

The complaint

Mrs M complains about the decision by AXA PPP Healthcare Limited to apply a retrospective exclusion to a claim under her private medical insurance policy.

What happened

Mrs M was covered under her husband's group private medical insurance policy through his employer. That policy was with AXA.

Mrs M's husband then left his employer and arranged for him and Mrs M to have individual cover with AXA (under the same policy). The policy started in September 2022 and cost £259.75 per month.

A few months later, Mrs M made a claim for a follow-up consultation. AXA assessed the claim and concluded that Mrs M had failed to disclose information when taking out the policy. It said if it had known the information, it would have applied an exclusion for Mrs M's condition. As the claim was for this condition, AXA applied the exclusion retrospectively and turned down the claim. Unhappy with this, Mrs M brought a complaint to this Service. I understand she also paid for further private treatment, but didn't claim for this due to the exclusion that had been added.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for AXA to conclude that Mrs M had misrepresented information, and turn down the claim because of the retrospective exclusion.

AXA later made an offer to cover Mrs M's condition in full for a higher premium, so long as she paid the backdated premium from the start. However, Mrs M didn't wish to do this, and so the matter has been passed to me for a decision.

I issued a provisional decision on 4 October 2023. Here's what I said:

'As this complaint concerns misrepresentation, I've considered the matter in accordance with the principles set out under the Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA'). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract.

When taking out the new policy, Mrs M's husband was asked some medical questions by AXA, which he answered on Mrs M's behalf. The question that AXA says was answered incorrectly was:

'Do you have any treatment, consultations, investigations or diagnostic tests, planned or pending?'

I'm satisfied this was a clear question. Mrs M's husband answered 'no' on her behalf.

Mrs M saw her consultant in March 2021. At that time, the consultant planned to review Mrs M in six months' time.

When Mrs M took out the policy, she was still waiting for the follow-up consultation. Mrs M's husband says he had no recollection of a follow-up being needed, so that's why he didn't disclose this.

I don't know the reason why the follow-up was delayed, though medical appointments were often delayed due to the impact of the Covid-19 pandemic around this time. However, Mrs M hadn't been told that she would no longer need the follow-up, and the claim was made for the follow-up.

Whilst I appreciate Mrs M (or her husband on her behalf) had forgotten a follow-up would be needed, the information provided by the consultant was that a follow-up would take place. I therefore find that Mrs M (or her husband on her behalf) failed to take reasonable care not to make a misrepresentation.

Mrs M's husband says that AXA was aware of the previous appointments and had a copy of all relevant correspondence (presumably including the letter which mentioned the consultant's planned follow-up), as these had been claimed under the previous policy. However, as our investigator has explained, we wouldn't expect an insurer to cross reference information from previous claims to ensure that medical questions have been answered correctly. It's reasonable to expect an insurer to rely on what it is told when it asks an applicant a question.

Mrs M's husband also says that AXA was allowing a transfer from a group policy to an individual policy. He says the point of this was to ensure that all existing conditions would continue to be covered under the individual policy, which is a feature of AXA's product.

It may be helpful if I explain that when an insurer allows someone to move from a group scheme to an individual policy, there is the potential for cover to be provided for pre-existing conditions. However, this is subject to the applicant answering medical questions so that the insurer can assess the risk presented to it, before allowing the transfer. Depending on the answers to those questions, an insurer could take action that reflects the risk presented, such as increasing the premium, applying an exclusion, or even refusing to offer cover. Here, AXA says it would have charged a higher premium.

Although I've found there was misrepresentation, I think it's clear that Mrs M's husband (on her behalf) didn't deliberately intend to mislead AXA. I agree with AXA that the misrepresentation was careless rather than deliberate.

Although AXA initially said (incorrectly) that it would have excluded Mrs M's condition if it had known about the planned follow-up, it has since confirmed it would have actually charged a higher monthly premium for her and her husband (£502.55 instead of the £259.75 which was paid). It has now offered to cover Mrs M's condition for the higher premium. However, it says this would be charged from the outset and therefore Mrs M would need to pay the backdated amount due.

I asked AXA for information on how Mrs M's new premium was calculated, and it has provided a breakdown which shows her premium would have been £385.38. I'm afraid I can't share this with Mrs M or her husband as this information is commercially sensitive. But I'm satisfied AXA has shown that it would have charged Mrs M this higher premium, and therefore the misrepresentation is 'qualifying' for the purposes of CIDRA.

AXA has confirmed that Mrs M's husband's part of the premium remained unchanged. Based on the total premium being £502.55, I would therefore assume that this was £117.17. But I would be grateful if AXA could confirm this in response to this provisional decision, so I

can be certain that £502.55 would have been the correct total premium. By my calculations, this would mean that Mrs M had paid 37% of her correct premium.

As I've said, AXA has offered to cover Mrs M's condition in full if she pays the backdated premiums. Although this isn't in line with CIDRA, where an insured is happy to do this, I won't usually interfere in this. However, Mrs M doesn't want to do so. So I think AXA ought to have used the remedy available under CIDRA.

CIDRA says an insurer's remedy is based on what it would have done had the consumer taken reasonable care and not made a careless misrepresentation. Therefore, because AXA would've still entered into the contract but would've charged a higher premium, that means AXA should have reduced proportionately the amount to be paid on a claim.

I therefore intend to find that AXA should reimburse Mrs M for the private treatment she has paid for on a proportionate basis (in other words, based on the proportion of premium Mrs M has paid, compared to what she should have paid), plus interest.

I also think Mrs M has been caused inconvenience and unnecessary confusion by AXA's handling of the matter. I intend to require it to pay her £300 compensation for this.'

I asked both parties for any further comments they wished to make before I made a final decision. However, neither party responded by the deadline with any further comments.

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.

Though as neither party has provided me with any further comments to consider, I'm satisfied this complaint should be partly upheld, and for the same reasons as set out in my provisional decision.

In my provisional decision, I asked AXA to confirm to me that Mrs M's husband's part of the premium was £117.17, so I could be sure that £502.55 was the correct premium that ought to have been charged. Based on this, I calculated that Mrs M had paid 37% of her correct premium. Unfortunately, AXA didn't provide this confirmation to me, and so I require it to confirm this to Mrs M.

My final decision

My final decision is that I partly uphold this complaint. I require AXA PPP Healthcare Limited to do the following:

- Confirm to Mrs M how much of the premium is payable for her husband, and the percentage of premium she has paid, compared to what she should have paid.
- Reimburse Mrs M for the private treatment she has paid for since taking out the policy (subject to the policy terms) on a proportionate basis. Interest* should be added at the rate of 8% simple per annum a month after the invoice/s were paid to the date of settlement.
- Pay Mrs M £300 compensation.

* If AXA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a

certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 15 November 2023.

Chantelle Hurn-Ryan
Ombudsman