

## **The complaint**

Mr L complains that Right to Health Limited (RTH) mis-sold him a personal private medical insurance policy.

## **What happened**

In January 2021, Mr L got in touch with RTH to look into taking out a personal private medical insurance policy. During ongoing discussions with RTH's adviser, Mr L explained that he'd been diagnosed with IBS some years previously, which he controlled by diet. He also disclosed that he'd undergone treatment on his thumb. RTH's adviser recommended that Mr L should take out a policy with an insurer I'll call V on a moratorium underwriting basis.

On 9 February 2021, Mr L emailed RTH's adviser to ask whether his IBS had been disclosed to V and whether it had agreed to cover it if he'd been problem-free for two years. The adviser responded to say that the IBS would be covered if Mr L had been symptom-free, treatment-free and if he'd gone without seeing a doctor for the condition for a two-year period. Mr L accepted the adviser's recommendations and cover began on 21 February 2021.

Subsequently, in 2023, Mr L made a claim on the policy for IBS. However, V turned down the claim. That's because it considered his condition to be chronic, which was specifically excluded by the policy terms.

Mr L considered RTH had mis-sold the policy to him. He felt he'd been assured that IBS would be covered. And he said he wouldn't have taken out the policy if he'd known it wouldn't be covered. He asked us to look into his complaint.

Our investigator didn't think RTH's recommendation had been suitable for Mr L. He thought it ought to have explained that Mr L's IBS was a chronic condition, which might be excluded from cover by V. And he also thought that RTH's adviser had given Mr L an expectation that they'd checked with V that IBS would be covered, so long as the terms of the moratorium were satisfied. So he thought RTH had made an error when it sold Mr L the policy.

However, the investigator didn't think that arranging cover for IBS was Mr L's main reason for taking out the policy. And he thought that even if RTH had highlighted that chronic conditions weren't covered, Mr L would still have taken it out. So he didn't think it would be fair to require RTH to refund the premiums Mr L had paid for the policy. Instead, he thought RTH should pay Mr L £100 compensation.

Neither RTH nor Mr L agreed with the investigator and so the complaint's 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.

Having done so, I think the fair outcome to this complaint is for RTH to pay Mr L £100 compensation and I'll explain why.

I'd like to reassure both parties that while I've summarised the background to this complaint and their submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues. I must also make it clear that this decision only considers RTH's actions at the point of sale. It isn't responsible for V's decision to turn down Mr L's claim and so I won't be considering the outcome of Mr L's claim here.

Both parties agree that RTH recommended that Mr L should take out the private medical insurance policy. This means it needed to make sure it was suitable for him. And it needed to give Mr L enough clear, fair and not misleading information about the policy so that he could decide if it was right for him.

I've listened carefully to the calls between Mr L and RTH's adviser. During the second pre-sale call, Mr L told the adviser that he'd been diagnosed with IBS around eight years earlier and that it was controlled by diet. The adviser had explained why they felt moratorium cover was suitable for Mr L, rather than full underwriting, which would likely have led to V applying a blanket exclusion on cover. And I think the adviser did explain how moratorium cover worked, both during the calls and in the demands and needs letter they sent to Mr L on 10 February 2021.

However, I do think, given the nature of IBS and given the time that had passed since Mr L's diagnosis, it would have been reasonable for the adviser, as the expert in the situation, to explain that most, if not all, medical insurance policies contain an exclusion for chronic conditions. And that the policy they were recommending excluded chronic conditions unless treatment was intended to treat an acute flare-up of a chronic condition. I appreciate the adviser wouldn't have been aware of what claims Mr L might need to make for IBS, nor whether V would consider his condition to be chronic. But I think the adviser ought to have highlighted the chronic condition exclusion to Mr L both during the pre-sale calls and in the demands and needs letter.

I'm mindful too that after RTH's adviser had sent Mr L V's quotation, Mr L emailed them specifically to ask whether they'd disclosed IBS to V and if so, would it be covered after two problem-free years. The adviser replied to say:

*'Yes, if you can go two years without seeing a doctor, having any treatment or medication, or suffering any symptoms, it will be covered for you.'*

In my view, this email indicates that the adviser had disclosed the IBS to V and that it would cover the condition subject to the moratorium terms being satisfied. Again, at this point, I think it would have been reasonable for the adviser to highlight the chronic condition exclusion. And I can understand why, following this email, Mr L would have had a reasonable expectation that a claim for IBS would be covered if he'd gone more than two years trouble-free from IBS.

As such, I agree that RTH did make an error when it sold Mr L's policy. I don't think the adviser gave Mr L enough clear enough information about the chronic condition exclusion at the point of sale. So I need to decide what I think is a fair way for RTH to put things right.

I've considered whether it would be reasonable for me to direct RTH to pay Mr L a full refund

of his premiums. However, for me to make such a finding, I'd need to be satisfied that if Mr L had been aware that claims for IBS might not be covered, he'd have chosen not to take out the policy. And, having listened to the calls, I don't think I could fairly conclude that he'd have decided against taking out private cover had the chronic condition exclusion been highlighted to him. I say that because when Mr L was asked why he was looking to take out private cover, he answered that it was because of the prevailing situation with the NHS (which, at that time, was dealing with the impact of Covid-19). He didn't mention seeking cover for IBS. Indeed, he didn't declare IBS until his second call with RTH's adviser – he mentioned that he'd forgotten to tell the adviser about it during their first call. Therefore, it doesn't seem to me that obtaining cover for IBS was Mr L's primary reason for taking out the policy.

Instead, I think it's most likely that Mr L decided to take out the policy because he wanted the benefits of private medical cover, given the wider healthcare picture at the time. Taking that into account, I think, on balance, Mr L would still have decided to take out the policy even if the chronic condition exclusion had been explained to him.

Nonetheless, I agree with our investigator that RTH's adviser could have done more to manage Mr L's expectations about cover for IBS. Especially given Mr L's email of 9 February 2021. And I don't doubt that Mr L was caused additional, avoidable frustration and upset (on top of the inevitable upset of his claim being declined) when his claim was turned down by V because of the chronic condition exclusion. So I also think a total award of £100 compensation is a fair, reasonable and proportionate award to recognise the trouble and upset I think RTH's error caused Mr L.

### **My final decision**

For the reasons I've given above, my final decision is that I direct Right to Health Limited to pay Mr L £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 February 2024.

Lisa Barham  
**Ombudsman**