

The complaint

Mr K complains that BUPA Insurance Limited declined his health insurance claim.

What happened

Mr K has private medical insurance through his employer, BUPA is the insurer. He was diagnosed with a back problem.

On 16 June 2021 Mr K had a caudal epidural, right L4 nerve root injection, right L3/S1 medial branch block and right sacroiliac joint injection. He claimed on the policy for that treatment and BUPA paid that claim.

In his letter of 26 October 2021 Mr K's consultant orthopaedic spinal surgeon advised Mr K to have a set of further injections - caudal epidural, right L5 nerve root injection and right L3/S1 medial branch block under sedation - as his discomfort had returned. The private hospital phoned BUPA on Mr K's behalf to ask for pre-authorisation for the further injections which were scheduled for early December 2021.

BUPA declined the claim. It said the medial branch block is used for diagnostic purposes only to identify the source of nerve pain so that it can be burned away or destroyed. They said Mr K had that procedure on 16 June 2021, which was funded, and as that injection hadn't identified the issue it wasn't reasonable to expect that another injection would. BUPA said as there wasn't a reasonable expectation the injection would work the injection wasn't curing the acute condition so it didn't meet the policy definition of eligible treatment and wasn't covered by the policy terms.

Mr K had the procedure and complained to us. He wants BUPA to pay the costs which he said was about £3,000. In summary he said:

- He didn't accept BUPA could make the clinical judgement that his consultant's recommended procedures were inappropriate. His consultant was an experienced specialist in this field who wouldn't recommend or conduct a procedure that was inappropriate or contrary to NICE guidance. It was unfair for BUPA to reach a different conclusion by following an administrative review of the information.
- The British Association of Spine Surgeons (BASS) website information for spinal stenosis said injections can improve the condition permanently and can be repeated. The injections he had in December 2021 were the second set so they hadn't been repeated several times without success.
- He noted the NICE 'Quality standard' said spinal injections for treating low back pain without sciatica are not clinically or cost effective. But sciatic pain was his main symptom so that didn't apply.

BUPA added that even if the treatment was clinically appropriate that doesn't mean it was covered by the policy terms. The medial branch block is temporary, not curing the acute condition, meaning it's not eligible as ongoing treatment. BUPA said it funded that procedure as a diagnostic procedure to allow the consultant to identify where on the spine treatment is

needed, which Mr K already had in June 2021. BUPA also told us that in February 2022 it had covered the cost of Mr K's surgery for spinal decompression for central spinal stenosis, and other later treatment which was aimed to resolve his issue long term so was eligible treatment.

Mr K sent us his consultant's October 2021 letter to his GP which he said showed he had the injections in December 2021 to relieve his leg pain and weakness in legs due to his spinal stenosis, so the injections weren't a diagnostic procedure.

Our investigator said BUPA fairly declined the claim as the December 2021 spinal injections, didn't meet the definition of eligible treatment as defined in the policy terms and was contrary to NICE guidance.

Mr K disagreed and wanted an ombudsman's decision. He added:

- Our investigator's recommendation hadn't taken into account his comments about the NICE guidance. He presumed our investigator referred to NICE guidance on '*Invasive treatments for low back pain and sciatica*' at 1.3.1 but the guidance at 1.3.5 was relevant to him.
- Our investigator hadn't taken into account the BASS website information for spinal stenosis which said spinal injections could alleviate the sciatic pain and could be permanent, so would meet the policy definition of eligible treatment.
- The NHS guidance on lumbar decompression surgery said a course of spinal injections, so more the one, was one of the treatments to follow before surgery. The NHS guidance supported the plan his consultant followed.

Following our investigator's recommendation both parties provided a significant amount of medical evidence including information from BUPA's medical directors and Mr K's consultant, which were exchanged between the parties. Ultimately BUPA said it would want to instruct an independent expert to give an opinion if my decision was to uphold Mr K's complaint.

What I provisionally decided – and why

I made a decision that I was intending to partly uphold the complaint. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably.

I've considered all the evidence that both parties have provided. I'm not going to address all the issues raised as I'll focus on the reasons why I've made my decision.

To be clear, my decision is only about Mr K's treatment of caudal epidural, right L5 nerve root injection and right L3-S1 medial branch block under sedation in December 2021. BUPA has commented about whether the treatment in June 2021 was eligible for cover under the policy terms, but it paid for that treatment at the time and that matter is closed.

I'm intending to partly uphold this complaint. I'll explain why.

Not all medical treatment is covered by the policy, even if a doctor has advised a policyholder that treatment is clinically appropriate.

The policy only covers eligible treatment which the policy defines as:

'treatment of:

an acute condition...

together with the products and equipment used as part of the treatment that:

- are consistent with generally accepted standards of medical practice and representative of best practices in the medical profession in the UK*
- are clinically appropriate in terms of type, frequency, extent, duration and the facility or location where the services are provided, for example as specified by NICE (or equivalent bodies in Scotland) in its guidance on specific conditions or treatment where such guidance is available*
- are demonstrated through scientific evidence to be effective in improving health outcomes, and*
- are not provided or used primarily for the expediency of you or your consultant or other healthcare professional*
- and the treatment, services or charges are not excluded under your benefits'.*

'Acute condition' is defined in the policy as :

'disease, illness or injury that is likely to respond quickly to treatment which aims to return you to the state of health you were in immediately before suffering the disease, illness or injury, or which leads to your full recovery'.

Mr K's consultant's letter of 26 October 2021 gave Mr K's medical diagnosis as:

*'L3/4 moderate spinal stenosis and lateral stenosis at L4/5
Facet arthropathy at L3/4, L4/5 and L5/S1'.*

With the planned treatment in December 2021, which is disputed, as:

'caudal epidural, right L5 nerve root injection and right L3-S1 medial branch block under sedation'.

Both parties have referred to different NICE guidance on '*Invasive treatments for low back pain and sciatica*' they consider are relevant. Mr K says the relevant NICE guidance is:

'1.3.5 Consider epidural injections of local anaesthetic and steroid in people with acute and severe sciatica. [2016]'

Mr K says as he had sciatica as a main symptom 1.3.5 applies. From his consultant's letter of 26 October 2021, I think sciatica was Mr K's main symptom at that time.

BUPA says the relevant NICE guidance is:

'1.3.1 Do not offer spinal injections for managing low back pain. [2016]'

and

'1.3.6 Do not use epidural injections for neurogenic claudication in people who have central spinal canal stenosis. [2016]'

But as BUPA's medical evidence is that *'spinal stenosis is the diagnosis causing the symptom of sciatica and neurogenic claudication is a synonym for the symptom of sciatica, not a separate condition'*, there appears to be some tension between the NICE guidance the parties have referred to. BUPA says the medical evidence shows Mr K had 'mild' sciatica, but that was noted in the consultant's letter of 1 June 2021. The consultant's letter of 26 October 2021, which gives Mr K's symptoms at the relevant time the disputed treatment was advised, doesn't say he had 'mild' sciatica.

I don't think I can reasonably disregard NICE guidance 1.3.5 in the circumstances of this case and say all the injections weren't clinically appropriate.

In any event the relevant policy term isn't prescriptive in saying cover for treatment relies solely on NICE guidance. The relevant term outlines a number of considerations.

The NHS guidance about lumbar decompression surgery, which Mr K had after the disputed treatment, says:

'Lumbar decompression surgery is usually only considered if non-surgical treatments for your lower spine haven't worked and symptoms are affecting your quality of life.'

'Non-surgical treatments include...spinal injection therapy. Spinal injection therapy is a course of spinal injections that can be used in combination with other therapies, such as physiotherapy. Local anaesthetic and steroids are injected to help reduce swelling and inflammation'.

I think that NHS guidance shows the disputed injection treatment Mr K had is consistent with generally accepted standards of medical practice and part of a common treatment plan. If the course of injections haven't worked, then surgery is considered. I think that *'course of spinal injections'* does imply more than one and the December injections were only the second set of injections Mr K had.

But to meet the policy definition of *'eligible treatment'* Mr K had to have an *'acute condition'* as defined in the policy which I've detailed above.

BUPA says the disputed injections treatment also isn't covered because of NICE guidance:

'1.3.8 Consider spinal decompression for people with sciatica when non-surgical treatment has not improved pain or function and their radiological findings are consistent with sciatic symptoms. [2016]'

Mr K did go on to have spinal decompression surgery when the December 2021 injections didn't work. But it's not reasonable for BUPA to say with the benefit of hindsight that as the injections didn't return Mr K to his usual state of health they shouldn't be covered.

BUPA also says the injections don't provide permanent relief for the symptoms, just temporary relief.

The BASS website information Mr K referred to says:

'Epidurals are an injection into the spinal canal that will treat the whole area of the lumbar spine. They seem to be more helpful for leg pain rather than back pain.'

Nerve root blocks, periradicular injections, root canal injections, or transforaminal epidurals are some of the names given to injections around a nerve. They can be very helpful for leg pain, particularly symptoms in just one leg.

Often by blocking the nerve pain with anaesthetic the symptoms will improve permanently or for quite a while. About 60% of patients will respond well. They are low risk procedures and can be repeated'.

I think that evidence suggests the nerve root injections 'often' improve symptoms permanently or at least for quite a while. And as 60% of patients 'respond well', it's more likely than not there will be an improvement. BUPA says patients' improvement in symptoms may reflect the self-limiting history of someone's condition rather than be due to the intervention. But the BASS information doesn't say what BUPA suggested, it says 'often by blocking the nerve pain...the symptoms will improve permanently'.

I think the NHS guidance and BASS information suggests nerve block injections could potentially have returned Mr K to the state of health he was in before having the condition, so would be eligible treatment.

I understand that Mr K had three procedures at the same time in December 2021 – caudal epidural, right L5 nerve root injection and right L3-S1 medial branch block under sedation.

BUPA says there was no clinical reason for Mr K's consultant to do a caudal epidural and L5 nerve root block at the same time as a caudal epidural would block the L4 and L5 nerve roots. I think that's reflected in the information on the BASS website which says that 'Epidurals are an injection into the spinal canal that will treat the whole area of the lumbar spine'. On the evidence I have it appears that it wasn't unreasonable for BUPA to conclude that it wasn't medically appropriate for the consultant to do a caudal epidural and nerve root block to the L5 in the same procedure.

I also haven't seen any evidence the caudal epidural could potentially provide permanent or long term relief of symptoms. But even if there was such evidence, I'm intending to say that only one of those two procedures, the nerve root block to the L5 or the caudal epidural would be reasonably covered as eligible treatment. Given the above evidence about the potentially permanent positive effect of the nerve root block injection I think that's the procedure which should be covered.

BUPA also says the medial branch block injection is a diagnostic process and while it funded that procedure in June 2021 as that injection hadn't identified the issue it wasn't reasonable to expect that the same injection would do so. I've seen no compelling evidence to persuade me that the medial branch block injection wasn't a diagnostic process.

On the current evidence I'm intending to say the medial branch block injection in December 2021 wouldn't be covered as eligible treatment under the policy. I think BUPA reasonably concluded that as the June 2021 right L3/S1 medial branch block didn't give a successful diagnosis it wasn't reasonable to expect that another of the same injection would do so.

Given the overall evidence and the circumstances of this case I think it's fair and reasonable for BUPA to pay the costs, plus interest as I've detailed below, of the right L5 nerve root injection. As that procedure was done at the same time as the caudal epidural and right L3/S1 medial branch block BUPA will need to liaise with Mr K's consultant to see what costs were attributable to the right L5 nerve root injection.

I note BUPA's said it wants to get an independent medical expert report if I uphold Mr K's complaint. But bearing in mind the time since Mr K made his complaint, the available evidence and the policy terms I don't think it would be fair and reasonable for BUPA to now get an independent medical expert report. I think it's unlikely, at this stage, to add anything further to the significant medical evidence that I've already been provided with by both parties'.

Responses to my provisional decision

BUPA accepted my provisional decision.

Mr K sent an email from his consultant's personal assistant which he said showed that when he had the right L5 nerve root injection there were no additional costs for the two injections I'd said weren't covered by the policy. Mr K said if BUPA agreed to pay the full costs he claimed for he was minded to accept my provisional decision but if BUPA disputed that it had to pay the full costs he wanted the opportunity to respond.

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.

BUPA has accepted my provisional decision. Mr K hasn't sent any new evidence that would lead me to change my mind that only the right L5 nerve root injection was covered by the policy, not the caudal epidural and right L3/S1 medial branch block.

For the reasons I've given in my provisional findings and these findings I think it's fair and reasonable for BUPA to pay the costs, plus interest as I've detailed below, of the right L5 nerve root injection. As that procedure was done at the same time as the caudal epidural and right L3/S1 medial branch block BUPA will need to liaise with Mr K's consultant to see what costs were attributable to the right L5 nerve root injection.

Mr K has now provided an email from his consultant's personal assistant which he said shows that when he had the right L5 nerve root injection there were no additional costs for the two injections I'd said weren't covered by the policy, so he wants BUPA to pay the full costs he's claimed.

Mr K should send the email from his consultant's personal assistant to BUPA as part of its liaison with his consultant to see what costs were attributable to the right L5 nerve root injection. If the parties can't agree those costs then Mr K can complain to BUPA about that matter and ultimately he make a separate complaint to us about that matter.

Putting things right

BUPA must pay the costs, plus interest as I've detailed below, of the right L5 nerve root injection. As that procedure was done at the same time as the caudal epidural and right L3/S1 medial branch block BUPA will need to liaise with Mr K's consultant to see what costs were attributable to the right L5 nerve root injection.

My final decision

I partly uphold this complaint and require BUPA Insurance Limited to pay the cost of the right L5 nerve root injection. Interest* should be added at 8% simple a year from the date of claim to the date of settlement. As the right L5 nerve root injection was done at the same time as the caudal epidural and right L3/S1 medial branch block BUPA Insurance Limited will need

to liaise with Mr K's consultant to see what costs were attributable to the right L5 nerve root injection.

*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 K how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 June 2023.

Nicola Sisk
Ombudsman