DRN-4330701

The complaint

Mr R complains about the way that Aetna Insurance Company Limited has handled claims he made over a number of years on a private medical insurance policy.

What happened

The circumstances of this complaint are well-known to both parties. So I've set out a brief summary of what I consider to be the key events.

Mr R took out a 'Pioneer' medical insurance policy in 2002. The policy renewed on 7 February of each year.

In 2019, Mr R made a number of claims on the policy, including invoices which dated back to a few years earlier. Aetna overlooked Mr R's claims initially and the claims don't appear to have been settled until February 2021. Mr R made a complaint about the delays he'd experienced.

At a similar time, in February 2021, the underwriter of Mr R's policy changed to Aetna Insurance (Hong Kong) Limited (AIHKL).

Aetna issued a final response to Mr R's complaint in March 2021. It offered Mr R £1000 compensation for the delays in processing his claims. This amount was also intended to include interest for the time Mr R had been out of pocket due to the delays in settling his claims. The final response letter provided referral rights to this service if Mr R was unhappy with Aetna's position.

At renewal in February 2022, Mr R's policy underwriter switched again to Aetna Insurance Company Limited. Mr R made further claims on the policy during the policy year. Again, he was unhappy with delays he experienced and Aetna's claims handling-process. So, after further correspondence between Mr R and Aetna, he made a new complaint.

Aetna provided a final response to Mr R's further complaint in March 2023. It explained that all of Mr R's claims had been reviewed and all but one had been settled. It told Mr R that it had wrongly accepted and paid a claim for a medication which wasn't approved by the relevant regulator to treat one of Mr R's conditions. But it agreed that it wouldn't ask Mr R to reimburse the money. In follow-up letters dated 5 and 18 April 2023, Aetna agreed to pay Mr R a one-off amount of £2000, which was inclusive of the £1000 it had offered in 2021. As such, it offered Mr R £1000 compensation for its handling of his claims after it had begun underwriting the policy in February 2022.

Mr R remained unhappy with Aetna's position and he asked us to look into his complaint.

Aetna let us know that it didn't consent to us looking into some of the issues Mr R had raised. It said that Mr R had complained to us about the issues it had dealt with in its final response letter of March 2021 too late. And it told us that AIHKL wasn't within our territorial jurisdiction either. So it didn't think we could consider anything that happened within the 2021-2022 policy year, while the policy had been underwritten by AIHKL.

Our investigator didn't think we could help Mr R with all of his complaint. She was satisfied Mr R had made his part of his complaint outside of the timescales set out in the rules under which we operate. That's because Aetna's final response letter of March 2021 had given Mr R six months to bring a complaint to us about the issues dealt it with. But Mr R hadn't complained to us until May 2023. The investigator didn't think exceptional circumstances applied which would have prevented Mr R bringing a complaint to us within six months. And the investigator didn't think we had the power to look at any complaint points relating to the period while AIHKL had been the policy underwriter, as it didn't fall within our jurisdiction.

The investigator thought we could consider Mr R's complaint about the way Aetna had handled claims during the 2022-23 policy year. She felt that Aetna had demonstrated that it had dealt with the majority of Mr R's outstanding claims and that it had paid for one medication outside the policy terms. She also thought its offer to pay Mr R £1000 compensation (together with the £1000 Aetna had offered in March 2021) was fair and reasonable. So she didn't recommend that Aetna should do anything more.

Mr R disagreed and I've summarised his responses to us. He felt that given his medical situation following Aetna's final response of March 2021, he hadn't been able to bring a complaint to us in time. He said Aetna had made an extremely large number of serious errors over several years and there'd been a continuous exchange of emails whilst he'd been an Aetna customer. He considered that as Aetna had included the offer of compensation it had made in 2021 in its offer of April 2023, it had waived the six-month time limit. He felt it was disingenuous to refer to Aetna's decision to recover a claim it had paid in error as a favour.

The complaint's been passed to me to decide. I will initially decide whether we have jurisdiction to look into the complaint points Mr R has made and then I will go on to consider the merits of any complaint points which I do find to be within our jurisdiction.

My findings on jurisdiction

I have looked at all the evidence and submissions to decide whether this is a complaint we have jurisdiction to consider.

Has the complaint been brought in time?

The Financial Ombudsman Service can't consider every complaint that's brought to us. The rules under which we operate – the Financial Conduct Authority's Dispute Resolution ('DISP') rules, set out what complaints we can and can't consider.

DISP 2.8.2 says*:*

'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication.'

We can consider a complaint which has been made too late if the respondent financial business consents to us doing so; or if we think exceptional circumstances apply which prevented a consumer from bringing their complaint to us in time.

In this case, it seems Mr R first made a complaint to Aetna in late 2020 about the delays he'd experienced in assessing and settling his claims. Aetna issued a final response to Mr R about those concerns on 10 March 2021. I'm satisfied that Aetna clearly explained its

settlement offer of £1000 compensation to Mr R; that it appears to have explained the reasons for the delays in settlement and that it gave Mr R clear referral rights to this service. Those referral rights explained that Mr R would need to bring a complaint to us within six months of that letter, or Aetna wouldn't consent to us looking into it. I haven't seen any persuasive evidence which would lead me to conclude that Aetna agreed to extend the time limits.

Mr R didn't bring a complaint to us until May 2023 – over two years after Aetna issued its final response. So I'm satisfied that his complaint points relating to claims he made between 2019 and February 2021 have been made out of time. I appreciate Mr R feels that Aetna's letters of April 2023 extended time under Aetna's first final response letter. However, I disagree. In my view, the April 2023 letters simply *referred to* the final response of March 2021 – they didn't revisit the complaint dealt with at that time.

I've thought carefully about Mr R's reasons for not bringing the complaint to us in time. I'm sorry to hear he was unwell with a number of medical conditions. However, I don't think these conditions or his circumstances meant that he couldn't have referred a complaint to us in time. So I don't find that exceptional circumstances applied which meant Mr R was unable to complain to us within six months of Aetna's March 2021 letter.

This means that I've decided that we can't consider Mr R's complaint points which relate to the handling of his claims by Aetna during the period up until February 2021, which were addressed by the final response letter of March 2021.

Is Mr R's complaint within our territorial jurisdiction?

At Mr R's February 2021 renewal, the policy underwriter switched to AIHKL. This was an insurer based in Hong Kong, which doesn't appear to have been subject to regulation by the UK regulator.

DISP 2.6 sets out our compulsory and voluntary jurisdiction. I've seen nothing to suggest that AIHKL is a member of our voluntary jurisdiction. DISP 2.6.1 explains our compulsory jurisdiction and says:

'(*1) The Compulsory Jurisdiction covers complaints about the activities of a firm (including its appointed representatives), of a payment service provider (including agents of a payment institution), of an electronic money issuer (including agents of an electronic money institution), of a CBTL firm, of a designated credit reference agency or of a designated finance platform which:*

1. *(a) …are carried on from an establishment in the United Kingdom; or*
2. *(b) are carried on from an establishment in an EEA State… '*

AIHKL's business isn't carried on from an establishment in the United Kingdom. And neither is its business carried on from an establishment in an EEA state.

I've looked carefully at the policy documents relating to the 2021-2022 policy year. Mr R's policy schedule clearly states that his insurer is AIHKL. The policy terms state that the contract is governed by the law of China. And the contract terms also state that '*the courts of Hong Kong will have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the plan.*'

On this basis, it seems to me that we don't have jurisdiction to consider any of Mr R's complaint points relating to the 2021-2022 policy year, as AIHKL simply isn't within our

territorial scope. So I've decided that we can't look into any issues which concern AIHKL's handling of Mr R's claims during the 2021-2022 policy year.

However, I'm satisfied that I have the power to consider Mr R's complaint about the way Aetna handled claims he made during the 2022-2023 policy year. That's because Mr R complained within six months of Aetna's March 2023 final response letter. And it's also because, in February 2022, Mr R's insurer changed to Aetna, which is regulated by the UK regulator. So Aetna falls within our jurisdiction. Therefore, I've gone on to consider the merits of that particular complaint.

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 sorry to disappoint Mr R, I think Aetna has already made a fair offer to settle his complaint and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. Aetna accepts that it didn't handle Mr R's claims during the 2022-2023 policy year as promptly as it could have done. There seem to have been delays in processing and paying claims, which has led to ongoing correspondence between Mr R and Aetna. Mr R has referred to errors in the claim calculations and errors in the communications Aetna has had with him. I don't doubt that these issues have caused Mr R unnecessary frustration and upset

Aetna has provided us with a breakdown of the claims it's paid during the 2022-2023 policy year. I'm satisfied that the breakdown indicates that Aetna has now dealt with all of Mr R's claims (bar a claim which was outstanding at the time Aetna issued its final response). I can see that Aetna has also paid costs which are outside the scope of the policy terms, which it doesn't intend to recover. Aetna told Mr R that it wouldn't cover the costs of that particular treatment going forward, as this wasn't a recognised treatment for Mr R's condition in the country he lived in. I'm satisfied this decision was in line with the policy terms.

Given the errors it seems Aetna accepts it made, it's offered to pay Mr R £1000 compensation to represent its failings during the 2022-2023 policy year. This is a significant award of compensation, which I think is fair, reasonable and proportionate to reflect the impact of errors which seem to have occurred during the course of that year. I understand too that Aetna issued a guarantee of payment to Mr R's treating hospital, to cover any claims he made prior to the end date of the policy in February 2023. This was outside of the terms of the policy and in my view, it was a very fair step for Aetna to take, to ensure that Mr R was covered and wasn't potentially left out-of-pocket.

Overall then, whilst I appreciate Mr R feels that the compensation Aetna has offered isn't enough, I think it has made a fair offer to settle his complaint. It's open to Mr R to now contact Aetna to accept the £1000 it offered for the complaint made within the 2022-2023 policy year. It's also open to him to contact Aetna to accept the previous offer of £1000 set out in its final response letter of March 2021 and which was reoffered in April 2023

My final decision

For the reasons I've given above, my final decision is that Aetna has already made a fair offer to settle Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 October 2023.

Lisa Barham
Ombudsman