

The complaint

Mr N complains about BUPA Insurance Limited's ('Bupa's) decision to turn down his private medical insurance claim.

What happened

Mr N is a member of a group private medical insurance policy that's underwritten by Bupa. He made a claim for NHS benefit.

Bupa turned down the claim. It said this wouldn't have been covered for private treatment under the policy as it considered the treatment Mr N was receiving to be experimental.

Unhappy with Bupa's decision, Mr N brought a complaint to this service. Our investigator looked into the complaint, but didn't recommend it be upheld. He concluded that Bupa had acted fairly in turning down the claim.

Mr N didn't accept our investigator's findings and so the matter has been passed to me for a decision.

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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must not unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr N's complaint.

The policy says the following about NHS cash benefit that is relevant to this claim:

'...and you have eligible treatment for cancer as set out in benefit 4.1 but have part of your cancer treatment provided under the NHS we pay NHS cash benefit...for that part of your cancer treatment received in the NHS if it would otherwise have been covered under your benefits for private treatment.'

Bupa says that the treatment Mr N was receiving under the NHS wouldn't have been covered for private treatment under the policy because it is experimental treatment.

The policy says the following about experimental treatment:

'We do not pay for treatment or procedures which, in our reasonable opinion, are experimental or unproved based on established medical practice in the United Kingdom, such as drugs outside the terms of their licence or procedures which have not been satisfactorily reviewed by NICE (National Institute for Health and Care Excellence).

Licensed gene therapy, somatic-cell therapy or tissue engineered medicines for conditions other than cancer that have not been tested in phase III clinical trials will be considered experimental. '

Mr N took part in a clinical trial run by the NHS for cancer patients. The aim of it was to trial a combination of two drugs to see how well they worked when taken together. One of those drugs (that I'll call R) is the conventional treatment for Mr N's type of cancer. The other drug (that I'll call A) is used to treat other types of cancer.

I'm satisfied that A would be considered experimental for Mr N's condition as it was being used outside the terms of its licence. Although R isn't experimental treatment for Mr N's condition, the aim of the trial was to combine it with A. So, I think it was reasonable for Bupa to say that the overall treatment would be considered experimental and therefore fell under the exclusion.

I've noted that Mr N wants Bupa to at least pay NHS benefit for the hospital visits where he was given R. I've carefully thought about this, but I don't require Bupa to do so. Although R is considered conventional treatment for his condition, it may be that certain factors, such as the frequency of the treatment, was affected by the trial. Overall, I think it was appropriate for Bupa to say that it was the combination of drugs that made up the treatment that Mr N was receiving, and this wouldn't have been covered privately.

Bupa referred to the wrong clinical trial in its final response. Mr N has confirmed the trial he took part in was the follow up to the one named by Bupa. I note the trial that Bupa had wrongly referred to had used the same combination of drugs that were being used in the follow-up trial that Mr N was on. So, I don't think its error makes a difference to the matter, as the treatment Mr N received under the trial was the combination of those same drugs.

There is an exception to the above experimental treatment exclusion. This says:

'Exception: We pay for experimental drug treatment for cancer subject to the following criteria:

- *the use of this drug treatment follows an unsuccessful initial licensed treatment where available, and*
- *you speak regularly to our nurse, as we may reasonably require in order to allow us to effectively monitor your treatment and provide support, and*
- *the drug treatment has been agreed by a multidisciplinary team that meets the NHS Cancer Action Team standards defined in The Characteristics of an Effective Multidisciplinary Team (MDT), and*
- *for the proposed treatment we are provided with an MDT report, which includes one of the following:*
 - *evidence that the drug treatment has been found to have likely benefit on your condition through a predictive genetic test where appropriate/available, or*
 - *evidence that the drug has had a health technology assessment with a positive outcome and there is a European Medicines Agency (EMA) licence for the drug with the drug being used within its licensed protocol, or*
 - *evidence that at least one NHS/National Comprehensive Cancer Network (NCCN)/European Society for Medical Oncology (ESMO) protocol exists, with*

- supporting phase III clinical trial evidence, for your exact condition (ie the specific indication including tumour type, stage and phase of treatment if relevant), or*
- *evidence that the drug treatment has published phase III clinical trial results showing that it is safe and effective for your condition.'*

I think it's for Mr N to show that the exception to the exclusion applies here. Bupa says it hasn't received any information for it to assess whether the exception applies.

Mr N says that a multidisciplinary team in the NHS decided that he would be suitable for the trial. I would therefore suggest that Mr N ask that team to provide Bupa with a report setting out whether the treatment he received in the trial meets the above criteria.

I've noted Mr N's comments that he considers the tone of Bupa's communication to be aggressive and threatening. Though I haven't seen any evidence of this in the communication I've seen between the parties.

I recognise my decision will disappoint Mr N, but I don't uphold this complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 14 October 2025.

Chantelle Hurn-Ryan
Ombudsman