

The complaint

Mr S complains that BUPA Insurance Limited turned down his private medical insurance claim.

What happened

Mr S holds a private medical insurance policy with Bupa. In 2022, Mr S saw a consultant and was diagnosed with retinal vein occlusion with haemorrhages and macular oedema. The consultant recommended three injections, and also said Mr S may need three laser treatments.

Mr S made a claim to Bupa for the recommended treatment. Bupa turned down the claim as it thought that Mr S's condition was chronic (as defined by the policy). Unhappy with this, Mr S brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for Bupa to conclude that the condition was chronic and therefore excluded from cover.

I issued my first provisional decision on 6 February 2023. Here's what I said:

"The policy excludes chronic conditions. The policy says:

'We do not pay for treatment of chronic conditions. By this, we mean a disease, illness or injury which has at least one of the following characteristics:

- it needs ongoing or long-term monitoring through consultations, examinations, check-ups and/or tests*
- it needs ongoing or long-term control or relief of symptoms*
- it requires your rehabilitation or for you to be specially trained to cope with it*
- it continues indefinitely*
- it has no known cure*
- it comes back or is likely to come back'*

The evidence that Bupa has provided (as referred to by our investigator) shows that long-term monitoring is needed for retinal vein occlusion. I'm therefore satisfied it would fall under the policy definition of a chronic condition.

However, the policy has an exception to the above chronic condition exclusion. This says:

"We pay for eligible treatment arising out of a chronic condition, or for treatment of acute symptoms of a chronic condition that flare up. However, we only pay if the treatment is likely to lead quickly to a complete recovery or to you being restored fully to your previous state of health, without you having to receive prolonged treatment..."

Bupa has referred to the 2022 policy wording which says that Bupa would only cover unexpected acute symptoms of a chronic condition that flare up. However, this change

applied from the date Mr S's cover renewed, which was in May 2022. The claim predated this. The policy wording I've quoted above from 2021 therefore applies to the claim.

The consultant said she recommended three injections to treat the vein occlusion, and that this may need further top-up of laser – up to three treatments. She said she had advised Mr S that this was a new acute event, and she was very confident that the macular oedema should improve very quickly with a short course of treatment.

I think it's apparent from this that Mr S was experiencing an acute flare up of his condition, and that his consultant expected the treatment to quickly address the symptom of macular oedema that he was experiencing. I'm satisfied this would fall under the above exception to the chronic condition exclusion. I therefore find that Bupa should accept the claim."

I asked both parties to provide further comments if they wished to do so.

Mr S responded to say he accepted my provisional decision. He noted that Bupa had changed the 2022 policy wording, and said these types of changes are difficult for the average person to spot. He thought Bupa should bring them to the attention of the member.

Bupa responded with the following main points:

- The chronic exclusion wording has not changed, only the 2022 wording clarifies what it means by flare-ups. The earlier wording didn't make it as clear as possible that only unexpected flare-ups are considered.
- It says Mr S first asked it to authorise the treatment on 5 May 2022, which was shortly before the policy renewed. It says that any treatment which took place after the policy renewed should be subject to the 2022 policy wording.
- It says the injections are not aimed to resolve the retinal vein occlusion. And the effect of the injections is temporary and must be given repeatedly over a year or more to treat the oedema, not the retinal vein occlusion.

I issued my second provisional decision on 22 February 2023. Here's what I said:

"The 2021 policy wording does not say that only unexpected flare-ups of a chronic condition would be covered. I therefore remain of the view that the claim for treatment in the 2021 policy year should have been covered. Mr S had an acute flare up of his condition which falls under the exception to the chronic condition exclusion. I accept that the injections treat the oedema rather than the retinal vein occlusion.

However, Bupa is correct that any claim for treatment which took place after the policy renewed in 2022 would be subject to the new policy wording. I'm satisfied that Mr S's flare up wouldn't be considered unexpected for his condition.

I mistakenly said in my first provisional decision that the policy renewed in May 2022. That was incorrect, as the policy renewed in June 2022. I apologise for any confusion.

After we received the responses from both parties to my first provisional decision, we spoke with Mr S to find out if he had any of the treatment privately before the policy renewed in June 2022. He confirmed he had not. He said that he had paid to see a consultant and have some scans, but then had laser treatment on the NHS in August/September 2022. He confirmed that was because Bupa had turned down his claim. Mr S doesn't know if he still needs the injections, but is due to see his consultant soon to establish this.

We also went back to Bupa to find out exactly when Mr S had started his claim for the injections. Bupa confirmed that this was on 22 February 2022.

It seems to me that if Bupa had authorised the treatment in February 2022, as I consider it ought to have done, then Mr S would have likely had all the injections by the time the policy renewed in June 2022 (though perhaps not the laser treatment). So Mr S has been disadvantaged by Bupa's decision to turn down the claim. Even though he has now had laser treatment on the NHS.

We don't know for certain that Mr S still needs the injections, given the time that's passed and the treatment he's had on the NHS. But if he does (and for the same reasons), I think it would be fair and reasonable for Bupa to cover this given that Mr S should have had the treatment before the policy terms changed in June 2022.

I also think it would be appropriate for Bupa to pay Mr S £300 compensation for the delay in having his treatment. Even though he's had some of the treatment on the NHS (which may well have resolved things), he had to go on a waiting list for this.

Mr S may wish to make a separate claim to Bupa for the scans and consultation he paid for in 2022, if he hasn't already done so.

Finally, Mr S says that Bupa ought to bring policy changes to a member's attention. Bupa has provided a document confirming that the policy would change following renewal after 1 January 2022. This says:

"Exclusion 6 Chronic conditions

We have amended the wording to the exception of this exclusion to clarify that we do not pay for treatment of a deterioration or flare up of a chronic condition when it is an expected part of the condition."

I understand this was provided to Mr S with his renewal pack in May 2022, and so I'm satisfied that the change to the policy was brought to Mr S's attention in advance of the renewal.

Bupa also says it made the decision to stop covering the injections for this condition in 2016, though my understanding is that this was an internal decision made by Bupa, and not a change to the policy terms."

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

Mr S provided details of the scans and consultation he previously paid for, and asked us to provide this information to Bupa. He also confirmed he accepted my second provisional decision.

Bupa responded with the following main points:

- Whilst it still thinks it declined the claim correctly, it appreciates that the change in policy wording was pivotal to my decision.*
- It says it didn't stop Mr S from having the injections, and so it cannot be held responsible for his decision not to proceed with the treatment.*
- It thinks the fact that Mr S didn't have the injections on the NHS is possibly a testament that the flare-up had settled on its own. Therefore, it thinks its original decision to decline to cover the injections was likely to have been accurate.*
- Mr S has since had laser surgery which would have offered him long-term relief of his symptoms. It does not think it would be fair for Bupa to cover the cost of any future injections, as Mr S is aware that the policy wording has now changed.*

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 has provided information relating to the scans and consultation he had privately. Though as I mentioned previously, if Mr S wants Bupa to make a payment for this then he would need to raise a new claim with Bupa directly.

Bupa says it didn't stop Mr S from having the injections, and so it doesn't think it should be held responsible for the delay in Mr S having treatment. I disagree. Mr S couldn't pay for the treatment privately, and so he went on the NHS. He then had to wait a number of months before having laser treatment. Therefore, Bupa's decision to decline the claim meant that Mr S's treatment was delayed. I remain satisfied that it would be appropriate for Bupa to pay Mr S £300 compensation for this.

I don't know why Mr S didn't have injections on the NHS, and laser treatment was carried out instead. Although Bupa says the laser treatment would have given Mr S long-term relief from his symptoms, we don't know if that's the case. We also don't know if Mr S still needs the injections either. However, I remain of the view that if Mr S does still need the injections (because the laser treatment did not resolve his symptom of macular oedema), then it would be appropriate for Bupa to cover the cost of those injections on a fair and reasonable basis. I don't require Bupa to cover any laser treatment, since Mr S has already had this.

My final decision

My final decision is that I uphold this complaint. I require BUPA Insurance Limited to accept the claim for three injections, if Mr S still needs these to treat his symptom (subject to Mr S providing evidence of this to Bupa). The remaining policy terms would apply.

I also require Bupa to pay Mr S £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 April 2023.

Chantelle Hurn-Ryan
Ombudsman