

The complaint

Mrs T complains about HMCA Insurance Ltd's decision to turn down her private medical insurance claim. She's also complained about the sale of the policy.

Mrs T is represented in this complaint by her husband, Mr T.

What happened

Mrs T took out the policy in 2015. It was sold directly by HMCA on a non-advised basis, and HMCA is also now the insurer.

In 2020, Mrs T made a claim under the policy as she needed surgery on her left hip. HMCA turned down the claim because Mrs T had undergone a left hip replacement before the policy started. It said this meant her claim fell under a policy exclusion.

Unhappy with this, Mr T brought a complaint to this service on his wife's behalf. Our investigator didn't recommend the complaint be upheld. She thought it had been reasonable for HMCA to turn down the claim. Our investigator also didn't think the policy had been mis-sold, as she thought HMCA had provided sufficient information about the policy to Mrs T at the time of sale.

I issued a provisional decision on 4 February 2022. Here's what I said:

Claim

The policy says:

"Where previous treatment has been received by the member for any joint, either before they became a member of the scheme or since joining it, no benefit will be payable under this policy in the case of any revision or repeat treatment to that joint."

Before taking out the policy, Mrs T had hip replacement surgery to her left hip. This would be considered treatment to the left hip joint. Mrs T's later claim to HMCA was also for treatment to her left hip joint.

As Mrs T's claim was for repeat treatment to her left hip joint, this falls squarely within the above exclusion. I'm therefore satisfied that HMCA turned down the claim in line with its policy terms.

Sale

Mr T says that he and Mrs T weren't made aware of the above exclusion when the policy was taken out. He says their understanding was that Mrs T would have cover for any condition that existed before the policy was taken out.

Although Mrs T didn't receive any advice from HMCA as to the suitability of the policy, HMCA still needed to provide sufficient information about the policy to Mrs T so that she

could make an informed decision as to whether to take it out. HMCA therefore ought to have made Mrs T aware how the policy worked, and brought any significant or unusual conditions/exclusions to her attention.

I think this exclusion is unusual for these types of policies, and therefore I'd expect it to have been brought specifically to Mrs T's attention before she took out the policy.

I've read the information provided to Mrs T at the time of sale, including the welcome letter, policy benefits leaflet, and key facts document (which specifically refers to the policy's significant features and exclusions). However, none of these documents refer to the exclusion.

I've also looked at the policy terms themselves, and I see the exclusion is written in small print and included amongst 27 other exclusions. I don't think this was clear or prominent enough.

The key facts document says that conditions that existed before enrolment aren't covered, but when transferring from an existing policy, conditions that originated whilst the member had cover with their previous provider will be covered.

Before taking out the HMCA policy, Mrs T had held private medical insurance cover with another provider. She'd cancelled that policy some months earlier. However, because she hadn't had a change in health since that cancellation, HMCA agreed to treat Mrs T's application as a transfer. This meant Mrs T had cover for conditions that existed before taking out the HMCA policy.

This is reflected in Mrs T's membership certificate which includes an endorsement that says:

"Benefit is payable in respect of treatment for any acute condition which originates after 01/01/1993, the date you enrolled in your previous plan."

I've also listened to the calls that took place between HMCA and Mr T, when he took out the policy for his wife. HMCA didn't mention the exclusion in those calls either. Whilst I appreciate Mr T didn't mention his wife's previous hip replacement surgery, I don't think he had any reason to do so. He was told that his wife would have cover for previous conditions, so quite understandably, he thought this would include her hip problems.

As I've said, given that the exclusion was unusual, I think it ought to have been brought to Mrs T's attention at the time of sale. As it wasn't, I think the policy was mis-sold.

The next point for me to consider is what redress would be appropriate.

Mr T thinks HMCA should cover the cost of any surgery his wife may need on her hip. However, it might be helpful if I explain that the aim of this service is to place a consumer back in the position they would have been (as far as possible), if the financial business' error hadn't occurred.

I've therefore thought about what Mr T might've done on his wife's behalf, had the policy not been mis-sold. In other words, if HMCA had brought the exclusion to Mr and Mrs T's attention at the time of sale, as I think it ought to have done.

Although Mrs T had held private medical insurance cover previously, she'd cancelled this some months before taking out the HMCA policy. I understand the reason for that was the increasing cost of the cover. Therefore, I can't say that Mrs T would've remained insured with her previous provider if she'd known of the exclusion.

Mr T explains that if the exclusion had been brought to his attention, he wouldn't have taken out the HMCA policy for his wife. He says that he only took out the policy because he thought his wife may need to claim in the future for treatment relating to her hip.

I accept Mr T's explanation. Whilst there's a possibility that he may have looked into taking out private medical insurance with another provider, I think it's unlikely he would've been able to specifically obtain cover for Mrs T's hip, given that it was a pre-existing condition.

Although HMCA decided to treat Mrs T's application as a transfer from her previous provider (thereby giving her cover for pre-existing conditions), that was unusual given the break in cover, and so I think it unlikely that another insurer would've done the same.

Overall, I think it's reasonable to conclude that Mr T wouldn't have agreed to take out the policy for his wife if he'd known of the exclusion, and that it's also unlikely he would've taken out cover elsewhere for her. That being the case, I don't intend to require HMCA to pay the claim. Instead, I think the most appropriate redress would be a refund of premiums, plus interest. Mr and Mrs T can then decide whether they want to cancel Mrs T's policy (if it hasn't already been cancelled).

HMCA says the Insurance Product Information Document (IPID) sent to Mrs T at renewal in 2019 and 2020 included the exclusion. I haven't seen these IPID's, and so I'd be grateful if HMCA could provide these in response to this provisional decision. If I think the exclusion was adequately brought to Mrs T's attention at these renewals, I'll likely only require HMCA to refund the premiums up to the date the exclusion was first brought to her attention."

I asked both parties to provide me with any further comments they wished to make before I reached a final decision.

Mr T responded and said he would like to know the reason behind HMCA including the endorsement in Mrs T's membership certificate. He thinks this endorsement appears to be at variance with the policy terms.

Mr T also said that it seemed inappropriate to cancel the policy whilst they were waiting for an ombudsman's decision, but they do intend to cancel it.

HMCA responded and said all its policies are sold on a non-advised basis, which means it doesn't highlight any individual exclusions, as it doesn't know which ones will be relevant to a customer. It said all the exclusions on the IPID were clearly stated, and it provided a copy of the renewal information (including the IPIDs) from 2019, 2020, and 2021.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I explained in my provisional decision that HMCA had added the following endorsement to Mrs T's membership certificate:

"Benefit is payable in respect of treatment for any acute condition which originates after 01/01/1993, the date you enrolled in your previous plan."

Mr T has questioned why this endorsement was added, as he thinks it was at variance with the policy terms.

HMCA added the endorsement to show that Mrs T's membership was accepted as a transfer from her previous policy, which meant she had cover for conditions that existed before the HMCA policy was taken out (which would usually be excluded). However, this doesn't mean that the other policy terms and exclusions wouldn't apply.

HMCA says that because its policies are sold on a non-advised basis, it doesn't highlight individual exclusions as it doesn't know which ones will be relevant to a customer. However, as I've said, at the time of sale it ought to have made Mrs T aware of how the policy worked, and told her of any significant or unusual exclusions. This particular exclusion is unusual for these types of policies, and so it should have been brought to her attention.

HMCA has provided the IPIDs from 2019, 2020, and 2021. I've looked carefully at these and under the section 'what is not insured?' it says, "*revision or repeat treatment to a joint problem*".

I'm therefore satisfied that the exclusion was brought to Mrs T's attention from 2019 onwards. HMCA will therefore only need to refund premiums up to the date of the 2019 renewal.

My final decision

My final decision is that I uphold this complaint.

I require HMCA Insurance Ltd to refund the premiums Mrs T paid between taking out the policy up to the date of the 2019 renewal. Interest should be added at the rate of 8% simple per annum, from the date each payment was made to the date of settlement.

If HMCA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs T how much it's taken off. It should also give Mrs T a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 11 March 2022.

Chantelle Hurn-Ryan
Ombudsman