

## **The complaint**

Miss M complains about the decision by AWP P&C SA to apply exclusions to her private medical insurance policy, and decline her claims.

## **What happened**

In May 2021, Miss M took out private medical insurance cover with AWP. In 2021 and 2022 Miss M made a number of claims for private treatment. When AWP assessed the claims, it concluded that they were related to symptoms/conditions that existed before the policy started, which Miss M hadn't told it about. It therefore applied some exclusions to the policy, and refused to pay the claims. Unhappy with this, Miss M brought a complaint to this service.

Our investigator recommended the complaint be upheld. She thought the evidence that AWP had relied on was not clear enough to conclude that Miss M had misrepresented information about her health when taking out the policy. The investigator recommended that AWP remove the exclusions and pay the claims. She also thought AWP should pay £500 compensation for the upset and inconvenience caused to Miss M by the matter.

AWP didn't accept our investigator's recommendations, and so the matter has been passed to me for a decision.

## **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.

Although AWP told our investigator that it intended to send this service additional information, it has not done so. Given that nearly three months have passed, I have reached my decision based on the information that we hold.

As this complaint concerns alleged 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.

I see that AWP has relied upon the pre-existing medical condition exclusion in the policy to turn down the claims. To be clear, that exclusion is not relevant here as medical questions were asked by AWP when Miss M applied for the policy. Instead, CIDRA would apply.

AWP says the following two medical questions weren't answered correctly by Miss M:

1. *Has any person included in this application ever suffered from, been in hospital with, or had tests, investigations or treatment of any kind, for the following conditions?*
  - a) *Any heart or circulatory disease or disorder, such as, but not limited to heart attack, coronary artery disease, irregular heartbeat, murmur, chest pain, clots, blood disorder, abnormal blood pressure, high cholesterol, etc.*

...  
m) *Any other accident, injury, disease or disorder not already disclosed.*

AWP has provided a blank application form, but not a copy of the actual application form completed by Miss M. I therefore haven't been able to confirm what her answers were to the above questions. Though in any event, I find that the questions aren't particularly clear. The ABI Code of Practice on misrepresentation says that not much weight should be given to 'catch all' or 'memory test' questions – and it seems to me that is what the above questions are.

Nonetheless, I'll address each claim in turn.

### Leg pain

In July 2021, Miss M saw a specialist as she had pain in her legs. The medical report said that Miss M complained of leg heaviness and discomfort that was becoming more pronounced in the last few months. It also said there was a swelling of Miss M's calves, and to a lesser extent in the feet, mostly during warmer months.

Based on this, AWP concluded that Miss M's symptoms had started before the policy began in May 2021. It said the reference to her symptoms happening in the warmer months meant it was possible to link her symptoms to a repeating pattern of the warmer months of the year. It thought she had therefore had her symptoms for at least a year.

Miss M said her symptoms had only started a few weeks before the appointment, and that she had waited for the pain to subside on its own. She said she saw the doctor when it did not do so, and she had attributed the problem to the hot weather at the time.

I appreciate the doctor's comments suggest that Miss M's symptoms *could* have pre-dated the start of the policy. However, it's also possible the reference to the last few months could mean her symptoms started after the policy was taken out. Miss M was seen by the doctor during the summer, and so I agree with our investigator the reference to warmer months could mean the warmer months after her policy started.

On balance, I don't think the above evidence was enough on its own for AWP to conclude that Miss M had experienced her symptoms of leg heaviness and discomfort before the policy started. Even if I had agreed with AWP, as I've said, it hasn't provided a copy of the completed application form, so I wouldn't have been able to conclude that Miss M had answered any of the questions incorrectly.

I therefore require AWP to remove the exclusion for '*any disease or disorder of the legs from cover, any underlying causes, including any treatment, investigations into and/or consequences of this condition*'.

AWP should also settle any outstanding invoices for this claim in line with the policy terms and limits. If Miss M has already paid the invoice/s, it should reimburse her for this and add interest.

### Dermatology

Miss M says that she arranged to see a Dr A after coming out in a rash on her face in June 2021. She explained that Dr A arranged some blood tests. She then had a follow-up appointment with Dr A who prescribed her some medication.

Miss M says that in August 2021, she had a problem with her lips. Dr A wasn't available, and so she saw Dr Z instead. According to Miss M, Dr Z prescribed her some medication, but also referred her to a Dr O. Miss M says that AWP paid Dr O's fees, but not the fees for Dr A or Dr Z.

I see that Miss M also had some patch testing, which I assume was related to her dermatology claims.

AWP refused to pay Dr A's invoices. It said the claim was excluded due to '*expenses relating to pre-existing conditions seborrheic dermatitis*'.

AWP also refused to pay Dr Z's invoice. It said the claim was excluded due to '*expenses relating to pre-existing conditions eczema*'.

However, AWP hasn't provided this service with any medical evidence to support that Miss M's claims were related to pre-existing conditions of dermatitis or eczema, despite having sufficient opportunity to do so. Again, even if I had agreed with AWP, it hasn't provided a copy of the completed application form, so I wouldn't have been able to conclude that Miss M had answered any of the questions incorrectly.

I therefore require AWP to remove the above exclusions from Miss M's policy, and pay the invoices for these claims in line with the policy terms and limits. If Miss M has paid these, then AWP should reimburse her and pay interest. This is also the case for any medication that Miss M was prescribed.

#### Clinic

I've seen an invoice from a private clinic for £412. I don't know what this invoice relates to. AWP refused to pay the invoice and said the treatment took place before the policy started.

As AWP has not provided any evidence to support its decision to turn down this claim, I cannot conclude that the claim was fairly declined. The invoice was dated March 2022 which was nearly a year after the policy started.

AWP should therefore pay this invoice in line with the policy terms and limits. If Miss M has already paid this, it should reimburse her and pay interest.

#### Conclusion

I think AWP has handled these claims badly. It has turned down Miss M's claims without giving sufficient reasoning for doing so, and apparently without supportive evidence for concluding that her symptoms/conditions predated the start of the policy.

It's apparent that Miss M has been caused both inconvenience and upset as a result of AWP's refusal to accept her claims. She has explained how stressful she has found the matter, and says she has been bombarded with debt collection letters for the private treatment, which she has not been able to pay.

I also note that Miss M required surgery on her leg, which AWP refused to cover. Although Miss M decided not to go ahead with this surgery, AWP's handling of the matter meant that she was denied the option. She also had to then seek treatment on the NHS for her symptoms.

In these circumstances, I agree with our investigator that AWP should pay Miss M £500 compensation to recognise the impact its handling of the claims have caused her.

## **My final decision**

My final decision is that I uphold this complaint.

I require AWP P&C SA to do the following:

- Remove the exclusions for: - disease or disorder of the legs, seborrheic dermatitis, and eczema.
- Settle any outstanding invoices for the claims relating to leg pain and dermatology in line with the policy terms and limits (plus the invoice for £412). If Miss M has already paid for any of the invoices it should reimburse her. Interest should be added at the rate of 8% simple per annum, payable from the date each invoice was paid to the date of settlement\*.
- Pay Miss M £500 compensation.

\*If AWP considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss M how much it's taken off. It should also give Miss 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 Miss M to accept or reject my decision before 3 August 2023.

Chantelle Hurn-Ryan  
**Ombudsman**