

The complaint

Mr and Mrs B complain that Usay Business Limited mis-sold them a personal private medical insurance policy.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mr and Mrs B held a personal private medical insurance policy with an insurer I'll call P. They'd been insured by P for a number of years. The policy was fully underwritten and provided cover for Mr and Mrs B's existing medical conditions. One of these conditions was endometriosis, which Mrs B had been diagnosed with some years before. P had paid for consultations and treatment under the policy.

In June 2022, Mrs B spoke with Usay, as their renewal quote with P was more than Mr and Mrs B could afford. Usay's adviser explained the options available to Mr and Mrs B. These included 'switching' their existing policy with P to a new insurer, which would continue their existing medical cover, or taking out a new moratorium policy, which would potentially exclude cover for their existing medical conditions. The adviser recommended that Mr and Mrs B should switch their policy with P to a new policy with an insurer I'll call A.

Ultimately, Mr and Mrs B decided to accept the adviser's recommendation and they took out a 'switch' policy with A. However, they later complained to Usay that the policy had been mis-sold to them. That's because A had turned down a claim they'd made for treatment of Mrs B's endometriosis on the grounds that it considered Mrs B's condition was chronic. Mr and Mrs B said they'd only taken out the policy with A because they'd understood it would provide the same cover as their previous policy with P.

Usay didn't agree that the policy had been mis-sold to Mr and Mrs B. It maintained that its advice had been suitable for them. And so Mr and Mrs B asked us to look into their complaint.

Our investigator didn't think Usay had mis-sold the policy to Mr and Mrs B. He felt that the advice to 'switch' their existing policy from P to A had been suitable. He considered that Usay had recommended a policy which provided cover for Mrs B's endometriosis. He didn't think Usay could be held responsible for A's claims decision.

Mr and Mrs B 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 and Mrs B, I don't think Usay has treated them unfairly and I'll explain why.

Usay recommended that Mr and Mrs B should switch their existing policy with P to a new policy with A. This means it needed to ensure that it carried out an assessment of Mr and Mrs B's demands and needs and that its advice was suitable for them. It also needed to give Mr and Mrs B enough clear, fair and not misleading information about the policy so that they could decide if it was right for them.

I've listened carefully to the calls between Mrs B and Usay's adviser. I'm satisfied that the adviser asked Mrs B clear questions about her existing cover with P; what cover she and Mr B wanted; their preferred hospital list and about their medical history (including information about their children's health). I'm also satisfied the adviser clearly explained the cover options which were available to Mr and Mrs B and the ways in which each type of policy worked – in particular, the difference between a switch policy and a moratorium policy.

Both Mr and Mrs B had existing medical conditions. Having listened to the calls, it seems to me that continuing cover for endometriosis was important to Mrs B. So, in my view, a recommendation to switch the existing cover with P to a policy with A was suitable and appropriate for Mrs B's needs. That's because a switch ensured that Mrs B's endometriosis would be accepted for cover under the policy with A. If Mr and Mrs B had opted for moratorium cover, endometriosis would have likely been excluded for at least two years – and Mrs B was concerned that the excluded period could be even longer. And I can see from the policy documentation that the policy with A was set-up on switch terms (continued medical exclusions), which meant that Mr and Mrs B's medical underwriting was carried over from their policy with P to their policy with A.

It seems A hasn't paid Mrs B's claim because it considers that it's caught by a policy exclusion for chronic conditions. However, that doesn't mean Usay's advice to switch policies wasn't suitable. It's still the case that cover for endometriosis itself wasn't excluded from the policy with A – claims for endometriosis could be considered in line with the policy terms. It was down to A to assess whether or not the claim was payable under the terms of the contract. Usay isn't responsible for assessing - or indeed authorised to assess - whether or not a claim is likely to be successful. Based on the evidence I've seen, I find Usay's recommendation to have been suitable, given cover for endometriosis was in place – even if ultimately, A didn't pay the claim for another reason.

I note Mr and Mrs B consider that if they'd remained with P, the claim is likely to have been covered. But having listened to the calls between Mrs B and Usay, it seems Mr and Mrs B had already decided to cancel their existing cover with P due to the price. So it isn't at all clear that even if Usay hadn't advised Mr and Mrs B to take out the policy with A; they'd still have had a policy with P in place to potentially claim on. And it also isn't at all clear that even if Mr and Mrs B had renewed their cover with P, any future endometriosis claims would have been payable.

It seems that Mr and Mrs B's main reason for switching insurers was because of the cost of renewing their existing cover with P. The policy Usay recommended with A was significantly cheaper than the policy with P. And the policy Usay recommended included the hospital list Mr and Mrs B wanted; along with a cheaper excess and very broadly similar cover options. In the round then, I'm satisfied that Usay's adviser recommended a policy which met Mr and Mrs B's demands and needs. And I find too that Usay gave Mr and Mrs B enough clear, fair and not misleading information about the policy and the way it worked so that they could make an informed decision about whether it was right for them.

Overall then, while I sympathise with Mr and Mrs B's position, I'm satisfied that Usay met its regulatory obligations when it sold this policy to them. And I think its advice to switch to the policy with A was suitable and reasonable. So it follows that I don't think Usay mis-sold the policy to Mr and Mrs B and that I'm not directing it to refund their premiums.

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 Mrs B and Mr B to accept or reject my decision before 12 December 2023.

Lisa Barham
Ombudsman