

The complaint

Mr L complains that BUPA Insurance Limited, trading as Bupa Global, is unfairly looking to apply a limit to his claim for cochlear implants under his international private medical insurance policy.

Mr L has been represented by his father during this complaint. For ease of reading, any reference to Mr L will include comments made by his father on his behalf.

What happened

Mr L has had a private medical insurance policy since 2006 with a company which BUPA took responsibility for in 2005. In 2009 Mr L transferred cover directly to BUPA and was advised that no additional exclusions would be added and the terms as per the previous policy would continue.

In 2010 Mr L noted that there was a maximum age limit of five years on the policy for cochlear implants and made a complaint to BUPA, saying this hadn't been part of his previous policy. BUPA looked into his complaint and stated that it would *"cover the cost of cochlear implants past the age of five as an exception"*.

In May 2024, Mr L noted that there was a policy limit of \$34,000 for claims relating to congenital and hereditary conditions. Mr L checked with BUPA who confirmed that the limit would apply to a claim for cochlear implant surgery. Mr L complained to BUPA as he said this sum is insufficient to cover the cost of the surgery. He also referred to the complaint made in 2010 and said that BUPA had agreed at that point to cover the costs of the surgery and therefore the limit shouldn't apply. BUPA didn't agree. It said that the agreement in 2010 was to remove the exclusion about the age limit for cochlear implants. BUPA said that this didn't change the other policy terms, including the limit for congenital conditions.

Unhappy with this response Mr L brought his complaint to us. Our investigator looked into the matter but didn't uphold the complaint. She found that the dispute Mr L had in 2010 related to the age restriction on the policy and so BUPA's response related only to that aspect. She said the policy limit hadn't been raised at that point and BUPA hadn't said when responding to Mr L that the policy limits would be ignored.

Mr L disagreed with the investigator's opinion and provided further information, including a legal opinion. In summary the legal advice was that BUPA had created a promise when it agreed to cover Mr L's operation for implants after the age of five and that BUPA cannot now apply the restriction for the policy limit. It also referred to there being two separate parts of the policy – one covering prosthetic implants and another relating to congenital and hereditary conditions – and said that the section relating to the implants didn't include a restriction on cost.

As no agreement could be reached, the matter was passed to me to decide.

On 17 January 2025 I issued my provisional decision. In it I said the following:

“The above is intended to provide just a summary of the situation. I fully appreciate Mr L’s strength of feeling on the matter and I want to reassure him that I’ve seen and considered the detailed submissions he has provided about his complaint. But it is 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 L. Rather it reflects the informal nature of our service, its remit, and my role in it.

I’ve also noted that Mr L has provided a legal opinion he obtained on the complaint. And I’d like to reassure Mr L that I have considered this opinion when reaching my outcome. I would point out that when considering disputes between consumers and financial businesses, we take what the rules that govern us describe as ‘relevant considerations’ into account, including the law, codes, and good practice. But ultimately I’m not bound to follow the legal position and any decision made is based on what I think is fair and reasonable in all the circumstances. This can mean any decision made may be different to what a court would decide when strictly applying legal rules.

It is not in dispute that BUPA agreed to remove the age restriction for claims for cochlear implants on Mr L’s policy under the section for prosthetic implants and appliances. The crux of this complaint relates to the policy limit for congenital and hereditary conditions that BUPA said would be applied to any claim made for this surgery and whether, when responding to the complaint about the age restriction, BUPA also agreed not to apply this limit.

The BUPA policy terms and conditions include a section relating to the treatment of congenital and hereditary conditions. In this section it states that there is a limit of \$34,000 for each membership year for treatment. I’m satisfied that this policy limit would apply to any treatment received for a congenital condition, regardless of the fact that the treatment may also be covered under the prosthetic implants and appliances section. This is because not every implant or appliance will be required as a result of a condition that was present from birth or has been passed down through family. I don’t believe BUPA acted unreasonably by saying this limit would apply to a claim for cochlear implants for Mr L as it seems he did have this condition present from birth.

So, under the terms and conditions of Mr L’s contract with BUPA, the policy limit applies. I’ve therefore moved on to consider whether I think BUPA has acted fairly and reasonably in the circumstances when saying it will apply this limit. Mr L contacted BUPA in 2024 as he was considering having the cochlear implant surgery. Mr L asked if this limit would be applied to the cochlear implant surgery, and he was informed that the treatment would be restricted to this sum. Mr L says BUPA previously agreed to cover the cost of the cochlear implants without any mention of policy limits and therefore it should honour the promise it made.

I’ve looked at the complaint Mr L made in 2010 when he first became aware that there was an age limit on the policy for cochlear implants. Mr L provided copies of emails he had with BUPA starting in April 2010 where it was confirmed that the policy would only provide cover for the surgery before the age of five. Mr L queried this and asked about why this age limit was in place specifically from a medical point of view. I can see that BUPA provided details of medical research to demonstrate why an age limit was included in the policy. Mr L then advised that he was told when he transferred to the BUPA policy in 2009 that no additional exclusions would apply. In December 2010 BUPA wrote to Mr L and confirmed it would *‘be able to cover the cost of cochlear implants past the age of five as an exception’*.

From what I’ve seen, there was no further contact in relation to cochlear implants until 2024 when Mr L was considering having the surgery. It was at this point that Mr L says he became aware that there was a limit of \$34,000 for congenital and hereditary conditions. Mr L has

referred to the fact BUPA said in 2010 it would cover the cost of cochlear implants and he said by doing so BUPA made a promise and that is enforceable by law. Mr L has said that he relied upon this to mean that BUPA would cover the full cost. He has also referred to the policy coverage he had prior to transferring over to the BUPA policy in 2009, which he said has no such restrictions on the cost of the surgery. And before he moved, Mr L said he was advised by BUPA that no additional exclusions would be added, and his policy terms would continue as before with no changes.

When looking at the complaint made in 2010, the issue raised related purely to the age restriction on the policy. I haven't seen any mention in the correspondence from Mr L about any other aspect of the policy nor is there anything in the response from BUPA to say that it was agreeing to alter any other terms or policy limits. I'm therefore satisfied that the complaint in 2010 and the exception BUPA made in relation to the cover was simply to agree to remove the age restriction. I'm not persuaded that anything in this correspondence was intended to override the remaining benefit terms of the policy, including any changes made in the years following this initial complaint.

I've also seen the correspondence sent by BUPA to Mr L in 2009 which said that his policy terms would continue with no changes. Mr L says that this means BUPA therefore cannot alter the terms of his policy. I note that BUPA commented on this in its response to Mr L in December 2010. BUPA said it had provided a guide which showed the terms and conditions before Mr L transferred over to this policy – so he was aware of the new terms. But it also said it had issued the response in 2009 following a discussion about the hearing issue and the continuation of cover. So BUPA disputes that this meant his cover would never change.

Most insurance policies work on a basis of an annual contract and therefore every year the cover can change. At each renewal the policy holder can review the policy terms and conditions to decide if the cover is still right for them. I can't conclude what happened prior to 2009 but since then the terms have been annually renewable. I'm not persuaded that this comment about the continuation of Mr L's cover meant that BUPA was never going to make any changes to the cover available under the policy.

Whilst I'm satisfied that BUPA hasn't acted unreasonably when applying the policy limit to the claim for Mr L's cochlear implant, I think BUPA should have been clearer in its communications with him about the cover available. The lack of clarity has caused a great deal of confusion and I think it's fair to say this has been a frustrating time for Mr L. I don't think BUPA are responsible for any costs of the implant surgery that exceed the \$34,000 limit on the policy, however, I'm persuaded that the way this has been handled and the loss of expectation he has suffered as a result should be compensated. Mr L believed he had cover for the full cost of surgery for over a decade and the fact that there was confusion surrounding whether or not the basis of the contract did change in 2009 will have caused significant distress. I'm currently minded to direct BUPA to pay Mr L £500 compensation in recognition of the distress and inconvenience this matter has caused him."

Both parties responded to the provisional decision. Mr L disagreed with the outcome, providing advice he had received which suggests that BUPA is incorrect to apply a restriction from one benefit to another – and therefore the limit for congenital conditions shouldn't apply.

In BUPA's response it disagreed with the compensation being awarded. It reiterated that the agreement reached in 2009 only related to the age restriction on the cochlear implant benefit and that other benefit limits were not waived. It also said that at the time the agents wouldn't have known to advise about this restriction to benefit as without clinical information it wouldn't be clear if this was a congenital condition. So it couldn't have set expectations at that point.

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.

I'd like to thank both parties for providing detailed submissions regarding the provisional decision. I've considered everything that has been said carefully, however, these comments don't alter my outcome. I'll explain why below.

I've thought about Mr L's dispute relating to the limit and I can understand why he thinks it is unfair. However, as I mentioned in my provisional decision, not every claim made under the benefit for prosthetic implants and appliances would relate to a congenital or hereditary condition, so I don't think it is unreasonable that there is a separate benefit limit which relates to treatment received for these conditions. There are numerous benefits detailed on the policy and some do include limits - so it is important to read the benefits available in their entirety. And I'm satisfied that the table of benefits is clear. I'm persuaded that BUPA's decision to apply the benefit limit to a claim for treatment of Mr L's congenital condition is reasonable.

Turning to the compensation, I've noted what BUPA has said here and I appreciate the point it has made about not having clinical information to show that this was a congenital condition in 2009. However, I've noted in the email to Mr L dated 20 December 2010 BUPA has confirmed that Mr L "*was born with a hearing condition*". It would therefore seem that BUPA had accepted that this was a congenital condition at this point but didn't take the opportunity to advise Mr L of the relevant limit. I'm therefore persuaded that BUPA was aware that this was a congenital condition, regardless of whether it had received clinical information to confirm this.

As I stated before, whilst I'm satisfied that BUPA wasn't agreeing to alter the remaining terms of the policy when it agreed to cover the implant surgery beyond the age of five, I do think it could have been clearer in its communications. Mr L has been under the impression that the surgery would be covered in full and so I'm persuaded that there is a loss of expectation, which could have been avoided. I'm therefore still of the opinion that BUPA should compensate Mr L for this.

Putting things right

BUPA needs to pay £500 in compensation for the distress and inconvenience.

My final decision

For the reasons mentioned above, I partially uphold this complaint. I direct BUPA Insurance Limited, trading as Bupa Global, to pay compensation as detailed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 April 2025.

Jenny Giles
Ombudsman