

The complaint

Mrs D complains that BUPA Insurance Limited has turned down a claim she made on a group private medical insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mrs D is insured under a group private medical condition. In November 2023, Mrs D called BUPA to make a claim on the policy. She explained that she required eye injections to treat myopic choroidal neovascularisation (CNV).

However, BUPA turned down Mrs D's claim. It said the policy listed a number of things it said chosen not to cover. In this case, it felt Mrs D's claim was excluded from cover for three reasons: the policy didn't cover chronic conditions; there was no cover treatment which was preventative in nature; and the contract didn't provide cover for the temporary relief of symptoms. It said that the injections wouldn't cure Mrs D's underlying condition of myopia.

BUPA did accept though that it hadn't given Mrs D clear reasons for declining her claim at the outset and so it agreed to pay for her first injection outside of the policy terms.

Mrs D's consultant, who I'll call Mr J, provided BUPA with further evidence which briefly stated that he considered the injections to be curative in nature rather than preventative or temporary.

But BUPA maintained its decision not to offer Mrs D any further cover for the injections and so Mrs D asked us to look into her complaint.

Our investigator explained that it was BUPA's responsibility to provide enough evidence to show a claim was excluded by the policy terms. He asked it to provide medical evidence which showed why Mrs D's claim wasn't covered. BUPA provided comments from its medical directors in support of its position.

However, the investigator didn't think BUPA had treated Mrs D fairly. In brief, he found Mr J's evidence to be credible and persuasive. While he accepted that myopia itself was a chronic condition, he felt that the injections for CNV were an exception to the chronic condition policy exclusion. And he didn't think BUPA had shown, on balance, that the injections were either intended for preventative reasons or for the temporary relief of symptoms. So he recommended that BUPA should reassess Mrs D's claim in line with the policy terms and conditions.

BUPA disagreed. It said that Mr J's opinion was just an opinion and contradicts how its medical directors and the wider medical community viewed the injections. It said it was unable to agree that the exception applied. It stated that it regularly saw consultants who had personal beliefs about certain types of treatment being effective for a condition permanently. But it said there needed to be much wider consensus for it to change how it applied the

exclusions, which hadn't been supplied here.

The complaint's been passed to me to decide.

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, I don't think it was fair and reasonable for BUPA to turn down Mrs D's claim and I'll explain why.

First, I'd like to thank Mrs D and BUPA's medical team for their submissions to us. This is a complex, very finely balanced case and turns on a specific set of circumstances. This decision is not intended to set a precedent and has been reached following a detailed assessment of the contract terms and the totality of the medical evidence.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles and guidance, the policy terms and the available medical evidence, to decide whether I think BUPA has treated Mrs D fairly.

I've first considered the policy terms, as these form the basis of the private medical insurance contract of which Mrs D is a beneficiary. The policy provides cover for 'eligible treatment', which includes the treatment of 'acute conditions'. BUPA's defined what it means by an acute condition as follows:

'a 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.'

The policy also sets out a list of specific exclusions on cover. BUPA has relied on three exclusions when it declined Mrs D's claim and I've listed these below:

'Chronic Conditions'

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 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.*

Exception: We pay for eligible treatment arising out of a chronic condition, or for treatment of unexpected 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. For example, we pay for treatment following a heart attack arising out of chronic heart disease. We do not pay for treatment required due to the expected deterioration or flare up of a chronic condition. This includes conditions which have a relapsing or remitting nature and require management of recurrent flare-ups, for

example, inflammatory bowel disease. In such cases, the flare-ups are an expected part of the normal course of the illness and therefore we do not consider them as acute complications of the disease. (My emphasis added).

Screening, monitoring and preventative treatment

We do not pay for:

- *health checks or health screening, by health screening we mean where you may or may not be aware you are at risk of, or are affected by, a disease or its complications but are asked questions or have tests to find out if you are and which may lead to you needing further tests or treatment*
- *routine tests, or monitoring of medical conditions, including: routine antenatal care or screening for and monitoring of medical conditions of the mother or foetus during pregnancy*
- *routine checks or monitoring of chronic conditions such as diabetes mellitus or hypertension*
- *tests or procedures which, in our reasonable opinion based on established clinical and medical practice, are carried out for screening or monitoring purposes, such as endoscopies when no symptoms are present*
- *preventive treatment, procedures or medical services (including vaccinations)*
- *medication reviews or appointments where you have had no change in your usual symptoms.*

Temporary Relief of Symptoms

We do not pay for treatment, the main purpose or effect of which is to provide temporary relief of symptoms or which is for the ongoing management of a condition.'

BUPA considers that Mrs D's claim is excluded by the three exclusions I've set out above. It's provided evidence that it made a commercial decision in 2016 to exclude claims for CNV because it considers that condition to be chronic and for the specific injections because it believes the injections are preventative and only provide temporary relief of symptoms.

It's a general principle of insurance that it's for a policyholder to provide enough evidence to show they have a valid claim on their policy. Once they've done so, the burden of proof switches to an insurer to show, on balance, that a relevant exclusion applies which would result in a claim being declined.

In this case, Mrs D has provided two letters from Mr J, a consultant ophthalmic surgeon, in support of her claim. BUPA has considered that evidence and concluded that Mrs D's claim isn't covered. So I've looked closely at all of the available medical evidence to decide whether I think this was a fair conclusion for BUPA to draw.

First, I've considered the evidence provided by Dr J. In brief, Dr J said that Mrs D had had two intravitreal injections for her eye condition and that when he'd last seen Mrs D in March 2024, 'there had been a good response to treatment.' Dr J stated:

'Neovascular membranes in myopia tend to be very responsive to treatment with generally very few injections being required, compared to the long-term treatment needed for other conditions, so I would regard the treatment in this instance as curative rather than preventative or temporary.

I plan to repeat (Mrs D's) monitoring, but I am not planning any further intravitreal treatments at present, although would not rule these out entirely.'

In summary then, Dr J has indicated that he believed Mrs D's injections for CNV to be curative in nature, with few injections being needed, compared to other conditions and that he didn't believe them to be preventative or temporary.

The investigator asked BUPA to provide the medical evidence it relied on when it decided to decline the claim. This would include its full claims file. BUPA didn't provide the investigator with any further underwriting evidence to show why the specific injections and/or CNV had been excluded from cover since 2016. But it did send us its medical director's comments and I've set these out below:

'The consultant states that the epiretinal membrane (ERM) is caused by myopia, which is a chronic condition. Both Moorfield's Eye Hospital and the Royal National Institute for the blind actually state that the majority of cases of ERM have no known cause.

In this member's case the ERM is a symptom of an ineligible chronic condition – myopia changes the shape of the eye and it is thought that this damages the retina, causing the membrane to form (the membrane is essentially a scar). Treating the membrane will not return the eye to its normal shape and cure the underlying condition (myopia), so we regard it as ineligible.'

"ERM and neovascular membrane are the same thing.

Epiretinal describes the location – on/over the retina.

Neovascular describes the process by which the membrane develops – formation of new vessels.'

And BUPA provided a link to a patient information sheet, which referred to the use of the specific injections Mrs D had undergone in reference to age-related macular degeneration, which stated that injections were likely to be needed over a number of years.

I've weighed-up the available medical evidence very carefully. It's important I make it clear that I'm not a medical expert. So it wouldn't be appropriate for me to substitute expert medical opinion with my own or to reach a clinical finding. Instead, my role is to assess all of the medical evidence that's been provided and decide which I find most persuasive.

Based on the available evidence, I accept that myopia itself is a chronic condition. I also accept what BUPA says about treating the membrane – this will not return the eye to its normal shape and cure the underlying myopia. And it seems to me that there is potential in cases of CNV for the need for more regular injections to control the condition on an ongoing basis. It also appears that symptoms may recur and need further treatment. In such circumstances and dependent on the evidence, I may well find that BUPA could fairly rely on the above exclusions to decline a claim for this condition.

But I need to take account all of the evidence before me. BUPA's evidence is general in nature and doesn't consider Mrs D's specific circumstances in depth. Nor does the patient information link refer to the treatment of CNV.

On the other hand, Mr J, who is an ophthalmic specialist, an expert in their field, who has had the opportunity to examine Mrs D at first hand, has made no suggestion that the injections were recommended for continuing management of CNV or prevention of future symptoms. And neither has he indicated that the injections would only provide temporary relief of Mrs D's symptoms. Indeed, his evidence would suggest the exact opposite, as I note he said specifically and clearly that he expected Mrs D's treatment for CNV to be 'curative'.

I've considered BUPA's comments about the opinion of an individual consultant compared to what BUPA says is the consensus of its medical directors and wider medical community. But, based on the specific facts of this individual case, I don't think that BUPA has provided persuasive evidence in support of its position. I appreciate BUPA's difficulties in doing so but BUPA has acknowledged that it can't say whether Mr J is or isn't correct in stating that the treatment is curative in this specific instance.

And I agree with our investigator that the exception to the chronic condition exclusion would apply here. I say that because while the underlying myopia is likely chronic in nature, Mr J's evidence does indicate that the injections would likely lead to either a full recovery from Mrs D's CNV symptoms or at least restore her to her state of health prior to the development of CNV. In my view, this situation is entirely analogous with the scenario BUPA specifically referred to in the contract when it described times when the exception might apply. It follows that I don't think it's fair or reasonable for BUPA to rely on the 'preventative treatment' or 'temporary relief of symptoms' exclusions either.

Overall, as I've said, this is a very finely balanced case. But I have to make a decision on the balance of probabilities. And based on the medical evidence I've seen, I'm more persuaded by the evidence of Dr J, a specialist in his field, who has treated the patient and who has specifically stated that they believe the injections to be curative. While I appreciate BUPA's comments about the wider medical community, I simply don't think it's provided enough evidence to counter Dr J's clear and specific opinion.

As such, it follows that I don't find that BUPA has shown the policy exclusions can fairly be applied to Mrs D's claim. And therefore, I don't find BUPA acted fairly or reasonably when it relied on the exclusions I've outlined above to turn down this claim.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint.

I direct BUPA Insurance Limited to reconsider Mrs D's claim in line with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 28 November 2024.

Lisa Barham
Ombudsman