

The complaint

Mr C complains about AXA PPP Healthcare Limited's offer of settlement for the mis-sale of his private personal medical insurance policy.

What happened

In June 2016 Mr C took out private medical insurance for himself and his family. AXA PPP was the insurer. He and his family were previously insured with AXA PPP through his former employer's group scheme policy.

Mr C says when his employer's group scheme cover ended he contacted AXA PPP to continue medical insurance with a personal policy and he specifically told it that he wanted cover "to continue for any medical conditions we may have claimed for previously through the group scheme". Mr C says those instructions to AXA PPP about what he wanted are "totally different" to the cover AXA PPP set up, which was on a 'medical history disregarded' (MHD) basis. He says when he claimed in March 2023 to have skin tags removed it became clear to him that the personal policy AXA PPP had set up wasn't appropriate for his needs.

AXA PPP declined Mr C's 2023 skin tags claim because there was a policy exclusion for the removal of fat and surplus tissue. Mr C says he first had skin tags in 2013 and the surgical removal of the tags was covered under his previous group scheme policy. He complained to AXA PPP that it had mis-sold the personal policy to him because he'd thought he was insured for all the medical conditions he'd been covered for previously.

AXA PPP's final response letter to Mr C said the call recordings for the 2016 policy sale were unclear and it couldn't say how the policy's MHD terms were explained to him during the policy's sale. So AXA PPP said it would give Mr C the benefit of the doubt that it hadn't properly explained the MHD and uphold his complaint. It agreed to cover Mr C's skin tags claim authorising treatment to be done by 13 September 2023 even if he chose to cancel his policy earlier, and it explained how it calculated the cut-off date. AXA PPP also paid Mr C £200 compensation for poor customer service which Mr C says happened during one of his calls with AXA PPP.

AXA PPP didn't agree to Mr C's request for a refund for the premiums he'd paid for the policy's MHD cover as it said he and his family had made claims on the policy for pre-existing conditions which wouldn't have been approved if there hadn't been MHD cover.

Mr C complained to us. In summary he said:

- He hadn't had the level of insurance he believed he had under the personal policy. AXA PPP didn't dispute the policy was mis-sold and he wants it to refund the premiums he's paid on top of the standard cover for continuing cover for medical conditions he and his family claimed for previously through the group scheme. If AXA PPP referred to that element as the MHD premiums they should be refunded as the MHD cover was inadequate for his needs. He says he's paid a lot more than his premium would have been on a moratorium underwriting basis.

- He wasn't going to renew the policy. AXA PPP's offer that his skin tags be covered on a one-off basis wasn't a solution and he should be fully covered for the condition on an ongoing basis as he was under the previous group scheme policy. AXA PPP had told him he wasn't covered for skin tags under that policy either and it had agreed treatment in 2013 on an exceptional basis but he'd didn't know about that. He said he didn't know what other treatments he and his family had covered under the previous group scheme policy that AXA PPP would say were excluded under the personal policy.
- AXA PPP said it wouldn't refund the premium of the MHD element as he and his wife had made claims for pre-existing conditions under the personal policy. He didn't agree that had happened. He'd asked AXA PPP for records of the claims he and his family had made on the previous group scheme policy and personal policy so he could check the information but it hadn't provided any records.
- He accepted AXA PPP's £200 compensation for his distress and inconvenience due to poor customer service and that wasn't an issue.

Initially AXA PPP said as Mr C had made his complaint to us more than six years after he bought the personal policy we couldn't consider the complaint. It referred to the Financial Conduct Authority's (FCA) rules, under which we operate, which say we can't consider a complaint if the complainant refers it to us more than six years after the event complained about. Our Investigator sent both parties a view saying in his opinion we could consider the complaint as Mr C had complained to us within three years from the date on which he became aware (or ought reasonably to have become aware) that he had cause for complaint. AXA PPP accepted that we could look at Mr C's complaint on that basis.

AXA PPP also said that Mr C's statement that he wanted cover "to continue for any medical conditions we may have claimed for previously through the group scheme" wasn't totally different to asking for MHD underwriting. To continue having cover for any medical conditions claimed for under the previous policy required MHD underwriting because the other options - fully underwritten or moratorium - would exclude the pre-existing conditions. Also it had sent Mr C the policy handbook when he took out the policy and at each policy renewal. He'd told it he hadn't read the policy document but that was his choice.

Our Investigator asked AXA PPP to provide details of the claims Mr C and his family had made for pre-existing conditions under the personal policy, which it provided. Our Investigator said Mr C and his family had received benefit from the MHD element of the policy and in all the circumstances AXA PPP didn't need to refund the MHD premium. Our Investigator said AXA PPP's offer to cover Mr C's skin tags claim was fair and reasonable.

Mr C disagrees and wants an ombudsman's decision. In summary he added:

- Our Investigator was biased to say that AXA PPP said it upheld the policy mis-sale complaint on the basis that the sale call was unclear as this suggested we believed it only upheld his mis-sale complaint because there was no clear recording. If AXA PPP had held the call recording correctly we would have known there was a mis-sale of the policy.
- AXA PPP's offer hadn't put him back in the position he would have been in had there not been a policy mis-sale. If he or his family needed cover for medical conditions covered by the previous group scheme that weren't covered by the personal policy he would be having the same arguments with AXA PPP. He expected AXA PPP to at least offer the equivalent costs of the skin tags treatment.
- The personal policy claim records that AXA PPP said were for pre-existing conditions

didn't evidence that those conditions were pre-existing and would only be covered under a policy with MHD cover. He still wanted AXA PPP to provide records showing what he and his family were treated for under the previous group scheme and treatment for the same conditions within three years of taking out the personal policy.

Before I made a decision I asked AXA PPP to provide us with further information including the claims record under the previous group scheme policy, I'll refer to the information provided below.

We sent the available claims record under the previous group scheme policy to Mr C for comment. He said his claim for arthritis in 2021 would have been covered if he'd taken moratorium underwriting for the personal policy. He also said the claims record for his wife was unclear and he didn't accept the information in the record was correct.

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.

I've considered all the points Mr C has made but I won't address all his points in my findings. I'll focus on the reasons why I've made my decision and the key points which I think are relevant to the outcome of this complaint.

AXA PPP now accepts that we can consider the complaint because it was made within the time limits set out in the FCA rules, so I don't need to make any finding on that matter.

Mr C says he accepts the £200 compensation AXA PPP paid for his distress and inconvenience due to its poor service so I don't need to make any finding on that matter.

I don't think it's necessary for me to consider and decide if the policy was mis-sold before I decide the outcome of this complaint. That's because in its final response letter to Mr C AXA PPP did accept the policy had been mis-sold. I note Mr C is unhappy that AXA PPP qualified why it upheld the complaint – the sale call recording was unclear - but the qualification doesn't make any difference to my decision.

I have to decide whether AXA PPP's offer to pay for Mr C's skin tags treatment as set out above was a fair outcome given that it agreed the policy was mis-sold, and I think it was. I don't think AXA PPP needs to refund the MHD element of the premiums since Mr C took out the personal policy in 2016, as he's requested. I'll explain why.

From what Mr C's said, when he told AXA PPP that he wanted the personal policy cover "to continue for any medical conditions we may have claimed for previously through the group scheme" he meant he wanted the same terms of cover as the previous group scheme policy so that any conditions covered by that policy would be covered by the personal policy.

It's not clear to me that the condition which triggered this complaint, Mr C's skin tags, were covered by his previous group scheme policy. From the evidence I've seen it appears that the condition wasn't covered by the terms of that policy but AXA PPP still agreed to cover the skin tags removal in 2013 because the skin tags were painful.

But the issue is wider than the cover of just one medical condition. AXA PPP has told us that it wasn't possible to provide Mr C with a personal policy with exactly the same policy terms as his previous group scheme policy as the latter was a trust scheme which was only available to large corporate clients for their employees.

When Mr C told AXA PPP that he wanted the personal policy cover “to continue for any medical conditions we may have claimed for previously through the group scheme” I think it reasonably set up a policy with MHD underwriting. That was the only way policy cover would immediately continue for medical conditions Mr C and his family had already claimed for under the previous policy. The alternative of the personal policy being fully underwritten would exclude cover for pre-existing conditions. And the other alternative of moratorium underwriting wouldn’t provide immediate continuation of cover of pre-existing conditions, cover would be dependent on timing.

Mr C’s mentioned that he wanted to check the claims records for treatment of the same conditions within three years of taking out the personal policy. But the moratorium period on this policy isn’t three years, it’s the standard ‘5-2-2’ moratorium. The policy terms explain that if Mr C had joined on moratorium terms:

‘it means that you won’t have cover for treatment of medical problems you had in the five years before you joined us until:

- you’ve been a member for two years in a row, and*
- you’ve had a period of two years in a row, since you joined, that have been trouble-free from that condition...’*

The policy gives the definition of trouble-free as:

‘ If you joined on moratorium terms, what do we mean by trouble-free?

Trouble-free means that you have not done any of the following for the medical condition you need treatment for:

- had a medical opinion from a medical practitioner, including a GP or specialist*
- taken medication (including over-the-counter drugs)*
- followed a special diet*
- had medical treatment*
- visited a practitioner, therapist, homeopath, acupuncturist, psychologist, cognitive behavioural therapist, optician or dentist’.*

So I’m satisfied that the only way Mr C and his family would have had immediate cover under the personal policy for conditions claimed for under the previous group scheme policy was to have the MHD underwriting.

AXA PPP has accepted it mis-sold the policy as it couldn’t be sure it had correctly explained to Mr C what MHD underwriting meant. So it couldn’t be sure that it had correctly told him that MHD didn’t have to mean that every medical condition that was covered by the policy terms of the previous group scheme was covered under the personal policy terms. But I don’t think that means AXA PPP should refund the MHD element of the premium to Mr C because I think claims were made on the personal policy that wouldn’t have been covered unless there had been MHD underwriting.

AXA PPP told us it doesn’t have complete claims records dating back to the previous policy which ended in 2016, and it’s not obliged to keep records for that long, which I agree. I’ve looked at the claims records and information AXA PPP has provided.

AXA PPP referred to the claims record for Mr C's arthritis. Its records show Mr C called it on 3 March 2021 about arthritis in joints in his hands. He told AXA PPP he'd had the problem for years, he lived with the condition and had claimed on the previous policy about five years before. The claim records show Mr C had claimed for treatment with a rheumatologist, the last consultation being on 21 May 2016. Although from that evidence Mr C's arthritis was a pre-existing condition, from the information I've seen that condition had been 'trouble-free' for two years and so would have been covered under moratorium underwriting.

AXA PPP also referred to the claims record for Mrs C's claims for treatment for bloating and low back pain in late June/early July 2016 which she had under the personal policy that had just been taken out in June 2016. AXA PPP said the notes show the previous policy membership number and state that any treatment Mrs C had for these conditions before 30 June 2016 needed to be assessed under the previous membership number. AXA PPP said it would only make such notes if treatment was continuing, which I accept. And AXA PPP's note of a call Mr C made to it at that time about his wife having treatment the next day shows treatment had been authorised under the previous policy but she had treatment in the new personal policy period. If Mr C had transferred to the personal policy on moratorium underwriting terms Mrs C wouldn't have been able to claim for treatment of those pre-existing conditions. The treatment for those conditions was only covered because Mr C and his family had MHD underwriting cover for the personal policy.

As I'm satisfied that the evidence shows Mr C's family has received benefit though having the MHD element of the policy I don't think it's reasonable for me to say that AXA PPP has to refund the MHD element of the premiums to Mr C.

AXA PPP's offer in relation to the mis-sale was to pay for treatment for Mr C's skin tags, as detailed above. As I've said, it's not clear to me that even under the previous group scheme policy the skin tags removal was covered by the strict policy terms. If the skin tags removal was covered by the previous policy terms AXA PPP's offer was fair. If the skin tags removal wasn't covered by the previous policy terms then AXA PPP's offer was more than fair. AXA PPP didn't need to offer Mr C the equivalent costs of the skin tags treatment.

Mr C says AXA PPP's offer isn't fair as he didn't know what other treatments he and his family had under the previous group scheme policy that AXA PPP would say were excluded under the personal policy. I've seen no evidence that there were any such conditions. Mr C says AXA PPP had "failed attempts by claims handlers to manipulate policy exclusions to deny claims, such as with (his) daughter". But that doesn't necessarily mean that the condition for which he was seeking cover for his daughter was fully covered by the previous group scheme policy. Even if it was, Mr C's comment that AXA PPP failed in its attempt to exclude the condition means AXA PPP did cover his daughter's condition under the personal policy. I've seen no evidence that Mr C has made a claim under the personal policy that AXA PPP ultimately didn't agree to cover that would have been covered by the policy terms under the previous group scheme policy.

Overall I'm satisfied that AXA PPP's offer in relation to the mis-sale of the policy was fair. This means I don't require it to do anything more to resolve this complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 March 2024.

Nicola Sisk
Ombudsman