DRN-4241410

The complaint

Mr and Mrs F complain that Independent Health Care Solutions Limited (IHCS) mis-sold them a private medical insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr F is one of the founders of R Ltd and its CEO. At the time of the advice complained of, Mr and Mrs F had the benefit of membership of a group private medical insurance scheme via R Ltd, with an insurer I'll refer to as 'A'.

Mr and Mrs F's monthly premium was £132.45 for their membership of the group private medical insurance scheme with A. That cover was on a continuing medical exclusions basis. That means that A agreed to continue Mr and Mrs F's previous cover without the need for fresh underwriting, so pre-existing conditions were covered to the extent they were previously covered or disregarded altogether. The membership with A also included treatment at hospitals near Mr and Mrs F's home.

R Ltd wanted to close its group medical insurance scheme and in October 2021, Mr F contacted IHCS about a private medical insurance policy for him and Mrs F. IHCS obtained two quotes from B which it says were on the basis of retaining cover for existing medical conditions and for treatment in B's extended hospital list. One was for £169.23 a month and the other was for £348.18. The latter quote took into account a medical issue for Mr F.

IHCS says that Mr F was concerned about the cost, so it obtained a quote from A for a private medical insurance policy for Mr and Mrs F on a continuous cover basis. That quote was £352.93.

IHCS says that B confirmed that Mr F's medical issue didn't have to be disclosed so they could proceed with the quote of £169.23 per month. IHCS recommended that policy with B. The new policy began in December 2021.The policy certificate shows that the policy was underwritten, which meant that Mr and Mrs F answered questions about their health. There were no special conditions excluding pre-existing conditions. The policy covered treatment at B's '*Extended Choice*' network. That doesn't include hospitals near Mr and Mrs F's home.

In March 2022, Mr F suffered sharp abdominal pains and wanted to make a claim against his policy with B. B told him that he didn't have cover for hospitals in the inner boroughs of the city in which he lived. It directed Mr F to a consultant based in a hospital in an outer borough of the city. Mr F raised the matter with IHCS.

Mr F sought private treatment in an NHS hospital in an inner borough. B agreed to cover the cost of a CT scan in another hospital, but Mr F's symptoms got worse, and he went to A&E. His problem was resolved with over the counter medication. Mr F pursued the complaint about the suitability of the policy.

IHCS made enquiries of A to see whether Mr and Mrs F could take out a private medical insurance policy on a continuing medical exclusions basis. The quote was £398.48, not £352.93 as previously quoted at the time of renewal, as Mr F had made a recent claim.

Mr and Mrs F say that they wanted to move from membership of the group scheme to a private medical insurance policy with the same benefits and terms. They say that IHCS didn't undertake an assessment of their needs or explain policy terms. Mr and Mrs F say that IHCS recommended a policy that was substantially narrower than their previous cover. They say that they live on the same street as two hospitals which aren't included in their cover with B. Mr and Mrs F say that IHCS sent Mr F a statement of needs after the new policy with B had started and after their membership with A had been cancelled.

Mr and Mrs F initially wanted the cover they were led to believe they had – that is, like-for-like cover - at the premium they were paying for the policy with B. They also want compensation for the months they have had an unsuitable policy and for Mr F's travel and inconvenience in visiting hospitals at some distance from his home and his time in dealing with the matter.

In response to the complaint, IHCS says that it provided Mr F with a quote from A for continuous cover, but Mr F said that was considerably more expensive than their renewal quote for their membership of the group scheme with A. It said that it provided Mr F with two quotes from B and Mr F agreed to proceed with one of them. IHCS said that Mr and Mrs F's cover with A under the group scheme was its national hospital list and that the comparable cover with B is its extended hospital list. It said that it wasn't aware that Mr and Mrs F required cover for a specific hospital near where they live. It said that if it had been aware of that, it would have recommended B's policy with '*Extended Hospitals including Central [City]'*.

One of our investigators looked at what had happened. She said that IHCS' recommendation met Mr F's stated requirements and that it gave him sufficient information to enable him to make an informed choice. The investigator didn't think that IHCS had made a mistake or treated Mr F unfairly. She said that there was no evidence that Mr F had asked for a policy which included hospitals in a particular location, so IHCS wasn't aware that was a requirement. The investigator said that IHCS wasn't required to recommend adding hospitals close to Mr F's home address.

Mr and Mrs F didn't agree with the investigator. Mr F responded at some length, which I won't set out here in full. In summary, Mr F said:

- Both IHCS and B accept that there's a fault here. The question is whether the fault lies with IHCS or B.
- The investigator hadn't considered all of the documents he had provided.
- The investigator said that IHCS doesn't have recordings of relevant phone calls and he has provided contemporaneous notes of his phone calls with IHCS.
- IHCS didn't assess their needs.
- IHCS' recommendation doesn't include any hospitals within 50 miles of where they live, so it didn't provide the same cover as their previous membership of a group scheme.

- Documentation provided by IHCS didn't include a reference to key differences between its recommendation and their previous cover.

- Their intention was to purchase a private medical insurance policy that had the same cover as they had previously.

- IHCS didn't establish their demands and needs and didn't draw to their attention that its recommendation didn't include access to local hospitals. IHCS referred to coverage as '*National'*, which they reasonably assumed included where they live.

Mr F asked that an ombudsman consider the complaint, so it was passed to me to decide.

We asked Mr and Mrs F what they did at renewal in December 2022. Mr and Mrs F say that before renewal in December 2022, they explored like-for-like costs of the cover they had as members of the group scheme with A. They say that B quoted a monthly premium of £1,069.42 (£12,833 annually). Mr and Mrs F didn't pursue that as the cost was prohibitive. At renewal in December 2022, Mr and Mrs F took out a new policy with B at a monthly premium of £188.98 (£2,267.76 annually). The policy covered hospitals near where they live, and the certificate shows that it was underwritten.

Mr and Mrs F say that they have lost the value of the difference between the cost of the policy they took out at renewal in 2022 and the cost of the policy with B that would provide like-for-like cover they had as member of the group scheme with A. They say that amounts to £10,565 per year for five years. Mr and Mrs F also want compensation for the lack of cover in the policy year 2021-2022 and for the broader consequences of the mis-sale. Mr and Mrs F say that as a direct consequence of the mis-sale, they can't afford the same level of cover that was previously in their reach.

My provisional decision

On 28 June 2023, I sent both parties my provisional decision in this case in which I indicated that I intended to uphold the complaint. I said:

- '*IHCS gave Mr and Mrs F advice about the policy. This means that, in line with the relevant rules and industry guidelines, it had a responsibility to ensure that the policy was right for them and to provide them with information that was clear, fair, and not misleading.*

- *It's common ground that Mr and Mrs F's previous cover under the group scheme with A included cover for treatment at hospitals near where they live and that the policy recommended by IHCS didn't include nearby hospitals. Both the group cover with A and the policy with B IHCS recommended covered Mr and Mrs F's pre-existing conditions.*

- *IHCS says that it didn't provide Mr and Mrs F with a quote for a policy which included hospitals near where they live as it was aware that the monthly premium would be more than a quote Mr F had already rejected. So, essentially, IHCS says that price and affordability were more important to Mr and Mrs F than the extent of their cover. But Mr F says that he wanted the same benefits and terms that they had as members of the group scheme.*

- *In a case like this, where there's a conflict of evidence, I look to see what I think is most likely to have happened based on the available evidence and the wider circumstances.*

- *IHCS didn't complete a fact find which might show Mr and Mrs F's demands and needs at the relevant time. IHCS says that it discussed the matter with Mr F over the phone and confirmed matters by e-mail. IHCS says that it doesn't record phone calls, so it doesn't have a recording of what was said. Mr F has provided contemporaneous phone notes of his conversations with IHCS.*

- *I've considered this matter carefully. On balance, I find that it's more likely than not that Mr and Mrs F required a policy with the same cover as they had as members of the group scheme with A, so which included treatment in hospitals near where they live. Mr F's contemporaneous notes refer to 'Like-for-like plan change'. I think that indicates that Mr and Mrs F wanted the same cover as they already had. I'm not persuaded by IHCS' contention that at the time of the advice complained of Mr and Mrs F's priority was price and affordability over the extent of their cover.*

- *The statement of demands and needs dated 13 December 2021 included a section called '**4. Significant Differences between your existing Product and Our Recommendation**:' Leaving aside the fact that this document is dated and was sent to Mr and Mrs F after the new policy started, I'd expect to see in this section information to show that IHCS' recommendation didn't include treatment in hospitals near where they live. I've seen nothing to indicate that IHCS explained that to Mr and Mrs F at the relevant time, that is, before they took out the policy.*

- *The statement of demands and needs also contains the following:*

  *'**2. Your objectives (Demands & Needs)***

  […]

  Hospitals Required: National'.

  I think it's reasonable to conclude that Mr and Mrs F required national hospital cover, which includes hospitals near where they live.

- *I think it would be unusual for individuals to seek private medical insurance cover which only included treatment in hospitals some distance from their home, especially when, as here, they live within walking distance of hospitals they had used previously under private cover. The more unusual a situation the more evidence is required to substantiate it. I'd expect to see contemporaneous notes and records from IHCS showing that price and affordability were more important than the hospital cover. I haven't seen that in this case.*

- *IHCS says that Mr and Mrs F's previous cover under the group scheme with A was based on a 'National Hospital List' and that the comparable list with B is the 'Extended Hospital List', which is what it recommended. I don't agree. IHCS' recommendation didn't include hospitals near where Mr and Mrs F live, whereas their previous cover with A did.*

- *On 30 November 2021, IHCS provided Mr and Mrs F with a quote for continuous cover with A. But it didn't explain that would mean that it covered treatment in hospitals near their home. So, the quote looked more expensive than options with B, which actually provided narrower cover. IHCS is the expert here and we'd expect it to draw out differences between the cover so that Mr and Mrs F could make an informed choice.*

- *Considering everything, I don't think that IHCS' recommendation was suitable for Mr and Mrs F as it didn't provide them with like-for-like cover.*

- *IHCS is right to say that the information provided to Mr and Mrs F by B on taking out the policy showed the extent of their hospital cover and indicated how they could discover whether a particular hospital was in their cover. But I don't think that changes the outcome here as the provision of information doesn't make an unsuitable recommendation suitable.*

- *Mr and Mrs F want like-for-like cover at the premium for the more restricted cover with B which was recommended by IHCS. I don't think it would be fair and reasonable to direct IHCS to put things right in that way. That's because the cover Mr and Mrs F wanted was never available at the premium they paid for the policy recommended by IHCS. A private medical insurance policy is likely to cost more than membership of a group scheme. That's because a group scheme usually has a number of members and risk is shared.*

- *Mr and Mrs F say that they have lost the value of the difference between the cost of the policy they took out at renewal in 2022 and the current cost of the policy with B that would provide like-for-like cover. They say that amounts to £10,565 per year for five years. I don't agree that's an accurate analysis of their loss. I'll explain why.*

- *In April 2022, during the course of the complaint, IHCS obtained a quote from A for continuous cover for Mr and Mrs F. Mr and Mrs F didn't pursue that, but it would have given them the cover they say they wanted, albeit at a slightly higher premium than at the time of renewal in December 2021. I think that IHCS' responsibility for any increased premium for like-for-like cover ended when it offered to pursue an application with A for like-for-like cover. Mr and Mrs F didn't take that up. I don't think that IHCS is responsible for continuing loss in the way Mr and Mrs F suggest.*

- *In cases like this, we look at the effect of the error on the individuals. Mr F was put to the trouble of dealing with what should have been a fairly straight forward claim in a rather protracted and worrying way. Thankfully, Mr F's medical issues were resolved, and B met his claim for a consultation near his home. But Mr and Mrs F were no doubt worried about the usefulness of their cover and concerned about what would happen if they needed to make a further claim. They were also put to the trouble of engaging further with IHCS to try and sort this matter out.*

- *In all the circumstances, I think that compensation of £500 is fair and reasonable in this case. In reaching that view, I've taken into account the nature, extent and duration of the distress and inconvenience caused by IHCS' error in this case.*

Responses to my provisional decision

Mr F responded for Mr and Mrs F and said that he largely agreed with my provisional findings but commented in relation to three areas, a brief summary of which is as follows:

IHCS and the Financial Conduct Authority (FCA)

- IHCS didn't act in accordance with its regulatory obligations and further regulatory sanctions may be applicable.

Their motivation for switching plans

- The advice in late 2021 was part of a plan which began in 2020 to move from a group private medical insurance scheme with B, first to a group private medical scheme with A and then to individual private medical insurance policies.

- IHCS told R Ltd that cost would be substantially reduced by moving away from a group private medical scheme. That may be further mis-advice from IHCS.

- There was no pressing need to close the group private medical insurance scheme and neither R Ltd nor Mr and Mrs F were under financial duress.

- There was no motivation to reduce cover: simply a desire to ensure that the annual costs didn't increase disproportionally over time as part of sensible financial planning.

- Price and affordability were not more important to them than the extent of their cover.

Analysis of loss

- IHCS advised that private medical insurance would be more cost-effective over time than group private medical insurance and that was the only basis for closing the group private medical insurance scheme.

- They previously had a group medical insurance plan which cost £150. If the mis-sold policy cost £169, redress can't be to offer another plan which is substantially more expensive. That is making the consumer pay for the broker's mistake.

- IHCS promised like-for-like cover at £169, so they shouldn't have to pay more than that.

- They relied on IHCS' advice: it shouldn't be permitted to sell a financial product at a price that doesn't exist then walk away from the consequences.

- IHCS accepted a fault had occurred and promised to put things right but didn't do so.

- R Ltd wouldn't have entertained closing its group private medical insurance scheme if costs were significantly increased: the sole rationale for doing so was cost-effectiveness.

- IHCS didn't offer an alternative policy. It provided a quote for an additional policy, which would have meant they paid two premiums simultaneously at a total cost of £579.84.

- IHCS didn't think that the alternative policy alone was an appropriate solution: it said that it was working to resolve the problem with B.

- Regaining like-for-like cover would cost approximately £10,500 a year more than the current policy they have and over 40 years that loss would be approximately £423,000, which is more than this service's financial award limit.

- Compensation for distress and inconvenience of £500 equates to merely 17 days of like-for-like cover.

- They suggest that IHCS pay compensation of the award limit or arranges cover for, say, 25 years and pay compensation for stress, distress, uncertainty, and inconvenience.

IHCS responded to say, in summary:

- It wasn't sure why there's been a change from the investigator's decision not to uphold the complaint as the only new information is that Mr and Mrs F have renewed the policy with BUPA for £188.98 a month.

- If Mr and Mrs F's policy is fully medically underwritten there will be significant exclusions in relation to pre-existing conditions.

- The extended hospital list offered by B includes a large number of hospitals within 30 miles of Mr and Mrs F's home but not necessarily within walking distance or the ones that they would choose to use.

- The national hospital list offered by A is its only hospital list. It provided the quote from B based on A's national list. When Mr F sought treatment in March 2022 he was offered a hospital less than five miles from his home. Due to a technical problem he had to go to a hospital approximately six miles away from his home for further treatment. Those hospitals were within close proximity to his home. As Mr and Mrs F hadn't said they wanted two specific hospitals included in their cover, they couldn't have foreseen the problem.

- It provided a 'continuation option' quotation from A before the policy with B had been processed but Mr F wasn't interested in that as the premium was £352.93.

- It did the best for Mr and Mrs F, in accordance with their requirements as it understood them.

- Mr F has provided misleading information as his new policy appears to be on different underwriting terms than the policy it recommended and the policy it recommended did include central hospitals, just not the hospitals he preferred.

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.

There has been substantial comment by both Mr and Mrs F and IHCS. In this decision, I'm dealing with the advice IHCS gave to Mr and Mrs F in late 2021, as that's the complaint Mr and Mrs F made to IHCS. I'm not dealing with earlier advice given to R Ltd, as R Ltd hasn't complained about that to IHCS.

The central question for me to decide is whether the advice IHCS gave to Mr and Mrs F in late 2021 was suitable and, if it wasn't, what IHCS should do to put matters right. I'm going to focus on that but first I'll make two general points.

Mr and Mrs F have asked whether regulatory sanctions are appropriate here. This service doesn't regulate or punish a business for its conduct. That's the role of the industry regulator, the FCA. This service looks to resolve individual complaints between consumers and a business. So, it's not for me to consider regulatory sanctions against IHCS.

IHCS says it doesn't understand why the investigator has changed her decision not to uphold the complaint. I think there's confusion about our process. This service operates a two-stage complaint process. That means that a complaint is first investigated by one of our

investigators. If either party to the dispute disagrees with the investigator's view, a complaint may be referred for an ombudsman's decision. That's what happened here - Mr and Mrs F disagreed with our investigator's view and asked for an ombudsman to consider the complaint. Where that happens, the complaint is looked at afresh. An ombudsman isn't bound by the findings of the investigator. A provisional decision gives both parties the opportunity to comment further before a final decision. My provisional decision set out the reasons why I reached the conclusions I had. I appreciate that my provisional decision was disappointing for IHCS.

I remain of the view that IHCS' recommendation to Mr and Mrs F in late 2021 wasn't suitable. That's because, on balance, I find that it's more likely than not that Mr and Mrs F required a policy with the same cover as they had as members of the group scheme with A, so which included treatment in hospitals near where they live. For the reasons I set out in my provisional decision, I'm not persuaded that Mr and Mrs F's priority was price and affordability. I've noted what IHCS says about the hospital lists of A and B. It remains the case that its recommendation to Mr and Mrs F had a narrower hospital list than their previous cover. I don't think that was suitable. And they didn't draw Mr and Mrs F's attention to it.

The remaining issue is what IHCS should do to put matters right. I've noted what Mr F says about financial loss. In the circumstances that arose here, IHCS isn't responsible for the difference in the cost of the policy it recommended and the cost of a suitable policy. The cover Mr and Mrs F wanted was never available at the premium they paid for the policy recommended by IHCS. And during the course of the complaint, IHCS obtained a quote from A for continuous cover, but Mr and Mrs F didn't pursue that. Mr and Mrs F refer to IHCS providing a quote for a policy which would have meant they had two policies simultaneously at a total cost of £579.84. But there was no obligation to have two policies simultaneously.

There's no basis on which I can fairly direct IHCS to either pay Mr and Mrs F compensation equal to this service's award limit or to arrange a private medical insurance policy for them for the next 25 years. I think a complaint for redress along those lines is misplaced and I don't think that it would fairly reflect the impact of IHCS' error in the particular circumstances of this case.

IHCS recommended an unsuitable policy for Mr and Mrs F. I don't think that IHCS caused Mr and Mrs F financial loss. It was open to Mr and Mrs F to take up the quote from A which IHCS obtained during the course of the complaint. But I think that IHCS' recommendation caused distress and inconvenience. When Mr F made a claim he discovered that the policy recommended by IHCS didn't include a hospital list that was suitable for him and Mrs F. I think fair compensation for that is £500.

Putting things right

In order to put things right, IHCS should pay Mr and Mrs F compensation of £500 in relation to their distress and inconvenience.

My final decision

For the reasons I've explained in my provisional decision and above, I uphold this complaint. Independent Health Care Solutions Limited should now take the step I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 6 September 2023.

Louise Povey
Ombudsman