



British Osteopathic Association

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British Osteopathic Association's submission regarding the concern of the osteopathic profession about the terms of the new Bupa Osteopathy Network

Introduction and summary

The British Osteopathic Association ("BOA") is an independent organisation which represents osteopaths working both within the National Health Service and privately in the United Kingdom. It is a not-for-profit organisation which aims to promote the understanding and benefits of osteopathy. The BOA obtains the opinions of its members on osteopathic issues, but maintains that its standalone independence is vital in carrying out its representational role.

The BOA is concerned that Bupa's Osteopathy Network insurance scheme (which is currently being launched) is coercive, anti-competitive and damaging to the interests of consumers and osteopaths. Specifically, the BOA is concerned that Bupa is abusing its dominant position and unequal bargaining power between itself and small or sole osteopathic practices to force artificially low prices which are not only likely to inflict real and unfair financial hardship on many providers of osteopathic services, but which are inimical to patients' choice of care available to them.

Bupa's Recognition Criteria

Bupa's dominant market share of over 40% on the market for private healthcare insurance makes recognition by it essential for any osteopath in private practice (as the vast majority of the profession is recognised) and continued recognition is necessary to maintain a successful practice. Bupa's change of recognition criteria in respect of fees restricts many osteopaths' ability to continue to treat their insurance patients. Bupa is in the unique position of being the only private healthcare provider which is vertically integrated by virtue of having its own musculoskeletal centre in London (a fact recognised by the Competition Commission at paragraph 55 of its Statement of Issues).

Furthermore, based on our experience of the market, the BOA and its members consider BUPA to be the largest provider of private medical insurance in the UK, thus giving it unparalleled market power as compared to the individual osteopaths, who have little, if any, bargaining power at all. This unequal playing field has created a market in which Bupa clearly feels that it can force osteopaths to charge artificially low prices for their services, with the long term consequence that innovation and consumer choice are likely to be materially harmed. If however, Bupa continued to allow "top up" payments to be made by patients to individual osteopaths (where fees exceed the Bupa reimbursement rates), competition at the retail level amongst osteopaths would increase, as would consumer choice (both in terms of which osteopath they choose and of which private medical insurer they choose). Patients would also be free to attempt to negotiate with Bupa a higher reimbursement rate where the insurance cover falls short of the costs of treatment. This, in turn, could increase competition amongst the insurers.

Damage to patient choice

To our knowledge, no other private insurance company attempts to set the fees of its osteopathic practitioners. The usual practice of insurers and Bupa's own practice hitherto, is to set a maximum amount in the member's insurance policy for osteopathic treatment for each acute episode. Once the patient's "pot" is used up, that patient can then choose to pay for treatment themselves privately.

If Bupa sets fees which are below the osteopath's usual fee, then patients should simply be able to 'top up' the payment to the practitioner, funding the shortfall out of their own pocket. Alternatively, they can go to another practitioner who is not their preferred choice but whose fees are within the insurer's cap.

That system strikes a fair balance between the economic cost to insurers of 'fee inflation' among medical practitioners and the need to preserve the patient's freedom to choose the "best care" for their needs. However, the effect of Bupa's new scheme where osteopaths must agree not to charge patients the difference between the fee Bupa will pay and the osteopath's usual charge is, by contrast, to remove patients' freedom of choice, by denying the patient indemnity at all in respect of a practitioner whose standard charge is above the level of an arbitrary "cap" laid down by Bupa. So far as the practitioner is concerned, he/she will not be "recognised" by Bupa (and hence be eligible for participation in the scheme) unless they limit their fee charged to the patient to the Bupa imposed cap. Thus, Bupa's scheme actually prevents patients from going to their preferred practitioners at all if the practitioner does not agree to bring his entire fee within the agreed cap imposed by/under the Bupa scheme. This type of arrangement, which arises because of the buyer power possessed by Bupa as insurer, was correctly identified by the Competition Commission (at paragraphs 35 and 36 of its Statement of Issues) as being potentially injurious to the proper functioning of competition. In particular, such a scheme could lead to a reduction or variance in the quality of service provided by consultants and may lead to less innovation, and potentially longer term reductions in output.

Additionally, many patients are insured with Bupa through their employers' schemes and so do not enjoy the freedom to change from Bupa to another insurer which allows them to go to the osteopath of their choice. This is another feature of the market which provides Bupa with unparalleled market power and it can only be viewed as causing real and significant detriment to patients, both as consumers and persons in need of care. It is a denial of their rights as a patient to 'best care', long established under medical guidelines not only by the NHS constitution but also by the General Medical Council. Hitherto, patients in the private sector have enjoyed the advantage of unlimited choice of consultant/practitioner subject to payment of their fees.

Moreover, recent changes to the NHS constitution have also recognised the rights of patients to choose which practitioner is responsible for their treatment. It is of interest to note that Bupa does allow 'top up' fees by consultants and categorises them as 'fee assured' (those who charge no more than that agreed with Bupa) or 'recognized' (those who may charge more than agreed with Bupa and to whom patients may have to pay the difference).

Financial hardship on practitioners and barriers to entry

Quite apart from the detriment caused to patients, the effect of the Bupa scheme will be to inflict substantial and lasting damage on the sustainability of the market in osteopathic services. Bupa is abusing its market power to force individual participating osteopaths to cap their fees at artificially low rate which fails to recognise fundamental distinctions in the market and the costs of applying such services in various localities across the country. For example, we understand that BUPA has sent the following emails to some of our members:

1. "Thank you for your email below regarding the £40/£30 fee limits for the Bupa Osteopathy Network. Please be advised that these fee limits are set and apply to all Osteopaths across the UK, area of practice is not something that was taken into account when setting the fees As the fees are non-negotiable,

you would be required to agree to the £40/£30 in order to be eligible to join the Bupa Osteopathy Network."

2. "With the new network it will be a standard price across the whole of the United Kingdom of £30. I am sorry that Bupa will not be moving on this price I am afraid."

Among other things, the rates fail to take into account, either sufficiently or at all:

1. The variable rates which osteopaths necessarily have to charge, depending on the location and structure of their practice. At opposite ends of the spectrum, a practitioner from premises in central London has greater overheads and expenses than one working from his own home in the north of England.
2. The variable lengths of practice and levels of skill as between recently qualified practitioners and practitioners who have established and well-justified reputations for clinical excellence and / or particular sub-specialties.
3. The scheme imposes new and time consuming levels of administrative demand on 'approved' practitioners. They will be required to invoice for fees entirely through the Bupa system as well as provide regular reports and audit their practices in a way not even required by the regulatory body.

Osteopaths with a large client base reliant on Bupa insurance to pay for their osteopathic care are faced with an impossible choice. If they bring their fees wholesale within the unfeasibly low caps imposed on them through participation in Bupa's new scheme, they will suffer a sudden, unanticipated and unjustified reduction in income. The more patients they take on with Bupa cover, the more acute the problem becomes. Such a reduction may well put some practitioners at risk of going out of business.

Worse, once having realised that it is financially unsustainable for them to continue to participate in the Bupa scheme, the price of leaving it is to reduce their patient-base at a stroke.

If, on the other hand, osteopaths simply choose not to participate in the scheme at all, they also put themselves at risk of losing many of their patients.

Additional reputational damage from non-participation

Any decision by an osteopath not to participate in the Bupa scheme comes at a potentially damaging reputational cost because the consequence of a practitioner deciding not to opt into the scheme (for entirely reasonable and justifiable commercial reasons) is that Bupa designates the practitioner as a "non-approved" provider.

As Bupa well knows, labels such as "approved" or "non-approved" have many connotations in the context of medical care, the most obvious and important of which relates to clinical competence and/or reputation.

If patients are told that certain practitioners are "non-approved" providers in connection with the new Bupa scheme, they are likely to form the impression that the practitioner in some sense falls below approved clinical or ethical standards, rather than simply being unwilling to perform services for an arbitrary fee laid down by Bupa for reasons of Bupa's own business.

Alternatively, but no less worryingly in a competitive market, customers may conclude (quite wrongly) that their preferred osteopathic practitioner is charging fees which are unreasonably high and/or unjustified by reference to the costs of his/her practice or the service he/she provides.

Given the extraordinarily low rates now being imposed by the Bupa scheme (set out in the email extracts above), such an impression would be entirely misleading.