

## **The complaint**

Mr L complains that BUPA Insurance Limited mis-sold him a 'Worldwide Health Options' private medical insurance policy.

## **What happened**

In 2014, BUPA sold Mr L a 'Worldwide Health Options' policy which included 'Worldwide Medical Insurance' ('WMI'), 'Worldwide Medical Plus' ('WMP') and 'Worldwide Evacuation' cover.

Mr L complained to BUPA about various issues in 2017, 2018 and 2019. In September 2019, BUPA acknowledged that Mr L was given incorrect information about how the deductibles for WMI and WMP applied to different inpatient and outpatient treatments. BUPA said it had waived some deductibles and added them as a credit to Mr L's account. BUPA also paid Mr L £200 compensation for this and other complaint points. Following the receipt of this letter, Mr L cancelled his WMP cover and increased the deductible payable under his WMI from \$1,700 to \$8,500.

In February 2021, Mr L complained to BUPA that his policy had been mis-sold to him. He said that, if BUPA had given him correct information about the applicable deductibles, he would not have purchased WMP at all and wouldn't have taken out WMI with as low a deductible as he did.

BUPA sent Mr L a final response letter in April 2021, addressing his complaint about the mis-sale of his policy. BUPA again acknowledged that Mr L had been given incorrect information about how the deductibles would be applied and also said it had given Mr L incorrect information about one of the available policy benefits. BUPA reviewed all of Mr L's claims since 2014 to determine which ones were affected by the incorrect advice and offered to refund him the deductibles which hadn't been applied as BUPA has explained they would when the policy was sold. BUPA also added interest and paid Mr L \$275 for the distress and inconvenience he experienced. Following an error by BUPA in making this payment to Mr L, it recalculated the interest due and increased the compensation payment to \$400.00.

Mr L was unhappy with how BUPA calculated the redress for its error when selling the policy and brought a complaint to our service.

One of our investigators looked into what had happened but didn't uphold Mr L's complaint. Mr L didn't agree with our investigator's findings, so the complaint was referred to me. I made my provisional decision about Mr L's complaint earlier this month. In it, I said:

*'BUPA initially queried whether Mr L's complaint had been brought to us with the six-month time limit set out under the Financial Conduct Authority's Dispute Resolution Rules. For the avoidance of doubt, I'm satisfied that it has.'*

*BUPA's final response letters dated 12 December 2018 and 17 December 2018 aren't relevant to the subject matter of this complaint. Although the final response letter of September 2019 addressed the information about deductibles provided by BUPA during the*

*sales call (amongst other things), this issue was re-investigated and addressed again in BUPA's final response letter of April 2021 which contained referral rights to our service. Mr L referred the matter to us within six months of April 2021, so I'm satisfied that this complaint is one which I have the power to consider.*

### *The sale of Mr L's policy*

*BUPA has indicated that the sale of Mr L's policy was advised. Regardless of whether the sale was advised or non-advised, under the relevant industry rules, BUPA needed to give Mr L information about his policy that was clear, fair and not misleading. If the sale was advised, BUPA also needed to ensure that Mr L's policy was suitable for his demands and needs.*

*I haven't been able to listen to the call during which Mr L was given incorrect advice by BUPA. But I don't think I need to. It isn't in dispute that BUPA gave incorrect information to Mr L.*

*Mr L has said, when he bought the policy from BUPA, he was seeking WMI cover with a mid-range deductible (\$1,700) in the event of an unexpected serious illness requiring significant and potentially expensive in-patient treatments. Mr L says he was historically healthy with a low claims' history, active, wealthy and debt-free with no dependents so he was willing to take on an element of self-insurance in this regard. Mr L says he wanted WMP with the lowest possible deductible (\$170) to cover smaller, outpatient expenses. Mr L says he was told that the WMP cover was for all outpatient costs and that no outpatient expenses were covered by the WMI. BUPA has acknowledged that the explanation given to Mr L in 2014 didn't accurately reflect how his policy operated.*

*I don't think the information given to Mr L by BUPA was clear. I think the information was misleading and, based on the evidence available to me, I don't think the policy was suitable for Mr L's needs. So, regardless of whether the sale was advised or non-advised, I'm satisfied that BUPA mis-sold Mr L's policy to him.*

*The fact that Mr L had a cooling-off period in which to cancel the policy and/or the content of any renewal documents which were sent to Mr L in the years following 2014 doesn't change this. Nor does the fact that Mr L didn't take BUPA up on its offers to discuss his needs in subsequent years. The policy documentation wouldn't necessarily have clearly alerted Mr L to the fact that the deductibles didn't apply in the way that BUPA had explained to him. Mr L was entitled to rely on the information provided to him by BUPA when the policy was sold in 2014.*

*Generally, when a policy has been mis-sold, the fair and reasonable remedy is for the consumer to be put back in the position they would have been in if the error had never happened. This means, if the consumer would never have purchased the policy, the policy should be treated as never having existed and the consumer should receive a refund of the premiums they've paid, less the value of any successful claims, together with interest.*

*Mr L says, if BUPA had made it clear how the policy operated, he may have looked for a different private medical insurance option elsewhere in the marketplace. However, at the very least, he says he would have moved further towards self-insuring and not taken the WMP element of cover at all. Mr L says he would instead have taken the WMI with a higher deductible.*

*I can't conclude with any certainty exactly what Mr L would have done differently if BUPA had given him correct information. However, Mr L has provided what I think is persuasive evidence about his financial capacity to self-insure and his risk-appetite. I also think Mr L's*

*decision to cancel the WMP and increase the WMI deductible to \$8,500 in 2019 supports his testimony as to what he is likely to have done if the policy hadn't been mis-sold.*

*BUPA's position of crediting and/or refunding the deductibles applied to Mr L's claims puts Mr L in the position he would have been in if the incorrect information given at the time of the sale had been true. It doesn't, despite BUPA's repeated arguments on this point, put Mr L back in the position he would have been in if the correct information had been given to him – which is what BUPA needs to do. As such, I don't think BUPA has provided fair redress to Mr L in the circumstances.*

*But, it also wouldn't be fair for BUPA to refund all the premiums Mr L paid in a situation where he has had the benefit of claims under the original policy, and when I think it's likely he'd still have gone ahead and taken out cover with BUPA in some form if he'd been given correct information. So, I've outlined what I currently think is fair redress below.*

#### **BUPA's handling of Mr L's complaint**

*I understand that Mr L has spent considerable time and effort in corresponding with BUPA about this complaint, and his failed attempts to seek what he sees as fair redress from BUPA as a result of its mistake will have caused him distress and inconvenience.*

*But we don't usually make a specific compensation award for someone's time, and we can't seek to punish or fine businesses through our awards as we're not the regulator. We wouldn't generally award compensation at the level which Mr L is seeking for errors of this nature.*

*I've taken into account our published guidance on the payment of compensation for distress and inconvenience and, overall, I think the compensation which BUPA has already paid to Mr L in respect of this complaint is fair and reasonable in the circumstances for the impact of its actions on Mr L.'*

So, my provisional decision was that I intended to uphold Mr L's complaint. I said I intended to direct BUPA to treat the WMP as never having existed and calculate the premiums which Mr L would have paid if he'd taken out a 'Worldwide Health Options' policy with 'Worldwide Medical Insurance' (with a deductible of £8,500 from the outset) and 'Worldwide Evacuation' cover only from 2014 to 2019. I said that BUPA should refund Mr L the difference between the above and the amount he actually paid for his original policy from the date of inception in 2014 until the date the policy was amended in 2019. I also said that BUPA could deduct the value of any claims paid (including any deductibles previously credited to or refunded to Mr L together with any interest) from the settlement and that it should add interest to the premium refund at 8% simple per annum from the date the original policy was taken out in 2014 until the date the settlement is paid.

BUPA responded to my provisional decision and said it had nothing further to add. Mr L replied with detailed submissions as to why I should amend my interest award.

#### **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've taken into account what Mr L has said, but I won't be changing my provisional direction. In cases like this, which don't involve borrowing, we generally think that a rate of 8% simple interest per year is an appropriate award to reflect the cost of being deprived of money in the past. I see no reason to depart from that here.

If there is any subsequent dispute about the calculation of BUPA's settlement then this would need to be the subject of a new complaint, first to BUPA and then to our service if the matter remains unresolved.

### **Putting things right**

BUPA Insurance Limited needs to put things right by doing the following:

- Treat the WMP as never having existed and calculate the premiums which Mr L would have paid if he'd taken out a 'Worldwide Health Options' policy with 'Worldwide Medical Insurance' (with a deductible of £8,500 from the outset) and 'Worldwide Evacuation' cover only from 2014 to 2019;
- Refund Mr L the difference between the above and the amount he actually paid for his original policy from the date of inception in 2014 until the date the policy was amended in 2019;
- BUPA Insurance Limited can deduct the value of any claims paid (including any deductibles previously credited to or refunded to Mr L together with any interest) from the settlement;
- BUPA Insurance Limited should add interest to the premium refund at 8% simple per annum from the date the original policy was taken out in 2014 until the date the settlement is paid<sup>1</sup>.

### **My final decision**

My final decision is that I uphold Mr L's complaint against BUPA Insurance Limited and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 21 October 2022.

Leah Nagle  
**Ombudsman**

---

<sup>1</sup> If BUPA Insurance Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr L how much it has taken off. It should also give Mr L a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.