

The complaint

Mr E is unhappy that USAY BUSINESS LTD (Usay) mis-sold a private medical insurance policy to him.

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.

In November 2023, Mr E contacted Usay about taking out a private medical insurance policy that provided cover for semi-professional/professional sports training. Following discussions on the telephone, Mr E agreed cover with an insurer and the policy was sold by Usay.

In February 2024, Mr E sustained an injury to both elbows, so he contacted the insurer to make a claim. Mr E was informed the claim wasn't covered as the policy didn't provide for semi-professional/professional sports while training.

Mr E made a complaint to Usay about being mis-sold the policy as he was informed that he would never have been covered under the policy he'd taken out. Usay agreed that the policy was mis-sold. It apologised, offered a full refund of the policy premiums and £200 for the distress and inconvenience caused to Mr E.

Unhappy, Mr E brought his complaint to this service. Our investigator upheld the complaint. She agreed with Usay's offer to fully refund the premiums and she thought £500 total compensation was fair and reasonable in the circumstances.

Usay accepted the investigator's findings.

Mr E disagreed. He asked for the complaint to be referred to an ombudsman. So, it was passed to me.

Mr E said in summary that the policy was completely mis-sold. Usay has the responsibility to adhere to the policy that was sold to him. He took the policy out in good faith and payments were made by him as was agreed. Mr E says Usay failed in providing the right policy for him which has left him with a significant financial loss and impacted his overall well-being.

I issued a provisional decision on 14 January 2025. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy was sold by Usay on an advised basis. The relevant rules and industry guidance say that the seller needs to make sure the policy is right for the consumer.

I've carefully reviewed the information and listened to the call recording between Usay and Mr E's partner. Mr E's partner explained Mr E was a semi-professional/professional martial arts sports person. He was starting his training and was looking to take part in competitions.

Mr E was also working as a manager. The adviser said Mr E would be covered on the policy for everything but competing. So, if Mr E sustained an injury while training, he would be covered. Mr E's partner explained the reason for taking out the policy was because of the wait times on the NHS and that he was looking to go back into training soon after taking the policy out. On this basis, Usay agreed the policy was suitable for Mr E and the policy was taken out.

I note Usay has accepted the policy was mis-sold to Mr E. It's offered Mr E a refund of the premiums and £200 compensation for the distress and inconvenience caused to him. And our investigator recommended a total compensation of £500. Mr E disagreed with both amounts of compensation.

I understand it's not in dispute that the policy was mis-sold. So, the key issue for me to determine is whether the compensation offered by Usay is fair and reasonable in the circumstances of this complaint.

Mr E has provided evidence of a quotation that he would've been able to get cover from another insurer for sports injuries. He says if he had the correct cover, he would not have suffered the significant financial loss, the loss of time and the stress he's experienced. Mr E had to pay substantial surgery costs privately (£15,720) and take out extra borrowing for this. And he's lost out potentially on the competitions he would've been able to take part in. He hasn't been able to train but when he starts again, he will be taking out an alternative policy which will provide cover.

Mr E says he was transparent in the call to Usay and explained the reasons for wanting the cover. Mr E wanted the peace of mind from the policy in case of injury as he couldn't afford to wait for the long NHS times.

When a policy is mis-sold, our approach is to think about putting the consumer back in the position as if the policy wasn't mis-sold.

In this case, if Mr E had the right cover in place, he would have been covered under the policy. And it would likely have paid out on his claim for the injuries he sustained while training and he wouldn't have suffered the financial loss.

As I've said above, Usay has agreed that the policy was mis-sold. I've considered that Mr E has had to pay for his own surgery by raising the funds needed as the NHS wait times were too long. This has caused considerable stress and inconvenience and has impacted Mr E's overall well-being.

Having reviewed the circumstances of what happened, my intention is to put things right by directing Usay to pay compensation equivalent to the financial loss Mr E has suffered.

Mr E paid £15,720 for the surgeries. He says an alternative policy would have cost him around £70 monthly and his mis-sold policy cost him £62.89 monthly. So Usay should deduct the difference in premiums between the two policies from the £15,720. There was no applicable policy excess. Usay should add 8% simple interest on the final compensation.

My intention is also to award Mr E in total £500 compensation (£300 in addition to the £200 offered by Usay) for the impact caused in the policy being mis-sold. I think this is fair and reasonable. This has caused Mr E considerable distress and inconvenience as explained above. The situation could have been avoided had the policy been sold as per Mr E's requirements. This has clearly had an impact on Mr E, both financially and on his daily life so I think £500 is fair in the circumstances of this complaint.

Putting things right

I intend to ask Usay to pay compensation equivalent to the financial loss Mr E has incurred because of the mis-sale. It should do it in the following way:

- Pay for the total cost of the surgeries which was £15,720.*
- Consider the difference in premiums paid between the policy Mr E would have taken out and the policy he was mis-sold. Deduct this difference from the above financial loss of £15,720.*
- Add 8% simple interest per annum to the final amount from the date the invoices for the surgeries were paid until the date of settlement.*
- Pay £500 total compensation for the distress and inconvenience caused.*

I now invite both parties to let me have any more comments or evidence by 28 January 2025.

Usay responded and disagreed with my provisional decision. It provided further comments and a copy of a call recording as evidence.

Mr E accepted the outcome of my provisional decision. He also provided further comments and a copy of the private medical insurance policy he'd taken, which included cover for sports injury while training, as evidence.

Whilst I'm still intending on upholding this complaint, as I've been provided with new evidence for consideration. So it was fair to both parties to explain my findings and give them an opportunity to respond before I make my final decision.

I issued a second provisional decision on 12 March 2025 to both parties. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Usay's reasons for disagreeing with the provisional decision are as follows:

- The costs Mr E has incurred for the treatment of his elbows would never have been covered under an insurance policy. The policy Mr E says he would have been able to obtain is in a similar cost range to the one Usay sold to him. Whilst it provides cover for semi-professional/professional sports training, the policy is very restrictive and provides no more than £500 worth of out-patient cover and only typically covers in/day patient treatment.*
- The premium quoted to Mr E would be more expensive than the £70 pounds he is alluding to. This is because his sport would be a risk category of three and considered to be high-risk.*
- It provided a call recording of a conversation between Mr E and Usay that took place just prior to the policy being taken out.*
- The call recording shows that even if Mr E was eligible for cover, the claim would still be declined as the new policy would also be set up on a moratorium basis regarding pre-existing medical conditions. This is because Mr E said in the call, he had multiple problems with his elbows prior to taking out the policy, including scans and investigations that specifically related to his elbows two weeks prior to the policy start date. He refers to*

slight arthritis in his elbow, a condition which is assessed as chronic.

- *The new policy would exclude a chronic condition such as arthritis from the start.*
- *Mr E went ahead with incurring the surgery costs despite having been told by Usay, and the insurer, that his claim would never be covered. He did this of his own accord in full knowledge that he would be responsible for the costs. And saying that he would now be covered on the new policy, is incorrect.*
- *Usay had no reason to highlight this previously as this level of detail wasn't warranted.*
- *Usay isn't liable for any costs except for the premium refund, and it increased its offer to £1,500 compensation to Mr E to bring the matter to a conclusion.*

Mr E accepted the findings of the provisional decision to uphold the complaint and provided the following comments:

- *He's provided a copy of the new policy certificate and the policy document showing the cover he's taken out to include his sport. This shows a premium of £74.75.*
- *He was very transparent in the call to Usay about his medical history. He didn't say he had multiple problems with his elbows but only referred to his left elbow as having had a scan and slight arthritis two weeks prior to the call.*
- *He made no reference to any problems with his right elbow.*
- *He reached out to the new insurer, and it said the claim for the left elbow would likely have been challenged by it due to a previous scan, but the right elbow would have been covered. So, whilst a full review of his claim hasn't taken place, Mr E accepts it's possible the new insurer wouldn't have covered the costs for the left elbow.*
- *He believes a fair outcome would be to pay compensation equivalent to the cost related to the right elbow as there were no pre-existing medical conditions related to this.*
- *He accepts that £500 is fair and reasonable compensation for what happened.*

I've carefully considered comments from both parties. Having done so, I still uphold the complaint. I'll explain why below and how I intend to put things right.

Firstly, I confirm again that neither party disputes the policy was mis-sold.

Secondly, both parties agree that an amount of compensation is fair and reasonable in the circumstances of what's happened.

The key issue I need to determine therefore is the level of compensation that would be fair on this complaint, based on the further comments and new evidence provided.

Mr E's main requirement from the policy was to be covered for any semi-professional/professional sports injury while he was training. He understood that he wouldn't be covered while he was competing. Had Mr E known there was no cover for sports injury, he would never have taken the policy that Usay recommended but would have taken an alternative one.

I've listened to the call recording Usay has provided. It hadn't provided this prior to the provisional decision. I don't agree with Usay that Mr E said he had scans and investigations on both his elbows. He said he had the scan on his left elbow. I also don't agree that Mr E

said he had multiple problems with his elbows. Mr E said it was slight arthritis on his left elbow. In the call, Mr E was clear with Usay about any injuries he'd had and explained these to Usay willingly. He wanted to ensure the information he provided was taken into account so he could get the right policy for his needs. There isn't anything in the call that suggests Mr E had problems with both elbows, only his left elbow.

Based on the information Mr E gave on the call, I think it's unlikely he would have been covered for injury to his left elbow on the new policy due to it being pre-existing. The policy also states there's no cover for a chronic condition such as arthritis. I note Mr E also checked with his new insurer whether the costs of the treatment for both elbows would've been covered. The insurer said it's unlikely he would have been covered for the left elbow.

I've considered Usay's comments that Mr E went ahead and incurred the surgery costs knowing that the responsibility for the full costs would be his. It said both Usay and the previous insurer had confirmed he had no cover for the treatment on his elbows. I've considered that Mr E's other option would have been to get treatment under the NHS. However, Mr E has said the wait times were long and because the injury was to both his elbows, he wouldn't have been able to operate on a day-to-day basis or to work in his job role. So, whilst I accept that he went ahead knowing he had the responsibility of the costs, he decided to privately get the treatment and fund this from borrowing the money so that he could get back into training. This had always been his objective – to receive private treatment as quickly as possible - and not have to wait for the NHS. He competes professionally and therefore wanted a policy that would provide cover for sports injuries. The policy sold by Usay didn't provide this and whilst Mr E could have waited for the NHS to treat him, this isn't what he ultimately decided. That was up to him. Ultimately, when a financial business does something wrong, our aim is to place the consumer in the position they would have been, if not for the error (as far as possible). Here, Mr E incurred financial costs for the surgery and wouldn't have done so if Usay had sold him the correct policy.

Mr E initially provided a quotation for the policy he would've taken out. Since my provisional decision of 14 January 2025, Mr E has provided us with a copy of the policy he's taken out. This shows a premium of £74.75, and the level of cover is for a maximum of £100,000 total cover on the policy, on a risk category of three for his sport, based on moratorium underwriting and has no excess. The out-patient cover limit is £500 relating to the in-patient admission. Usay says the policy is restrictive and provides no more than £500 of out-patient cover and typically only covers in/day patient treatment. And due to the risk category of Mr E's sport, the premium would be higher than the £70 approximately that he had the quote for.

Having reviewed the policy, I think it's unlikely Mr E's left elbow injury would have been covered on the new policy had he initially taken this. And the insurer has also informed Mr E, that this was unlikely. So, the question is whether the right elbow would potentially have been covered. And if so, to what level.

Having considered the policy Mr E would have taken out, I think it's likely the policy would have provided cover for the injury to Mr E's right elbow. That is, cover for surgery to his right elbow as an in-patient, with an out-patient limit of £500 applied in relation to in-patient admission. My understanding is the surgery cost was £7,950 for his right elbow.

In summary, my intention is to require Usay to pay compensation equivalent to the value of this loss as I think overall this is fair and reasonable. It should take into consideration the difference in premiums of the two policies and add 8% simple interest per annum. I also think Mr E has suffered distress and inconvenience as a result of the policy being mis-sold and the impact caused to him financially and on his well-being. I think Usay should pay £500 compensation in recognition of this which I think is fair in the circumstances here.

Putting things right:

I intend to require Usay to pay compensation equivalent to the financial loss Mr E has incurred because of the mis-sale. It should do it in the following way:

- Pay for the cost of the surgery to Mr E's right elbow. Mr E should confirm the exact amount he paid for this and provide a breakdown of the treatment he received as in-patient and out-patient to Usay directly.*
- Consider the difference in premiums paid between the policy Mr E was mis-sold (£62.69) and the policy he's taken out (£74.75). Deduct this difference from the financial loss incurred for surgery to his right elbow.*
- Add 8% simple interest per annum to the final amount, from the date the surgery was paid for until the date of settlement.*
- Pay £500 total compensation for the distress and inconvenience caused.*

I now invite both parties to let me have any more comments or evidence by 26 March 2025.

Mr E responded and said he accepted my provisional decision.

Usay responded and said it also accepted my provisional decision. This was on the proviso that Mr E could provide the relevant information on the costs he incurred for surgery to the right elbow.

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 uphold this complaint as explained in my provisional decision dated 12 March 2025. As both parties have accepted my provisional decision, I see no reason to depart from the outcome I've reached.

I note Usay has said it requires the invoice/s for the surgery to the right elbow and any cost breakdown which must be on headed paper from the hospital. Otherwise, it reserves the right to contact the hospital directly to query the exact costs for the surgery. I note Mr E has provided this service with a copy of a headed letter, following his consultation, from the hospital setting out the cost for his treatment to the right elbow. The letter also provides a breakdown of the treatment. However, it's not clear whether this is the actual invoice. So, I don't think it's unreasonable that Usay will need to see evidence of this information. Mr E should liaise directly with Usay to provide this information.

In conclusion, I require Usay to pay compensation equivalent to the value of the loss as I think overall this is fair and reasonable. It should take into consideration the difference in premiums of the two policies and add 8% simple interest per annum. I also think Mr E has suffered distress and inconvenience as a result of the policy being mis-sold and the impact caused to him financially and on his well-being. I think Usay should therefore pay £500 compensation in recognition of this which I think is fair in the circumstances here.

As I'm upholding this complaint, I've set out below how Usay should put things right.

Putting things right

I require Usay to put things right in the following way:

- Pay for the cost of the surgery to Mr E's right elbow. Mr E should confirm the exact amount he paid for this and provide a breakdown of the treatment he received to Usay directly.
- Consider the difference in premiums paid between the policy Mr E was mis-sold (£62.69) and the policy he's taken out (£74.75). Deduct this difference from the financial loss incurred for surgery to his right elbow.
- *Add 8% simple interest per annum to the final amount, from the date the surgery was paid for until the date of settlement.
- Pay £500 total compensation for the distress and inconvenience caused.

*If USAY BUSINESS LIMITED considers it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr E how much it's taken off. It should also give him a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, my final decision is that I uphold Mr E's complaint about USAY BUSINESS LTD. I require it to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 April 2025.

Nimisha Radia
Ombudsman