

The complaint

Mr S complains that BUPA Insurance Limited (BUPA) has unfairly refused to meet a claim he's made on his insurance policy.

What happened

Mr S holds private medical insurance with BUPA. He had a stroke in 2022 and was hospitalised. He was told that a hole in his heart – which is present in everyone when born – hadn't closed, as it normally does over time. That left him more prone to problems such as strokes later in life. Mr S's treating consultant recommended that Mr S have surgery to close the hole as a precaution against further problems.

Mr S asked BUPA to pay for the operation, but it said it wouldn't, because the policy Mr S has doesn't cover the correction of congenital problems – whether that's a disease or an abnormality.

Mr S complained about this, but BUPA hasn't changed its stance, so he asked us to review his complaint.

Our investigator didn't think BUPA had treated Mr S fairly. He noted that a hole in the heart is present in everybody when they are born, but that this hole normally closes some time after birth. He didn't think that, in these circumstances, BUPA had shown that Mr S's condition was congenital, as it wasn't an abnormality he was born with, but something that hadn't corrected itself after he was born. He thought BUPA should reconsider Mr S's claim.

BUPA sent some more information in, and pointed out that congenital conditions were defined in the policy – although in a section headed "rules" rather than "definitions". Our investigator didn't think the wording altered his opinion.

BUPA didn't think this was fair, but also said it would contribute £10,000 towards the cost of Mr S's operation as a gesture of goodwill.

Mr S hasn't accepted this offer, so I've been asked to decide this complaint.

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.

Before I explain my decision, I must say that I've reached my conclusions by considering only the specific circumstances of Mr S's claim. Having said that, I'm going to uphold this complaint, for much the same reasons as our investigator.

I've looked carefully at the description of "congenital conditions" contained in Mr S's policy. It's included in a list of exclusions – conditions and/or circumstances in which BUPA can fairly refuse to meet a claim.

The description says BUPA need not pay for treatment of any "*abnormality, deformity,*

disease ... present at birth" after the first 90 days. I don't think that helps me reach a fair conclusion as the condition Mr S has is present in all new-born babies. It doesn't appear to be an abnormality as described here.

I've borne in mind that BUPA drafted the terms and conditions for Mr S's policy. If it had wanted to exclude cover for the condition Mr S now has, then it could have specified that in the terms and conditions. It didn't choose to do that, so I don't think it's fair for BUPA to refuse Mr S's cover based solely on this description.

BUPA has provided some medical opinions that say Mr S's condition is congenital – and Mr S's treating consultant has sent in a report that supports his belief that it isn't.

I'm not medically qualified, but I can say which report I'm most persuaded by. Like our investigator, I think that's the one from Mr S's consultant. I say this because:

- He has more knowledge of Mr S's condition than anyone else submitting reports.
- He says that Mr S's condition is not – technically – a congenital heart condition.
- The supporting documents he's provided are from NHS England congenital heart disease standards, which I find persuasive.

I don't think the word "technically" in the consultant's letter affects my decision – I've interpreted that as a reflection that there may well be some difference of opinion on this point.

In contrast, both opinions from BUPA's in house medical team say the condition is congenital. One of the opinions in BUPA's records has no supporting evidence or reasoning and the other has no supporting evidence, although it does note that most people who grow up with the condition are asymptomatic. BUPA also later provided an excerpt from a website that says the hole "normally closes during infancy" and a second that says the hole frequently persists into adulthood and individuals are mostly asymptomatic.

Taking everything into account, I don't think BUPA has provided sufficient evidence to persuade me that Mr S's condition meets its definition of a congenital defect. So I don't think it treated Mr S fairly when it refused his claim. I note that BUPA offered a goodwill settlement, and that does seem to be a for offer, although I don't know the exact costs Mr S may have incurred by this time.

Putting things right

To put things right, BUPA should reconsider Mr S's claim, without applying the exclusion that the condition is congenital. For clarity, I'm not saying BUPA should automatically meet the claim in full as there may be other terms and conditions which apply to Mr S's claim. Of course, should Mr S want to accept BUPA's goodwill offer, I'd expect BUPA to allow him to do that instead.

My final decision

My decision is that I uphold this complaint, and I require BUPA Insurance Limited to reconsider Mr S's complaint as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 February 2023.

Susan Peters
Ombudsman