

The complaint

Mrs W complains that AXA PPP Healthcare Limited has turned down a claim she made on a personal private medical insurance policy.

What happened

Mrs W took out a personal private medical insurance policy with AXA in July 2007.

Unfortunately, in 2018, Mrs W was diagnosed with breast cancer and underwent radiotherapy. Mrs W takes regular medication to prevent a recurrence of cancer and undergoes bi-annual medical reviews with a consultant breast surgeon who I'll call Mr M.

In October 2022, Mrs W saw Mr M at a review in a clinic. Mr M found no evidence of recurrent malignancy. But he noted that Mrs W had experienced changes in her right breast secondary to breast cancer surgery and radiotherapy. These changes were due to a breast implant Mrs W had had inserted in 2006 becoming hardened and encapsulated. Mr M noted that Mrs W was keen to undergo removal and replacement of her existing breast implants.

So Mrs W made a claim on her private medical insurance policy for the costs of removing and replacing her existing, hardened breast implant and the implant inserted in her other breast.

AXA turned down Mrs W's claim. It didn't dispute that Mrs W's breast implants had been affected by her radiotherapy treatment. But the policy only covered a policyholder's first reconstructive surgery after an accident or surgery if AXA had continuously provided cover before the surgery took place. And it specifically excluded treatment related to previous cosmetic surgery – including cosmetic surgery to a reconstructed breast. Mrs W had had breast implant surgery in 2006 – prior to the policy start date – for cosmetic reasons. So it felt the policy exclusion applied to the circumstances of her claim.

Mrs W was unhappy with AXA's decision and she asked us to look into her complaint. She also felt AXA's call handlers had treated her rudely.

Our investigator thought Mrs W's complaint should be partly upheld. He felt the medical evidence showed that Mrs W's implant had hardened due to her previous cancer treatment and that it was therefore medically necessary to remove it. So he concluded that the cost of removing the implants should be covered, although he felt it had been reasonable for AXA to decline to cover the cost of replacing them.

I issued a provisional decision on 13 July 2023, which explained the reasons why I thought it had been fair for AXA to turn down Mrs W's claim. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mrs W's policy and the available evidence, to decide whether I think AXA treated Mrs W fairly.'

I've first considered the terms and conditions of Mrs W's policy, as these form the basis of her contract with AXA. It's important that I make it clear that Mrs W's policy certificate indicates that she didn't have extended cancer cover (section 9) under her policy. Cover under section 9 was an optional extra and Mrs W's policy certificate states 'no' next to this particular option. During calls with AXA, Mrs W referred to terms relating to reconstructive breast surgery, which she felt provided cover for her situation. However, the terms Mrs W referred to are set out in the extended cancer cover section of the policy and therefore, don't apply to her claim. Instead, AXA considered Mrs W's claim in line with section 6 of the policy, which sets out the 'eligible treatment' it covers.

The policy sets out the circumstances and criteria which AXA uses to assess whether treatment is eligible or not. One of those criteria states that the treatment 'is not excluded from cover by any term in (the) handbook.'

Section 6.1(d) says that AXA will pay for:

'Your first reconstructive surgery after an accident or following surgery for a medical condition, provided that:

- We have covered you continuously under a policy of ours since before the accident or surgery happened; and*
- We agree the cost of the treatment in writing before it is done.'*

Section 6.2 sets out a list of specific treatments that AXA has decided not to cover. One of these says that AXA won't pay for:

'Cosmetic (aesthetic) surgery or treatment, or any treatment relating to previous cosmetic or reconstructive treatment, including any cosmetic operation to a reconstructed breast.'

I've looked carefully at all of the available evidence and in particular, Mr M's report. He stated that: (Mrs W) had 'developed changes in the right breast secondary to breast cancer surgery and radiation therapy and these changes are associated with discomfort. Therefore, she is keen to proceed with replacement of the existing breast implants combined with capsulotomy on the right.'

AXA considered the evidence and felt the claim was specifically excluded from cover. I've thought about this carefully to decide whether I think this was a fair conclusion for AXA to reach.

Having listened to the calls between Mrs W and AXA, Mrs W indicated to AXA that she'd had implants inserted in 2006 for cosmetic reasons. This surgery pre-dated Mrs W taking out the policy in 2007. So it's clear that AXA hadn't been continuously covering Mrs W since prior to her original implant surgery in 2006. And as such, I don't think she meets the first 'limb' of the cover conditions set out in 6.1(d).

And in my view, AXA has clearly set out that it won't cover any treatment related to previous cosmetic treatment. I don't doubt Mrs W's account to AXA that the radiation therapy had caused her original implants to harden and become encapsulated. I can entirely understand why Mrs W wished to undergo surgery. However, I don't think it was unfair or unreasonable for AXA to conclude that the surgery Mrs W had claimed for in 2022 was directly related to the cosmetic implant surgery she'd undergone in 2006. Therefore, I don't currently think it was unfair or unreasonable for AXA to rely on the exclusion to turn down Mrs W's claim.

Our investigator felt that AXA should cover Mrs W's treatment because he considered that Mr M's letter showed the surgery was medically necessary. I disagree. While Mr M says that

the breast changes Mrs W had experienced are 'associated' with discomfort, he didn't indicate that Mrs W was experiencing discomfort or pain. Neither did he suggest that the surgery was medically necessary in Mrs W's case. So I don't think I could reasonably uphold the complaint on this basis either.

It's clear that Mrs W feels very strongly about this complaint and I sympathise with her position. But having considered everything, I simply don't think AXA has treated her unfairly or unreasonably. And while I understand Mrs W thinks AXA's call handlers were rude to her, having listened to the calls, I think AXA's staff acted in a professional and polite way. I appreciate Mrs W was understandably upset when she was told that her claim wasn't covered, but I don't currently think AXA's call handlers acted rudely or inappropriately. On this basis then, I don't currently think AXA acted unfairly when it turned down Mrs W's claim and nor do I think it needs to pay her any compensation.'

I asked both parties to send me any additional evidence or comments they wanted me to consider.

AXA accepted my provisional findings. Mrs W didn't. In brief, she felt the claim and complaint turned on an interpretation of the policy wording. She wanted to resolve the issue, as she felt it had been going on for far too long. She said she has discomfort and, at last check, the surface had degraded. She told us that post-surgery, she has been left with a large indent at the incision site, which has affected her confidence. She queried what we'd suggest she should do.

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 Mrs W, I still think it was fair and reasonable for AXA to turn down her claim and I'll explain why.

I understand it's been some time since Mrs W made her claim and I can understand why she would like it to be resolved as soon as possible. I'm also aware that my conclusions are different to our investigator's and I appreciate this is likely to have caused Mrs W frustration and disappointment. I'm sorry too to hear about the impact of the surgery on Mrs W's confidence.

However, as I set out in my provisional decision, I'm satisfied that AXA has clearly set out the cover that Mrs W's policy provides. And for the reasons I explained above, I'm satisfied that the circumstances of Mrs W's claim aren't covered by the terms of the contract between her and AXA. I'm sorry to hear that Mrs W suffered from discomfort and I don't doubt how upsetting this situation must be for her. But it remains the case that there simply isn't enough medical evidence from Mrs W's treating surgeon to show that Mrs W's surgery was medically necessary, or that she was in pain or discomfort. Additionally, I don't think I could fairly hold AXA responsible for any post-surgical discomfort or issues that Mrs W may now be experiencing. So I don't find that there are any reasonable grounds upon which I could direct AXA to accept and pay Mrs W's claim.

Overall, despite my natural sympathy with Mrs W's position, I think it was fair and reasonable for AXA to turn down her claim.

My final decision

For the reasons I've given above and in my provisional decision, 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 W to accept or reject my decision before 13 October 2023.

Lisa Barham
Ombudsman