

## **The complaint**

Mr H complains that BUPA Insurance Limited has acted in a discriminatory way due to its fee structure. He considers that BUPA doesn't pay its specialist medical providers enough. Mr H says this meant that he was unable to see his preferred specialist when he made a claim on his private medical insurance policy.

## **What happened**

Mr H has a personal private medical insurance policy. He made a claim for treatment, which BUPA authorised. Mr H wished to see a particular medical professional who specialised in a particular field. I'll call the provider Mr D. However, while Mr D was 'recognised' by BUPA, it appears he told Mr H that he didn't take on BUPA patients because its fee contributions were too low.

So Mr H got in touch with BUPA because he said he was unable to find a medical professional who specialised in the field of care he was seeking. He felt that BUPA had failed to meet its obligations under the Equality Act 2010 and that it didn't pay its providers enough. He also considered that BUPA should ensure that policyholders with protected characteristics had access to treatment.

BUPA didn't consider it had discriminated against Mr H and it said that it could only cover treatment provided by BUPA-recognised specialists. It provided Mr H with a list of recognised specialists and it also directed Mr H to its 'BUPA finder' – which enables policyholders to search for recognised specialists.

Mr H was unhappy with BUPA's response and so he asked us to look into his complaint.

Our investigator didn't think BUPA had treated Mr H unfairly or unreasonably. He felt the policy terms made it clear that BUPA would only cover treatment provided by specialists it recognised. He didn't think BUPA was responsible for Mr D's decision not to treat BUPA policyholders. And he considered that BUPA had tried to take reasonable steps to help Mr H find an alternative specialist.

Mr H disagreed 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, whilst I'm very sorry to disappoint Mr H, I've decided not to uphold his complaint and I'll explain why.

First, it's important I make the parameters of this decision clear. I appreciate Mr H would like us to direct BUPA to increase its fee contributions to its recognised specialists. It appears he believes that this would lead to policyholders with protected characteristics having better access to specialist medical providers. However, I have no power to tell a financial business

to change its policies or procedures – or what fee agreements it should have in place. Neither can I tell a financial business what commercial agreements it must enter into with external providers. That's because we're not the industry regulator. My role is to look into complaints brought by individual consumers to assess whether they've been treated fairly and reasonably by a financial business we cover, in the individual circumstances of their complaint.

So I've first considered the policy terms and conditions, as these form the basis of Mr H's contract with BUPA. The policy provides cover for 'eligible treatment'. BUPA was satisfied that Mr H had claimed for eligible treatment and this had been pre-authorised. This is what I'd reasonably expect BUPA to do.

The policy says:

*'All Treatment must be carried out in a Recognised Facility in the UK and is provided by a Consultant, medical practitioner or healthcare professional who is recognised by us for the Treatment you need on the date you receive that Treatment.'*

This term is reiterated on the Insurance Product Information Document and also set out on Mr H's policy certificate. Accordingly, I'm satisfied that BUPA's policy documents make it sufficiently clear that it will only pay for specialists it recognises.

In this case, BUPA *does* recognise Mr D and it would be prepared to pay for Mr H to undergo treatment with Mr D in accordance with its fee schedule. This is in line with its obligations under the contract terms. It's unfortunate that Mr D won't take on Mr H's care, because I appreciate that he is a specialist in a field which is important to Mr H. But I can't fairly hold BUPA responsible for Mr D's decision not to take on BUPA patients.

What I would expect BUPA to do in situations like these though is to help Mr H to try and find a specialist who can help him. And from what I've seen, I think it did. BUPA has provided Mr H with a list of other recognised specialists, along with details of its BUPA finder. So, it seems it was possible for Mr H to speak to someone who had the relevant experience and background he was seeking. It just wasn't possible to pair him with his preferred specialist. I don't think I could fairly or reasonably hold BUPA responsible for any specialist's waiting times or a professional's decision not to offer Mr H treatment. I think BUPA's taken appropriate and reasonable steps to try and help Mr H find a specialist who can treat him.

Overall then, I don't think BUPA has treated Mr H unfairly. I've listened to calls between BUPA and Mr H and I think he was given accurate and clear information. I don't find that he was treated rudely or provided with poor customer service. And I haven't seen anything to suggest that BUPA has treated Mr H any differently to any of its other policyholders or singled him out unfairly in any way.

I appreciate Mr H has concerns that BUPA has breached its obligations under the Equality Act 2010. It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not BUPA has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

It's clear Mr H feels BUPA has discriminated against him, given the problems he's experienced. But having carefully considered all of the evidence, I don't think BUPA has

done so. I say this because, although Mr H wasn't able to access his preferred specialists via BUPA, I do think it offered him reasonable alternatives. And I don't think the reason why Mr H was unable to work with his preferred therapist was the result of any unreasonable behaviour on the part of BUPA, but rather due to Mr D charging a higher rate than BUPA was prepared to pay. It isn't unusual, or specific to any one area of medicine or any specific group of people, and so I don't think BUPA has behaved unreasonably in how its fee structures apply in the circumstances of Mr H's claim. I hope that it helps Mr H to know that someone impartial and independent has looked into his concerns

### **My final decision**

For the reasons I've given above, 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 H to accept or reject my decision before 11 September 2023.

Lisa Barham  
**Ombudsman**