

The complaint

Mrs and Mr W complain that AXA PPP Healthcare Limited has turned down a claim Mrs W made on their personal private medical insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the main events.

Mrs and Mr W held a personal private medical insurance policy, which included Comprehensive Cancer Cover (CCC). In 2021, Mrs W had been diagnosed with a rare form of cancer. Unfortunately, in mid-2023, she was diagnosed with metastases in her liver.

Mrs W wanted to receive treatment which would provide her with the best quality of life. However, the conventional treatment available on the NHS was a form of immunotherapy which could cause significant side effects. Mrs W's treating specialists recommended that Mrs W undergo chemosaturation treatment, which showed some encouraging responses. So Mrs W made a claim for the cost of chemosaturation treatment.

AXA looked into Mrs W's claim. It obtained evidence from Mrs W's consultant medical oncologist in support of the treatment and it sought the opinion of its Chief Medical Officer (CMO). Ultimately, it turned down the claim. It said the policy only covered conventional treatment. It didn't agree that chemosaturation treatment was conventional treatment for Mrs W's condition in line with the policy terms. And it also considered whether the claim ought to be paid under the 'unproven treatment' cover provided by the policy. But it didn't think the claim met the relevant criteria.

Mr and Mrs W were very unhappy with AXA's stance and they asked us to look into their complaint. They also felt the CCC was unclear and misleading.

Our investigator didn't think Mr and Mrs W's complaint should be upheld. He considered the terms of the policy and the available medical evidence. He also considered guidance from the National Institute for Health and Care Excellence (NICE) relating to chemosaturation treatment for Mrs W's specific condition. And overall, he didn't think AXA had unfairly relied on its policy terms to decline the claim. He also explained the reasons why he didn't think AXA had handled the claim unfairly and why he didn't consider the policy cover was unclear.

Mr and Mrs W disagreed. They said the policy terms specifically referred to 'developing treatments' which were unlikely to have full NICE approval. For Mrs W's specific condition, NICE had stated that chemosaturation could be performed under special conditions. And Mrs W's consultant oncologist had confirmed those conditions would be met at the hospital where the treatment had been planned. They felt that despite this, AXA had taken an opposite and extreme interpretation to turn down the claim. They said that they felt AXA was able to interpret matters to its benefit – which they believed should be challenged. And they believed that AXA's ability to interpret terms in its favour made the policy literature misleading to laypeople, who were likely to have understood that they'd be comprehensively covered.

The complaint's been 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.

Having done so, whilst I'm very sorry to disappoint Mrs and Mr W, I don't think it was unfair for AXA to turn down their claim and I'll explain why.

First, I'd like to say how sorry I was to read about Mrs W's diagnosis. I don't doubt what a worrying and stressful time this has been for Mrs and Mr W and their family. I'd like to reassure them that while I've summarised the background to their complaint and their detailed submissions to us, I've carefully considered all that's been said and sent. In this decision though, I haven't commented on each point that's been raised and nor do our rules require me to. Instead, I've focused on what I believe to be 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. I've taken those rules into account, together with other relevant considerations, such as industry principles and guidance, the contract terms, and the available evidence, to decide whether I think AXA handled this claim fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between AXA and Mrs and Mr W. I appreciate Mrs and Mr W feel that the cover provided by the policy is misleading and I've carefully borne this in mind.

Page eight of the policy terms includes the following:

'Like all health insurance plans, there are a few things that are not covered. We've listed the most significant things here, but please also see the detail later in this handbook.'

As such, even though I appreciate Mrs and Mr W chose to add the CCC option to their cover, I think AXA has made it clear enough that this doesn't mean all claims for all cancer treatment will be covered. If CCC cover wasn't added, the policy makes it clear that claims for cancer won't be covered at all.

Page 14 of the policy states that Mr and Mrs W's membership covers 'eligible treatment' AXA has defined eligible treatment and I've set out the relevant definition below:

'Eligible treatment' is treatment of a disease, illness or injury where that treatment:

- falls within the benefits of this plan and is not excluded from cover by any term in this handbook; and*
- is of an acute condition (for details see 3.4); and*
- is conventional treatment (for details see 3.3); and*
- has been proven to be effective and safe (for details see 3.3)*
- is not preventative (for details see 4.15); and*
- does not cost more than an equivalent treatment that delivers a similar therapeutic or diagnostic outcome*
- is not provided or used primarily for the convenience or financial or other advantage of you or your specialist or other health professional*

Treatment needs to meet all of these requirements. There are some exceptions which will be described in the relevant sections of this handbook. For example there are times when we

do cover treatment of chronic conditions or unproven treatment...

AXA's explained too what it means by 'conventional treatment' and I've set out the applicable definition below:

'We define conventional treatment as treatment that:

- is established as best medical practice and is practised widely within the UK; and*
- is clinically appropriate in terms of necessity, type, frequency, extent, duration and the facility or location where the treatment is provided; and has either*
- been approved by NICE (The National Institute for Health and Care Excellence) as a treatment which may be used in routine practice; or*
- been proven to be effective and safe for the treatment of your medical condition through high-quality clinical trial evidence (full criteria available on request).*

...If the treatment is a drug, the drug must be:

- licensed for use by the European Medicines Agency or the Medicines and Healthcare products Regulatory Agency; and*
- used according to that licence.'*

And page 15 explains the applicable cover if a policyholder's specialist recommends unconventional treatment. Again, I've set out the applicable terms below:

'We know our members may want to have access to developing treatments as they become available. So we will consider covering the following treatment when it is carried out by a specialist.

- surgery not listed and identified in the schedule of procedures and fees; and*
- other treatments and diagnostic tests which are not conventional treatments.*

In this handbook we refer to this treatment as unproven treatment. The cover for unproven treatment is more restrictive than for conventional treatments.

Unproven treatment must:

- be authorised by us before it takes place; and*
- take place in the UK; and*
- be agreed by us as a suitable equivalent to conventional treatment and;*
- have high quality evidence of its safety.'*

I think the policy terms and conditions clearly explain that AXA only pays for eligible treatment – and that generally, such treatment must be conventional. I think it's explained what it considers conventional treatment to be. I also think it's clearly set out the criteria which need to be satisfied before it will consider and pay for unproven treatment.

Both Mr and Mrs W and AXA appear to agree that chemosaturation isn't the conventional treatment for Mrs W's condition. It seems the conventional NHS treatment would be immunotherapy and Mrs W has explained why that type of treatment might be less successful for her specific condition and why the likelihood of significant side effects would be higher.

It's clear that when assessing this claim, both under the conventional treatment and unproven treatment headings, AXA asked Mrs W's treating specialist for information, as well as referring that evidence on to its CMO for review. In my view, that was a reasonable and

appropriate response from AXA. It's clear too that the CMO and AXA's claims team took into account the relevant NICE guidelines for the chemosaturation treatment which had been proposed for Mrs W when the claim was considered. In brief, the applicable NICE guidance at the time stated:

'Evidence on the safety of ...chemosaturation...for cancer or metastases in the liver shows there are serious, well-recognised complications.

- *For patients with metastases in the liver from (Mrs W's primary form of cancer), there is some evidence of short-term tumour response. For these patients, this procedure should only be used with special arrangements for clinical governance, consent, and audit or research.*

(Clinicians should) Audit and review clinical outcomes of all patients having the procedure.

Healthcare organisations should:

- *Ensure systems are in place that support clinicians to collect and report data on outcomes and safety for every patient having this procedure.*
- *Regularly review data on outcomes and safety for this procedure.*

Further research should be in the form of randomised controlled trials against current best practice, including other liver-directed and systemic therapies. It should report details of patient selection, concurrent therapies and techniques, and adverse events, including those related to chemotherapy.'

The CMO therefore concluded that NICE hadn't approved the treatment as routine treatment for Mrs W's specific condition. And they also concluded that the type of drug used in chemosaturation wasn't licensed for that particular use by either the European Medicines Agency or the Medicines and Healthcare Products Regulatory Agency.

And AXA's CMO also took into account evidence from the American Society of Clinical Oncology's FOCUS phase 3 trials into chemosaturation treatment. They concluded that there wasn't sufficient peer-reviewed evidence or high-quality evidence to show the safety of the treatment or its effectiveness.

Mrs W's treating consultant oncologist explained that the treating hospital had adequate provisions for audit and governance in line with NICE. They also said that the drug used in the treatment had been licensed by the US Federal Drugs Agency. They referred to other drugs being routinely used outside of their licensing arrangements and to evidence of short-term tumour response to chemosaturation treatment. I've carefully considered what the oncologist said.

I entirely appreciate that Mrs W and her treating team felt that the chemosaturation treatment was best for her and it isn't my role to interfere in clinical opinion or decide on the most appropriate form of treatment. My role is to decide whether I think AXA has handled this claim fairly. I must make it clear too that I'm not a medical expert and in making my decision, I must weigh up the available expert evidence to decide whether I think AXA has relied on it fairly and reasonably when assessing this claim in line with its policy terms.

I've very carefully considered all of the relevant medical evidence available on file. I've also taken into account the NICE guidance I've set out above and the FOCUS phase 3 trial findings. And in my view, it wasn't unfair for AXA to conclude that Mrs W's proposed treatment didn't meet all of the criteria required by the 'unproven treatment' cover. I say that

because I don't think it was unfair for it to rely on its CMO's conclusions that NICE hadn't approved the treatment as routine treatment for Mrs W's cancer; that the drug hadn't been licensed for that specific use by the relevant regulatory bodies and that there wasn't enough peer-reviewed evidence to show its safety and efficacy.

As such then, I don't think AXA acted unfairly when it turned down Mrs W's claim.

I've thought about whether it would be fair and reasonable to direct AXA to pay what it might otherwise have paid for Mrs W to obtain alternative, conventional treatment. However, in these circumstances, I don't think it would be fair to direct AXA to step outside of a strict application of the policy terms and conditions and pay a contribution towards a claim which isn't covered by Mr and Mrs W's contract with it.

It's clear Mr and Mrs W feel that no claims could succeed under this particular section of the policy. However, I'm satisfied that the criteria which need to be met in order for an unproven treatment claim to be successful are set out in the contract. I don't find that AXA has interpreted the terms in an unfair way to its benefit or to try and prevent Mrs W making a valid claim.

I'd add too that while I can understand why Mr and Mrs W are very upset that the claim wasn't payable and Mrs W has said this had an impact on the progression of her disease, I don't think there were any unreasonable delays in the handling of this claim. I think AXA kept Mrs W up to date; I think it took fair steps to manage her expectations about the likely outcome of the claim and it assessed the relevant evidence and external publications in a timely way.

Overall, despite my natural sympathy with Mrs and Mr W's position and while I'm very sorry to cause them further upset, I don't find AXA has treated them unfairly.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 2 December 2024.

Lisa Barham
Ombudsman