DRN-4923936

The complaint

Mr S complains about his private medical insurance policy with AXA PPP Healthcare Limited.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in full here. In summary, Mr S was previously a member of a group private medical scheme via his employer. In early March 2022, Mr S contacted AXA about taking out a private medical insurance policy as he was leaving his employment later that month. AXA asked Mr S some questions about his health.

In mid-March 2022, Mr S asked AXA to authorise a consultation with a cardiologist. AXA authorised a consultation with a cardiologist, minor diagnostics and a follow-up consultation under Mr S' membership of the group private medical scheme.

AXA offered Mr S a private medical insurance policy on a continuation of cover basis. The policy started on 23 March 2022. AXA declined Mr S' claim in relation to a consultation on 31 March 2022. Mr S complained about AXA's decision.

AXA responded to Mr S' complaint on 2 November 2022. It said Mr S' claim was ineligible because he hadn't declared his pending treatment when he took out his private medical insurance policy. AXA said it would apply an exclusion in relation to investigations and treatment for hypertension and associated conditions or Mr S could pay an additional premium. AXA gave Mr S information about referring his complaint to the Financial Ombudsman Service within six months of the date of that letter.

On 4 November 2022, Mr S spoke to AXA about its final response and on 11 November 2022, AXA phoned Mr S and maintained its position. Mr S asked AXA for a follow-up letter. AXA misunderstood Mr S' request and sent him a copy of a call recording in March 2022.

In January 2024, Mr S contacted AXA again. He complained AXA hadn't sent him a follow-up letter after its discussion with him in November 2022. On 18 March 2024, AXA sent Mr S a final response in relation to his new complaint. AXA said it had misunderstood Mr S' request for a follow-up letter and thought he wanted copies of the phone calls and notes that informed its previous decision, rather than another letter. AXA apologised for its error. It repeated its offer to remove the exclusion on payment of the additional premium.

Mr S pursued his complaint. He wants AXA to remove the exclusion on his policy. Mr S says his two complaints are directly linked. He says AXA planned to add the exclusion to his policy in 2022 but didn't do so until 2024. Mr S says those are the exceptional circumstances why he didn't refer his 2022 complaint within six months of AXA's final decision letter.

One of our Investigators looked at what had happened. He said he couldn't consider Mr S' complaint about the matters referred to in AXA's final response in November 2022, because Mr S hadn't referred that complaint to us within six months. The Investigator didn't think there were exceptional circumstances in this case.

The Investigator considered Mr S' complaint about AXA failing to send a follow-up letter in November 2022. He said AXA had acted fairly and reasonably in offering to remove the exclusion in relation to hypertension and associated conditions on payment of the additional premium.

Mr S didn't agree with the Investigator. He said AXA confirmed at the start of the policy there were no exclusions, applied one during the policy and is now asking for an additional premium to remove it. He doesn't think that's fair. Mr S says there are extenuating circumstances in relation to his complaint in 2022.

Mr S asked that an Ombudsman consider his complaint, so it 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.

I've taken into account the law, regulation and good practice. Above all, I've considered what's fair and reasonable. The relevant rules and industry guidance say AXA must act to deliver good outcomes for retail customers.

AXA's decision to decline Mr S' claim and apply an exclusion

Our rules for considering complaints are set out in the Dispute Resolution (DISP) section of the Financial Conduct Authority's handbook of rules and guidance. DISP 2.8.2 says:

> '*The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
> *(1) more than six months after the date on which the respondent sent the complainant its final response […]*
> *[…]*
> *unless*
> *(3) in the view of the Ombudsman, the failure to comply with the time limits […] was as a result of exceptional circumstances; or*
> *[…]*
> *(5) the respondent has consented to the Ombudsman considering the complaint where the time limits have expired […].'*

AXA hasn't consented to this service considering the merits of Mr S' complaint in 2022, so I need to determine whether Mr S' complaint was made in time.

AXA's final response to Mr S' initial complaint is dated 2 November 2022. It included in its response that Mr S had six months within which to refer his complaint to this service if he remained dissatisfied. And it made clear it wouldn't consent to us considering the complaint if it was made outside the six months time limit. Mr S referred his complaint to this service in 2024. So, according to the rule I've set out above, Mr S' complaint about AXA declining his claim and applying an exclusion was made too late.

The only way I can set aside this time limit is if there were exceptional circumstances for Mr S not being able to refer the complaint to us on time. The bar for exceptional circumstances is a high one – the example given in DISP is incapacitation.

Mr S says he referred his complaint late because it's directly linked to his complaint which led to AXA's final response in March 2024. I'm not persuaded there are exceptional circumstances here. In November 2022, Mr S had all the information he needed to pursue his complaint. I appreciate there were additional exchanges after AXA's final response of 2 November 2022, but AXA correctly set out Mr S' right to refer his complaint to this service and there was nothing to prevent Mr S from pursuing the matter then. I'm sorry to disappoint Mr S, but we can't consider this part of his complaint.

AXA's failure to send a follow-up letter in November 2022

It's common ground AXA misunderstood Mr S' request following its final response on 2 November 2022. AXA thought Mr S asked it to provide the reasons for its decision in March 2022 about Mr S' claim whereas Mr S had asked for a follow-up letter. AXA has apologised for that. I think AXA's apology is sufficient in this case, so I don't direct it to do anything further in relation to this complaint.

Mr S' position going forward

In its final response of 18 March 2024, AXA asked Mr S to contact it if he wanted to remove the exclusion and pay the additional premium. In addition, the exclusion says as follows:

> '[…] *This can be reviewed at your request from Mar-2024 (sic) but such a review would involve the submission of an up-to-date and relevant medical report.'*

So, it's open to Mr S to either pay the additional premium or he can ask AXA to review the exclusion on provision of a relevant medical report. If Mr S doesn't accept the outcome of AXA's review, he can complain to AXA about that in the first instance and if he is not happy with its response, he may refer that complaint to this service.

My final decision

I can't consider Mr S' complaint about AXA's decisions to decline his claim and add an exclusion to his policy because it was made out of time.

My final decision is that I don't uphold Mr S' complaint in relation to AXA's failure to send a follow-up letter in November 2022, because the steps AXA has already taken about this matter are fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 October 2024.
Louise Povey
Ombudsman