

## The complaint

Mr C complains that BUPA Insurance Limited ('Bupa') applied a special condition to his private medical insurance policy, and also turned down his claim.

## What happened

Mr C was added to a group private medical insurance scheme in January 2023. The scheme is underwritten by Bupa. He was asked to complete an application form.

In February 2023, Mr C had a consultation and some tests for his condition of pituitary adenoma. The costs were submitted to Bupa.

Bupa received Mr C's completed application form in June 2023. Based on the information provided, Bupa applied a special condition (exclusion) for Mr C's condition of pituitary adenoma to the policy. It turned down the claim on the basis that Mr C's condition was pre-existing. Unhappy with this, Mr C brought a complaint to this Service.

Meanwhile, Bupa accepted there had been service failings on its part. It noted that Mr C had submitted his application in March 2023, but it hadn't actioned this at the time. Bupa offered Mr C £300 compensation for this.

Our investigator recommended the complaint be upheld. He thought Mr C had taken reasonable care not to make a misrepresentation about his health when taking out the policy. He therefore concluded that Bupa couldn't apply the exclusion, and recommended that Bupa consider Mr C's claim. Finally, our investigator thought the £300 compensation Bupa had offered Mr C was reasonable.

I issued a provisional decision on 17 January 2024. Here's what I said:

*'Our investigator considered the matter in line with The Consumer Insurance (Disclosure and Misrepresentation) Act 2012 ('CIDRA'). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. However, Bupa hasn't alleged that Mr C has misrepresented any information in his application form, and so CIDRA doesn't apply here.'*

*As I understand it, Bupa allows the group secretary or broker to add new members to the scheme online. However, the new members are still required to complete an application form. Bupa has provided a copy of a dummy application form, and this says:*

*'Before we can welcome you...please complete this application form as fully and accurately as possible...Until we have received this we won't be able to confirm exactly what your policy covers you for, meaning your claims might take longer for us to process and we might not be able to pay for treatment you need.'*

*And*

*'Please note that the policy you are joining is a fully medically underwritten policy. That*

*means that any symptoms or conditions that have been present prior to the start date of the policy may not be covered.'*

*The membership certificate confirms the cover start date was 27 January 2023. Though it also says:*

*'It's important you provide us with your medical history*

*As a reminder any treatment that is for, resulting from or is related to any pre-existing condition is not covered. We haven't received medical history information yet, so we are unable to confirm what special conditions (if any) apply...This means claims might take longer for us to process and we might not be able to pay for treatment you/they need. Please fill in your application form and return it to us as soon as you can.'*

*When Bupa processed Mr C's application form in June 2023, it made the decision to apply a special condition to the policy for his pituitary adenoma. The policy defines 'special condition' as '...any exclusions or restriction to cover that are personal to an individual based on the medical history given to us for that individual'.*

*It's up to an insurer whether or not it accepts a medical condition for cover after an application has been underwritten. I therefore find that Bupa was entitled to apply the special condition to the policy after it assessed Mr C's application.*

*However, the complicating factor here is that Mr C made a claim between the date he joined the scheme and the date his application was underwritten by Bupa (and the special condition applied). As I understand it, Bupa is relying on the policy's pre-existing condition exclusion to turn down the claim, as the application hadn't been underwritten at that point. I've therefore considered whether its claims decision was reasonable.*

*The policy defines a 'pre-existing condition' as:*

*'any disease, illness or injury for which in the seven years before your effective underwriting date:*

- you have received medication, advice or treatment, or*
- you have experienced symptoms*

*whether the condition was diagnosed or not.'*

*It's not in dispute that Mr C's condition is monitored every two years, and that he consulted a healthcare professional about the condition in the seven years before the policy started. I'm therefore satisfied he had received medical advice in the seven years before the policy started and that his condition would fall under the above exclusion.*

*Mr C argues that his condition wouldn't be considered a disease, illness or injury.*

*The NHS describes the condition as a non-cancerous tumour of the pituitary gland. It says that non-cancerous brain tumours tend to be slow growing and unlikely to spread. And that whilst they are not cancerous and can often be successfully treated, they are still serious and can be life threatening.*

*Whilst I appreciate Mr C's explanation that he hasn't experienced any symptoms for the condition, it's apparent that he does still have a medical condition. I therefore find it was reasonable for Bupa to say the condition is a disease or illness.*

*Bupa also makes the point, not unreasonably, that if the condition wasn't considered a disease or illness, then a claim couldn't be paid for it anyway. That's because the policy covers treatment of an 'acute condition', which is defined in the policy as a 'disease, illness*

*or injury that is likely to respond quickly to treatment...’.*

*I therefore find it was reasonable for Bupa to rely on the pre-existing condition exclusion to turn down the claim.*

*Bupa received Mr C’s application form in March 2023, but didn’t process it at this time in error. That meant he had to re-send the application in June 2023. Bupa offered Mr C £300 compensation to recognise that it had unreasonably delayed making an underwriting decision on his application. I’m satisfied this is reasonable in the circumstances.’*

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

Mr C didn’t provide any comments, other than he maintains that the condition isn’t a disease.

Bupa didn’t provide any further comments.

### **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 C says he still doesn’t think the condition is a disease. However, I’m satisfied, for the same reasons as I explained in my provisional decision, that it was fair for Bupa to say the condition is a disease or illness. And that if it wasn’t, a claim wouldn’t be covered under the policy anyway.

As neither party has provided any further comments, I see no reason to depart from the findings I made in my provisional decision. So I’ve reached the same conclusions, and for the same reasons.

### **My final decision**

BUPA Insurance Limited has made an offer to pay £300 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that BUPA Insurance Limited should pay Mr C £300.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 29 February 2024.

Chantelle Hurn-Ryan  
**Ombudsman**