DRN-4373403

The complaint

Mr E complains that BUPA Insurance Limited declined his private medical insurance claim.

What happened

Mr E is a member of his employer's group private medical insurance policy insured by BUPA. The policy started on 1 March 2022 and renewed in March 2023. The policy is on a five year 'moratorium' underwriting basis.

In March 2023 Mr E made a pre-authorisation claim to see a specialist about his lipoma. BUPA declined the claim. It said the information from Mr E's GPs showed he'd been diagnosed with a lipoma in December 2017, which had been increasing in size and he'd seen GPs in November 2022 and February 2023 about removal of the lipoma. BUPA's final response letter to Mr E said his lipoma was a pre-existing condition which wasn't covered by the policy terms.

Mr E complained to us that BUPA had unfairly declined the claim. In summary he said:

- BUPA's letter contained date errors. It said the policy started in March 2023, but it was March 2022. It also said he was diagnosed with lipoma in December 2017 whereas his diagnosis was in January 2017 so its calculation of the five year period was wrong.

- He saw a GP in November 2022 who had made a referral for lipoma. He had a phone, not a face to face, appointment with a GP in February 2023 to get a more detailed referral as BUPA told him a specific referral addressed to the right specialist was needed. So his February 2023 conversation with the GP wasn't medical advice.

- BUPA was wrong to say that just having the lump was a symptom of lipoma, he had an asymptomatic lipoma until September 2022 when it started to cause back pain. So he had the first symptom of his lipoma after the policy started. He provided various definitions of 'symptoms' which he said supported his point.

- As he'd had no advice, or symptoms, or treatment for his lipoma in the five years before the policy started his claim was covered by the policy terms.

- He wants BUPA to pay the claim, compensation for his time and inconvenience he'd spent in making the complaint and compensation for his unnecessary pain and suffering caused by it not paying for him to see a consultant and having the treatment required.

During our investigation BUPA said that whilst the lipoma diagnosis in January 2017 was over five years from the policy start date, the lump, which was a symptom of the lipoma condition, was still present within the relevant five year period and was a moratorium condition as detailed under the policy terms.

Our investigator said BUPA had reasonably declined the claim.

Mr E disagrees and wants an ombudman's decision. Mr E said our investigator's consideration of his complaint was unfair because our investigator had:

- Accepted the policy definition of moratorium condition but ignored the explanation of a 'pre-existing condition' in the policy information and BUPA's final response letter. There was discrepancy and lack of clarity in BUPA's policy information especially as the moratorium condition information was in smaller print than the other relevant wording.

- Referred to the words in the policy's glossary as 'Definitions' whereas BUPA had used the word 'Meanings'. Mr E said a 'definition makes a meaning formal, distinct and clear' and the investigator's use of the word 'definition' had been used to his disadvantage.

- Hadn't addressed that BUPA got the date of his lipoma diagnosis wrong or that his lipoma had been asymptomatic. Also investigator rejected the complaint on a different issue than BUPA used in its final response letter which meant BUPA's decline of the claim was unfair.

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've considered all the points Mr E has made but I won't address all his points in my findings. I'll focus on the reasons why I've made my decision and the key points which I think are relevant to the outcome of this complaint.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably.

I think BUPA fairly and reasonably declined the claim. I'll explain why.

The policy terms under the 'Information on claiming' section say:

> *'If you are a moratorium member*
> *As a moratorium member you are not covered for treatment of any moratorium conditions. Each time you make a claim you must provide us with information so we can confirm whether your proposed treatment is covered under your benefits. Before you arrange any consultation or treatment call us and we will send you a pre-treatment form to complete. You will need to provide details of the history of the medical condition you are claiming for, including information that you will need to ask your GP or consultant for...'*

The policy 'Glossary' section says a 'moratorium condition' means:

> *'any disease, illness or injury or related condition, whether diagnosed or not, which you:*
>
> - *received medication for*
> - *asked for or received, medical advice or treatment for*
> - *experienced symptoms of, or*
> - *were to the best of your knowledge aware existed*
>
> *in your moratorium qualifying period immediately before your moratoria start date.*

By a related condition we mean any symptom, disease, illness or injury which reasonable medical opinion considers to be associated with another symptom, disease, illness or injury'.

The policy glossary says 'moratorium qualifying period' means:

> *'the number of years stated in the 'Further details' section of your membership certificate as being your moratorium qualifying period'.*

Mr E's membership certificate under 'Further details' says *'Your moratorium qualifying period is five years'.*

The policy glossary says 'moratoria start date' means:

> *'if you are a moratorium member, the date you started your continuous period of cover under the scheme. This is:*
> *the date shown as 'Moratoria start date' on your membership certificate…'*

Mr E's membership certificate says '*Moratoria start date 1 March 2022'.*

BUPA's final response letter contained the wrong date of Mr E's lipoma diagnosis. The GP's evidence shows Mr E was diagnosed with lipoma on his back in January 2017, which is more than five years before Mr E's cover under the group policy started on 1 March 2022.

But BUPA says even though the correct diagnosis date of Mr E's lipoma was over five years from the policy and moratorium start date the lipoma still isn't covered under the policy terms as a pre-existing condition. And it also thought Mr E had a moratorium condition, not covered by the policy terms (which is why our investigator and now I have considered whether BUPA reasonably also thought that Mr E had a moratorium condition).

I think BUPA reasonably considered Mr E's lipoma on his back to be a moratorium condition as set out under the policy terms. The GPs' overall evidence says the lipoma was there in January 2017 and has increased in size. The November 2022 referral letter says the lipoma has increased to the *'size of a tennis ball'* causing Mr E discomfort. The February 2023 referral letter says the lipoma has been:

> *'Gradually increasing in size but has significantly increased in size in the last six months, painful in sitting and sleeping on that side'.*

I think it's reasonable for BUPA to understand that as there had been a gradual increase in size of the lipoma, to be the size of a tennis ball by November 2022, it's probable that Mr E noticed at least some of the size increase within the five years before the policy started. And even if all the lump's growth happened after 1 March 2022 Mr E was aware he had the condition from the January 2017 diagnosis and during the five years before the policy started. Which means Mr E's lipoma was a moratorium condition as set out in the policy terms.

The policy excludes claims in relation to moratorium conditions saying:

> *'Exclusion 33 Moratorium conditions*
> *For moratorium members we do not pay for treatment of a moratorium condition, or a disease, illness or injury that results from or is related to a moratorium condition'.*

Mr E's group policy has an exception to that exclusion which is shown on his membership certificate:

> *'Under Exclusion 33 Moratorium conditions, an additional Exception is added as follows: We pay for treatment of a moratorium condition if at any time after your start date you do not receive any medication for, ask for and/or receive any medical advice or treatment for, and/or experience symptoms of that moratorium condition for a continuous period of two years cover under your scheme. Your moratorium qualifying period is five years'.*

That exception only applies if after the policy started on 1 March 2022 Mr E hadn't received medication, asked for and/or received any medical advice or treatment for, and/or experienced symptoms of his lipoma for a continuous period of two years, which would be until 1 March 2024.

I think BUPA reasonably considered that Mr E had *'asked for and/or received'* medical advice about his lipoma within two years of the policy starting when he consulted the GP in November 2022 about the pain from his lipoma. The November 2022 referral letter shows Mr E spoke to the GP about the pain and his wish to be referred for consideration of removal of the lipoma. And Mr E's conversation with another GP in February 2023 when they refined the referral letter was part of asking for medical advice for the condition.

So I'm satisfied that BUPA reasonably considered the exception to the general exclusion for claims for a moratorium condition didn't apply to Mr E's circumstances. That means BUPA could fairly and reasonably decline the claim as the lipoma on Mr E's back was a moratorium condition.

BUPA raised the moratorium condition as being another reason it could decline the claim during our investigation. Its final response letter to Mr E was about declining the claim due to his lipoma being a pre-existing medical condition, not covered by the policy terms. Mr E says due to how the policy documents are set out it wouldn't be fair for BUPA to rely on the moratorium conditions exclusion to decline the claim. And he disagrees that he had a pre-existing medical condition. So I've considered those matters.

BUPA's final response letter refers to the information given in 'A quick guide to rolling moratorium underwriting' document which says:

> *'Rolling Moratorium Underwriting*
>
> *Your company has chosen this type of underwriting for your policy. This means that you didn't have to tell us about your medical history when you first joined us. Instead, we'll ask you about this each time you come to make a claim, so that we can confirm if your condition is new or pre-existing*
>
> *'Pre-existing conditions*
>
> *You're covered for conditions that are eligible under the rules of your scheme. Any conditions where you've had:*
> *advice or*
> *symptoms or*
> *treatment (including medication)*
> *for in the five years before joining us are considered pre-existing and not covered. If, after joining us, you've not had any advice, symptoms or treatment (including medication) for two years, we'll no longer consider this condition pre-existing and start to cover it'.*

The policy glossary doesn't give a meaning for 'symptom'. I've considered the examples of definition of symptom that Mr E's provided. I've seen many more examples which generally say in effect that a symptom is a sign of a condition or disease. I've also considered the information Mr E's provided which he says shows most lipomas are asymptomatic, it being a fatty lump which doesn't usually need treatment, as was his lump until September 2022 when it caused him pain.

I think BUPA could reasonably consider that the lump was a symptom of Mr E's lipoma, which he had in the five years before the policy started. The evidence from the GP in the claim paperwork shows the symptom of lipoma was the lump found in January 2017. The lump remained during the relevant five year period. As I've said above I think BUPA can fairly understand the lump probably increased in size during that time. But even if not the lump was still a sign that Mr E had a lipoma. The lump may not have given Mr E pain until September 2022 but before then the lump was still a symptom of the lipoma. I'm satisfied BUPA reasonably considered Mr E's lipoma to be a pre-existing condition.

Mr E continued to have the symptom of lipoma in the two years after the policy started. He also took medical advice within the two years after the policy started about action to take for potentially having the lump removed. I'm satisfied that BUPA reasonably considered that Mr E's lipoma on his back was a pre-existing condition and not covered by the policy terms.

Even if I thought the policy information Mr E was given about pre-existing medical conditions was more prominent and clearer than the information about the moratorium conditions it doesn't alter my decision as I think BUPA fairly and reasonably declined the claim for both reasons.

BUPA told Mr E it will assess whether the lipomas which have appeared on his shoulder and ribcage are eligible for treatment if his GP can give further information about when those symptoms began, which is fair of BUPA. Mr E will need to contact BUPA direct if he wants to take that matter further.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 29 November 2023.

Nicola Sisk
Ombudsman