

28 May 2024

**Final report by the Complaints Commissioner****Complaint number 202300758***The complaint*

1. On 07 February 2024, you asked me to review a complaint about the FCA.

*Your complaint to the FCA*

2. You complained to the FCA about what you perceive to be unfair and unclear terms and conditions in your health insurance policy with Firm X.
3. You explain that you were “admitted as an inpatient [in hospital] and stayed two nights and three days. [Firm X] entitlement states “we pay for each day/ night you are admitted”, [Firm X] only paid for the two nights maintaining there is no entitlement for the days.
4. You say “My understanding of the entitlement should have paid £60.00, three entitlements (days or nights) based on a stay of 2 nights and 3 days. Firm X have only paid for the 2 nights, £40.00. Whilst only a shortfall of £20.00, it is the principle of being misled into understanding that Firm X paid for nights or days spent in hospital”.
5. You provided information about the term you considered unfair by copying the relevant part from your policy and sending it to the FCA Unfair Contracts Team. The following is an extract from your submission to the FCA:

*Hospital admission - Cash amount when you are admitted to hospital - We pay -  
For each day / night (max20 each year)*

*a day-patient is a patient who is admitted to a hospital or day-patient unit  
because they need a period of medically supervised recovery but does not*

*occupy a bed overnight. If you are admitted as a day-patient and then stay overnight, we will pay one night's hospital cover (not one day and one night) .*

6. You have complained to the FOS about this. My understanding is that in your view, the insurer should have paid you for the third day you were in hospital which you allege it did not.
7. You would like the FCA to say whether the contract term in paragraph 5 above is unfair and misleading.

*What the regulator decided*

8. The FCA explained that it is unable to provide you with information about whether the contract term is unfair and misleading. The FCA Supervision Hub said to you that ultimately only a court can decide if a term is unfair or misleading. The FCA Complaints Team said that it does not provide feedback about whether the term is unfair and misleading and whether or not it has/will take action against the firm in question due to confidentiality restriction.

*Why you are unhappy with the regulator's decision*

9. You say "I can see little point in going to the trouble of reporting a concern when the FCA do not deem it appropriate to provide any feedback". You don't see why the FCA can't simply say if the term you have described above is unfair and misleading.

*My analysis*

10. Your complaint is that the FCA will not provide you with an opinion on what you perceive to be an unfair contract term and will not tell you what action if any, it took in response to the information you provided.
11. The FCA Complaints Team has provided you with information about why it won't do either of these things.
12. For the purposes of clarity, neither the FCA Complaints Team did not review how the FCA Unfair Contracts Team considered the information you provided and what decision was taken.

13. This is because your complaint has been considered as dissatisfaction that you will not be provided with feedback, rather than what the FCA did with the information you provided.
14. I can appreciate how frustrating it must be not to know in detail what has happened about the information you have provided to the FCA. The FCA welcomes information and intelligence bringing forward issues for its consideration. However, as you were told, the FCA does not generally say what action has been taken in response to the information that it receives.
15. I appreciate you query the point of sending in your concerns if you will not hear back from the FCA: however, even though you may not receive direct feedback, the FCA may inform its regulatory work from information submitted to it by individuals and firms, resulting in an improved regulatory environment in the round. In my view, there is benefit in sending in concerns to the FCA and I thank you for doing so, even if you do not receive direct feedback.
16. Whilst your complaint has centred on the FCA's willingness and ability to provide feedback, I am aware that you have raised a wider issue about unfair and misleading contract terms which you have submitted to the relevant area within the FCA. The FCA Complaints Team told you that it could not disclose s348 information, however, it also listed information which was not subject to s348 such as : "our opinion on whether a firm is complying with our rules • our assessment of the riskiness of a firm's business model • what actions we should take when making inquiries into a firm or market, and • setting out the factors for and against making a new rule."
17. I invited the FCA to explain how it applied these principles to the information you provided, which it did in response to my preliminary report. I am satisfied that the FCA has not ignored the information which you have provided, and has given it proper consideration. Unfortunately, I cannot say any more than that, and I recognise that that will be frustrating for you.
18. As you are aware, you may submit your complaint about your insurer to the FOS if you believe that the firm has not applied its terms correctly in your case.
19. You have also submitted a freedom of information request to the FCA and are in discussion with the relevant team at the FCA about this. I am unable to review

complaints about this matter under the Complaints Scheme. You should direct such complaints to the Information Commissioner's Office.

Rachel Kent

Complaints Commissioner

28 May 2024