

## **The complaint**

Mrs D complains because AXA PPP Healthcare Limited hasn't paid a claim for disability compensation under her private medical insurance policy.

All references to AXA PPP Healthcare Limited include the agents it has appointed to handle claims on its behalf.

## **What happened**

Mrs D holds a private medical insurance policy, provided by AXA PPP.

In 2019, Mrs D had a serious accident and injured her foot. Mrs D needed a number of surgeries and other treatments, and says she remains in constant pain. She says she has no sensation in certain areas, can't wear a shoe, can't drive, and can't walk without crutches. Mrs D says her doctors agree she has permanently lost the use of her foot.

Mrs D made a claim with AXA PPP under the disability compensation section of her policy. She provided a medical report dated 25 September 2020 in support of her claim. AXA PPP said Mrs D's claim wasn't covered under her policy, as she hadn't completely lost the use of her foot.

Unhappy, Mrs D brought her complaint to the attention of our service. She subsequently provided medical reports dated 26 March 2021, 18 October 2021 and 3 December 2021, which have all been shared with AXA PPP.

One of our investigators looked into what had happened and, at first, recommended that AXA PPP should pay Mrs D's claim. AXA PPP didn't agree with our investigator's findings but offered to arrange an independent medical examination ('IME') for Mrs D, at AXA PPP's expense, and to be bound by the findings of any IME report.

After considering AXA PPP's offer and its further submissions, our investigator said she thought the offer was fair and reasonable in the circumstances. Mrs D didn't accept AXA PPP's offer, or our investigator's revised conclusions, so the complaint has been referred to me to make a final 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.

Industry rules set out by the regulator (the Financial Conduct Authority) say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when making my decision about Mrs D's complaint.

The terms and conditions of Mrs D's policy provide for the payment of a benefit in the event of the *'total and irreversible loss of use of hand, foot, arm or leg'* as a result of an accident. It isn't in dispute that Mrs D's injury is permanent and irreversible. AXA PPP hasn't paid Mrs D's claim because it doesn't think the medical evidence demonstrates that her injury has

resulted in the *'total'* loss of use of her foot.

When deciding whether I think AXA PPP has acted fairly and reasonably in the circumstances, it's not for me to make my own medical conclusions about Mrs D's medical condition, or to substitute expert medical opinion with my own. Instead, I've considered whether I think AXA PPP has acted fairly and reasonably based on the available medical evidence in this case.

The report dated 25 September 2020, written by an orthopaedic and trauma surgery specialist who I'll call 'Dr A' says that Mrs D *'is still experiencing permanent pain, necessitating the use of a stick to support her when walking'*. The report doesn't say that Mrs D has totally lost the use of her foot, so I don't think AXA PPP acted unfairly or unreasonably by turning down the claim based on the content of this report.

The report dated 26 March 2021, prepared for purposes unrelated to this claim, by a doctor who I'll call 'Dr B' says that Mrs D has *'a permanent lack of function of 12%'*. I don't think this report supports a conclusion that Mrs D has totally lost the use of her foot. I understand Mrs D says she voluntarily provided this report to AXA PPP and she feels it's now being used against her. But I can't fairly ask AXA PPP to selectively disregard what I think is persuasive medical evidence relating to the validity of Mrs D's claim, and I also don't think AXA PPP acted unfairly or unreasonably by turning down the claim based on the content of this report.

I've also considered the report dated 18 October 2021, prepared by a GP who I'll call 'Dr C', which says Mrs D has *'totally lost the use of her left foot, which is in a permanent condition'*, as well as a second report dated 3 December 2021 prepared by Dr A which says Mrs D has *'permanent consequences resulting in the total and permanent loss of use of her ... foot'*.

After reviewing these reports, AXA PPP said it wished to request Mrs D's medical notes so it could consider the claim further. These notes weren't forthcoming from the medical professionals, which was outside of AXA PPP's control. AXA PPP subsequently offered to arrange an IME for Mrs D and to be bound by the findings of any report (i.e. to pay Mrs D's claim if the IME results in a conclusion that Mrs D has suffered a total and permanent loss of use of her foot).

I understand Mrs D feels AXA PPP could have arranged for an IME sooner. But I don't think it was necessary for AXA PPP to consider an IME before it received the reports of 18 October 2021 and 3 December 2021. And, when AXA PPP did receive these reports, I think it was reasonable for it to attempt to request Mrs D's medical notes first.

I've considered everything Mrs D has said about the qualifications of Dr A and Dr C but, given the contradiction between the content of the report of 26 March 2021 and the later reports together with the lack of availability of Mrs D's medical notes, I don't think it's unreasonable for AXA PPP to request for Mrs D to undergo an IME. I don't think it would be fair or reasonable to direct AXA PPP to pay the claim based on the current available medical evidence and I'm satisfied that a fair resolution, if Mrs D wants her claim considered further, is for AXA PPP to arrange an IME.

For the avoidance of doubt, I'm satisfied that Section 4.3 of the terms and conditions of Mrs D's policy (referring to AXA PPP's rights to arrange an IME) applies to any claim.

I note that AXA PPP already has medical information about Mrs D which was gathered by its 'second medical opinion service' in 2019. But this information pre-dates all the medical reports which I've mentioned above and isn't up to date. So, this doesn't change my decision.

I'm sorry to disappoint Mrs D. I have no doubt that she has been through a very difficult time following her accident. But I don't think AXA PPP has acted unfairly or unreasonably in the circumstances.

### **Putting things right**

AXA PPP Healthcare Limited needs to put things right by arranging for an independent medical examination for Mrs D. AXA PPP Healthcare Limited needs to pay for the examination and will be bound by the findings of any report.

### **My final decision**

I'm upholding Mrs D's complaint against AXA PPP Healthcare Limited in part and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 25 November 2022.

Leah Nagle  
**Ombudsman**