

The complaint

Mr P complains that AXA Insurance UK Plc hasn't fully settled a medical expenses claim he made on a travel insurance policy.

What happened

Mr P was on holiday abroad in a country I'll call K. He was due to fly back to the UK on 17 March 2020. However, on 10 March 2020, Mr P began to feel unwell and so sought medical treatment from a local hospital doctor I'll refer to as Dr R. Dr R recommended that Mr P should undergo blood tests and a CT scan to investigate the cause of his symptoms. Mr P also had to move accommodation at this point and so rented a room from a friend who lived locally. The CT scan was carried out on 12 March 2020.

Dr R scheduled a follow-up appointment with Mr P for 18 March 2020 – the day after Mr P was due to fly back to the UK. So Mr P rebooked his return flight for 24 April 2020. The appointment went ahead on 18 March 2020 and Dr R diagnosed Mr P with diverticulitis. He prescribed Mr P antibiotics to treat the condition and he also recommended that Mr P should undergo further tests to rule out malignant illness.

As a result of the Covid-19 pandemic, flights from K were suspended. So Mr P wasn't able to return home as planned. Instead, he remained in K until September 2020, when he was able to fly back to the UK. He made a claim on his travel insurance policy for his medical expenses and the associated costs he'd incurred.

AXA looked into Mr P's claim and appointed an agent to investigate the claim in K. It had some concerns about the claim and Mr P's version of events. Ultimately, it agreed to settle the medical expenses Mr P had incurred up until 17 March 2020 – the date he had originally booked to return to the UK. It didn't think there was enough evidence to show that it'd been medically necessary for Mr P to remain in K beyond that date.

Mr P was unhappy with AXA's settlement and he asked us to look into his complaint.

Our investigator didn't think Mr P's complaint should be upheld. She noted that Mr P hadn't contacted AXA's medical assistance team in line with the policy terms. And she didn't think Mr P had demonstrated it was medically necessary to remain in K post-17 March 2020. However, she didn't think AXA had handled the claim as well as it could've done. AXA had paid Mr P £100 compensation to reflect customer service failings and the investigator concluded this was a fair amount.

Mr P disagreed and so the complaint was passed to me to decide.

I considered all of the available evidence, including an email from Dr R dated 21 January 2021. This stated that Dr R and Mr P had spoken on 30 March 2020 and that subsequently, Mr P had been fit to travel. I also noted that AXA's agent had confirmed with Dr R that Mr P hadn't been seen for the scan and blood test follow-up until 18 March 2020 – at which point it appeared that Dr R had prescribed Mr P antibiotics to treat diverticulitis. I noted that AXA's agent had also broadly corroborated that Mr P was staying where he said he'd been at the time. So I thought the evidence indicated that Mr P likely hadn't been told he was fit to travel

until 30 March 2020. I asked AXA what its medical assistance team would've advised had Mr P got in touch and whether it would've considered he'd been fit to fly on 17 March 2020. And I let it know that I felt it might be reasonable to reconsider Mr P's medical expenses claim on the basis that I considered the evidence showed he hadn't been fit to fly until 30 March 2020.

AXA told me that its assistance team hadn't been contacted, but that its clinical team would've taken the advice of the treating doctor. It maintained that there was no evidence that Mr P hadn't been fit to travel after 17 March 2020. It said it couldn't ask the clinical team for a retrospective opinion on Mr P's condition, as this is a common condition, which many people live with. It said too that Mr P's failure to contact the assistance team had greatly impacted on the potential claim costs, as it hadn't been given the chance to negotiate treatment or repatriation costs.

Additionally, AXA maintained that Mr P had misrepresented the claim, based on information he'd provided about the accommodation he'd stayed in. Mr P had made two payments to his friend before he'd become unwell and AXA queried why he'd have arranged accommodation he hadn't known he'd need. It had concerns too that Mr P had paid money to his friend in relation to a business transaction rather than accommodation.

I issued my provisional decision on 1 September 2022. In my provisional decision, I explained the reasons why I intended to partly uphold Mr P's complaint. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr P's policy and the available evidence, to decide whether AXA treated Mr P fairly.'

I've first considered the terms and conditions of Mr P's policy, as these form the basis of his contract with AXA. Section 2 – Medical emergency and repatriation expenses says that AXA provides cover for the following:

'We will pay you up to the limit in your schedule for the items shown below which are necessarily incurred during a trip as a result of you suffering unforeseen injury due to an accident, illness, disease and/or compulsory quarantine.'

- *Emergency medical, surgical, hospital, ambulance and medical fees and charges incurred outside of your home area.*
- *Emergency dental treatment for the immediate relief of pain only incurred outside of your home area.*
- *An allowance for every complete 24 hour period you are in hospital or confined to your accommodation on the advice of a medical practitioner and contribution towards meal expenses for a nominated person who is staying or travelling with you (the excess does not apply to this benefit).*
- *Costs of telephone calls to and from the Emergency Medical Assistance Service notifying and dealing with the problem.*
- *The cost of taxi fares for your travel to or from hospital relating to your admission, discharge or attendance for outpatient treatment or appointments and/or for collection of medication prescribed for you.*
- *If you die outside your home area the cost of funeral expenses abroad plus the cost of returning your ashes or your body to your home. If you die on a trip within your home area the reasonable additional cost of returning your ashes or body to your home.*
- *Additional transport and/or accommodation expenses incurred, up to the standard of your original booking, if it is medically necessary for you to stay beyond your scheduled return date. This includes, with the prior authorisation of the Emergency*

Medical Assistance Service, reasonable additional transport and/ or accommodation expenses for a travelling companion, friend or close relative to stay with you or travel to you from the UK or escort you home. Also, additional travel expenses to return you to your home or a suitable hospital nearby if you cannot use the return ticket.

▪ With the prior authorisation of the Emergency Medical Assistance Service, the additional costs incurred in the use of air transport or other suitable means, including qualified attendants, to repatriate you to your home if it is medically necessary. These expenses will be for the identical class of travel used on the outward journey unless the Emergency Medical Assistance Service agrees otherwise. If the Emergency Medical Assistance Service confirms an alternative method of travel is required this will only apply for the ill or injured insured person.'

What's clear then is that AXA does provide cover for a policyholder's emergency medical and hospital fees.

This section of the policy also sets out a list of specific things which AXA doesn't cover. This list includes:

- Any claim where you have been unable to evidence your loss.*
- Any claims arising directly or indirectly from:*
 - the cost of treatment or surgery, including exploratory tests, which are not related to the injury due to an accident or illness which necessitated your admittance to hospital;*
 - any expenses which are not usual, reasonable or customary to treat your injury due to an accident, illness or disease;*
 - any form of treatment or surgery which, in the opinion of the Emergency Medical Assistance Service or us (based on information provided by the medical practitioner in attendance), can be delayed reasonably until your return to your home area;'*

In my experience, many travel insurance policies exclude medical expenses claims where a policyholder hasn't contacted the insurer's medical assistance team ahead of incurring costs. But in this case, there is no exclusion under this section for any emergency medical costs which haven't been authorised by AXA's medical assistance team, or indeed for additional accommodation costs for a policyholder themselves. So I can't fairly find that any failure by Mr P to notify AXA's assistance team about the claim while he was actively unwell and receiving medical treatment means that his claim is accordingly specifically excluded by the policy terms.

AXA accepts that prior to 17 March 2020, Mr P was unwell and sought medical assistance from Dr R. It's settled the medical expenses he incurred up until that date. However, it doesn't agree that Mr P has shown it was medically necessary for him to remain in K after his original planned date of return. I've considered this point very carefully, as the policy makes it clear that a policyholder needs to evidence their loss.

There's no dispute that Mr P saw Dr R on 10 March 2020 and was referred for tests. AXA's agent corroborated this information both with Dr R and with the relevant hospital. The agent's report also supports Mr P's testimony that he wasn't able to obtain a follow-up appointment with Dr R to discuss the test results until 18 March 2020. Dr R says this was due to his existing patient schedule and indeed, the agent's report states that the results weren't passed on to Dr R until 18 March 2020.

Dr R provided a prescription on 18 March 2020 for the antibiotics he prescribed to treat Mr P's condition. The medication receipts are dated the same day. Dr R's letter of November

2020 states that Mr P had signs of acute diverticulitis and that the CT scan he underwent showed multiple diverticulitis. So the medical evidence suggests that Dr R prescribed antibiotics to treat acute diverticulitis.

I acknowledge that this evidence doesn't explicitly state that Mr P wasn't fit to fly on 17 March 2020. However, I think it's strongly suggestive that Mr P was suffering from an acute condition which required antibiotic treatment and which he wasn't able to obtain until after he'd been due to return to the UK. I can also see that the prescriptions were fulfilled at a pharmacy on the date they were given.

And I've placed significant weight on Dr R's email of 21 January 2021 which says:

'According to my record, we spoke on 30/03/2020. Subsequently, you were advised fit to travel.'

In my view then, Dr R's evidence indicates that he had a follow-up with Mr P on 30 March 2020 – around 12 days after the antibiotics had been prescribed and it was at this point that Dr R felt Mr P had been fit to travel. As such, it seems more likely than not that prior to 30 March 2020, Dr R would've considered Mr P unfit to travel and that therefore, he'd have concluded it was medically necessary for Mr P to remain in K after 17 March 2020.

AXA has stated that its medical assistance team would've been guided by the treating clinician had Mr P contacted it. This is in line with the policy terms. Given Dr R appears to have concluded that Mr P wasn't fit to travel until 30 March 2020, it seems to me most likely that AXA's medical assistance team would've reached the same view. And AXA has provided no compelling evidence here to show that it's been prejudiced as a result of Mr P's failure to contact its assistance team. Accordingly then, I think it's likely it would've continued to consider Mr P's medical expenses up until this particular point.

I do appreciate AXA has some concerns about the accommodation costs in particular that Mr P has presented. To be clear though, any direction I make here is likely to be to reconsider Mr P's claim on the basis that he wasn't fit to fly until 30 March 2020 and to assess what, if any, assistance Mr P might've been covered for to return to the UK. I'm not intending to direct AXA to pay Mr P's claim – it's entitled to reassess the costs he's claimed for, in line with the remaining terms and conditions of the policy and subject to any additional evidence AXA might require. And given AXA's already settled some of the claim, it doesn't appear to have concluded that the whole claim falls outside of cover due to any potential misrepresentation.

Overall then, I currently don't think that AXA has assessed Mr P's claim fairly. I currently find that Mr P has provided enough medical evidence to show that he wasn't fit to fly until 30 March 2020. So I consider that AXA should reassess his claim in line with the policy terms and conditions, taking into account this particular evidence.'

I asked both parties to provide me with any additional evidence they wanted me to take into account.

AXA accepted my provisional findings.

Mr P didn't accept my provisional decision and I've summarised his response:

- He'd contacted AXA to make a claim on 10 March 2020. It had said it would get back to him within two working days. He wasn't contacted and therefore, he didn't realise he had to contact the medical assistance team;
- He provided explanations for the payments which had been made to his friend in advance of the claim being made;

- His airline had had to rebook his flight for 24 April 2020, on the understanding that if there was earlier availability, he might have been able to rebook. But due to Covid-19, all international flights had been cancelled until August 2020;
- He believed he had been honest and upfront about the claim and had tried to be reasonable in the costs he had incurred. He queried why my proposed direction was only to reconsider his claim until 30 March 2020, given he couldn't return to the UK earlier;
- This claim has been ongoing for over two years and has cost Mr P and his family high interest costs and a great deal of time;
- AXA had made assumptions that this claim was fraudulent. This had caused Mr P a great deal of upset and had damaged his reputation. So he felt the claim should now be settled, together with an award for compensation.

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, my final decision is the same as my provisional decision and I'll explain why.

First, I thank Mr P for the evidence he's provided which shows he made an online claim on 10 March 2020. I appreciate he wasn't directed to AXA's assistance line at this point. But as I set out in my provisional decision, I don't think the policy terms required Mr P to contact medical assistance before incurring his particular medical costs. And I didn't think AXA had shown its position had been prejudiced in any way by any failure to contact medical assistance in any event. So I didn't think it was fair for AXA to decline to cover any post-17 March 2020 expenses for this reason.

Mr P feels strongly that AXA's decision to appoint an agent to investigate the claim and its subsequent claims correspondence caused him worry, frustration and damage to his reputation. I don't doubt that the situation has been worrying for him. But it's a policyholder's responsibility to show that they have a valid claim on their policy. Often, insurers will investigate claims and obtain evidence on a policyholder's behalf in order to decide whether a claim is covered. Generally, I think an insurer's entitled to be satisfied that a claim's covered before it agrees to accept it. And given that AXA did have some concerns about the claim and the timeline of events, I think that it was reasonably entitled to carry out some further investigations into the circumstances of Mr P's claim.

I'd add too that AXA said it didn't have sight of Dr R's email of 21 January 2021 until we sent it a copy of the email on 1 June 2022. In my view, this was the key piece of evidence which demonstrated that Mr P likely hadn't been fit to fly before 30 March 2020. As it seems AXA didn't have the opportunity to consider this evidence ahead of investigating the claim and making its original settlement offer, I don't think it would be fair for me to direct it to pay compensation for any failure to conclude Mr P hadn't been fit to fly after 17 March 2020.

AXA has previously paid Mr P £100 compensation for its handling of the claim. I think this was a fair award in the round and so I don't think that AXA needs to pay anything more here.

As I explained in my provisional decision and to be clear, I'm not directing AXA to settle Mr P's claim. Neither am I making any finding as to what, if any, additional settlement should be paid. That will be for AXA to decide following its reassessment of Mr P's claim, in line with the policy terms and conditions. My finding is that Mr P has shown, on balance, that he wasn't fit to fly until 30 March 2020. Therefore, I remain satisfied that the fair outcome to this complaint is for AXA to reconsider Mr P's claim for his medical expenses and additional

accommodation costs, on the basis that he wasn't fit to fly until 30 March 2020, in line with the remaining policy terms and conditions and subject to any additional evidence it may require from Mr P in support of his claim. This means that Mr P may need to provide AXA with any additional information it might ask for in order for it to fully reconsider his claim.

My final decision

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

I direct AXA Insurance UK Plc to reconsider Mr P's claim for his medical expenses and additional accommodation costs, on the basis that he wasn't fit to fly until 30 March 2020, in line with the remaining policy terms and conditions and subject to any additional evidence it may require.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 October 2022.

Lisa Barham
Ombudsman