

## The complaint

Mr S complains about the sale of a private medical insurance policy by Your Mortgage Decisions Limited ('YMD').

## What happened

Mr S held a private medical insurance policy with an insurer (that I'll call 'Policy A').

In July 2018, on the advice of YMD, Mr S switched to a new private medical insurance policy with a different insurer (that I'll call 'Policy B').

In 2020, Mr S made a claim under Policy B as he needed knee replacement surgery due to his arthritis. The insurer said Mr S had arthritis before he took out the policy, and he hadn't declared this. It said if he had done so, it would've applied an exclusion for this. It therefore applied the exclusion for arthritis retrospectively and turned down the claim.

Mr S complained to YMD about the sale of Policy B. He said he'd made the adviser aware of his medical conditions, including arthritis. However, YMD didn't think Policy B had been mis-sold. Unhappy with this, Mr S brought a complaint to this service.

I issued a provisional decision on 6 July 2022. Here's what I said:

*"YMD has provided a record of electronic submission form. This form was for life insurance, serious illness cover, and family income cover (with the same insurer that provided cover for Policy B). This form included details of Mr S's rheumatoid arthritis and high blood pressure.*

*YMD says the answers to the application for Policy B were taken from Mr S's application for life insurance.*

*I've looked at the application for Policy B, and I see that the insurer asked a 'switch' question that related to Mr S's health. This asked:*

*"In the last three years, have you or any other person to be insured:*

- experienced symptoms, or*
- received any advice from a healthcare professional, or*
- received treatment or have treatment planned or expected (including prescribed or over the counter medication) for any condition?"*

*The answer to this question was 'no'. But Mr S had been prescribed medication for his arthritis in that timeframe, and was aware that he needed two full knee replacements. So the answer should've been 'yes'.*

*The insurer has confirmed that if the above question had been answered 'yes', the following question would've been asked:*

*“When did you or any other person to be insured last experience symptoms, receive advice from a healthcare professional, or receive any treatment (including prescribed or over the counter medication) relating to the following? (Please advise us of the most recent time period for each condition i.e. if you have treatment or advice planned, anticipated or expected and you also had treatment 1-3 years ago, please select “treatment or advice planned, anticipated or expected”).”*

*It then lists a number of conditions, including arthritis. So if the application had been completed correctly, the insurer would’ve known about Mr S’s arthritis. The insurer has confirmed that if it had known about Mr S’s arthritis, it would’ve excluded this from cover.*

*YMD says it supplied the insurer with a copy of Mr S’s life assurance application so they could begin the process of the application for the private health insurance. We therefore asked the insurer about this. The insurer responded to say there’s no evidence that they completed the application for Mr S. They said the application was submitted by YMD using its own online portal.*

*YMD doesn’t have any evidence to support its assertion that the insurer completed the private medical insurance application form. I therefore have to conclude that YMD completed this application, based on the answers Mr S previously gave in his life assurance application.*

*It wasn’t appropriate for YMD to do this, as the two application forms asked for different information relating to Mr S’s health. YMD was therefore at fault for Policy B’s application not including details of Mr S’s arthritis, and so I find that the policy was mis-sold.*

*When a business makes an error, the aim of this service is to place the consumer back in the position they would have been, had the error not occurred (as far as possible).*

*As I’ve said, the insurer for Policy B has confirmed that if it had known of Mr S’s arthritis, it would’ve applied an exclusion for this. Given that Mr S knew he’d need two full knee replacements in the future, I’m satisfied he would’ve remained insured under Policy A if he’d known that he couldn’t have cover for his arthritis under Policy B.*

*Although Mr S had had arthritis affecting his knees for many years, I note that the insurer for Policy A had covered private treatment for his knees. This would suggest that the previous insurer was satisfied his condition wasn’t chronic at that time. On balance, I’m therefore satisfied that if Mr S had remained covered under Policy A, then he would’ve been able to have the knee replacement surgery he needed privately.*

*The difficulty here is that Mr S hasn’t actually had the surgery privately, and so there’s no financial loss in that respect. I note he’s currently on an NHS waiting list for his first knee replacement, though this has been delayed due to other medical conditions he’s since experienced.*

*As Mr S can’t have the knee replacement surgery privately now, it wouldn’t be appropriate for me to require YMD to pay compensation equivalent to the cost of the surgery that Mr S needs. I say that because there’s no guarantee that Mr S would use that money for his surgery. Mr S could still have the treatment under the NHS, and would then have a lump sum payment that he wouldn’t have ever been entitled to. It also wouldn’t be appropriate for me to require YMD to reimburse Mr S for the private treatment when he eventually has the surgery, as we don’t know when this will happen, or indeed if it ever will (due to his health).*

*I therefore intend to award Mr S a lump sum payment as compensation, taking into consideration all the circumstances. In doing so, I've taken into account the following:*

- *If Mr S had remained insured with Policy A, he likely would have already had his first knee replacement surgery privately. Although Mr S's health has caused delays, his health problems only happened after he'd been on the NHS waiting list for a number of months.*
- *Mr S has experienced pain and suffering as a result of his surgery being delayed.*
- *When Mr S has his surgery on the NHS, he won't have the comfort of having this in a private hospital. This will also be the case if he has a second knee replacement in the future.*
- *Mr S has saved over £1,000 a year on his annual premium by switching to Policy B.*

*Taking everything into account, I think a reasonable amount of compensation would be £3,000.*

*Mr S also says that he's paid for some steroid injections into both knees to relieve his pain. I think it would be reasonable for YMD to reimburse him for this, plus interest. However, I don't intend to require YMD to pay for this treatment going forward. I say that because I think it's unlikely that the insurer of Policy A would have paid for this treatment on an ongoing basis. That's because these policies aren't intended to cover ongoing or long-term relief of symptoms."*

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

Mr S responded with the following main points:

- He's glad I agree that the policy was mis-sold, but doesn't think the redress I've proposed is suitable.
- He wants YMD to arrange a policy for him that covers his condition.
- He says he's paying around £6,000 a year in premiums, and that this is a financial loss.
- He says it's only my opinion that the insurer of Policy A wouldn't have paid for ongoing steroid treatment.
- His health has worsened, and he's no longer able to work.

YMD responded to say it was disappointed in the change of outcome. It asked if Mr S could provide evidence of his steroid injections before refunding him.

### **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.

Mr S says that my intended redress doesn't place him back in the position he was in previously. He thinks YMD should arrange a policy that will cover his condition.

Whilst I can understand Mr S's reasoning, YMD is not an insurer. As Mr S's condition would be considered pre-existing, he wouldn't be able to have cover for this under a new policy. Therefore, YMD would not be able to arrange this for him. That means YMD cannot place Mr S in the same position he was in previously.

It's for that reason that I've instead needed to consider a compensation payment. I've set out in my provisional decision my reasoning behind the compensation amount of £3,000, so I won't repeat this here.

Although Mr S says he's incurred a financial loss due to the premiums he's paying for Policy B, it's still the case that he can claim under that policy, just not in respect of his knee condition. I therefore don't agree that this is a financial loss.

I accept I don't know for certain that Insurer A wouldn't have covered ongoing steroid treatment. However, these policies specifically exclude ongoing or long-term relief of symptoms. Mr S hasn't provided any evidence which would suggest otherwise. I therefore don't require YMD to pay for future injections.

I'm sorry to hear of Mr S's health issues, and the impact this has had on his ability to work. However, I remain of the opinion that a lump sum compensation payment of £3,000 is appropriate redress in respect of the mis-sale of Policy B.

### **My final decision**

My final decision is that I uphold this complaint and require Your Mortgage Decisions Limited to pay Mr S £3,000 compensation.

I also require YMD to reimburse Mr S for steroid injections he had after taking out Policy B (subject to evidence of his costs). Interest should be added at the rate of 8% simple per annum from the date each invoice was paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 August 2022.

Chantelle Hurn-Ryan  
**Ombudsman**