

The complaint

Mrs C complains about the decision by AXA PPP Healthcare Limited to apply an exclusion to her private medical insurance cover.

What happened

On 19 January 2022, Mrs C completed an application to join her employer's group private medical insurance policy with AXA. Her application was accepted, and cover started on 1 February 2022.

Mrs C later asked AXA if it would cover the cost of a mammogram. AXA considered the matter and concluded that Mrs C hadn't disclosed relevant information about her health when taking out the policy. It therefore applied an exclusion to the policy for breast cancer. Unhappy with this, Mrs C brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought AXA had shown that Mrs C hadn't take reasonable care when completing the application form. She found that it had been reasonable for AXA to apply the exclusion.

Mrs C didn't accept our investigator's conclusions, 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.

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.

AXA says Mrs C failed to take reasonable care when answering the medical questions in her application form. I'll consider each question in turn.

The first question asked:

'3.1 Have you or anyone to be covered under this plan, had treatment in hospital or consulted a specialist in the last 12 months?'

The application also said:

'Please note:

- By treatment we mean surgical or medical services that are needed to diagnose, relieve or cure a disease, illness or injury*
- A specialist is any doctor (including psychiatrist) who is not your GP.'*

I think this question was clear.

In response to this question, Mrs C answered yes and disclosed that she'd had treatment for a gynaecological problem, as well as another condition. However, AXA thought that Mrs C also ought to have disclosed consultations she'd had with Miss P (consultant oncoplastic breast surgeon) on 26 January 2021 and 3 September 2021.

Mrs C says she saw Miss P in January 2021 because she wanted to know whether medication prescribed for her gynaecological problem would cause any complications. This was due to her previous diagnosis of cancer. She says that this appointment therefore only took place because of her gynaecological issue.

I've read Miss P's January 2021 clinic letter, and I appreciate she did comment on Mrs C's prescribed medications. She said these should only be used in the short term given Mrs C's previous breast cancer. Though it's also the case that she carried out a physical examination on Mrs C and said this showed no evidence of recurrence (of cancer). Miss P said she had reassured Mrs C and would review her in one year with a mammogram.

After Mrs C referred her complaint to this Service, she provided new evidence from Miss P, as well as from her consultant obstetrician and gynaecologist (Mr R).

Miss P said the January 2021 appointment was due to Mrs C's gynaecological issue. She said Mrs C had been started on medication which she was concerned may affect the risk of recurrence of cancer and wanted to discuss this.

Mr R said that he saw Mrs C in December 2020, and had advised her to seek the opinion of her breast surgeon to ensure it would be safe for her to go on the medication prescribed.

I've taken into account the comments by Miss P and Mr R. However, I note that Mrs C's previous appointment with Miss P was in July 2020. At that appointment, Miss P said she would review Mrs C again in six months. It therefore seems that the January 2021 appointment was a planned follow-up appointment in relation to Mrs C's previous diagnosis of cancer (though I appreciate that Mrs C asked Miss P about her medication for her gynaecological problem in this appointment too). So I think Mrs C should have disclosed this consultation to AXA.

Mrs C saw Miss P again in September 2021. She did so as she had noticed a small lesion in the left axilla. Miss P arranged a mammogram, as well as an ultrasound of the axilla, and said that a physical examination showed no evidence of recurrence (of cancer). Whilst I appreciate Mrs C says there was no diagnosis or treatment, it is still the case that she consulted a specialist, and so I think she ought to have also told AXA about this consultation.

I therefore find that Mrs C failed to take reasonable care when answering the above question.

The application also asked:

'3.2 Do you or anyone else to be covered under this plan have any treatment, consultations, investigations, or diagnostic tests, planned or pending?'

Mrs C answered 'no'. Again, I think this question was clear.

Miss P's clinic letter dated 3 September 2021 included a plan to review Mrs C in a year's time with a mammogram.

I'm satisfied from this that Mrs C had a follow-up consultation and investigation planned or pending when she applied for the policy. Therefore, I find that Mrs C also failed to take reasonable care when answering this question.

As I've concluded that Mrs C failed to take reasonable care when answering both questions, that means there was misrepresentation.

AXA has shown this Service that if Mrs C had answered the questions correctly, it would have applied the following exclusion:

'No benefit for any investigations and treatment related to Breast cancer and conditions arising therefrom and associated therewith.'

That means that AXA has shown that the misrepresentation was 'qualifying' under CIDRA. As AXA has categorised the misrepresentation as careless rather than deliberate, that means that AXA was entitled to apply the exclusion retrospectively, and refuse any claims that fell under the exclusion.

I recognise my decision will disappoint Mrs C, but I find that AXA's decision to apply the exclusion was fair and in line with CIDRA.

My final 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 C to accept or reject my decision before 9 August 2023.

Chantelle Hurn-Ryan
Ombudsman