

## The complaint

Mr K complains that AXA PPP Healthcare Limited has declined to provide further cover for a spinal problem under a personal private medical insurance policy.

## What happened

Mr K took out a personal private medical insurance policy on 2 June 2020, on moratorium underwriting terms. This meant that AXA wouldn't provide any cover for any condition Mr K had had in the five years before the policy was taken out unless he'd had a 'trouble-free' period for at least two years after the policy began.

On 27 June 2020, Mr K made a claim on the policy for a spinal condition. Mr K's GP filled-out a referral form, which stated that Mr K had begun to experience symptoms of the condition on 19 June 2020. So AXA authorised the claim and covered the costs of Mr K's consultations with a specialist and spinal surgery, amongst other things.

Subsequently, in late 2022 and early 2023, Mr K began to suffer further pain, in particular, suffering persistent left-sided symptoms of associated neck pain and headaches. He underwent further consultations with his treating doctor, who felt that Mr K might need a further MRI scan.

AXA asked Mr K's treating doctor for more information about the claim. It noted that the evidence indicated Mr K had been in an accident in 2018 and that his spinal pain had developed a short while later. The doctor linked the accident and the condition Mr K had and was claiming for. So AXA concluded that Mr K's spinal condition had existed in the five years before the policy was taken out. And it didn't think Mr K had had a two-year 'trouble-free' period between taking out the policy and his claim. Therefore, it concluded that Mr K's claim was excluded by the moratorium.

So AXA declined to offer further cover for Mr K's spinal condition from March 2023 onwards. However, it told Mr K that it wouldn't be seeking to recover any of the treatment costs it had already paid.

Mr K was unhappy with AXA's position and he asked us to look into his complaint. He said that he couldn't pay for the MRI scan he needed or to undergo further treatment. He considered that AXA was neglecting his care and seeking to stop paying out to its customers. He felt that given AXA had already paid for some of his treatment, it had a duty of care to him.

Our investigator didn't think AXA had treated Mr K unfairly. Based on the medical evidence, she didn't think it had been unreasonable for AXA to conclude that Mr K's claim was caught by the moratorium terms. And so she felt it had been fair for AXA to decline to provide any further cover for Mr K's spinal condition.

Mr K disagreed. In summary, he felt the treating doctor's evidence showed that he hadn't had symptoms of the spinal condition before taking out the policy – he'd simply had whiplash. He considered if he'd shown symptoms of the spinal condition after the accident in

2018, he'd have been treated for it at that time. And he felt that AXA was hiding behind its policy terms to refuse to pay further claims.

The complaint's been passed to me to decide.

### **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 Mr K, I don't think it was unfair for AXA to decline to provide further cover for his spinal condition and I'll explain why.

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 Mr K's policy and the available medical evidence, to decide whether I think AXA treated him fairly.

First, I've considered the policy terms and conditions, as these form the basis of the contract between Mr K and AXA. I can see that Mr K took out the policy on 2 June 2020, on a moratorium underwriting basis. Page 15 of the Membership handbook sets out what moratorium underwriting means and states:

*'If you joined us on moratorium terms, it means that you won't have cover for treatment of medical problems you had in the five years before you joined us until:*

- *you've been a member for two years in a row, and*
- *you've had a period of two years in a row, since you joined, that have been trouble-free from that condition.'*

AXA has defined 'trouble-free' as follows:

*'Trouble-free means that you have not done any of the following for the medical condition you need treatment for:*

- *had a medical opinion from a medical practitioner, including a GP or specialist*
- *taken medication (including over-the-counter drugs)*
- *followed a special diet*
- *had medical treatment*
- *visited a practitioner, therapist, homeopath, acupuncturist, psychologist, cognitive behavioural therapist, optician or dentist.'*

In my view, AXA's policy terms make it clear that it won't cover any pre-existing medical conditions a policyholder has had in the five years prior to taking out the policy, until they've been a member for two consecutive years and have had two consecutive 'trouble-free-years'. AXA now considers that Mr K's spinal condition is excluded by the terms of the moratorium. So I've looked carefully at the available medical evidence to decide whether I think that was a fair conclusion for it to draw.

When AXA initially considered Mr K's claim, in 2020, it relied on the medical form completed by Mr K's GP. This stated that Mr K's symptoms had begun a few weeks *after* the policy had been taken out. On that basis, I think it was reasonable for AXA to have decided to accept Mr K's claim and to pay for his spinal consultations and surgery.

However, that doesn't mean AXA is obliged to provide ongoing cover for Mr K's condition

indefinitely.

In January 2023, AXA received further medical evidence from Mr K's treating doctor. One clinic letter was dated June 2022 and included the following:

*'Diagnosis:*

- 1. RTA in 2018...with trauma to head and left side of body.*
- 4. Neck pain and arm symptoms mainly left sided;'*

The treating doctor said:

*'Since I last reviewed him over a Teams appointment last month, he has gone on to have an MRI of his cervical spine in the Upright MRI Scanner...*

*(Mr K) however has the majority of his symptoms on the left side of his neck and shoulder, which I suspect is related to his direct trauma to that part of his body during the accident.'*

A further clinic letter from Mr K's treating doctor, also dated June 2022, stated:

*'(Mr K) tells me that about a month after his injury neck pain started to develop and he has been scanned previously and known to have some wear and tear in his cervical spine. Initial advice from spinal surgery was for conservative management. He feels that however over time symptoms are intrusive, preventing him from returning to work and mainly his symptoms are intermittent symptoms in his arms, left ulnar distribution and right arm globally.'*

The treating doctor's letter also referred to a spinal MRI Mr K had undergone in April 2022.

In March 2023, Mr K's consultant wrote a further clinic letter stating that they were happy to arrange a further MRI for Mr K because he was experiencing left-sided symptoms. The diagnoses included the following:

*'Diagnosis:*

- 1. RTA in 2018 (scooter vs car accident) with trauma to head and left side of body;*
- 2. (Spinal condition) and left more than right arm symptoms with associated neck pain and headaches;*
- 4. Pressure type symptoms in the upper cervical spine and occipital discomfort with persistent left arm discomfort and headaches.'*

The consultant also stated:

*'Since I last spoke to (Mr K) in December he tells me that he has started to develop increased neck discomfort in the mid-cervical spine as well as in the suboccipital region radiating up into the occipital area. He feels that he has persistent left arm symptoms as he had prior to surgery.'*

I don't think it was unreasonable for AXA to have relied on the treating doctor's evidence to conclude that Mr K's symptoms had begun shortly after his accident in 2018 – which was only around two years before the policy was taken out. Nor do I think it was unreasonable for AXA to have concluded that Mr K hadn't had a two-year 'trouble-free' period after taking out the policy – given he'd had an MRI scan within the first two years of policy cover. On that basis then, I don't find AXA acted unfairly when it decided that Mr K's claim fell within the scope of the moratorium clause and decided to decline to provide further cover for that condition.

Following AXA's decision, Mr K's treating doctor wrote a letter in support of his claim. I've set out what I think are the doctor's key points:

*'I have had a telephone discussion with (Mr K) to clarify the chronology of his symptoms related to his neck. He tells [sic] that although he was involved in a road traffic accident in 2018, he was assessed and managed at the time for soft tissue whiplash and was discharged without any requirement for spinal intervention. The symptoms I have been reviewing him for and treating appear to have started in late 2019/2020. It is not certain that his symptoms are related to his previous trauma in 2018 and may have been a more recent onset. I would be grateful if you could consider his case for ongoing cover.'*

AXA considered the doctor's letter but maintained its position. I've thought very carefully about this. I appreciate that the treating doctor can't say with certainty that Mr K's symptoms are related to the accident in 2018. However, it remains the case that they previously indicated that they suspected Mr K's condition and accident could be related. And the doctor has also made reference to Mr K's symptoms potentially having begun in late 2019. This would have been several months *before* the policy began in June 2020. So even if Mr K's symptoms aren't linked to his previous accident, I don't think it was unfair for AXA to have concluded that those symptoms likely existed before the policy began. Therefore, I don't think it was unfair for AXA to maintain that Mr K's claim was excluded by the terms of the moratorium and to decline to offer further cover his spinal condition.

I sympathise with Mr K's position, because I appreciate he's told us that he can't afford to pay for an MRI or further treatment privately. But I think AXA has treated Mr K fairly and reasonably in all of the circumstances. And I find it was reasonably entitled to decline to provide any cover for Mr K's spinal condition after 14 March 2023.

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 18 December 2023.

Lisa Barham  
**Ombudsman**