

## The complaint

Mrs F complains BUPA Insurance Limited unfairly turned down her claim for knee replacement surgery.

## What happened

Mrs F holds a private medical insurance policy, underwritten by BUPA. She had been a customer for many years and in 2022, changed over to a different BUPA policy.

In 2023, Mrs F's GP referred her to see a consultant due to her having severe pain in her right knee. And the consultant recommended that she needed to have knee replacement surgery. So, Mrs F contacted BUPA for authorisation of the procedure.

BUPA requested information from Mrs F's GP. And after reviewing this, it said it thought the problems she had with her right knee were pre-existing and it declined the claim.

Mrs F says that when she took out the new policy, she understood that medical conditions she had in the prior 7 years would not be covered. But she said she'd had no symptoms, treatment or investigations related to her right knee in that time.

Mrs F complained to BUPA. It said Mrs F's GP completed a medical questionnaire and within this, stated she had been diagnosed with moderate osteoarthritis in her right knee in 2009. BUPA said although it accepted Mrs F hadn't had any issues with that knee within the 7 years prior to taking the new policy, it thought this was a chronic condition. And it said this was not covered under the policy.

The policy terms include the following exclusion

*"We do not pay for Treatment of Chronic Conditions. However, we will pay for Eligible Treatment for an unexpected flare-up of acute symptoms of a Chronic Condition if the Treatment is likely to lead quickly to a complete recovery rather than prolonged Treatment. We do not pay for Treatment required due to the expected deterioration or flare up of a Chronic Condition. This includes conditions which have a relapsing-remitting nature and require management of recurrent flare-ups, for example, inflammatory bowel disease. In such cases, the flare-ups are an expected part of the normal course of the illness and therefore we do not consider them as acute complications of the disease."*

Also, the Insurance Product Information Document (IPID) which provides a summary of Mrs F's cover, included the following under the section headed 'What is not insured'.

*"Restrictions apply to treatment of the following*

*Chronic conditions (we pay for treatment of unexpected acute symptoms resulting from a flare-up)"*

And the policy provides the following definition of a chronic condition.

*“A disease, illness or injury which has one or more 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.”*

Unhappy with the response from BUPA, Mrs F brought her complaint to this service. An investigator here looked into what had happened and said they thought BUPA had declined the claim fairly.

BUPA made no comments on the investigator's view. However, Mrs F disagreed. In summary she said she was aware an exclusion was added to her policy for her left knee, however no such exclusion was in place for her right knee. She said she'd had no problems with her right knee for 14 years and queried whether her requirement for knee surgery was an 'unexpected flare-up of a chronic condition'.

The investigator put this question to BUPA who supplied a response from its Chief Medical Officer (CMO). In summary the CMO said osteoarthritis is a generalised degenerative condition which is not prone to acute flare ups. And as this was diagnosed in 2009, an expected decline in the knee was known prior to Mrs F taking out her policy.

Mrs F still disagreed and said she thought the claim should have been covered as the policy was fully medically under-written and no exclusion was added for the right knee. She asked for a decision from an ombudsman and so, the case has been passed to me to decide.

### **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.

And I've looked at the relevant rules and industry guidelines, which say an insurer must handle claims promptly and fairly and shouldn't unreasonably reject a claim.

Having done so, I don't think BUPA has acted unfairly, and I'll explain why.

- Mrs F's GP noted on the medical questionnaire *“First entry I can see re R knee is a letter from ortho – moderate OA – 03/09/2009”*. So I'm satisfied Mrs F had been diagnosed with osteoarthritis in her right knee at that time.
- I think BUPA has fairly assessed Mrs F's osteoarthritis to be a chronic condition within the definition of BUPA's policy terms. The policy includes a list of

characteristics of a chronic condition, and I'm satisfied osteoarthritis can fairly be said to be a condition which continues indefinitely and has no known cure.

- And I'm persuaded by BUPA's CMO's explanation that osteoarthritis is a degenerative condition, so it would be expected to decline or get worse from the point of diagnosis. And as such, I think it's fair that BUPA concluded Mrs F's knee pain leading to her needing knee replacement surgery is not an acute flare-up of a chronic condition.
- Although I appreciate Mrs F didn't have any symptoms or treatment related to her right knee in the seven years prior to taking the new policy, the exclusion for pre-existing conditions is not the only condition BUPA needs to consider when assessing her claim. As shown above, the terms also state that BUPA will not pay for treatment of chronic conditions. And I'm satisfied that the right knee surgery Mrs F required, was treatment for a chronic condition, due to her existing osteoarthritis in that knee since 2009.

I appreciate Mrs F will be disappointed with my decision. However, in this case I've not found that BUPA has done anything wrong, so I can't fairly say Mrs F's claim should be accepted.

### **My final decision**

For the reasons I've given, it's my final decision that I do not uphold this complaint. And I make no award against BUPA Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 27 October 2023.

Gemma Warner  
**Ombudsman**