

The complaint

Mr A is unhappy that BUPA Insurance Limited trading as BUPA International (Bupa) have cancelled his policy of private medical insurance and asked him to reimburse them for claims paid for two providers from 2008 onwards.

What happened

Mr A had an international policy with Bupa. His complaint concerns claims he made in respect of two physiotherapists. For simplicity I'll refer to them as physiotherapist 1 and physiotherapist 2. In February 2019 Mr A called Bupa to ask for pre-authorisation for 15 sessions of physiotherapy with physiotherapist 2. Ten sessions were subsequently agreed, but Mr A was told Bupa would need a progress report before they could agree to further sessions. After a review, Bupa said they were unable to authorise further physiotherapy with physiotherapist 2 and they were carrying out an audit. Bupa said Mr A could continue his treatment with an alternative physiotherapist, but Mr A didn't wish to do so as he felt physiotherapist 2 was the best and it wouldn't be ethical to do so.

Mr A's case was passed to Bupa's counter fraud team, who asked Mr A to provide original invoices from physiotherapist 2, proof of payment of invoices, contact details for physiotherapist 2 and contact details for the facility she worked from. Mr A said physiotherapist 2 worked freelance, came to his home, produced her own invoices and she didn't retain them. He initially said that providing payment details violated his privacy, but later provided a copy of a cheque.

In April 2019 Bupa wrote to Mr A and said they had completed a review of earlier physiotherapist claims with physiotherapist 1 between December 2008 and March 2017. As a result, Bupa asked Mr A to explain why he had made claims for treatment by physiotherapist 1 when she said she had never treated Mr A or his wife. Mr A said physiotherapist 1 had treated him in a room of a hotel and later at his daughter's home. He provided a letter from Mr L saying he was the front office manager of the hotel at the relevant time and introduced Mr A to physiotherapist 1. Mr L said physiotherapist 1 had treated Mr A and his family from the end of 2008 to 2017.

In May 2019 Bupa wrote to Mr A to terminate his policy from December 2008 and request repayment of £115,825.16 for all claims for Mr and Mrs A, who was named on Mr A's policy, from December 2008. They said physiotherapist 1 had not treated Mr A or his wife, that all elements of the invoices submitted in respect of treatment by her were false and she hadn't treated private patients since 2011. In respect of physiotherapist 2 Bupa said the invoices submitted were false and signatures were cut out and re-used.

Mr A was unhappy with Bupa's decision and brought a complaint to this service. Our investigator upheld the complaint in part. She said Bupa hadn't acted unreasonably in concluding Mr A's claims for treatment by physiotherapist 1 were fraudulent. But she said there wasn't enough evidence to conclude the claims made in respect of physiotherapist 2 were fraudulent.

Neither party accepted the investigator's opinion, so the complaint was passed to me to reach a decision. Mr A said the statement of Mr L is conclusive but wasn't properly considered and the opinion was based on false statements without taking in to account his evidence. Bupa said the investigator didn't follow the Insurance Act 2015. They said this because the investigator concluded that Mr A's claim for treatment from physiotherapist 1 from December 2008 was on balance fraudulent. This means Bupa can cancel Mr A's policy from December 2008, meaning that by the time Mr A had treatment with physiotherapist 2 from 2017 his policy no longer existed, so no claims could be met.

My provisional findings

I issued my provisional decision on 24 March 2020 I said,

"Mr A's policy of insurance says,

"Fraudulent Claims

You and any dependant (or anyone acting on behalf of you or any dependant) must not

- make a fraudulent or exaggerated claim under this plan,*
- send us fake or forged documents or other false evidence, or make a false statement in support of a claim and/or*
- provide us with information which you or any dependant knows would otherwise enable us to refuse to pay a claim under this plan.*

Failure to comply with the above will give us the right to

- refuse to pay the whole of the claim,*
- recover any payments we have already made in respect of the claim and/or*
- notify you that this plan...has terminated from the date of any of the acts or omissions set out above, and we will not refund the premium."*

As Mr A's claims for treatment by physiotherapist 1 were earlier I'll start by considering them. I've seen evidence from physiotherapist 1 that leads me to conclude she did not treat Mr A or his wife and did not prepare the invoices he submitted in support of his claims. Her evidence persuades me that aspects of the invoices are false and physiotherapist 1 says she didn't treat private patients over many of the years Mr A claimed for. I'm aware Mr A disputes what physiotherapist 1 told Bupa, but I consider her evidence is reliable and see no reason why she wouldn't be telling the truth.

Mr A has provided a letter from Mr L, which he says is more persuasive than physiotherapist 1's evidence. I don't agree. Mr L said after he introduced physiotherapist 1 to Mr A she treated him and his wife until 2017. I'm not sure on what basis Mr L can say this, particularly as he said that at a later date physiotherapist 1 treated Mr A at his daughter's home. I can't see that Mr L would have knowledge of this in his role as a front office manager of the hotel. Mr L also makes reference to helping Mr A with his claims, suggesting a personal relationship between Mr A and Mr L. But the most important point I've considered is that Mr A says Mr L will not get involved in the investigation other than to confirm the letter. This means Bupa has no opportunity to verify what Mr L has said and ask further relevant questions.

After careful consideration I'm more persuaded by the evidence of physiotherapist 1 than Mr L. I consider Mr A has submitted false invoices and that Bupa have acted reasonably in applying their policy terms in respect of fraud and in terminating Mr A's policy of private medical insurance from the date of the fraudulent act. The first invoice from physiotherapist 1 was dated December 2008, so Bupa are entitled to terminate Mr A's contract from this date.

The law is also clear that Bupa are entitled not to meet any claims after a fraudulent act. The Insurance Act 2015 says,

“(2) If the insurer does treat the contract as having been terminated—

(a) it may refuse all liability to the insured under the contract in respect of

a relevant event occurring after the time of the fraudulent act, and

(b) it need not return any of the premiums paid under the contract.”

Mr A first claimed for treatment by physiotherapist 2 in October 2017. As this is after Mr A’s policy was terminated, Bupa have no liability to Mr A for any of his claims for treatment by physiotherapist 2. In these circumstances Bupa can ask Mr A to repay all benefit from the date of the first fraudulent claim in December 2008. I understand Mr A and his wife made claims for treatment from physiotherapist 1 and 2 for £115,825.16, so this is the amount Bupa can reclaim from Mr A. Because Mr A’s contract has been terminated from 2008 I don’t need to decide whether I think physiotherapist 2’s invoices are genuine.

Bupa could have asked Mr A to repay all claims from December 2008, but have chosen only to recover claim costs in respect of physiotherapists 1 and 2. I think that’s fair.”

Bupa replied and said they didn’t wish to add anything for me to consider.

Mr A didn’t accept my findings. He said:

- I didn’t follow the right test for a serious allegation of fraud. The relevant burden in this case is beyond reasonable doubt, or at least a heavy burden. Bupa should have a “watertight and compelling case which is beyond doubt”.
- I’ve failed to take in to account Mr A’s evidence he’s an upstanding member of the community and that no-one has ever suggested he’s committed fraud before. My decision has far-reaching consequences for him.
- I’ve relied too heavily on the evidence of physiotherapist 1, who isn’t telling the truth, and I shouldn’t just believe her. Her story is “inherently unlikely” and suggests he got her name from somewhere and pretended she treated his family.
- Physiotherapist 1’s evidence should be examined very closely. Mr A suggests it’s likely she asked him to pay in cash because she was avoiding paying tax.
- Mr A asks why he wouldn’t make up a completely fictional person if he was acting fraudulently. He thinks details of his story enhance its likelihood, for example the fact that treatment moved to his daughter’s home.
- I’ve ignored the evidence from the hotel manager, or not given it appropriate weight. The manager was independent and there’s no evidence of a relationship with Mr A. Mr A feels the hotel manager’s natural reluctance to get involved in a matter that doesn’t concern him has counted against Mr A. The manager introduced physiotherapist 1 to Mr A in front of other hotel staff, so his evidence doesn’t stand alone.
- Both Mr A and his wife say physiotherapist 1 treated them, which means I need to consider two people’s word against one person’s word. Mr A says no weight has been given to the fact his family back up his version of events.
- Mr A asks me to review and reverse my provisional decision.

What I’ve decided – and why

I’ve re-considered all the available evidence and arguments to decide what’s fair and

reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusions as in my provisional decision, and for the same reasons.

Mr A says the applicable burden of proof in his case is beyond reasonable doubt. But this service is an informal dispute resolution service – the criminal standard of proof required for a successful prosecution in a court of law does not apply here. Having said that, I consider that to be fair to Mr A the evidence I rely on needs to be strong.

Mr A has told me he's an upstanding member of the community, but my decision isn't about his community standing. Instead, my decision concerns the individual circumstances of this case.

Mr A also referred to the fact his family back up his version of events. He thinks that as he and his wife say physiotherapist 1 treated him, I should give more weight to their evidence than to physiotherapist 1's. I've not been provided with any evidence of this. But even if I had, I'm still more persuaded by physiotherapist 1's evidence. It's important to note physiotherapist 1 didn't just say she didn't treat Mr A, she also said she didn't prepare the invoices Mr A submitted to Bupa, aspects of them are false and she didn't treat private patients at all for many of the years Mr A has claimed for. Mr A has focused on whether physiotherapist 1 treated him and hasn't commented on the other points. Taking everything in to account, I don't agree with Mr A that physiotherapist 1's evidence is inherently unlikely.

I consider it's more likely than not that physiotherapist 1 didn't treat Mr A or prepare the invoices he submitted to Bupa. In these circumstances Mr A's questions about why physiotherapist 1 asked him to pay cash, and a higher amount for treating in a hotel room, aren't relevant. I also don't believe Mr A's version of events is more plausible because physiotherapist 1 isn't a made-up person.

I turn now to the hotel manager's evidence (Mr L). I don't accept I didn't consider this evidence, as I commented on aspects of it in my provisional decision. But I've placed greater weight on physiotherapist 1's evidence. The front office manager commented on areas I consider to be outside of his knowledge given his role and would not engage with Bupa to answer queries. I found this point particularly significant. Mr A says the manager was naturally reluctant to get involved in a claim that didn't involve him, but he provided a letter in the first place. And although Mr A says Mr L introduced physiotherapist 1 to Mr A in front of other hotel staff, I've only seen evidence from Mr L.

Having considered all the evidence, I'm persuaded Bupa acted fairly and reasonably in cancelling Mr A's policy of private medical insurance from December 2008 and in seeking reimbursement of his claims for treatment from physiotherapists 1 and 2 from then.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 June 2020.

Jay Hadfield
Ombudsman