

The complaint

Mr P is unhappy that BUPA Insurance Limited (BUPA) declined his private medical insurance claim.

What happened

Mr P has a private medical insurance policy with BUPA.

In 2018, Mr P started to experience symptoms which were then diagnosed, in 2021, as Essential Tremor (ET). Mr P was under the care of the NHS and was prescribed medication. It was effective in helping with his symptoms, but there were side effects.

In July 2023, Mr P contacted BUPA about claiming for a treatment called 'Magnetic Resonance Guided Focused Ultrasound' (MRgFUS). The NHS wait times for this treatment were very long and the symptoms of Mr P's condition were worsening. BUPA declined Mr P's claim. Initially, it said that ET was a chronic condition and therefore excluded under the policy terms. And following information it reviewed from Mr P's consultant, it declined the claim also because the procedure was considered experimental.

Mr P went ahead and paid privately for the procedure to be carried out in September 2023.

Mr P made a complaint to BUPA. But it maintained its position to decline his claim for the treatment.

Mr P brought his complaint to this service. Our investigator didn't uphold it. She didn't think the claim had been declined unfairly as ET was considered to be a chronic condition. She also thought BUPA caused confusion about whether it was still excluding the claim as a chronic condition, and it could have explained this clearly to Mr P. Overall, she said, whilst BUPA also said that MRgFUS was experimental, the claim hadn't been declined unfairly as the condition itself was considered as chronic and therefore excluded.

Mr P disagreed with the investigator's findings and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

In summary, Mr P says BUPA's rejection of his claim is unfair, incorrect and invalid. He's made further points in relation to this as follows:

- The call recordings strongly support his case that BUPA had no grounds to refuse funding for his procedure.
- His consultant provided all the information about Mr P's condition, including information from the National Institute for Health and Care Excellence (NICE) which says approval for the treatment was granted in 2018 and NHS England commissioned it in 2021. The documentation provided by his consultant has not been fully considered by us.
- The investigator hasn't considered his argument that his condition wasn't chronic

despite BUPA saying the exclusion for chronic condition didn't apply.

- The treatment Mr P had wasn't experimental and his condition wasn't chronic as per the BUPA handbook – he says he provided evidence for this which hasn't been considered.

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.

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, the terms of this policy and the circumstances of Mr P's claim, to decide whether BUPA treated him fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr P. Rather it reflects the informal nature of our service, its remit and my role in it.

For the avoidance of doubt, I'm not medically qualified and it therefore wouldn't be appropriate for me to make a finding on the conditions referred to here. Instead, the key issue for me to decide is whether I think BUPA's decision to decline Mr P's claim was unfair or unreasonable based on the information which has been provided.

I note that BUPA has excluded Mr P's claim for two different reasons – that the condition for which Mr P had treatment was considered to be chronic and the treatment Mr P had was considered experimental. There has been some confusion caused in BUPA's communication around these two reasons. So, for clarity and completeness, I will consider both in my decision.

Mr P said BUPA accepted his argument that the condition wasn't chronic and then it came up with a different reason to exclude the claim because of experimental treatment. I acknowledge this. I've reviewed the information and listened to the call recordings that Mr P had with BUPA. I understand BUPA informed Mr P that his claim wouldn't be covered as his condition was chronic. Following further conversation, Mr P provided BUPA information from his consultant about the treatment he had, BUPA then said the treatment itself wasn't covered because it was experimental.

I can see therefore why Mr P thought the exclusion for his condition being chronic no longer applied. BUPA didn't provide anything in writing regarding the chronic condition exclusion. But it then provided a final response and referred to the exclusion for the treatment. So, BUPA caused the confusion as it didn't refer to both points in its final response. However, having reviewed everything BUPA has confirmed the reasons for the claim being declined was for both reasons.

Chronic condition

Most private medical insurance policies normally cover acute conditions but not chronic conditions.

So, I've first looked at what the terms and conditions of Mr P's policy say. There are a number of exclusions listed in the policy handbook under the section 'What is not covered'.

Exclusion 6 Chronic conditions states:

'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 your 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.'*

BUPA says it considers ET to be a chronic condition specifically for the first four reasons above.

It's provided information from the NHS. This states that ET can't be cured but there are treatments available which can reduce the tremor if it is affecting your life.

Additionally, the National Tremor Foundation states *'ET is a chronic condition characterised by involuntary, rhythmic tremor of a body part...'* And on the same platform, it states:

'Medical treatment

The currently available medical treatments for essential tremor are symptomatic and not curative. This means that the severity of essential tremor can be decreased by medication but that the tremor will not be cured. There is no medication that will permanently remove essential tremor from a person who is affected by it.'

Based on the above information, I'm not persuaded that ET isn't a chronic condition as currently there is no cure and it is progressive. I acknowledge Mr P's comments that he doesn't think ET is a chronic condition, but I've reviewed the information both parties have provided. I think ET is a chronic condition. Whilst Mr P's consultant says the treatment was medically appropriate for him and it proved to be successful, I've also taken into account the information on the NHS website as well as the National Tremor Foundation's websites. These confirm that there is no cure for ET and that's it's a progressive condition. In Mr P's case, I realise that the treatment has been successful, but it was only carried out on one side and there's no clear indication of the monitoring, controlling and further treatment requirements going forward.

Additionally, Mr P's policy says that there is an exception to the above exclusion. This says it does pay for eligible treatment arising out of a chronic condition. However, it will only pay for this if the treatment is likely to lead quickly to a complete recovery or to being fully restored to the previous health, without having to receive prolonged treatment. Based on the information Mr P's consultant provided, Mr P's symptoms were progressive and didn't arise out of an acute flare-up. So, I don't think this exception applies.

I therefore think it wasn't unreasonable for BUPA to decline his claim. ET is considered to be a chronic condition, and this is excluded under the policy.

Experimental treatment

Most private medical insurance policies exclude treatment or procedures which are considered experimental or unproven based on established medical practice.

Mr P's policy with BUPA excludes cover for experimental treatment which has not satisfactorily been reviewed or approved by NICE.

So, in terms of what's happened on this complaint, Mr P had a procedure called MRgFUS. BUPA says this procedure or treatment was considered experimental. It referred to the NICE guidelines for this procedure.

Mr P has also provided all of the medical information from his consultant to BUPA for consideration and to evidence that the procedure effectively cured his condition. His consultant confirmed this to BUPA.

The NICE guidelines for MRgFUS states:

'1.1...current evidence on its efficacy is limited in quantity. Therefore, this procedure should not be used unless there are special arrangements for clinical governance, consent, and audit or research....'

1.2 Clinicians wishing to do unilateral MRI-guided focused ultrasound thalamotomy for treatment-resistant essential tremor should:

- *Ensure that patients and their carers understand that this procedure is only done to treat tremor on 1 side of the body, and that the effect of this on the functional ability and quality of life of patients with bilateral disease is uncertain.'*

I do understand that the procedure Mr P has proved successful for him. However, whilst I've carefully considered both his comments and the information from his consultant, the crux of the issue is that the procedure hasn't yet been approved by NICE and is therefore considered experimental under the terms of Mr P's policy. The current recommendation for this procedure is that the evidence on its efficacy is limited in quantity. It's clear that Mr P's consultant says the procedure is being carried out under the NHS and peer reviews have been conducted. But that's not the same as the issue being looked at here which is whether the claim for the procedure is covered under Mr P's policy. Having reviewed the information, I'm not persuaded the claim is covered.

Has the claim been declined unfairly?

Taking everything into account, I'm not persuaded that BUPA has declined the claim outside the terms of Mr P's policy. And I'm not persuaded BUPA has done this unfairly or unreasonably. Mr P decided to undergo the procedure despite being aware of the potential application of the exclusion. I know he feels strongly about his condition not being chronic and that the treatment wasn't experimental. However, having reviewed the available evidence, I don't think BUPA has acted inappropriately by declining the claim. It follows therefore that I don't think BUPA did anything wrong.

My final decision

For the reasons given above, I don't uphold Mr P's complaint about BUPA Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 December 2024.

Nimisha Radia
Ombudsman