Malta. I've had dental treatment in Lithuania in December 2022.

On the 28 December 2022, I informed them that I am in Lithuania and performed dental treatment for Atlas. So, they knew, and they had all this information.

It is being said that the service provider is not referring to that information. They are referring to my original email asking them to pre-authorise the treatments. And, as I have correctly confirmed, it is a policy condition that operations are pre-authorised and that I had sent them an email to pre-authorise the operation. I informed them that I would like to fly to Lithuania to have this procedure carried out over there and I included an X-ray.

So, it is being said that that X-ray was taken by a dentist and, asked who took that X-ray, I will repeat again that on 15 December 2022, I received an email from Atlas about my dental treatment, what will be compensated. Yes, there are four oral surgeries. So, it was already answered what I could do.

It is being said that they replied to my email explaining the oral surgical procedures covered by the policy. They say that they did not authorise the treatment. They say that they asked me for the information and, in reply to that, I provided them with a quote, which they asked for, an X-ray which they also asked for.

They are saying that the X-ray was taken before I went to Lithuania (because they have the information about the dental treatment which was carried out). It is being said that, however, before travelling to Lithuania I must have consulted a dentist or went to a dental clinic and had taken an X-ray. Asked where and who had taken this X-ray, I say the situation is that on 28 December 2022, when I was already in Lithuania, they examined my old dentals, and they created new implants for my treatments.

How could I inform them before when I wasn't in Lithuania? I couldn't have this new treatment plan and perform for you. I got an answer, in which case, that it will be compensated. And then, when I was in Lithuania and I got my new dental treatment plan, I immediately sent it to Atlas to inform them about that. That is my answer.”¹⁴

¹⁴ P. 133 – P. 135

The Arbiter asked the Service Provider whether the email being referred to is the same email dated 20 December 2022 sent at 09:51 (P. 85), where it says:

'I am ZR, living in Moroni Street ...

According your request, I am sending my dental treatment plan and the teeth photo to your Pre-Authorisation team ...'.

The Service Provider responds in the affirmative.

During the same hearing, the Arbiter stated that it is clear that a dental X-ray was not sent when the Complainant was in Lithuania, as she flew on 28 December, and the photo was sent on 20 December. The Arbiter also mentioned that despite repeatedly asking who had taken this X-ray, he did not receive a reply and, thus, concluded that no response was provided.

The Complainant continued that:

"I sent information but I did not receive an answer from Atlas. So, what could I do? I had already planned my trip for dental treatment as I had big pain in my teeth. So, I could not wait until Atlas answers me, so I went to Lithuania.

And the doctors, dental doctor, they re-examined my teeth."¹⁵

The Arbiter reiterated that the question about who took the X-ray was asked for five times and the Complainant still did not respond, so it was decided to move on with the case.

The Service Provider's representative stated that:

"In reply to what Ms ZR has just stated, that we did not reply to her email, I confirm that our Daniela Gauci Portelli Emails replied to her email on 21 December explaining what would be covered and what would not be covered.

We replied to all Ms ZR's emails, and even when we rejected the claim, she submitted the claim anyway through our online portal and we have rejected and asked for further information once again."¹⁶

The Arbiter asked the Complainant:

"It is being said that this question was asked in February 2023, which means after I had the surgery in Lithuania, so, how do I come to this conclusion that this was part of a pressure to receive the treatment in Malta if the treatment

¹⁵ P. 135

¹⁶ P. 135 – P. 136

was already executed in Lithuania, I reply, yes, for me, it's interesting too, because I have been once in this clinic to ask about general prices. And why Atlas wants to connect all my cases to this clinic, for me it's very strange.

The Arbiter is asking again why, when somebody asks me to give my permission to check documents which could establish or disprove pre-existing conditions, be considered as obvious proof of pressure for me to use a dental clinic in Malta if I had already decided, and I had already executed the treatment in Lithuania; and asked whether I had given or not my consent to obtain this information, I say that, yes, for me this is very strange too: why Atlas thinks that my one time being in this clinic and asking about price is a pre-condition of my dental treatment.

I repeat that I haven't had any dental treatment in Malta. So, this is unfair and totally discriminatory because if I had performed dental treatment in this clinic in Malta, there would have been no problem for compensation. The problem is that I did my dental treatment in Lithuania. And they did not even call to get more information about this treatment.

Asked again by the Arbiter whether or not I gave them my permission, I say, no. I did not see any reason for permission. This is not a related case.”¹⁷

During the second hearing of the 26 February 2024, Lauren Hili Caruana on behalf of the Service Provider declared that:

“Ms ZR joined Atlas Healthcare through, let's say, company X, so I won't mention any names. She had a health policy and a dental policy, and she was insured between the 28th of February 2022 and the 20th of May 2022. She was insured on what we call medical history disregarded basis, which means that she did not have to complete an application form with her past history.

So that was a hospital plan, a hospital policy, a health policy and a dental policy. She left this company and joined Company Y. However, she only had a health policy. She did not have a dental policy too, and this was between July 2022 and February 2023.

However, this time round, she was asked to complete an application form, which means that she was insured on a fully medically underwritten basis. This

¹⁷ P. 136 – P. 137

means that she had a break in cover of less, a bit less than two months because she left company X in May 2022 and joined Company Y in July 2022.

When we sent the information to the client explaining the new policy, we informed her that there will be no dental cover this time round since the previous employer had also purchased a dental policy. So, this time round there was only a health policy. May I point out that the dates on the letter of complaint which we received were slightly incorrect, meaning that she was insured between the 12th of July and the 1st of February, not the 14th of February.

Then, she left this company, and she joined another company, Company Z. And she was insured between March 2023 and June 2023, and once again she was insured on a health policy only, no dental policy. And she was insured on a medical history disregarded basis. So, once again, we did not ask her to complete an application form because she was medical history disregarded.

So, at the end of April 2022, our ex-client asked for cover for dental implants and, at the time, she was still covered under Company X. So, she had a dental policy at the time. She provided us with the information, and we authorised cover up to the policy limit. She provided us with a letter from her dentist at the time in Malta, and we provided her with the limits. She came back to us saying that she will also have a CT scan and X-ray in the crown, not just an implant. So, we revised her case, and on the 3rd of April, we replied and provided her with further information. However, may I point out that this particular dental benefit had a yearly limit of €1,000. So, basically, we have authorised cover obviously up to the limit for the treatment she was about to have carried out.

So, in August 2022, when she joined the second company and we informed her right away that she will only have a health policy, she got back to us and told us that she is planning to have treatment out of the country. She was planning a procedure out of the country. So, in August 2022, she was already planning the procedure she had carried out in December 2022.

Obviously, at the time, we were not aware that it's a dental procedure. So, we went back to her and asked for the usual information, which means the name of the surgeon and the anaesthetist, the name of the hospital and a quotation.

So, basically, we went back to the client in August, and we provided her with the information. There was no reply to our e-mail.

However, on the 14th of December 2022, our client got back to us, and she provided us with the information in relation to her dental procedure. So, basically, she provided us with her personal details, her ID card number, her name and the policy number, and she informed us that she will have dental implantation and root canal treatment, and asked whether she was covered for this treatment: dental implants and root canal. This was on the 14th December 2022. We got back to her; at this point she was insured with Company Y, so there was no cover for root canal and implants because she did not have a dental cover and because the health policy does not cover this kind of dental procedure.

So, we went back to her. We listed down, what we call, the oral surgical procedures. Oral surgical procedures are the dental operations which are covered by the policy. So, we went back to her, and we said these are the procedures covered by the policy. We provided her with the full list, including the information on what is covered by the health policy. She replied to us on the 20th of December, and she provided us with some information. She provided us with an X-ray, the same X-ray I was asking about in the other session. She provided us with a quotation from the clinic.

Originally, we were asked for cover for a dental implant and the root canal treatment. Then when we provided her with the full list of the oral surgical procedures. In this email, she provided us with a quotation asking for a surgical removal of an impacted tooth which is one of the oral surgical procedures and other treatments. The quotation at the time dated 20 December 2022 amounted to €3,595.

She provided us also with the information about the flights, and I would like to point out that the flights are not covered by the policy. On the private hospital plan, there is no cover for flights. There is cover on the international plan, however, the treatment has to be carried out in the UK, and it would be for cancer treatment. It would not be for any other treatment, so the flights were not covered. So, this is the information she provided us with.

We rejected cover. We explained that we are unable to authorise cover. We explained the pre-existing aspect; what we are excluding from the policy because of pre-existing conditions. We are talking about pre-existing because we had already explained in the previous months what is covered by the policy and what is not. And we knew that she had obviously already consulted the dental clinic in Malta.

So, basically, we have asked for the information from the previous dental clinic which she had consulted in Malta. And we had informed her that the implants were not covered from our end.

Obviously, we kept coming and going, so we replied, we rejected. The client got back to us. We provided the information once again to the client why we were unable to authorise cover. By the end of December, in the meantime, the client went ahead with the procedure, and she had the procedure carried out. So, by the time she had the procedure carried out, we had already informed her about the pre-existing condition, about the information we required from the dental clinic in Malta. This was all the information we had provided our client with.

Even though we had rejected cover, she sent the claim documents anyway. So, she submitted the claim, including the invoice at the time. Obviously, the receipt because she had the procedure carried out and she provided us with a claim form together with the invoice. So even though we had rejected cover, the claim was submitted to us anyway.

We replied anyway and we asked again for the information which we had never received. We asked for a confirmation, an authorisation for us to go to the dental clinic in Malta and confirm whether the procedure she had carried out was pre-existing or not because one of the procedures which he had carried out was actually covered by the policy, but we were still investigating pre-existing. So, we could not authorise cover or pay then because, obviously, by then, the procedure was carried out, the invoice, the receipt and the claim form was sent to us. but we still did not have the authorisation to get the information from the dental clinic in Malta. So, we were still investigating pre-existing.

Contrary to what was said in the in the letter of complaint, we have always replied to emails even when we received the claim; even though when we rejected cover and we had asked for further information, we still replied back and asked for the information. We have submitted all the emails and all the replies given to our client to the Arbiter.

The cost of the procedure did not amount to €3,000 as in the quote; it was much less because the treatment which was carried out was less than originally quoted and this amounted to €890.00. Part of it is not covered because, as I said, she does not have a dental policy. But the part which might have been covered, because it was an impacted tooth and might have been surgically extracted, we still could not pay for it or authorise cover because we are still suspecting pre-existing. And that is why I was asking about the X-ray last time because that was part of the investigations we were carrying out.

Asked by the Arbiter whether there is a breakdown of this €890 between the procedure which is not covered outright and the procedure which may be covered but subject to pre-existing condition, I say that Tooth No. 38 which would have been surgically extracted and impacted, that amounted to €320. So, the €320 would have been eligible for benefit if confirmed that it was not pre-existing because we are investigating a pre-existing condition in this aspect. There is also anaesthesia and there was also an X-ray which was carried out again on the day. So, during the procedure there was an X-ray also carried out.

The X-ray which was submitted to us is not the same X-ray which was carried out during the procedure because the X-ray was submitted to us before the procedure. There was another X-ray which was taken by the clinic because most probably they would want to have the X-rays, the images, prior to the procedure. So, the X-ray which was taken prior to the procedure and the X-ray submitted during the pre-authorisation are not the same X-ray.

The Arbiter asks if there was not this issue of a pre-existing condition what amount of claim would have been paid, I say that the €40 for the X-ray would

have been paid, €80 for the anaesthetist would have been paid, and €320 for the removal of the impacted tooth. That amounts to €440.”¹⁸

During the cross-examination, she continued that:

“Asked whether we can provide a reasonable explanation why Ms ZR’s dental treatment, which falls under the category of surgical removal of buried teeth and complicated buried roots as stated in the policy, was denied, I say that, as I have explained, we were investigating a pre-existing condition. Ms ZR originally asked us for confirmation of cover and whilst insured under dental policy. So, she was already questioning some treatment and when she came back to us on the 14th of December 2022, she asked for a cover for dental implants and root canal treatment.

After, circa, 7 to 10 days, we provided Ms ZR with a list of all the oral surgical procedures which are covered by the policy, and she came back to us with a quote confirming the same treatment which was listed on the oral surgical procedures. She was asking for dental implantation and root canal treatment when we provided her with the oral surgical procedures which are covered by the policy, the same exact wording was listed on the quotation. Then she provided us with an X-ray and this X-ray must have been taken out locally but was not dated, so we were still investigating the pre-existing aspect.

So, we could not authorise cover for the surgical removal of an impacted tooth because we were investigating and we are still investigating; at this point, we've stopped because we don't have the information, but the problem was that we did not have the information to be able to confirm whether it is pre-existing or not. This is the reason why we could not authorise cover.

It is being said that it is not a pre-existing condition in this case. Asked whether the insurance company considers the new treatment plan provided by professional dentists in Lithuania reflecting the current condition of her teeth, I say that the current condition of her teeth was confirmed on a quotation. We did not have an X-ray from Lithuania. What I would like to point out here as well is that our policies do cover treatment which is carried out overseas, so we do not discriminate. We do not make any difference between treatment

¹⁸ P. 138 – P. 142

carried out in Malta or treatment carried out abroad as long as it is covered by the policy. And, in this case, it was a private hospital plan which means that treatment out of the country is limited. It is not covered in full, so we don't make a distinction between treatment carried out locally or treatment carried out abroad.

As long as the treatment and the fees are eligible for benefit, we will be able to pay according to the policy wording. So yes, we did have the confirmation, a quotation from Lithuania, confirming, to be fair, what we had just given to our client with the list; the same list of all surgical procedures which we provided was listed on the quote. And, yes, we did have that information, but, as I said, we were still investigating pre-existing.

Asked if we have any doubts about her new dental treatment why there were no attempts made to contact the dental clinic in Lithuania for further information or qualification regarding the treatment provided, I say because she did not have any dental treatment carried out at this clinic, according to the information that was given to us was that she did not have any history, any dental history at this dental clinic. So, the dentists in Lithuania would not be able to provide us with the information about the treatment which was carried out at the dental clinic in Malta. They would be able to give us information on what has been carried out in their clinic. Obviously, this is reasonable. If I ask a dental surgeon, or any other surgeon, and ask him to provide me with the dental history or with any other history, they will provide me with the history they have. They would not be able to provide me with the history of the client's treatment which was carried out in another country.

And this is her case. She had a consultation carried out at Demajo, we've mentioned them last time. And that is the information we required. We had no doubt about the information which was given to us by the Lithuanian surgeon. We absolutely had no issues with that. They provided us with a quote. Then she provided us with a receipt confirming the treatment which was carried out.

So, from their end, we did not have any issues. And they would not be able to provide us with her dental history, local dental history. So that is the reason why we did not ask them for the information.

It is being said that she is not requesting compensation for past dental treatment but is requesting compensation for the new dental treatment that was carried out in Lithuania and that it is illogical to ask for the history. Asked to explain why her previous consultation in the dental clinic in Malta was used as the basis for denying coverage despite the treatment being performed in Lithuania, I say that we did not deny, we asked for further information. We did not say we are unable to cover; what we are unable to cover is what is not covered by the health policy.

May I kindly point out that dental treatment under the health policy is very, very limited. So, what we're saying is that under a health policy, only the oral surgical procedures are covered and only accidental damage to natural teeth if treatment is carried out within the first few hours after the accident.

A health policy is not a dental policy. So, basically, we did not reject the part of the surgical extraction of the impacted tooth. We asked her to provide us with the information so we will be able to establish whether it's pre-existing. We had to do that. We have to do that because she consulted a dental surgeon in Malta, a dental practitioner, and she had an X-ray as well. So, that X-ray has been taken somewhere in Malta and that X-ray confirmed the impaction. So, before she went to Lithuania, she had an X-ray which confirmed the impaction, so that is the reason why we were asking for more information from the dental practitioner in Malta to be able to establish whether it was a pre-existing condition or not.

And because in that particular policy, under Company Y, it was medically underwritten, that was the difference.

It is being said that she did not have any treatment in Malta and thus it is not fair that we asked for information when she does not have this information to provide to us. She says that they made the X-ray but it was from a situation in the past. It is being said that if we wanted a new X-ray, we should have asked her and she would have provided one from the Lithuanian clinic; and we did not ask her for this information.

Asked why Ms ZR's request for compensation for the dental treatment was initially confirmed, was told to proceed, and yet later was denied without further explanation (she is referring to our email where we provided

information in which cases the dental treatment will be compensated and where we confirmed that, yes, dental treatment like buried tooth is compensated), I say that, basically, a surgical extraction of an impacted tooth is covered by the policy as long as not as it is not a pre-existing condition.

So, let's make something clear. Ms ZR provided us with an X-ray, all right, and this X-ray confirmed an impaction. She had a break in cover. She was originally on a medical history disregarded benefit and she had a health and a dental policy. During this policy, Ms ZR had treatment carried out locally, presumably, even this X-ray was carried out at the time. She had a break in cover of almost two months, and she joined our company again through a different employer, which employer has only taken a health policy and Ms ZR was fully medically underwritten.

So, basically, the reasoning is she provided us with an X-ray, most probably taken in Malta prior to her date of joining. This confirms an impacted tooth. This impacted tooth was surgically extracted in Lithuania, and had it not been a pre-existing condition, this part of the claim would have been eligible for benefit. But since Ms ZR did not authorise us to go to the Demajo dental clinic and ask them for a confirmation, we could not pay this part of the claim. The rest of the claim was not covered because the rest of the items were not part of the oral surgical procedures which we pay for. However, this is the reason, this is the particular reason: we have an X-ray. It is not dated, but with Ms ZR's quote, she had provided us with an X-ray. So, where was this X-ray taken? Was it taken by Demajo? When was it taken? So, this is the information we have requested before from Ms ZR which she had never authorised or had never given us. Because if she did not authorise it, at least she could have given us the information, but nothing has been given to us.

Asked why we never asked for a new X-ray from the Lithuanian clinic, I say that we don't need the new X-ray.

Asked how the denial of coverage of her dental treatment aligns with the terms outlined in her insurance policy, particularly regarding surgical procedures covered, I think I have already answered this question. What is covered by the policy will always be paid to our clients, so a surgical removal of an impacted or buried tooth is covered by the policy. Ms ZR had an impacted

tooth removed in Lithuania. If this is not a pre-existing condition, we would have been able to pay for it.

However, we did not have the information. We could not establish whether this was a pre-existing condition or not. Just to put to put this into perspective, impacted teeth might have a history of five years or even more because they are not surgically removed right away.

So, the dental surgeons usually - unless it is too bad and it has to be surgically removed right away - try to give treatment before it is surgically removed because, at the end of the day, it is an operation, anaesthesia has to be performed and everything. So, basically, what we're saying here is that a surgical removal of an impacted or a buried tooth, or even more if it's teeth, they are covered by the policy and they are part of our oral surgical procedures. But, in Ms ZR's case, we did not have the information so we could not confirm. We require information about her previous dental treatment."¹⁹

Following such hearings, the Complainant presented her final submissions²⁰ to the Arbiter, whilst the Service Provider declared²¹ that it had no further comments to make.

Having seen the statements by the Complainant

Having seen the statements by the Service Provider

Considers

The Complaint mainly revolves around whether the dental treatment undergone by the Complainant is covered under the health insurance policy. The Service Provider claims that it was related to a pre-existing condition, whereas the Complainant disputes this.

The Complainant argued that the insurer is refusing to honour the claim for dental treatment, despite the treatment being noted in the confirmation received from the same Service Provider. Reference has been made to various email communications exchanged between the Complainant and the Service Provider. Although these were quoted by the former in the original complaint

¹⁹ P. 142 – P. 146

²⁰ P. 149 – P. 150

²¹ P. 151

form submitted, copies have only been provided by the latter together with the reply to the complaint in question.

Based on such email correspondences,²² the following timeline has been established:

- *13 April 2022*²³ - An email from Atlas health department was sent to the Complainant, whereby the former advised that *‘With reference to our telephone conversation please note that dental implants would be considered eligible for cover when they are clinically required and we would pay towards the cost of the equivalent bridgework treatment ...’*. They also confirmed that, as discussed telephonically, the annual dental policy limitation is €1,000, whilst encouraged the Complainant to forward the dentist’s report for assessment.
- *28 April 2022*²⁴ - Email from Demajo Dental Clinics sent to the Complainant in response to her request for further information. The email explained why the implant was necessary. Such email followed Atlas’s request for information as to why crown and implant were needed.²⁵
- *2 May 2022*²⁶ - The Complainant sent an email to the insurer's health department, forwarding Demajo Clinic's explanation for the required treatment. She asked Atlas how much the insurance would compensate her and how much she would be required to pay for the tooth treatment.
- 3 May 2022
 - The representative from Atlas’s Health department informed the Complainant that the cover for the implant will be paid as the equivalent bridgework. She confirmed that the applicable cover is the extensive dental plan and, thus, 80% of one of the treatments up to the limits can be covered.²⁷

²² P. 70 – P. 100

²³ P. 80

²⁴ P. 97

²⁵ P. 98

²⁶ P. 97

²⁷ P. 96

- Complainant asked for clarification, informed Service Provider that the treatment proposal including all prices (not just the implant) costs €1,995. She then asked the same service provider to advise on the amount to be compensated.²⁸
- Atlas provided additional information. They advised that the maximum dental treatment coverage in one policy year €1,000. They explained that depending on the type of implant used, this will be paid out of the bridgework benefit, and the maximum amount they would be able to pay out in this case is €400.²⁹
- The Complainant requested further information regarding compensation.³⁰
- *4 May 2022*
 - Atlas provided further information in reply to her request.³¹
 - Complainant requested confirmation that, based on their explanation, Atlas will only be paying the sum of €880, broken down as follows: €400 for the implant, €400 for the bridge, and €80 for the CT Scan.³²
 - Again, Atlas requested confirmation from the Complainant's dentists regarding the equivalent to the crown emax, as only based on that they will be able to give her confirmation as to the amount to be compensated.³³
 - Complainant advised the Service Provider that *'it's a crown full ceramic'*, and again requested confirmation of the compensation amount.³⁴

²⁸ *Ibid.*

²⁹ P. 95

³⁰ *Ibid.*

³¹ P. 94

³² *Ibid.*

³³ P. 93

³⁴ P. 92

- *12 July 2022* – At this time, the Complainant was no longer employed³⁵ with the same employer of May 2022, (when she was enquiring about the dental treatment).
- *1 August 2022*³⁶ - The Complainant informed Atlas about her joining a new company on 11 July 2022. She requested confirmation regarding her new health insurance based on the application submitted by her new employer.³⁷
- *5 August 2022*³⁸ - Atlas advised that the insurance cover is in place and asked the Complainant to confirm their home address so that they can resend the documentation. A copy of the handbook and benefits was sent to her via the same email, and she was instructed to refer to the Private Hospital Plan for details of her cover.
- *14 December 2022*³⁹ - A website inquiry about health has been submitted by the Complainant.
- *15 December 2022*⁴⁰ - Referring to the Complainant's query, Atlas advised that her policy is a health policy and '*... dental treatment is limited to 4 oro surgeries ...*'. The Complainant was requested to send an X-ray, quote, and dentist's report to the Pre-Authorisation team, and will then be able to provide her with a reply.
- *20 December 2022*⁴¹ - The Complainant sent an email to the Service Provider, informing them about the dental treatment plan and that 'teeth photo' was being sent to the pre-authorisation team. In this email, she specifically mentioned that the treatment would be carried out in Lithuania, and considering it being another European Union country, as per the Airfares section of the Plans & Benefits, she was also expecting confirmation of reimbursement of the flight tickets.

³⁵ P. 138

³⁶ P. 79

³⁷ *Ibid.*

³⁸ P. 78

³⁹ P. 82

⁴⁰ P. 81

⁴¹ *Ibid.*

- *21 December 2022*⁴² - Email from Atlas to the Complainant explaining that they are unable to authorise cover and explained the reason behind such decision. They explained that private healthcare insurance is designed to cover new medical problems arising after joining, meaning that, pre-existing medical conditions would be excluded from cover. Emphasis was made on the fact that dental treatment was not covered under her health policy and only a list of oral surgeries might be covered, but also considering that the condition is pre-existing. It was stated that:

'in May 2022, whilst you were under your previous policy you had already contacted us to advise that dental implants were required within two teeth and these would reflect to teeth 36 and 38 and hence these would be pre-existing and not covered. Moreover teeth 36 and 38 are not impacted and hence the surgical removal of these teeth would not fall under our oro-surgical procedures.

Furthermore with regards to the removal of your buried tooth 46 this will also most probably not be eligible for cover since according to our dental advisors this seems to be pre-existing condition. This is also because the tooth has already been treated with a root canal which even more so proves that the dental condition was pre-existing.'

The Complainant argued that the Service Provider *'... refused to compensate my dental treatment without any logical explanation and proof of the reason for their refusal.'*⁴³ She insists that *'There were no pre-existing conditions of my dental treatments for which I am seeking compensation.'*⁴⁴

The Arbiter notes that the main issue revolves around the fact that the Complainant was employed with a particular company and had been offered a health insurance policy issued by the Service Provider. While employed, she enquired about compensation for dental treatment she had to undergo. Evidently, she had even consulted with Demajo Dental Clinic in Malta about such treatment, and a copy of the email explaining why the treatment was required had even been submitted.

⁴² P. 84

⁴³ P. 132

⁴⁴ *Ibid.*

Based on the emails summarised above, the Service Provider had, at that time, all the required information. No further communication was exchanged between them after 4 May 2022. It was precisely, on 1 August that the Complainant had again contacted the Service Provider.

However, the Arbiter notes that, despite a copy of the various email exchanges between the parties having been submitted and summarised above, based on the Service Provider's declaration, further communication had in fact been exchanged.

It results that, following the Complainant's communication with the Service Provider about the treatment she had to undergo, the former changed jobs. Since the policy in question was paid for by her employer, cover ceased. However, she joined a new company, and the new employer also paid a health insurance policy which commenced in July 2022.

The Service Provider explained that:

'Ms ZR joined Atlas Healthcare through, let's say, company X, so I won't mention any names. She had a health policy and a dental policy, and she was insured between the 28th February 2022 and the 20th of May 2022. She was insured on what we call medical history disregarded, which means that she did not have to complete an application form with her past history.

So that was a hospital plan, a hospital policy and a dental policy. She left this company and joined Company Y. However, she only had a health policy. She did not have a dental policy too, and this was between July 2022 and February 2023.

However, this time round, she was asked to complete an application form, which means that she was insured on a fully medically underwritten basis. This means that she had a break in cover of less, a bit less than two months because she left company X in May 2022 and joined Company Y in July 2022.⁴⁵

So, it is crucial to note that the insurance coverage in April/May 2022 may have been different from the coverage starting in July 2022. Even though the same Service Provider was the insurer behind such cover, the coverage provided by

⁴⁵ P. 138

the new employer was not the same. However, the Complainant seems to be overlooking such distinction.

The Service Provider explained further that:

*'... at the end of April 2022, our ex-client asked for cover for dental implants, and at the time, she was still covered under Company X. So, she had a dental policy at the time. She provided us with the information, and we authorised cover up to the policy limit. She provided us with a letter from her dentist at the time in Malta, and we provided her with the limits. She came back to us saying that she will also have a CT scan and X-ray in the crown, not just an implant. So, we revised her case, and on the 3rd April, we replied and provided her with further information. However, may I point out that this particular dental benefit had a yearly limit of €1,000. So, basically, we have authorised cover obviously up to the limit for the treatment she was about to have carried out.'*⁴⁶

Such declaration is evidenced in the email correspondence summarised above.

Atlas also explained that:

'... in August 2022, when she joined the second company and we informed her right away that she will only have a health policy, she got back to us and told us that she is planning to have treatment out of the country. She was planning a procedure out of the country. So, in August 2022, she was already planning the procedure she had carried out in December 2022.

Obviously, at the time, we were not aware that it's a dental procedure. So, we went back to her and asked for the usual information, which means the name of the surgeon and anaesthetist, the name of the hospital and a quotation. So, basically, we went back to the client in August, and we provided her with the information. There was no reply to our e-mail.

However, on the 14th December 2022, our client got back to us, and she provided us with the information in relation to her dental procedure. So, basically, she provided us with her personal details, her ID card number, her name and the policy number, and she informed us that she will have dental implantation and root canal treatment and asked whether she was covered for this treatment:

⁴⁶ P. 139

*dental implants and root canal. This was on the 14th December 2022. We got back to her; at this point she was insured with Company Y, so there was no cover for root canal and implants because she did not have a dental cover and because the health policy does not cover this kind of dental procedure.*⁴⁷

Atlas stated that they replied to her listing the oral surgical procedures, that is, the dental operations, that are covered under the applicable policy together with information on what is covered under same policy. An X-ray together with a quotation amounting to €3,595 was forwarded by the Complainant. However, Atlas affirmed that despite being originally asked for cover for a dental implant and the root canal and having then provided her with the full list of the oral surgical procedures covered, she then '*...provided us with a quotation asking for a surgical removal of an impacted tooth which is one of the oral surgical procedures and other treatments.*'⁴⁸

This implies that, following the Service Provider's reply listing the procedures that were covered under the policy, the Complainant's request for cover has then changed from dental implants and root canal and presented a quotation indicating one of the treatments/procedures which Atlas had previously mentioned.

This was not contested by the Complainant.

It is clear that the Complainant failed to acknowledge the difference in dental coverage provided by her former employer compared to the employer she was with when the procedure was undergone.

It appears that, despite Atlas informing her that they were unable to authorise coverage, she still went ahead with the procedure, and the procedure was indeed carried out. A claim was still submitted, including a copy of the invoice and a receipt. The Service Provider noted that despite the original quote amounting to €3,000, the actual treatment amounted only to €890.

The Service Provider insists that despite the Complainant indicating otherwise, the main reason behind the claim for treatment being repudiated is that the same treatment was to cure a condition which was already pre-existing. This

⁴⁷ P. 139 – P. 140

⁴⁸ P. 140

information was communicated to the Complainant even prior to the date the treatment had been carried out.

They stated that:

*'We rejected cover. We explained that we are unable to authorise cover. We explained the pre-existing aspect what we are excluding from the policy because of pre-existing conditions. We are talking about pre-existing because we had already explained in the previous months what is covered by the policy and what is not. And we knew that she had obviously already consulted the dental clinic in Malta.'*⁴⁹

A section in the *Atlas Healthcare Plans – Membership Handbook* refers to the Service Provider's position on pre-existing medical conditions. It clearly states that:

*'Private healthcare insurance is designed primarily to provide cover for new medical problems arising after joining. Depending on your underwriting terms, pre-existing medical conditions may be excluded ...'*⁵⁰

Atlas stated that her employer, referred to as Company Y, provided cover on a fully medical underwritten basis. This means that when applying for cover, a full health questionnaire should be completed, and pre-existing medical conditions are usually excluded.

The Arbiter does not have any information on the content of such questionnaire or application, but it is evidently undisputable that the Complainant had communicated with the Service Provider about the required treatment before the policy in question commenced.

In the original complaint form submitted, the Complainant stated⁵¹ that she organised the trip to Lithuania because the dental treatment needed to be done as soon as possible.

The Arbiter believes that if this treatment was truly urgent, she wouldn't have waited until December, particularly till the end of year to go to her home country

⁴⁹ P. 140

⁵⁰ P. 104

⁵¹ P. 3

for it to be carried out, especially when communications with the insurer about the matter have commenced way back in April.

The Complainant also stated⁵² that she has consulted the dental clinic in Malta about the dental treatment options and the relevant prices. She found out that the prices in Malta were double those in Lithuania and '*... decided to go to Lithuania in the future to have my teeth fixed there.*'

The consultation with Demajo Dental Clinic in Malta took place in April 2022, and the Complainant admitted that she was aware of the required treatment and had already decided to have the treatment done in her home country. This clearly substantiates the Service Provider's argument that, at the time of commencement of the policy, that is, July 2022, the condition requiring dental treatment existed already. In July 2022, she already knew that dental treatment was required and that she would be flying to Lithuania to undergo the treatment.

The Arbiter refrains from commenting on the primary reason behind the Complainant's decision to undergo the necessary dental treatment in Lithuania, and whether the specific time of the year she visited her home country for such treatment was purely coincidental or not.

The Arbiter also believes that the Complainant's arguments are inconsistent. As despite indicating that she '*... decided to go to Lithuania in the future to have my teeth fixed there*', during the cross-examination, she stated that '*... on December 2022, I decided to fix my teeth because I had big pain, and yes, I sent an email to Atlas because I wanted to clarify in which case my let's say treatment can be compensated.*'⁵³

Despite the several statements and declarations submitted, the Complainant failed to submit any kind of relevant proof disputing the Service Provider's decision and, in this respect, the Arbiter finds the detailed explanation of the occurrences as provided by the Service Provider's representative to be more credible.

⁵² P. 4 - P. 5

⁵³ P. 133

Decision

The Service Provider declared⁵⁴ that one of the procedures which the Complainant had carried out and amounted to €320 plus the X-ray and anaesthetist fees that amounted to €40 and €80 respectively, could be covered by the policy provided there was sufficient evidence that there was no pre-existing condition.

As the Complainant did not give her consent for the necessary checks, this has unavoidably increased the suspicion of such a condition. Complainant's refusal to give details on the X-ray submitted with her pre-authorisation request does not help to weigh the balance of probabilities in her favour.

Furthermore, Complainant's claim for recovery of flight tickets when these are specifically excluded⁵⁵ increases the conviction that Complainant is on an expedition to recover whatever she can, whether covered or not.

The change of the nature of intervention to exactly what she was informed could be covered under her policy also seems unrealistically coincidental.

Even her claim that the Service Provider is refusing settlement because Complainant used a clinic which charges half price what it would cost locally, seems illogical. If it costs half price at an overseas clinic compared to a local one, it would be in the Insurers' interest to promote the cheaper solution.

For the reasons explained, the Arbiter dismisses the Complaint and does not impose on the Service Provider any obligation to reimburse the Complainant for the expenses incurred in relation the dental treatment claimed.

Each party is to bear its own costs of these proceedings.

Alfred Mifsud
Arbiter for Financial Services

⁵⁴ P. 142

⁵⁵ P. 49

Information Note related to the Arbiter's decision

Right of Appeal

The Arbiter's Decision is legally binding on the parties, subject only to the right of an appeal regulated by article 27 of the Arbiter for Financial Services Act (Cap. 555) ('the Act') to the Court of Appeal (Inferior Jurisdiction), not later than twenty (20) days from the date of notification of the Decision or, in the event of a request for clarification or correction of the Decision requested in terms of article 26(4) of the Act, from the date of notification of such interpretation or clarification or correction as provided for under article 27(3) of the Act.

Any requests for clarification of the award or requests to correct any errors in computation or clerical or typographical or similar errors requested in terms of article 26(4) of the Act, are to be filed with the Arbiter, with a copy to the other party, within fifteen (15) days from notification of the Decision in terms of the said article.

In accordance with established practice, the Arbiter's Decision will be uploaded on the OAFS website on expiration of the period for appeal. Personal details of the Complainant(s) will be anonymised in terms of article 11(1)(f) of the Act.