

The complaint

Mr and Mrs B complain about the way BUPA Insurance Limited handled a claim they made on a group private medical insurance policy. In summary, they say that BUPA caused delays in their child being able to access medical treatment and that BUPA incorrectly shared Mr B's personal data with his employer.

What happened

In January 2023, Mr B and his family became insured under his employer's group private medical insurance policy. At that point, Mr and Mrs B were also insured by BUPA under a group scheme held by Mrs B's employer.

Unfortunately, Mr and Mrs B's child became unwell and needed medical treatment. Mr B says he contacted BUPA to enquire about cover but was told on more than one occasion that it couldn't locate a policy for him. He also says he didn't receive any policy documentation. So he says he asked his employer for help.

BUPA's call records show that Mr B called to look into obtaining support for his child. It appears this call took place in February 2023. At first, the call handler hadn't been able to trace Mr B's policy, but later during the call, they were able to locate the contract and transferred Mr B to the relevant team.

On 22 February 2023, Mrs B contacted BUPA's specialist team to further look into treatment for her child. The relevant policy was located and BUPA set-up a triage appointment for Mr and Mrs B's child. On the same day, Mr B's employer emailed BUPA with an urgent request because it said Mr B had told it he was having difficulties in accessing BUPA services. BUPA responded to confirm that Mr B had family cover in place.

Subsequently, in March 2023, Mr B's employer emailed BUPA again, checking that there was only one policy in place for Mr B and that a welcome pack would be sent to his work address. BUPA responded to the employer's email. It said that Mr B had been covered under another BUPA policy which had lapsed a week beforehand. It said Mr B's personal email address had been linked to the old policy, which was why his welcome pack for the group policy had been sent to his personal account.

Mr and Mrs B were very unhappy with the way BUPA had handled the claim and their data. They felt it had breached data protection laws, by sharing details of the lapsed policy with Mr B's employer. And that it had caused unreasonable delays in Mr and Mrs B being able to access treatment for their child.

BUPA acknowledged that it had shared the end date of Mr B's old policy with his employer. But it said it had done so to answer his employer's query about the welcome pack.

Remaining unhappy with BUPA's response, Mr and Mrs B asked us to look into their complaint.

Our investigator noted that BUPA accepted it had shared information about Mr B's previous

policy. But she didn't think this had caused a delay in BUPA being able to arrange treatment for Mr and Mrs B's child, as it had already organised a triage appointment around a week before it shared this information. She asked BUPA to undertake a search of all of the calls Mr and Mrs B had made to it in January and February 2023. She was satisfied that it had sent us copies of the calls it had available. She acknowledged that Mr and Mrs B had been through an upsetting time, but she didn't think BUPA needed to do anything more.

Mr and Mrs B disagreed. In summary, they didn't think the investigator had fully considered their complaint, as they didn't think she'd considered the impact of BUPA being unable to locate Mr B's policy on their ability to access timely treatment for their child. They also said Mr B had called BUPA in January 2023 and had been categorically told it couldn't locate a policy in his name and that therefore, it couldn't offer any cover for Mr and Mrs B's child. They felt the investigator had conflated this call with a later call Mr B made in February 2023.

I issued a provisional decision on 5 January 2024 which explained why I didn't think BUPA needed to take any action. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, relevant law and the available evidence, to decide whether I think BUPA have treated Mr and Mrs B fairly.'

It's clear that Mr and Mrs B feel strongly that their child's ability to access necessary medical care was delayed by BUPA being unable to locate Mr B's policy. Mr B says that he called BUPA in January 2023 and was told that no policy could be found.

Our investigator asked BUPA to conduct a search of all the calls Mr and Mrs B had made to it in January and February 2023. BUPA provided four calls in total. There is no record of a call made in January 2023. I note that in the original complaint form Mr and Mrs B sent us, Mr B said that he'd called BUPA in February/March 2023 and that it hadn't been able to find a policy for him. The complaint form states that following a similar call a couple of weeks later, Mr B escalated the matter to his employer. Mr B's employer emailed BUPA with a query marked as 'urgent' to check Mr B's cover on 22 February 2023. It seems likely then that his call with BUPA took place around this time. So I think it's more likely that Mr B in fact did contact BUPA in February 2023, rather than in January 2023.

So, like the investigator, I've listened to the calls BUPA has provided. Two calls were made to BUPA by Mr B to look into accessing support for his child. As I've set out above, I think these calls likely took place in February 2023. In the first call, while the call handler wasn't initially able to trace a policy for Mr B, they were subsequently able to do so by using his child's details. At this point, Mr B was transferred to the relevant specialist team. It seems that during this call, Mr B was unhappy with the delay in answering further data protection questions and the call waiting time and instead said he'd call back later. On that basis, while there was a clear initial problem in finding Mr B's details, this was very promptly rectified. And given Mr B chose to end the call with the specialist team and call back later, it seems to me that he chose not to pursue arranging treatment for his child at that point.

It's possible that Mr B did call earlier and was told that no policy could be traced. I don't doubt this would have been frustrating for him. But I think BUPA has provided reasonable evidence of its searches and has complied with our information requests. So I don't find there's enough evidence to show, on balance, that Mr B called BUPA at an earlier point and was told that it couldn't provide any help.

A third call took place on 22 February 2023, between Mrs B and BUPA's relevant specialist team. During that call, a triage appointment was arranged for the following week. In my view,

this was a prompt and appropriate response to Mrs B's request for support for her child.

Based on the evidence I've seen; I don't think I could fairly find that BUPA unreasonably delayed Mr and Mrs B's child from accessing treatment.

It's clear that Mr and Mrs B feel that BUPA has breached data protection laws by sharing information with his employer about a previous policy. I don't think it would be appropriate for me to make a specific finding about whether there was a breach of relevant data protection legislation. I think the Information Commissioner's Office would be best placed to make a finding on that point. Nonetheless, I can consider whether the sharing of information has caused Mr and Mrs B any material harm, trouble or inconvenience.

BUPA accepts that it responded to Mr B's employer and confirmed that he had been covered by it previously under a lapsed policy, which was linked to his personal email address. Mr and Mrs B haven't been able to point to any specific financial loss or harm which flowed from the sharing of this information. I note too that this email was sent on 2 March 2023 – which post-dated the triage appointment Mrs B made for her child on 22 February 2023. So I don't think I could fairly or reasonably find that the sharing of this information caused any delays in BUPA's handling of this claim either.

Overall, I sympathise with Mr and Mrs B's position, as I appreciate they've been through a difficult time. But I don't currently find that BUPA needs to do anything more.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

BUPA had nothing to add.

Mr and Mrs B didn't accept my provisional findings. In summary, they said they didn't think there was much more they could do against the machine of process if the regime is based on one party being believed over the other. They felt my decision came down to my acceptance that if BUPA hadn't recorded a call in January 2023, this was sufficient evidence to show a call hadn't happened. They questioned whether I was seriously suggesting that BUPA had checked all calls from January 2023. They said that BUPA might try and cover up its mistakes, but that they'd never forget the impact of the January 2023 call on them. They said they would do all in their power to prove the call had happened.

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.

Having done so, whilst I'm sorry to disappoint Mr and Mrs B, I still don't think BUPA needs to take any action and I'll explain why.

It's clear that Mr and Mrs B still feel strongly that Mr B contacted BUPA in January 2023 and that it offered no support. Where there's a dispute about what's happened or what's been said, I need to make my decision based on the balance of probabilities – that is to say, what I think is most likely to have happened, given the available evidence and the wider circumstances.

In this case, as I've set out above, I acknowledge that it's possible that Mr B contacted BUPA in January 2023 and that there's simply no record of the call being made. However, we asked BUPA to carry out a call search for the months of January and February 2023 using the numbers Mr and Mrs B told us they might have called from. BUPA said it had

carried out a search using those numbers. And it sent us the copies of the calls it *had* found, which I listened to and which I referred to in my provisional decision. So I think it took reasonable and appropriate steps to locate the call. There's simply no internal or audio record of BUPA receiving a call from Mr and Mrs B in January 2023.

It remains the case too that when Mr and Mrs B first complained to us, they stated in their complaint form that they'd contacted BUPA in February or March 2023, rather than in January 2023. Mr B's approaches to his employer (and its subsequent queries to BUPA) regarding BUPA's tracing of his policy also seem to have followed the calls he made to BUPA in February 2023. In my view, this indicates that Mr B's initial contact with BUPA in respect of this claim most likely took place in February 2023.

On balance then, I still don't think there's enough persuasive evidence to show that it's more likely than not that Mr B called BUPA at any earlier point and was told that it couldn't help.

Overall then, while I sympathise with Mr and Mrs B's position, as I understand they've been through a difficult time, my final decision is the same as my provisional decision and for the same reasons. I'm still not directing BUPA to do anything more.

My final decision

For the reasons I've given and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 27 February 2024.

Lisa Barham
Ombudsman