

The complaint

Mrs S complains about the sale of her private medical insurance policy by Morehealth Limited.

What happened

Mrs S held private medical insurance cover with an insurer (that I'll call 'Policy A').

In 2018, Morehealth arranged for Mrs S to switch her cover to a new policy with a different insurer (I'll call this 'Policy B').

In 2021, Mrs S made a claim under Policy B as she needed surgery on her left knee. After assessing the claim, the insurer said Mrs S (or Morehealth on her behalf) hadn't disclosed relevant information about her left knee when applying for the policy. The insurer said that, if it had known the information, it would have applied an exclusion for any disorders of the left knee. The insurer therefore applied this exclusion retrospectively and turned down the claim.

Mrs S complained to Morehealth about the sale of Policy B. She said she had told Morehealth about issues with her left knee at the time of the application.

Morehealth accepted that Mrs S had told it that she had had an arthroscopy, but said it had checked with the insurer whether it needed to disclose this information before submitting the application. Based on Morehealth's conversation with the insurer, it didn't think Mrs S's arthroscopy would have made a difference to the insurer's acceptance of the application, so it didn't disclose this. Morehealth said that Mrs S hadn't told it she had arthritic changes to her knee and needed a knee replacement, and said that if she had done, this information would have been given to the insurer.

Unhappy with Morehealth's response, Mrs S brought a complaint to this service.

I issued a provisional decision on 10 August 2022. Here's what I said:

"The insurer asked:

'In the last three years, have you or any 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?'

Morehealth answered 'no' on Mrs S's behalf to this question.

I've listened to the calls between Morehealth and Mrs S to see what Mrs S was asked.

During the first call, the adviser said he'd looked at Mrs S's medical notes and saw that in

February 2018 she had had an arthroscopy of her left knee. He said "Has there been anything else since then?" Mrs S said "no" and the adviser went onto say "or was that just the only claim?" Mrs S replied to say that was the only claim, but she had had physio. The adviser then asked if they had said it was due to arthritis at all, or if it was just an injury. Mrs S said it was an injury, a meniscus tear.

I think Mrs S gave Morehealth correct information in response to the questions she was asked. Her arthroscopy was her only private medical insurance claim in respect of her knee, and this was due to a meniscus tear. Although she was later seen under the NHS in respect of her knee and was found to have arthritic changes, that wasn't what she was asked by the adviser.

During the second call, the adviser clarified that Mrs S had had a meniscus injury in February 2018 for which she had an arthroscopy. He said "Did they say if there was any arthritis there at all?" and Mrs S replied "No, they didn't say anything like that, they just did the arthroscopy because of the meniscus tear."

Again, I'm satisfied that Mrs S answered the adviser's questions correctly.

There's been a lot of discussion between Morehealth and our investigator over whether the insurer for Policy B would have applied the exclusion if it had only known of Mrs S's arthroscopy. I don't think this is particularly relevant. The crux of the issue is that Morehealth's adviser didn't ask Mrs S the above medical question asked by the insurer, so she wasn't given the opportunity to disclose the relevant information that the insurer wanted to know. I therefore find that the policy was mis-sold.

The insurer has confirmed that if it had known the relevant information, it would have excluded any disorders of the left knee. If Mrs S had remained covered under Policy A, it's likely she would have had cover for her knee. So I think that Mrs S was prejudiced by the mis-sale. This has caused Mrs S a great deal of inconvenience as although she has a cheaper policy, she has been left without cover for her left knee and so hasn't been able to fully benefit from her policy. She will also likely face difficulties in the future obtaining private cover for her knee.

Mrs S has already had knee surgery under the NHS, though she had to go on a waiting list for this. She was placed on the waiting list in August 2020, and didn't have the surgery until January 2022. She's confirmed that she remained in hospital for four nights for her surgery.

Mrs S has explained that whilst she was waiting for her surgery, she was in severe pain and had difficulty walking. She also needed help from friends and family with some of her household chores. I think it's apparent that Mrs S was therefore not only caused inconvenience by the mis-sale, but also pain and suffering.

To put things right, I think Morehealth should pay £100 a night to Mrs S for the time she spent in hospital, to recognise the loss of comfort she experienced by not having her operation in a private hospital.

I also think Morehealth should pay Mrs S £2,000 compensation for distress, inconvenience, and the pain and suffering she experienced as a result of the mis-sale."

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

Mrs S responded to confirm that she accepted my provisional findings. She also

provided evidence to show that she had spent four nights in an NHS hospital for her surgery.

Morehealth responded with the following main points:

- It thinks there is a fundamental flaw in this service's understanding of the insurer's application process and the underwriting rules for this disclosure at the time. It says that its adviser called the insurer's underwriting team, and this was the process for obtaining underwriting decisions in 2018.
- It says Mrs S didn't disclose her arthritic changes, even when asked. Morehealth was only made aware of a meniscus tear treated by arthroscopy, which it disclosed to the insurer's underwriters.
- It remains of the view that the insurer would not have applied an exclusion if it had known only of Mrs S's meniscus tear and arthroscopy.
- Mrs S had been its client since 2015, and its system holds very detailed medical history regarding its clients from the first date of contact. It says that Mrs S's medical history had been documented for three years prior to switching to Policy B in 2018, and by that it means, she had been asked medical questions every 12 months.
- It says I made a factually incorrect statement in my provisional decision.
- It has provided a call that took place before renewal in November 2018 where Mrs S was asked medical questions. It thinks this shows that Mrs S wasn't honest with Morehealth about her health.

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.

Morehealth says that its adviser called the insurer's underwriting team. It says the disclosure given by Mrs S did not fall under the questions that would have resulted in a referral to medical underwriting and therefore no exclusion would apply. Morehealth has asked why I believe the arthroscopy was not disclosed by its adviser to the insurer.

I didn't address this point in my provisional decision, as I didn't find it relevant. But to clarify, I accept that Morehealth's adviser called the insurer and told it about Mrs S's meniscus tear and arthroscopy. The adviser said he couldn't see that it would fall under the questions, and didn't know if it needed to be declared or not. The insurer said that since Mrs S's condition wasn't to do with arthritis, then it would only refer to the underwriters if there was any treatment planned, expected or anticipated.

Nonetheless, I agree with our investigator that the insurer didn't tell Morehealth not to declare Mrs S's arthroscopy in response to the medical question asked. The fact remains that when the application was put through the online portal to the insurer, Morehealth's answer to the relevant question was 'no', but that answer was incorrect.

Morehealth has continued to question the insurer's assertion that it would have applied the exclusion if it had known only of the arthroscopy, as it doesn't believe that to be correct. I think Morehealth could well be right. However, I don't intend to pursue this point with the insurer, as I don't think it's relevant to the matter. As I said in my provisional decision, the

crux of the issue is that Morehealth didn't ask Mrs S the medical question asked by the insurer at the time of the switch. It is accepted by Morehealth that if the insurer had known of Mrs S's requirement for a knee replacement, an exclusion would have been added.

Morehealth thinks I made a factually incorrect statement in my provisional decision when I said:

"I think Mrs S gave Morehealth correct information in response to the questions she was asked. Her arthroscopy was her only private medical insurance claim in respect of her knee, and this was due to a meniscus tear. Although she was later seen under the NHS in respect of her knee and was found to have arthritic changes, that wasn't what she was asked by the adviser."

Morehealth is under the impression that my reference to Mrs S being seen later under the NHS meant that this took place after the call with the adviser. To be clear, I was referring to Mrs S being seen under the NHS after her arthroscopy.

Morehealth has said that it holds a detailed medical history for its clients, and that it asks medical questions every 12 months. Morehealth has now provided a call that took place prior to renewal in November 2018 with Mrs S.

In this call, Morehealth explained it was going to see if there were any better options available for Mrs S, and would carry out a review as it normally would. Mrs S was asked by Morehealth if she had seen a consultant in the last 12 months, and she confirmed she had done so for her knee. She explained she had had an arthroscopy in February 2018. Morehealth asked Mrs S if it was all ok now, and she confirmed it was. Morehealth also asked *"Did they say there was arthritis in the knee?"* and Mrs S said no it was a meniscus tear. Morehealth also asked Mrs S if she'd had any other consultations in the last 12 months, and she said no.

I think Mrs S gave Morehealth accurate information in respect of her arthroscopy. However, I accept that Mrs S ought to have told Morehealth (in response to the questions asked) that she'd had a further consultation for her knee in September 2018 and had been found to have arthritic changes and required a knee replacement.

Having said that, I think it's one thing not to take care to give an intermediary accurate information about your health when they are carrying out a review of your cover, and quite another to misrepresent information to an insurer when taking out an insurance policy. The consequences of misrepresenting information to an insurer is that a claim may not be paid, and the policy even voided.

Mrs S makes the reasonable point that she wasn't told what the insurer wanted to know at the time of the switch, and also wasn't given the opportunity to check what answer/s Morehealth had given on her behalf.

I think the most relevant call took place in December 2018. Morehealth had sent Mrs S a quote, and Mrs S called Morehealth to go ahead with the switch to Policy B. Given that Morehealth knew at this time what policy Mrs S was going to take out, I would have expected the adviser to have made Mrs S aware of the medical information that the insurer wanted to know.

As Morehealth didn't do so, I think the fault lay with Morehealth here, as Mrs S was denied the opportunity to disclose the relevant information to the insurer. I therefore remain of the opinion that the policy was mis-sold, and that Morehealth should put things right in the same way that I explained in my provisional decision.

My final decision

My final decision is that I uphold this complaint. I require Morehealth Limited to pay Mrs S:

- £2,000 compensation; and
- £400 for the four nights that Mrs S spent in hospital for her knee surgery.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 September 2022.

Chantelle Hurn-Ryan
Ombudsman