

## **complaint**

Mr M has complained about the decision made by BUPA Insurance Limited to limit the amount it contributed towards Mr M's claim for cataract surgery under his private medical insurance policy.

## **background**

The circumstances leading to this complaint and my initial conclusions, are set out in my provisional decision dated 21 August 2014, a copy of which is attached and forms part of this final decision.

Briefly, Mr M required cataract surgery and as the procedure was carried out by a consultant who was not fee-assured ("Mr A"), BUPA said it would only contribute £289 to the consultant's fees in line with its fee schedule limits. I was provisionally minded to require BUPA to cover the full cost of Mr M's cataract surgery as it was unable to find a fee-assured consultant within a reasonable distance for Mr M who would charge within its limits for the procedure. I was also minded to require BUPA to pay £150 to Mr M for the handling of the claim.

I invited both parties to provide me with any further submissions they wished to make.

BUPA responded and confirmed it had nothing further to add.

Mr M responded and accepted my provisional decision. However he made the following points:

- He says BUPA should not have informed his wife that it had a fee agreement with another consultant ("Mr B") when it did not. BUPA later told Mr M that the fee agreement with Mr B had terminated in March 2013 but Mr M says this was a total fabrication as Mr B confirmed to him that he had never had a fee agreement with BUPA. Mr M says he was surprised that BUPA's duplicity was not emphasised in my provisional findings.
- Mr M would like me to reconsider the amount of compensation payable to him, as he says his wife spent approximately 50 hours trying to resolve the matter on his behalf and if he had employed a secretary then he would have had to pay that secretary £20 per hour, which would not include the cost of postage, telephone calls, photocopying etc.
- Mr M confirmed that he paid Mr A's fees in full in March 2013 and does not have a receipt, but is able to obtain one if needed.

## **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I am not persuaded to depart from my earlier conclusions. I will explain why.

Mr M accepts my decision that BUPA should pay Mr A's fees in full, but is unhappy that BUPA told his wife that Mr B's fee for the procedure would be covered in full, when it did not have a fee agreement in place with him.

BUPA says it *did* have a fee agreement in place with Mr B; however when it informed Mr B's wife of this, the fee agreement had apparently ended (as of March 2013). Mr M says that Mr B has never had a fee agreement in place with BUPA and therefore considers BUPA has not told the truth.

I should explain that any fee agreement between BUPA and a consultant is a contract between those two parties and is not something in which this service can interfere. I have not seen a copy of any agreement that may have existed between BUPA and Mr B and so do not know if there was an agreement between the two parties and if there was, when it ended. However, the main issue here is that when BUPA told Mr M's wife that it had a fee agreement in place with Mr B, this was not the case. As BUPA was unable to provide details of a fee-assured consultant that was reasonably accessible to Mr M, I remain satisfied that it should pay Mr A's fees in full.

Mr M remains of the opinion that he should receive at least £500 for the cost of making his complaint. We do not usually make an award for the time a consumer spends trying to resolve their complaint. But I have given consideration to the amount of correspondence between Mr M and BUPA and I note that he sent less than ten letters (each less than two pages in length) to BUPA about his complaint. I cannot reasonably conclude that making his complaint took up a great deal of Mr M's time (or his wife's on his behalf) or that he should be compensated for this. I have also not seen any direct evidence of the costs of any postage, photocopying etc that Mr M says he spent on making his complaint.

Overall, I remain satisfied that £150 compensation to reflect BUPA's handling of Mr M's complaint is a reasonable amount in the circumstances.

### **my final decision**

For the reasons set out above and contained within my provisional decision, my final decision is that I uphold this complaint. I require BUPA Insurance Limited to settle Mr M's claim for Mr A's fees in full. As Mr M has already paid the shortfall himself, then BUPA Insurance Limited should reimburse him directly, adding interest at the annual simple rate of 8% simple, calculated from the date he paid the shortfall to the date of settlement. Mr M would need to provide evidence of the date he paid the invoice directly to BUPA Insurance Limited.

I also require BUPA Insurance Limited to pay Mr M £150 for the inconvenience caused by its handling of his claim.

Chantelle Hurn  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mr M has complained about the decision made by BUPA Insurance Limited to limit the amount it contributed towards Mr M's claim for cataract surgery under his private medical insurance policy.

### **background**

In 2012 Mr M's wife contacted BUPA to obtain authorisation for her husband to have a consultation with a consultant ophthalmologist ("Mr A") as he was having problems with cataracts. Authorisation was given but BUPA advised that if Mr M required surgery, then BUPA would pay up to £289 per eye. BUPA said that Mr A charged more than £289.

Mr M required cataract surgery on each eye. In January 2013, Mr M's wife contacted BUPA to make enquiries about other consultants who would charge within BUPA's limits. BUPA provided the contact details of a consultant ("Mr B") who it said was fee-assured and would carry out the procedure within BUPA's limits. The next nearest fee-assured consultants were around 40 to 50 miles away from Mr M's home.

Mr M's wife contacted Mr B to enquire about him carrying out the cataract surgery on her husband, but was informed that he was not fee-assured and charged £800 per eye for cataract surgery, which was more than Mr A charged. Mr M therefore had the surgery with Mr A.

Mr M complained to BUPA. He considered that BUPA should pay for the full costs of the cataract surgery with Mr A. He thought that it was unfair of BUPA to limit the payment to £289 per eye when there were no fee-assured consultants operating within a reasonable distance of his home. He also noted that BUPA had reduced the amount it paid towards cataract surgery in 2012 and thought he should have been made aware of this. In addition to covering the full cost of the surgery with Mr A, Mr M also wanted BUPA to pay a contribution towards the costs he had incurred in complaining, which he said amounted to over £500.

BUPA did not uphold the complaint. It said that at the time of its conversation with Mr M's wife, Mr B's fees were covered in full, however this agreement ended in March 2013.

It explained that it continually reviews the amount it pays to consultants for procedures and it was satisfied that it made Mr M's wife aware of the amount it would pay for cataract surgery when she initially contacted it. Dissatisfied with this response, Mr M brought a complaint to this service.

Our adjudicator did not uphold the complaint. He was satisfied that BUPA had made Mr M aware from the outset that Mr A's fees would not be met in full and that he would be liable for the shortfall. The adjudicator did not think Mr M had been prejudiced by BUPA incorrectly informing him that Mr B charged within its limits. He said that if Mr M had had the surgery with Mr B and been billed for an amount higher than £289, then he *would* have required BUPA to pay the full costs of Mr B's fees. However, he could not do this as Mr M did not actually have the surgery with Mr B.

Mr M did not accept the adjudicator's conclusions and requested that his complaint be referred to an ombudsman. The matter has therefore been passed to me to consider afresh.

### **my provisional findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I accept that BUPA is entitled to impose limits on the amount that it will pay consultants for particular procedures, provided that it is able to offer its members access to a consultant willing to

charge within this limit. I should also explain that given the amount BUPA pays for a procedure is an arrangement between BUPA and the consultants, I would not expect it to notify its members when it makes changes to its fee schedule.

Mr M was aware that his chosen consultant (Mr A) charged more than BUPA's fee limits. However his wife did attempt to arrange for him to see a fee-assured consultant, so that he would not need to pay a shortfall. The nearest consultant that BUPA said was fee-assured was Mr B and he informed Mr M's wife that he did not charge within BUPA's limits. Whilst I appreciate BUPA may not have known this at the time, I note that the next nearest fee- assured consultants were between 40 and 50 miles away from Mr M's home. Taking into account Mr M's age, it would seem unreasonable to expect him to travel this distance in order to receive the required treatment.

In the circumstances, I am not satisfied that Mr M was reasonably able to access a consultant who was willing to charge within BUPA's limit. Consequently, I consider BUPA should make up the shortfall for Mr A's fees.

Whilst I have noted Mr M's assertion that making his complaint has cost him in excess of £500 because of telephone calls, photocopying and postage, I have not seen any evidence of this. However I do think that Mr M was inconvenienced by BUPA's handling of his claim and I consider £150 compensation to be a reasonable amount in the circumstances.

#### **my provisional decision**

For the reasons set out above, I am currently minded to uphold this complaint. I propose to direct BUPA Insurance Limited to settle Mr M's claim for Mr A's fees in full. If Mr M has already paid the shortfall himself, then BUPA Insurance Limited should reimburse him directly, adding interest at the annual simple rate of 8% simple, calculated from the date he paid the shortfall to the date of settlement.

I also propose to direct BUPA Insurance Limited to pay Mr M £150 for the inconvenience caused by its handling of the claim.

Both parties now have one month in which to respond before I issue my final determination.

Chantelle Hurn  
**ombudsman**