

## The complaint

Mrs S complains that BUPA Insurance Limited turned down her private medical insurance claim.

## What happened

Mrs S held private medical insurance cover with BUPA.

In 2019, Mrs S needed a c-section because large fibroids meant her life was at risk during childbirth due to the risk of haemorrhaging. She made a claim for the c-section under the policy, and BUPA accepted the claim.

Then in 2020, Mrs S needed another c-section. Again, this was necessary because of her fibroids. She contacted BUPA, and it said it needed more information before it could authorise the surgery. Mrs S then went into early labour, and so had the emergency c-section. BUPA contacted the hospital later that day, and advised the nurses that the claim wouldn't be covered.

BUPA told Mrs S that it had paid the 2019 claim in error. It said it shouldn't have paid that claim because the c-section didn't treat the fibroids. But it wouldn't be asking for her to repay this. However, although it had made an error in 2019, it said that didn't mean it should approve the 2020 claim in error too. Though it offered Mrs S £2,000 compensation to recognise that its 2019 claims decision had led her to believe the 2020 claim would be covered. Unhappy with this, Mrs S brought a complaint to this service.

Our investigator recommended the complaint be upheld. She accepted that Mrs S's claim wasn't covered under the policy terms. However, she thought that BUPA's actions had given Mrs S the impression that the c-section in 2020 would be covered. Our investigator thought BUPA ought to therefore pay the claim on a fair and reasonable basis.

I issued a provisional decision on 2 March 2022. This is what I said:

*"The policy excludes childbirth, and delivery of a baby. However, it says there are certain situations where the exclusion wouldn't apply, and these are:*

*"Eligible treatment of the following conditions:*

- *miscarriage or when the foetus has died and remains with the placenta in the womb*
- *stillbirth*
- *hydatidiform mole (abnormal cell growth in the womb)*
- *foetus growing outside the womb (ectopic pregnancy)*
- *heavy bleeding in the hours and days immediately after childbirth (post-partum haemorrhage)*
- *afterbirth left in the womb after delivery of the baby (retained placental membrane)*
- *complications following any of the above conditions*

*Eligible treatment of the member (mother) that relates to pregnancy or childbirth but only if:*

- the Treatment is required due to a flare-up of the medical condition, and*
- the Treatment is likely to lead quickly to a complete recovery or to you being restored fully to your state of health prior to the flare-up of the condition without you needing to receive prolonged Treatment.”*

*On 22 September 2020, Mrs S’s specialist (Mr D) wrote a report. He explained that Mrs S had two large fibroids which were causing her abdominal pain. Mr D said he strongly recommended that Mrs S have a c-section in the next ten days to avoid her going into labour, and to minimise the risk of intrapartum haemorrhage and bleeding and complications due to the large fibroids and her previous c-section. Mr D also said that Mrs S was at risk of uterine dehiscence which was a potentially life-threatening condition for her.*

*I agree with BUPA that Mrs S didn’t meet any of the exceptions to the childbirth exclusion. Also, although she had fibroids, the c-section wasn’t treatment of the fibroids themselves. I’m therefore satisfied that it was reasonable for BUPA to say the claim wasn’t covered under the policy.*

*Although these same policy terms applied in 2019, BUPA assessed the claim at that time incorrectly and found it to be payable. Mrs S was of course advantaged by this because it meant an ineligible claim was paid. However, this did give her the (mistaken) impression that if she needed another c-section due to the risk of haemorrhage due to her fibroids, then this would again be covered by BUPA.*

*Unfortunately, BUPA didn’t help the situation when Mrs S spoke with its staff member on 9 September 2020. BUPA incorrectly advised Mrs S during this call that if there was any risk to her life, then the c-section would be “absolutely fine”. The staff member said it needed more information to establish this, but once BUPA received the information, the surgery would most likely be covered. She then said she didn’t want to say it would definitely be covered, but it had been covered previously, so would potentially be covered in the future. The staff member said later in the call that BUPA would contact Mrs S with its decision, and if the claim wasn’t eligible, BUPA would go through this with her.*

*BUPA has explained that it no longer considers maternal risk to life as eligible criteria for a c- section, and that its policy wording changed around two years earlier. It’s unfortunate that BUPA’s staff member wasn’t aware of this change to the policy wording, because Mrs S was given the impression that her surgery would most likely be covered. As far as Mrs S was concerned, childbirth did present a risk to her life, just as it had the previous year – BUPA had covered that previous surgery, and had reassured her that the c-section she needed in 2020 would also most likely be covered, for that reason.*

*However, it remains the case that Mrs S hadn’t actually received authorisation from BUPA before having the c-section. I understand that Mrs S went into labour and needed an emergency c-section, and therefore she says she didn’t have time to contact BUPA again. However, this was 19 days after she’d spoken to BUPA, and so I think she could’ve contacted BUPA again to check whether a claims decision had been made.*

*BUPA has confirmed that it made the decision to turn down Mrs S’s claim on 24 September 2020. Unfortunately, it didn’t tell her of this at the time. Instead, BUPA told the hospital that the claim wasn’t covered a few hours after Mrs S’s c-section had taken place, which was four days later.*

*Despite Mrs S being given the wrong information on 9 September 2020, the situation could've still been avoided if BUPA had told Mrs S promptly of its claims decision on 24 September 2020. If Mrs S had been aware of this, she could've gone to the NHS to have the c-section and so wouldn't have incurred the private hospital costs. Given that Mrs S didn't have the funds to pay for the private treatment, I'm satisfied that this is what would have happened, had she known that the c-section wouldn't be covered by BUPA.*

*I appreciate that this is an unusual situation, but taking into account all the circumstances, I think BUPA ought to pay 50% the claim on a fair and reasonable basis. I don't intend to require BUPA to pay the full claim. Although Mrs S was led to believe the claim would be covered, she hadn't received confirmation of this before having the c-section and was aware there was a possibility that it may not be covered. So I can't say that BUPA was entirely at fault for what happened.*

*As I understand it, Mrs S paid £3,554.51 towards the surgery, and family members paid the remaining amount (though I'd appreciate it if Mrs S could confirm this in her response to this provisional decision). I only intend to require BUPA to pay interest on the amount that Mrs S paid for her treatment, as interest is awarded to recognise that someone hasn't had use of the money. We can't compensate her family members for this, as they aren't eligible complainants.*

*Having said that, I think Mrs S would have been caused unnecessary distress and inconvenience as she had to ask family members to loan her the additional funds needed (even to make up 50% of the costs). I therefore require BUPA to pay her £200 compensation for this."*

I asked both parties to provide any further comments they wished to make.

BUPA responded to say it disagreed with my provisional findings. It made the following main points:

- It doesn't think there's a straightforward answer to the extremely unusual set of circumstances which led to the complaint.
- It can understand why I sympathised with Mrs S's position, given the vague advice it provided when she first contacted it.
- Though it says it was Mrs S's duty to have her treatment authorised.
- It sought advice from this service's technical helpdesk when it was looking into Mrs S's complaint, and is disappointed that the advice it received had very little impact on my decision.
- It says there's no evidence that Mrs S borrowed funds from family members.
- It's concerned that a precedent is being set for such circumstances. For example, if it covered a claim incorrectly due to a mistake, it may be obliged to continue to cover ineligible treatment because of the expectations it may have set.

Mrs S responded to say she was disappointed that I hadn't agreed with our investigator's recommendations, but she understood my reasons for that. She therefore accepted 50% of the claim. She confirmed the amount of the claim was £16,054.51. Mrs S also confirmed that she'd borrowed £10,500 from family members for the treatment.

## **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 accept that it was Mrs S's duty to obtain authorisation for her treatment. However, she attempted to do this, and was given the wrong information by BUPA.

BUPA explains that it sought advice from this service's technical helpdesk when it was looking into Mrs S's complaint. BUPA is unhappy that the advice it received had no impact on my decision.

When informal advice is given to a business from our technical helpdesk, this is only basic guidance and is based on one side of the situation, and without possession of all the relevant facts. BUPA told our helpdesk that it had accepted Mrs S's previous c-section claim. However, it didn't explain that Mrs S was misled when she called BUPA in September 2020 about her second c-section (in fact, BUPA incorrectly stated that Mrs S hadn't called it at all about her second c-section).

I do appreciate that BUPA wanted to reach a fair settlement for Mrs S, and made attempts to do this. I also accept that these were very unusual circumstances, and I'd like to reassure BUPA that my decision doesn't set a precedent. We look at the individual merits of each case, and make decisions based on what we consider to be fair and reasonable in all the circumstances.

To be clear though, if BUPA's only error had been to pay the first c-section by mistake, I wouldn't have required it to pay towards the second c-section (as I accept this wasn't covered under the policy). I'm requiring BUPA to pay 50% towards the claim on a fair and reasonable basis because it continued to give Mrs S wrong advice about her cover when she called it in September 2020. If BUPA hadn't made that mistake, then I'm satisfied Mrs S wouldn't have had the private treatment in 2020.

BUPA says there's no evidence that Mrs S borrowed funds from family members. However, I see no reason to doubt Mrs S, and I note she's confirmed how much she borrowed in response to my provisional decision. Given that the £200 compensation I'm awarding for this inconvenience is less than the interest I would've awarded if she'd paid for all the treatment herself, I don't think Mrs S had any reason not to be truthful about this.

Mrs S has confirmed that she borrowed £10,500 from family members for the treatment. Taking into account the £2,000 paid by BUPA, that meant she paid £3,554.51 out of her own funds for the treatment. I remain satisfied that it would be appropriate for BUPA to pay interest only on this amount, for the reasons explained in my provisional decision.

Mrs S has confirmed that the original claim cost was £16,054.51. She should provide the invoice/s directly to BUPA when it settles 50% of her claim.

## **My final decision**

My final decision is that I uphold this complaint in part. I require BUPA Insurance Limited to pay 50% of the claim (less the £2,000 already paid) in line with the remaining policy terms. Mrs S should be reimbursed directly, and interest added on the amount she paid of £3,554.51. This should be at the rate of 8% simple per annum from the date the invoice was paid to the date of settlement\*.

I further intend to require BUPA to pay Mrs S £200 compensation.

\* If BUPA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs S how much it's taken off. It should also give Mrs S 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 S to accept or reject my decision before 13 April 2022.

Chantelle Hurn-Ryan  
**Ombudsman**