

The complaint

Mr D and Ms F complain that AXA PPP Healthcare Limited has turned down a claim under the extended travel insurance cover which forms part of their private medical insurance policy.

What happened

Mr D and Ms F have a private medical insurance policy. They paid an additional premium for extended travel insurance which was also underwritten by AXA.

On 29 June 2020, Mr D travelled to a country I'll call R. He intended to travel on to a country I'll call N and eventually return to the UK on 3 October 2020. At the time Mr D travelled, there was Foreign, Commonwealth & Development Office (FCDO) advice in place against all but essential travel abroad due to the Covid-19 pandemic.

Subsequently, on 4 July 2020, the FCDO announced 'travel corridors' between the UK and certain, specified countries. The travel corridors meant that travel to one of the listed countries was exempt from FCDO advice against travel. R was included on the travel corridor list.

Unfortunately, on 28 July 2020, Mr D became unwell and sought medical attention in R. He was diagnosed with a collapsed lung and required surgery, which he underwent on 6 August 2020. On the same day, Ms F contacted AXA to make a claim for Mr D's surgery and medical expenses. On the following day, 7 August 2020, AXA turned down the claim. It said that the travel policy specifically excluded any cover if a policyholder had travelled against FCDO advice. As Mr D had travelled to R on 29 June 2020, when FCDO advice against all but essential travel was still in place, AXA said Mr D's expenses wouldn't be covered.

Mr D was discharged from hospital on 11 August 2020. His doctor told him that he'd need an X-ray in eight days' time and a CT scan and consultation in a month. Ms F says Mr D was told not to fly. Mr D travelled on by train to his family in N, where he underwent a further consultation. Due to the findings of the consultation, Mr D required further surgery. So Ms F called AXA on 1 September 2020 to confirm whether the costs of this surgery would be covered. AXA told Ms F that it'd already declined cover for the costs of surgery abroad. Mr D underwent surgery on 9 September 2020.

Mr D and Ms F were unhappy with AXA's decision and they complained. AXA ultimately maintained its decision to refuse to cover both medical expenses claims. It noted from the claims documentation that Mr D's trip had been intended to last 98 days. However, the policy only provided cover for up to 65 days. So it said that not only was the claim not covered due to Mr D travelling against FCDO advice, the policy was also void because the original trip length exceeded the trip limit.

Remaining unhappy with AXA's stance, Mr D and Ms F asked us to look into this complaint.

Our investigator recommended that this complaint should be upheld in part. He accepted that strictly, Mr D had travelled against FCDO advice on 29 June 2020. But at the time he

became unwell, there was no longer FCDO advice in place against travel to R. He thought the FCDO exclusion applied to claims which were caused by the reason for the issuance of the FCDO guidance. So he didn't think it was reasonable for AXA to rely on this exclusion clause.

And he accepted that the policy only covered trips which were up to 65 days in length. Mr D's planned trip would've exceeded this duration. But as Mr D had become unwell well within the trip limit, he thought it would be fair for AXA to pay all of the medical expenses Mr D had incurred within the 65-day period of cover, together with interest. This would've taken Mr D's cover up to broadly 2 September 2020 – therefore excluding the surgery he'd undergone in N.

I issued a provisional decision on 23 June 2022. In my provisional decision, I explained the reasons why I thought this complaint should be partly upheld. I said:

'First, I'd like to reassure both parties that whilst I've summarised the background to this complaint and the detailed submissions both parties have made, I've carefully considered all that's been said and provided. Within this decision though, I haven't commented on each point that's been made and neither do our rules require me to. Instead, I've focused on what I think are the key issues.

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 D and Ms F's policy and the available evidence, to decide whether AXA treated them fairly.

The contract terms

I've first considered the terms and conditions of Mr D and Ms F's policy, as these form the basis of their contract with AXA. It's clear that AXA considered this claim in line with the travel insurance add-on terms and conditions, while Ms F believes the claim should be assessed under the private medical insurance cover. For completeness, I think AXA has correctly considered the claim in line with the travel insurance cover. That's because whilst I agree that the private medical insurance policy does provide extended medical cover outside of the UK; this only applies to claims a) where the treatment has been planned before a policyholder travels abroad and b) where AXA has agreed the fee before a policyholder goes abroad. In this case, Mr D's treatment abroad wasn't planned nor was the fee pre-agreed with AXA. So I don't think it was unreasonable for AXA to decline to cover the claim under the private medical insurance policy.

Instead, AXA assessed the claim under the Travel Cover option, so I've next turned to look at the contract terms for that particular add-on. Section 1 sets out the 'Medical benefits' available under the travel policy. This says that AXA will provide the following cover:

'We will pay expenses necessarily and reasonably incurred outside the insured members' home area if the insured member suffers illness or injury during the insured period outside their home area, for the following:

What we will pay for:

- (a) hospital, medical and treatment expenses*
- (b) up to the following amounts for emergency dental treatment for the immediate relief of pain and the preservation of natural teeth but not subsequent restorative work...*
- (c) additional accommodation and travelling expenses incurred as a direct consequence of bodily injury sustained by the insured member or of unforeseen sickness of the insured*

member which has occurred while the insured member was on an overseas journey. We will pay for accommodation and travel expenses of a similar standard to that originally booked and paid for.

(d) charges in the event of the death of an insured member outside their home area, for burial or cremation in the locality where death occurs, up to a maximum of £2,000.

(e) additional accommodation and travelling expenses which are necessarily incurred by one relative or one friend who is required, on written medical advice, to remain with an insured member who has suffered injury or sickness as in (c) above...Please note: We will pay for accommodation and travel expenses of a similar standard to that originally booked and paid for.

Section 1 Part B sets out the cover for International Emergency Medical Assistance. This sets out what AXA means by 'the service' and says:

'The service (moving the insured member to another hospital which has the necessary medical facilities either in the country where the insured member is taken ill or in another nearby country (evacuation) or bringing them back to their home area (repatriation)).

The policy explains that:

The service is available worldwide during the period of cover to any insured member who, while abroad from the United Kingdom, is injured or becomes ill suddenly and needs immediate hospital treatment as an in-patient. The service is only available in these circumstances. The General Exclusions listed on page 23 and the exclusions listed in Section 1A do not apply to the service. If the service is needed you must contact the alarm centre so that immediate help or advice can be given over the phone. Arrangements may then be made for an appointed doctor to see the insured member and to move him or her back to their home area (repatriation) if necessary. If an appointed doctor thinks it is necessary then the service will be carried out under medical supervision'.

In my view, the medical evidence clearly shows that Mr D became unwell abroad and required emergency hospital treatment. On the face of things, he made a claim due to an insured event which is covered by section 1 of the policy.

However, the policy also sets out a list of things AXA specifically excludes from cover. One of these says:

*'We will not pay claims under any section **caused by** (emphasis added)*

Travelling against Foreign and Commonwealth Office advice

If, at the time of travelling, the Foreign and Commonwealth Office had advised against all travel to that specific country or area, this exclusion will apply to all Sections, whatever your reason for travel.'

Mr D and Ms F held standard travel cover. And I note that the time limits set out in the policy state that AXA will cover a maximum 65 days in total spent abroad, applying to a single journey. There's no dispute that at the time Mr D chose to travel to R, there was FCDO advice in place against all but essential travel abroad. There's also no dispute that Mr D planned to spend broadly 98 days abroad, which was over 30 days longer than the trip limit set out in the policy terms.

What is fair and reasonable in all the circumstances?

AXA initially turned down Mr D's claim for treatment in R because he'd travelled against

FCDO advice on 29 June 2020. I've thought about this carefully, given the exclusion I've set out above. Regardless of what AXA's intention was when drafting this clause though, I note that the policy only excludes claims caused by travelling against FCDO advice. The FCDO advice which had been issued in March 2020 and which still applied at the point Mr D travelled was issued in respect of the risk presented by Covid-19. But Mr D didn't make a claim which was caused by Covid-19 or because he'd travelled against FCDO advice. His claim was because he'd suffered a collapsed lung. The medical evidence makes no suggestion that this was because Mr D had contracted Covid-19 or that his lung condition was a complication of it. So I don't think AXA has reasonably demonstrated that Mr D's claim was caused by travelling against FCDO advice.

I'd add too that Mr D didn't need to make a claim while the FCDO advice was in place. At the point he became ill, R was part of a travel corridor which was exempt from the FCDO advice against travel. So I think this particular clause, which in my view, is intended to protect insurers against claims which are specifically caused by a traveller not following FCDO guidance, is immaterial to the overall circumstances of Mr D's claim. This means then that I don't think AXA has shown, on balance, that this exclusion clause defeats Mr D's claim.

However, that doesn't mean that I think Mr D's full claim should be covered. As I've explained above, the policy clearly sets out that AXA is only prepared to offer cover under Mr D's policy for 65 days of travel. But given it would've provided cover for a 65-day trip, I don't find that any technical breach of the trip limit prejudices AXA's position in terms of a claim which was first made well within the 65-day trip limit. I think it's fair and reasonable for AXA to step away from a strict contractual position here and consider some of the expenses which were incurred within the relevant contract cover period. In my view, this currently means that the medical expenses Mr D incurred in R should be treated as covered under the policy terms and reassessed.

Our investigator thought that Mr D's medical expenses up until day 65 – broadly 2 September 2020 – should be paid. I've thought about this carefully. But I don't currently agree. That's because I can see that the discharge summary from the hospital in R shows that the doctor recommended that Mr D needed a follow-up in eight days and a further follow-up a month later. There's no suggestion that Mr D wasn't fit to travel at all – simply that he wasn't fit to fly. I note from AXA's initial surgery decline email on 7 August 2020, that the assistance team did ask what assistance Mr D needed. Given Ms F had been told Mr D wasn't covered and given Mr D was aware he'd need to incur further medical costs, at least in terms of scans and a consultation, I think it would've been reasonable for him to look into returning to the UK by land or sea, for follow-up either on the NHS or privately. While I can understand why Mr D might've wished to join his family in N, I don't think I could reasonably find that AXA should automatically pay the medical expenses which Mr D incurred between his discharge in R and 2 September 2020.

As I've set out above, I don't think AXA has reasonably demonstrated that it was entitled to rely on the FCDO exclusion to decline Mr D's initial claim. So I've thought about what should've and is likely to have happened in the circumstances. I think that following Mr D's discharge from hospital, on the understanding that he was fit to travel other than by air, AXA is most likely to have arranged to return Mr D to the UK and cover the costs under part B of the travel policy, so that he could undergo the necessary follow-up checks and tests. So I think it would always have had some liability for costs here.

In my view, a fair and reasonable outcome to this particular point would be for AXA to calculate how much it would've cost to repatriate Mr D to the UK for treatment following his discharge on 11 August 2020. It should then compare this amount against Mr D's medical expenses claim for costs he incurred in N up until the expiry of the 65-day trip limit. It can then assess which cost is the lowest to it and should accordingly cover the lower of those

two options.

Overall, I currently don't think that AXA has treated Mr D and Ms F fairly. So I intend to tell AXA to reconsider Mr D's claim for all of the medical costs he incurred in R. And for it to compare the cost of repatriating Mr D to the UK following his discharge on 11 August 2020 with the medical costs he incurred following that date up until the expiry of the 65-day limit. It should then cover the lower of those costs.'

I asked both parties to provide me with any additional evidence or information that they wanted me to consider.

Mr D and Ms F felt that Mr F's psychological disruption had never been taken into account.

AXA disagreed with my provisional decision. I've set out its response to my provisional findings below:

'Thank you for setting out the reasons behind the issuance of a provisional decision to partially uphold Mr D and Ms F's complaint. We have carefully considered your comments contained within this decision, however, we still consider that Mr D is not entitled to cover under our policy.

As we previously mentioned, under this policy we do not cover trips for travel against Foreign and Commonwealth Office ("FCDO") advice. You suggest that the FCDO advice issued at the point Mr D travelled was in respect to the risk presented by Covid-19 and therefore Mr D collapsed lung was not "caused by" travelling to a country advised against the FCDO. However, given the unprecedented nature of Covid-19, it is our position that it is premature to determine that Covid-19 could not be a contributing factor to the existence or the worsening of a separate health condition. In any event, there is no explicit link between the intention behind the FCDO's decision to advise against travelling to a particular country, and the medical situation under which a policyholder brings a claim.

It is clear that the drafting of clause 5.4 is (purposely) wide and excludes all claims involving travelling to a country against the advice of the FCDO, regardless of the reason. You will appreciate there are many circumstances in which the FCDO may advise against travel, and risks related to such travel cannot all be factored in to a travel policy; hence it is reasonable for such risks to be excluded. For example, had Mr D become ill in a war zone, such illness may not have been caused by the war, but it would certainly significantly increase the risk profile for cover and the difficulty in administering the policy.

You also suggest that at the point Mr D became ill, R was exempt from the FCDO advice against travel. However, the policy wording in clause 5.4 clearly states that the claim is excluded if "at the time of travelling" the FCDO had advised against all travel to that specific country. The FCDO had still been advising against travel to R on 29 June 2020, which is when Mr D decided to travel to R. As such, we consider that this exemption clause applies.

In any event, the policy clearly states that coverage will not be provided for any single overseas journey exceeding the 65-day trip limit. As Mr D, by his own admission, planned his journey from 29 June to 3 October, we are entitled to deny cover in its entirety given that there is no wording in the policy to the effect of covering the claim up until the 65 day period. It is the overall time planned abroad by the policyholder before travelling which is of relevant here in determining whether the claim is covered or not. This is how we have applied the time limit clause to all other policyholders, so for the purposes of consistency and fairness, we need to adhere to this strict contractual position.

For the reasons set out above, we urge you to reconsider the provisional 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.

Having done so, I still think Mr D and Ms F's complaint should be upheld in part and I'll explain why.

It's clear AXA feels strongly that the 'FCDO exclusion' is drafted in such a way as to exclude all claims where a policyholder has travelled against FCDO advice – irrespective of the reason. It's stated that this exclusion is purposely wide and all-encompassing. For ease of reading, I'll re-state the relevant FCDO exclusion here:

*'We will not pay claims under any Section **caused by**:*

5.4 Travelling against Foreign and Commonwealth Office advice

If, at the time of travelling, the Foreign and Commonwealth Office had advised against all travel to that specific country or area, this exclusion will apply to all Sections, whatever your reason for travel.'

I don't agree with AXA's interpretation of this clause as purposely wide. In my view, the inclusion of the words '*caused by*' are key in *narrowing* the scope of the exclusion to applying only to claims which are directly caused by a policyholder's travel against FCDO advice. If AXA's intention was to exclude any and all claims where a policyholder had travelled against FCDO advice – regardless of the reason for the claim – then it was open to it to draft the contract terms in such a way as to make this clear. Instead, I think a reasonable person would interpret clause 5.4 as only excluding claims which were caused by a policyholder travelling against FCDO advice.

In this case, I accept Mr D *did* travel to R on 29 June 2020 despite there being FCDO advice against travel in place. It's common ground that the reason this particular FCDO guidance had been issued was because of Covid-19. So taking the plain and ordinary meaning of clause 5.4, I still think that in order for AXA to fairly rely on the FCDO exclusion clause to decline Mr D's claim, it needs to show, on balance, that the claim arose because of Covid-19.

AXA states that given the unprecedented nature of Covid-19, it seems premature to determine that it couldn't be a contributing factor to the existence or deterioration of an existing health condition. As I set out above, I've carefully considered the available medical evidence to assess whether the medical professionals, who were treating Mr D and who were able to examine him at first hand, suggested that the collapsed lung he suffered was due to Covid-19 infection.

Mr D's diagnosis on admission was: '*Spontaneous complete right-sided pneumothorax.*' X-rays and tests were carried out which confirmed this diagnosis. There is no mention of Covid-19 as either a direct or contributory cause of Mr D's illness in any of the medical reports available to me. If the treating doctors had noted that Mr D was suffering from Covid-19 or concluded that there was a link between that virus and Mr D's presenting condition, I'd have expected them to have noted this on the medical reports. Given there's no such finding though, I don't think AXA have shown, on balance, that Mr D's illness was caused by Covid-19.

R had been made exempt from the FCDO advice against travel at the time Mr D became unwell. So while I accept he travelled against such advice initially, it's difficult to see how AXA's ability to administer his policy was adversely affected at a time when R was on a green list and so it seems the FCDO had concluded it was broadly safe for UK nationals to travel there. While AXA has made a comparison with travel to a warzone, I don't think this is in any way a similar comparison or that the same sorts of risks would be likely to arise.

Overall then, I don't think AXA has shown it was reasonably entitled to rely on the FCDO exclusion to turn down Mr D's claim.

AXA has also maintained its stance in relation to the 65-day trip limit. I acknowledge that Mr D's original planned trip did last significantly longer than 65 days. And so on a strict interpretation of the policy, his claim isn't covered.

But the Financial Services and Markets Act 2000, our enabling legislation, provides me with powers under section 228 (2). This says that I must determine a complaint by what I consider to be fair and reasonable in all of the circumstances of the case. This power and duty is echoed in the regulator's rules by which we must abide, found under DISP 3.6.1. This power allows me to step away from a strict interpretation of the contract if I feel its application produces an unfair result.

In this case, Mr D's illness occurred well within the 65-day trip limit. So while I accept there was a technical breach of the trip limit, it seems to me that it would be unfair to apply the policy terms strictly here. I say that because there is no prejudice to AXA in accepting and dealing with a part of a claim which falls within the part of a trip it would've covered. This is in line with the long-standing approach of this service. The award I outlined in my provisional decision limits AXA's costs and means that, depending on the cost comparison calculation, it wouldn't be liable for any costs which fell after day 65 of the trip. So I don't find that its position would be in any way worsened in this regard and it remains the case that I think this award is a fair and reasonable one.

I appreciate Ms F considers I haven't taken into account Mr D's psychological condition at the time of the claim. I do appreciate why Mr D wished to join his family in N and that this must've been a worrying time. With that said, I do think he'd been clearly told that any medical costs he incurred wouldn't be paid and he was aware that he needed follow-up care following his discharge from the hospital in R. So I still think it's fair to say that bearing this in mind, it would've been reasonable for Mr D to return to the UK following his discharge from hospital to seek aftercare on the NHS or under his private medical cover if appropriate.

Overall, I still find that the fair and reasonable outcome in the specific circumstances of this complaint is for AXA to consider Mr D's claim for all of the medical costs he incurred in R in line with the remaining terms and conditions of the policy. And for it to compare the cost of repatriating Mr D to the UK following his discharge on 11 August 2020 with the medical costs he incurred following that date up until the expiry of the 65-day limit. It must then cover the lower of those costs.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part.

I direct AXA PPP Healthcare Limited to AXA to reconsider Mr D's claim for all of the medical costs he incurred in R in line with the remaining terms and conditions of the policy. And to compare the cost of repatriating Mr D to the UK following his discharge on 11 August 2020 with the medical costs he incurred following that date up until the expiry of the 65-day limit. It should then cover the lower of those costs.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Ms F to accept or reject my decision before 2 September 2022.

Lisa Barham
Ombudsman