

The complaint

Mr and Mrs D complain that AXA PPP Healthcare Limited declined Mrs D's claim against her private medical insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here in full. In summary, Mr and Mrs D have private medical insurance with AXA. Mrs D suffered from painful knees and in July 2021 she saw her GP who referred her to an orthopaedic surgeon. She made a claim against her policy and AXA authorised cover for an initial consultation, diagnostics and a follow-up consultation.

In August 2021, the orthopaedic surgeon diagnosed osteoarthritis (OA) in Mrs D's knees and recommended sequential knee replacement. In late September 2021, Mrs D contacted AXA and told it that she was having a knee replacement in October 2021. AXA said that it had made an error in authorising the initial consultation, diagnostics and follow-up consultation. It relied on an exclusion which I refer to in more detail below. AXA said that the treatment Mrs D required was associated with her rheumatoid arthritis (RA) and that further investigations and treatment were excluded from her cover.

Mr and Mrs D provided AXA with further information but it didn't change its position. Mrs D cancelled the operation planned for October 2021 and pursued the complaint.

Mr and Mrs D say that AXA acted unfairly in declining Mrs D's claim. They say that OA and RA are different and separate conditions and that they've provided two medical opinions to support their claim.

One of our investigators looked at what had happened. He recommended that the complaint be upheld. The investigator didn't think that AXA had shown that the exclusion applies in this case. He said that AXA hadn't shown that Mrs D's OA was in any way related to her RA. The investigator said that AXA should reassess the claim in line with the remaining terms of the policy.

Mr and Mrs D agreed with the investigator. They said that as Mrs D's condition has deteriorated they self-funded an operation in October 2022.

AXA didn't agree with the investigator. It said, in summary:

- In assessing risk it excludes associated conditions.
- The exclusion in this case means that treatment for OA or joint deformity are excluded.
- A member who has pre-existing RA is more likely to have or develop OA as a result.

- When it offers cover on a moratorium basis it excludes conditions associated with diabetes, raised blood pressure and investigations following a prostate specific antigen test.
- It has provided evidence about the relationship between RA and OA.
- Mrs D's GP said that her pain was aggravating her existing RA. So, the referral was for pain related to existing severe arthritis.
- Mrs D's GP's submission of October 2021 referred to Mrs D's RA also having some effect on her knee pain.
- In order to review the claim it would need to request more detailed medical information about Mrs D's history or RA.

As there was no agreement between the parties, the complaint was 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.

the relevant terms and conditions

The starting point is the terms and conditions of the policy, the relevant parts of which say as follows:

"Your cover for existing medical conditions

[...]

Mrs [...] D[...]

Your policy has been accepted on a continued medical exclusions underwriting basis from your previous insurance provider.

No benefit is payable for any investigations and treatment related to rheumatoid arthritis and conditions arising therefrom or associated therewith."

has the claim been declined unfairly?

The relevant rules and industry guidance say that AXA has a responsibility to handle claims promptly and fairly and it shouldn't reject a claim unreasonably. I don't think that AXA acted fairly in declining Mrs D's claim. I say that because:

- Insurance policies aren't designed to cover every eventuality or situation. An insurer will decide what risks it's willing to cover and set these out in the terms and conditions of the policy document. The onus is on the consumer to show that the claim falls under one of the agreed areas of cover within the policy. If the event is covered in principle but is declined on the basis of an exclusion set out in the policy the onus shifts to the insurer to show how that exclusion applies.
- It's clear from the consultant orthopaedic surgeon's initial diagnosis of 28 August 2021 and his supplementary undated report that Mrs D's pain was caused by OA. He said that there was no indication of ongoing RA and whilst Mrs D's GP had referred to RA in passing, the "*clinical and radiological picture do not support ongoing rheumatoid arthritis*".

- AXA seeks to rely on the exclusion I've set out above. It says that the treatment Mrs D required was associated with RA. AXA provided information from its medical team which said that degeneration and joint damage can be a complication of RA and lead to joint replacement surgery. It says that the exclusion covers not just RA but any associated conditions or complications.
- The central question for me to decide is whether Mrs D's claim was for investigations or treatment arising from or associated with RA. I've noted what AXA has said but I've seen no persuasive evidence that the investigations and treatment Mrs D required for OA in her knees was associated with RA.
- AXA has provided evidence that RA can lead to joint replacement but I've seen nothing to show that Mrs D's OA was arising from or associated with RA. Whilst Mrs D's GP said in the referral letter of 5 August 2021 that the pain was aggravating Mrs D's existing RA, subsequent investigation by the consultant orthopaedic surgeon didn't find ongoing RA. There's no suggestion that Mrs D's OA was arising from or associated with her RA.
- AXA says that when it offers cover on a moratorium basis it excludes conditions associated with diabetes, raised blood pressure and investigations following a prostate specific antigen test. That's noted but not directly relevant here. That's because Mrs D's policy is underwritten on a continued medical exclusions basis and AXA didn't specifically exclude OA. Based on what I've seen, I'm not persuaded that Mrs D's OA arose from or was associated with her RA.
- For the reasons I've explained, I don't think that AXA acted fairly in declining Mrs D's claim. In order to put things right, AXA should assess the claim under the remaining terms of the policy, disregarding the exclusion in relation to conditions arising from or associated with RA. AXA says that it will need to request more detailed medical information about Mrs D's history or RA but I think that the time for that has passed. I don't think it would be fair or reasonable for AXA to decide now to gather further medical information about Mrs D's RA. It had an opportunity to do that when Mrs D made her claim.
- Mrs D says that she self-funded an operation in October 2022. AXA should reimburse the cost of that, subject to the policy terms and limits. That's because if AXA had assessed the claim correctly, Mrs D would have had the benefit of cover under the policy. Mrs D has been kept out of the use of her money, so AXA should pay interest on the amount of the settlement from the date Mrs D made the payment until the date AXA settles the claim.

Putting things right

In order to put things right, AXA should reimburse the cost of the operation Mrs D self-funded in October 2022, subject to the policy terms and conditions. It should also pay interest on the amount of the settlement at the simple rate of 8% per year from the date Mrs D made the payment until the date AXA settles the claim.

HM Revenue & Customs requires AXA to take off tax from this interest. AXA must give Mrs D a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint. I now require AXA PPP Healthcare Limited to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 13 February 2023.

Louise Povey
Ombudsman