

The complaint

Mr D complains BUPA Insurance Limited unfairly declined his claim for hospital benefit when he underwent cancer treatment via the NHS.

What happened

Mr D holds a private medical insurance policy underwritten by BUPA. He underwent cancer treatment in an NHS hospital, and made a claim against his policy under the '*NHS cancer cash benefit*' cover.

BUPA declined the claim. Mr D said the reasons for this were not made clear to him and he was not told what he would need to provide, in order for his claim to be paid. Subsequently he arranged for a consultant to write to BUPA to provide details of the treatment. And he said BUPA failed to inform him of the outcome after receiving the consultant's letter. Mr D also said he thinks the terms of the policy are unclear and BUPA hasn't fulfilled its 'cancer promise'.

BUPA said it declined the claim due to an exclusion in the policy cover, related to experimental treatment. The exclusion it relied on is as follows.

"Exclusion 16 Experimental drugs and treatment

We do not pay for treatment or procedures which, in our reasonable opinion, are experimental or unproved based on established medical practice in the United Kingdom, such as drugs outside the terms of their licence or procedures which have not been satisfactorily reviewed by NICE (National Institute for Health and Care Excellence).

Exception: We pay for experimental drug treatment for cancer subject to the following criteria [...]

- *when your consultant provides us with one of the following:*
 - *evidence that the drug treatment has been found to have likely benefit on your condition through a predictive genetic test where appropriate/available, or*
 - *evidence there is a European Medicines Agency (EMA) licence for the drug used to treat your condition and the drug is used within its licensed protocol, or*
 - *evidence that at least one NHS/National Comprehensive Cancer Network (NCCN)/European Society for Medical Oncology (ESMO) protocol exists, other than as part of research/clinical trials protocol, for your exact condition (ie the specific indication including tumour type, staging and phase of treatment if relevant), or*

- a published positive opinion on the Orphan Drug EMA Register for your exact condition (ie the specific indication including tumour type, staging and phase of treatment if relevant), or

- Phase III clinical trial results showing clinical efficacy and safety for the drug treatment published in a peer-reviewed journal.

Before starting this type of treatment you must have our confirmation that the above criteria have been met and we need full clinical details from your consultant before we can determine this."

Mr D complained to BUPA. BUPA said the treatment Mr D had undergone was not covered. It said the treatment was still in a trial stage, so it was considered experimental and was therefore excluded from cover.

Unhappy with BUPA's response, Mr D brought his complaint to this service. An investigator here looked into what had happened and ultimately said they thought BUPA hadn't declined the claim unfairly, as they weren't persuaded the evidence showed the treatment met the terms and conditions for cover. However they thought BUPA had caused unnecessary delays and said it should pay £100 in compensation for the poor service.

BUPA accepted the investigator's view. However, Mr D disagreed. In summary he said the relevant trial for his treatment had been in the third phase since 2018. And he thought BUPA was trying to avoid paying the claim. He said he had been treated poorly and wanted BUPA to be challenged on the clarity of the terms and conditions.

As Mr D disagreed and asked for a decision from an ombudsman, the case has been passed to me to decide.

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.

And I've looked at the relevant rules and industry guidelines, which say BUPA has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

Having considered the evidence in this case, I don't think BUPA declined Mr D's claim unfairly, and I'll explain why.

I've carefully reviewed the terms of the policy, in particular exclusion 16. The exclusion states experimental treatment will be covered when a consultant provides one item from a list of several options. And I think this clearly sets out the evidence BUPA will require for a valid claim in the circumstances of experimental treatment.

BUPA is entitled to decide what it wants to cover under the policy when setting the terms. As I've said, I think the terms of the exclusion are clear. And I've found no reason to say BUPA has applied this exclusion unfairly in Mr D's case.

Whilst I appreciate the trial Mr D's specific treatment was a part of was in phase three for some time, the terms also require that the results had been published in a peer-reviewed journal. The evidence provided related to a published report on a different combination of drugs from those being used for Mr D's treatment. And the terms specifically state "*clinical efficacy and safety for the drug treatment*", so I don't think it was unfair for BUPA to say this report was insufficient to support the claim, due to the drugs used being different.

Although letters were provided from a consultant directly involved with the trial, commenting on its success, this evidence has not persuaded me that the trial and specific drugs used for Mr D's treatment, had phase three clinical trial results published in a peer-reviewed journal, at the time BUPA declined the claim. And that's what is required by the terms of Mr D's cover. So it follows that I don't think BUPA declined the claim unfairly.

Mr D also complained about delays by BUPA and poor service. Having reviewed the correspondence and timelines, I've noted BUPA failed to respond to some of Mr D's communications. And I think it should also have communicated with Mr D directly when writing back to the consultant in response to his letter in support of the claim. The investigator recommended BUPA should pay Mr D £100 in compensation. And I think that amount accurately reflects the impact to Mr D of having to chase BUPA for responses in these circumstances.

My final decision

For the reasons I've given, it's my final decision that I uphold this complaint in part. And I direct BUPA Insurance Limited to pay Mr D £100 in compensation for the distress and inconvenience caused.

BUPA Insurance Limited must pay the compensation within 28 days of the date on which we tell it Mr D accepts my final decision. If it pays later than this, it must also pay interest on the compensation, from the date of my final decision to the date of payment, at 8% simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 October 2022.

Gemma Warner
Ombudsman