

29 April 2019

Ministry of Business, Innovation & Employment  
Financial Markets Policy – Commerce, Consumers and Communications Branch  
15 Stout Street  
Wellington

Attention: Daniel O'Grady, sent by email to [daniel.ogradey@mbie.govt.nz](mailto:daniel.ogradey@mbie.govt.nz)

**Subject: Government Review of Insurance Contract Law – Privacy of natural persons Submission**

Dear Daniel,

Thank you for your email dated 05 April 2019 and the opportunity to provide a written submission to the Government Review of Insurance Contract Law. We believe that there are a number of behaviours and practices within the medical insurance industry that are reprehensible, and hope that this review and subsequent regulation/legislation change will address these.

It's very easy to find people who are frustrated and angry with their medical insurance companies, and feel trapped due to lack of competition and the expansion of 'exclusions' should they change provider. From my anecdotal conversations I'd suggest that the bulk of these people are split into two groups.

1. Those that did not get their claims approved, and believe that the insurance company shirked its responsibilities through process and fine print.
2. And those that are not happy with the funding made available for some treatments, especially trial treatments.

We believe improvements in the area of Item 1 can be legislated for, and its on this matter that we make our submission.

Prior to engaging with yourself we have undertaken the Sovereign internal complaints process and the also the IFSO complaints process. At the time of making these complaints we knew that from a technical contractual perspective we would likely lose, but felt strongly that it was important to formally document our concerns. It's in this respect that we share our experiences with you; as we feel that they are good examples of areas of commercial practice that would benefit from legislative change.

As a result of the Government Review of Insurance Contract Law the areas that we would like to see legislative change in, are as follows:

1. Require that insurance companies undertake a review of a prospective clients medical file prior to the offer and acceptance of medical insurance coverage.
2. Increase the independence and authority of the Ombudsman.
3. More clearly define the role and responsibilities of the insurance broker.

No doubt you will have been bombarded with lengthy submissions (complaints), and I have no wish to do the same to you. Accordingly, I have attached my closing summary letter to Sovereign, which I provided them with after their letter confirming we had reached deadlock. My points of concern are covered in this letter, and if of interest to you we can elaborate in more detail by written submission or in person. I summarise these below.

1. Inadequate Due Diligence at Application Phase

With respect to our experiences we feel greatly aggrieved by the actions of Sovereign; and regardless of the contractual right or wrong, in our view their processes and approach with regards to pre-existing medical conditions and non-disclosure is morally wrong. The areas of conflict could have been completely avoided, if Sovereign had simply completed appropriate due diligence at the time of onboarding us as a client. We live in the digital age, and much of this information is readily available, and there is no reasonable reason not to have done so. The failure to properly vet incoming client's medical records, coupled with the detail by which they review this record at time of claim, creates a significant gap in expectation and needlessly results in frustration and anger for their customers in the midst of dealing with their own medical and therefore emotional challenges.

2. Independence and Authority of the Ombudsman

In terms of the role of the IFS Ombudsman; we are disappointed with the limitations of this role – we had hoped that they would be able to act completely independently – however in our view it was clear from the restrictions to which parts of our complaint they could address, that in fact there is still too much restraint and control placed on this office. Specifically, we would like to see the ombudsman formally address areas that the insurance industry should look to improve their product and services thereby avoiding future conflicts, rather than solely arbitrating on the contractual terms.

3. Role and Responsibilities of the Insurance Broker.

In terms of the insurance broker; we would like to see clearer definition of the role and its responsibilities. Reflecting on our experiences we are very dissatisfied with the role of the broker, and feel that at times and as the intermediary our broker unfairly become the 'meat in the sandwich'. Notwithstanding this we very much wish that we had been given stronger advice with regards to the medical history questions; if the client has ever visited the doctor, no matter how innocuous it seems, in our view the brokers advice should be that their client requests a 'full review of their medical file'.

We are available to speak further on these matters if you wish; our contact details are: Privacy of natural persons

[Redacted]

Yours faithfully,

Privacy of natural persons

[Redacted]

Privacy of natural persons

Attachment: Letter dated 7<sup>th</sup> September 2017 to Sovereign - Privacy of natural persons - Insurance Complaints

07 September 2017

Sovereign  
Private Bag Sovereign  
Victoria Street West  
Auckland 1142

Attention: Sean Fowke, sent by email to Privacy of natural persons

**Subject:** Privacy of natural persons **Sovereign Insurance Complaints**

Dear Sean,

Thank you for your letter dated 22 August 2017 confirming that we have reached deadlock. Whilst disappointed by this outcome, we are not surprised. As I discussed with you, fundamentally we believe Sovereign's client engagement and claim assessment process to be flawed, unfair and in breach of your fiduciary responsibility to your customers – on this basis it's unsurprising that with respect to our complaint, Sovereign and yourself, have found as you have.

Further to this, whilst we acknowledge your comment that parts of our complaint are outside of the jurisdiction of the IFSO ombudsman – we intend to make the complaints anyway. Hopefully there are others who have documented their concerns and the ombudsman whilst perhaps not being able to determine a finding at this time is able to further these issues with legislative subcommittees or similar. There is simply no reasonable explanation as to why Sovereign does not undertake adequate due diligence at the time of application (as just about every other profession is required to) – hopefully one day there will be a legislative requirement that you do so, and therefore others aren't misled and entrapped as we have been.

For your information and partially in rebuttal to your letter of 22 August 2017, these are the points of complaint that we intend to make to the IFSO. I also make no apologies for the repetition in our points, these were the issues of complaint raised in our previous correspondence but they were not all adequately addressed, so to ensure that none are missed we have itemised every point here for the record.

Related to Privacy of natural persons Denied Insurance Claim – March 2015:

1. Privacy of natu Insurance coverage should have commenced in 2012 prior to the mid-2013 doctors' visits that Sovereign use as the basis for denying our claim. [This has been covered in an email exchange with ourselves, Tony Gill our broker and Sovereign in March through May of 2015].
  - a. We met with our insurance broker Tony Gill in late 2012. At this meeting, we found out that Privacy of natu wasn't automatically covered by our existing policy – which was a surprise to us and an oversight.
  - b. Consequently, at that meeting we asked for a quote to add Privacy of natu to our policy and would have moved quickly if the quote had been provided.
  - c. We did not get the requested quote, and following a card from our broker Tony Gill in late September 2013 reminding us of this outstanding item, we chased Tony by email on 01 October 2013 asking that the quote be provided.

- d. As a reflection of how quickly we act, the policy was confirmed and in place 18 October 2013; 18 days after I sent the follow up email.
- e. We do not believe the gap in Privacy of natu insurance, especially as it pertains to most of 2013, is our fault, as such we do not believe we should have been penalised for this.
2. Basis for Denying Claim – Non-disclosure. We disagree that we did not disclose everything in our application. Sovereigns application form has the following questions.
- *1 b) Have you had a medical exam, test, x-rays or advice, treatment or surgery from a health professional in the last five years?*
  - *1 e) Do you suffer, or have you ever suffered from, or have you ever had treatment or surgery or medical tests or prescribed medication for any of the following? Ears, eyes, nose, throat*
- a. We had no basis for knowing the two visits to the doctor for Privacy of in, for what we considered common child colds were relevant. Doctors' visits for kids are free, and we went because we thought we might as well. These were not serious illnesses.
- b. At these doctor's visits tonsillitis was never mentioned – how were we to know a visit to the doctor for a childhood cold was relevant. Again, we state we believe we disclosed all relevant information.
- c. Plain English should be used on the application. If your intent was that every consultation with any medial practitioner was relevant than why confuse the applicant with the wording of your questions, why not simply say that. "have you ever been to the doctor, physio or any other medical practitioner for any reason including childhood colds, and muscle tweaks. To this question we would have said yes.
- d. Given what we have subsequently experienced it's hard not to feel that the questions are designed to confuse and mislead.
3. Basis for Denying Claim – Relevance of doctor's visits. We do not agree that the doctors' visits in mid-2013 were material enough to deny insurance cover.
- a. The notes Sovereign quotes related to Privacy of natu doctors' visits reflect the nature of these ailments. They are bland, and reflect no more than a common childhood cold.
  - b. Should these notes been reviewed at application phase we believe they would have been seen for what they are; a common childhood cold – and that Privacy of in would have been fully covered with no exclusions.
  - c. Hindsight is a wonderful thing; it strikes us as very convenient that Sovereign follows an application process that allows it the benefit of hindsight when assessing medical claims. We would suggest all of us have medical history that can be construed as relevant later in life.
4. Failure by Sovereign to undertake adequate due diligence at time of application. The challenging wording of the application questions and the benefit of hindsight allow Sovereign to put themselves in a position of power, which is then used unfairly during the claim application phase to deny claims. This would be avoided by proper due diligence at time of application.
- a. The complaint related to this issue could have been completely avoided if Sovereign had simply accessed Privacy of natu medical records at time of application. Given we live in the digital age, and reflecting on how quickly these records were obtained when our claim was denied, there is no reasonable reason not to undertake adequate due diligence during the application phase.
  - b. The questions on your application are misleading and challenging to answer to the level that Sovereign seeks. In our case, and despite having our broker with us assisting whilst we filled in our applications, in Sovereigns view we still filled these out inadequately.

Related to Retroactive Policy Alteration for Privacy of natural persons – June 2017:

5. The retroactive policy alteration basis its decision on the view that Privacy of natural pe had a history of back pain that was not disclosed. We disagree with this conclusion and we seek the withdrawal of this retroactive policy alteration; and full medical cover to Privacy of natural perso spine reinstated.
  - a. Privacy of natural pe was in pain at the time of our applying for medical insurance, something we discussed with the broker. However, all medical consultations around that time, both before and after, clearly viewed the back pain as pregnancy related. The historical medical records Sovereign has accessed confirm this, including those you have quoted in your correspondence to us.
  - b. In two places on our application form we clearly highlighted pregnancy issues – Given the multiple diagnosis's that her back pain was pregnancy related, why would we suspect anything else and record it elsewhere on her form? Sovereign failed in its duty to adequately review and undertake due diligence on this disclosure (or perhaps you did and decided it wasn't relevant).
  - c. The only note to the contrary was in May 2010 where she tweaked her back, sought medical treatment and physio and subsequently had no issues. Privacy of natural pe thought nothing of this and still does not remember it.
  - d. You also note that we should have highlighted her further medical issues between the time of application and when insurance was confirmed as being in place. Given that the doctors' visits during this time clearly reference her issues as being 'pregnancy related' and were therefore noted on our application, why would we consider that things have changed and notify you.
  - e. Plain English should be used on the application. If Sovereign's policy is to exclude parts of the body that have had a 'minor tweak' then we'd suggest anyone who applies for medical insurance later in life will have significant exclusions.
  - f. If your intent was that every consultation with any medial practitioner was relevant than why confuse the applicant with the wording of your questions, why not simply say "have you ever been to the doctor, physio or any other medical practitioner for any reason including childhood colds, and muscle tweaks". To this question we would have said yes as Privacy of natural pe has been to the doctor dozens of times throughout her life.
  - g. Given what we have subsequently experienced it's hard not to feel that the questions are designed to confuse and mislead.
6. Relevance of doctor and physio visits in May 2010. We do not agree that the doctor and physio visits in May 2010 were material enough to retroactively alter insurance cover.
  - a. The notes Sovereign quotes related to Privacy of natural person doctors' visits reflect the nature of the ailment. "left lower back pain when she bent down that has not settled ... joint strain ... need physio ...".
  - b. Should these notes been reviewed at application phase we believe they would have been seen for what they are; a 'minor tweak' – and that Privacy of natural pe would have been fully covered with no exclusions.
  - c. Hindsight is a wonderful thing; given Privacy of natural perso recent tumour in her spinal sack we can see why Sovereign may wish to retroactively exclude any claim related to her spine; however, we do not agree that there is any just reason to do so.

7. Failure by Sovereign to undertake adequate due diligence at time of application. The challenging wording of the application questions and the benefit of hindsight allow Sovereign to put themselves in a position of power, which is then used unfairly to deny claims. This would be avoided by proper due diligence at time of application. We continue to seek the withdrawal of this retroactive policy alteration; and full medical cover to [Privacy of natural person] spine reinstated.
- a. The complaint related to this issue could have been completely avoided if Sovereign had simply accessed [Privacy of natural person] medical records at time of application. Given we live in the digital age, and reflecting on how easily these records were obtained when Sovereign decided to retroactively alter [Privacy of natural person] cover, there is no reasonable reason not to undertake adequate due diligence during the application phase.
  - b. The questions on your application are misleading and challenging to answer to the level that Sovereign seeks. In our case, and despite having our broker assisting us whilst we filled in our applications, in Sovereigns view we still got it wrong.
  - c. Your retroactive decision states the following: *"It is acknowledged with effect from 28 September 2011, that should a claim arise on the life of [Privacy of natural persons] as a direct or indirect result of any disease, disorder of, or injury to the Spine, it's Intervertebral Discs, Nerve Roots or Supporting Musculature, including treatment, surgery or complications thereof, then no claim will be payable under the Medical \$300 Excess Benefit attached to this contract."*
    - i. All material information was available to Sovereign when you approved our application, the decision to retroactively alter the policy is simply a case of Sovereign wishing to mitigate any future liability based on a new medical issue.

Related to Sovereigns Policies and Procedures – August 2017:

8. The use of plain English. We believe the language used in your application process is overly complex to the point that its misleading. Despite filling these forms in with the aid of an experienced insurance broker we, in Sovereigns view we still filled these out inadequately. This could be avoided if your application used plain English.
- a. If your intent was that every consultation with any medial practitioner was relevant than why confuse the applicant with the wording of your questions, why not simply say "have you ever been to the doctor, physio or any other medical practitioner for any reason including childhood colds, and muscle tweaks". To this question we would have said yes for both [Privacy of natural person] and [Privacy of natural person] applications.
  - b. Given what we have subsequently experienced it's hard not to feel that the questions are designed to confuse and mislead.
9. Avoidable confrontational customer correspondences. The language used in denying claims or altering policy coverage is confronting, especially in emotional charged circumstances. Good customer management practices should seek to avoid this. Furthermore, this could be easily avoided by a change in process at the time of application assessment. We seek that Sovereign change their process.
- a. We have received two letters on 23 March 2015 (relating to our son [Privacy of natural persons]) and 01 June 2017 (relating to [Privacy of natural persons]) that we take issue with. In both cases they use language such as; non-disclosure, misstatement of a material fact, duty of disclosure – these are then supported by definitions and references to the Law Reform ACT 1977. It all sounds very scary and officious and implies that we have lied or misled you, and as such our claim is denied or our coverage is retroactively reduced. We take great umbrage with any inference that we have lied or misled. Furthermore, we do not believe that platitudes stating otherwise change that inference. (I reference an email from Sovereign dated 15 May 2017 which states *"Firstly please let me confirm, as I believe my colleagues in claims have already done, that Sovereign is not alleging that [Privacy] or [Privacy of natural persons] purposefully left information off the application form. If that*



*was the impression given to [redacted] & [redacted], we sincerely apologise.”*). We believe that we took all reasonable steps to ensure that our applications were filled out correctly and to the extent of our memory. We sat discussing the application with our insurance broker as we filled them in – a process we hoped would ensure that we filled them in correctly. Conversely, we also believe that Sovereign did not take all practicable steps to ensure that our application was properly assessed prior to accepting our premiums and implying a level of insurance that did not actually exist.

10. Inadequate Due Diligence at Application Phase. We believe that the due diligence undertaken in Sovereign’s application assessment process is inadequate when compared to the claim assessment process. As a result, your clients are subjected to unnecessary angst at a time when emotions are already running high which causes anger and a feeling that Sovereign is being deceitful with their business practices and behaviours. If Sovereign cares about their relationship with their customers they should change their processes to avoid this occurring.

- a. We have made two medical related claims, and in both instances, we have been left angry at the way we have been characterised – in essence it has been implied that we have lied or misled during the application phase. What is particularly galling, is that if Sovereign had simply undertaken the same level of due diligence during the application phase as they do during the assessment of a claim then all of this angst could have been avoided.
- b. We believe that the process you follow is deceitful and that it ultimately causes great and unnecessary angst for your clients. On this basis, we believe that it’s important to document for the record our dissatisfaction with your processes, in the hope that maybe something will change, and that other good, honest, hardworking people like ourselves aren’t subjected to this confronting process in the midst of dealing with their own medical and therefore emotional challenges.
- c. We like many of your clients joined Sovereign later in life and as such had previous medical history. We consider ourselves honest, intelligent and savvy people, furthermore we sought expert guidance in the form of an experienced insurance broker when we filled out our applications. We would suggest that there are many more people out there like us; and we wonder how many years they unknowingly pay their premiums for a level of insurance that in reality may be much less.

11. We believe that Sovereign has a fiduciary responsibility to accurately state the true insured scope when accepting our premiums. Because as we have found on two occasions, what we are actually insured for may be much less following access to our medical records. Therefore, the implied level of insurance is inaccurate.

- a. Given the ease that these records can be accessed we don’t believe there is any reasonable explanation as to why they simply aren’t accessed at the time of application; as such we believe that Sovereign is being deceitful when it accepts payments from its customers for an implied, but not real, level of insurance coverage.

12. Sovereign’s claim’s review process is flawed. With the benefit of hindsight, you seek to create a picture of deception; and that we your customers have set out to mislead you through the omission of critical information. This is avoidable and you should change your policy to avoid this.

- a. You do this by selectively quoting aspects/components of the medical notes and records.
- b. By the use of medical records from periods of time not related to the issue; thereby creating the impression of greater material supporting your position than there really is. In the instance of [redacted], you referenced multiple medical records from 2016, many years after our insurance coverage was in place.

- c. Also by the representation of an ailment as more material than it really is. [Privacy of natu] childhood colds and [Privacy of natural person] back 'tweak' are excellent examples. With hindsight, and the addition of a long list of one sided medical information, they give the impression they are worse than they are.
13. Sovereign's complaint's review process is flawed – it does not address all issues raised, focusing on those complaints that are within the jurisdiction of the IFSO, and it is selective in the material that it considers. A robust complaints review process would seek to fully review all issues related to a complaint, both directly made and indirectly; and it would look at ways that the business can improve its processes to avoid them happening again. Sovereigns complaints process does not do this
- a. Careful review of all correspondences between ourselves and Sovereign clearly shows that Sovereign:
    - i. Has been selective in which points it responds too
    - ii. Does not attempt to address areas of complaint outside of IFSO jurisdiction
    - iii. Has no intention of utilising customer feedback and complaints as an initiator for reviewing their systems for improvement.
  - b. We would be very interested in viewing what information is actually shared with Sovereign's Complaints Committee. The resolution and Privacy Specialist presumably prepares a summary for the complaint for review by the Committee. We would suggest that a review only of the summary by the Committee is inadequate and relies on the specialist to make a balanced representation of the facts. Given the information shared with us as being pertinent to the decision, and as discussed above, we would suggest this summary is not balanced.

We are available to speak further on these complaints if you wish; our contact details are: [Privacy of natural persons], [Privacy of natural persons].

Yours faithfully,

[Privacy of natural persons]

[Privacy of natural persons]