DRN-4961576

The complaint

Mr and Mrs B complain that AXA PPP Healthcare Limited didn't let them know that they could take out a cheaper policy when their 'Assure' private medical insurance policy renewed in 2020 and 2021.

What happened

Mr and Mrs B held an 'Assure' personal private medical insurance policy for a number of years. Ahead of policy renewal in 2020, Mr B spoke with AXA about the price of the policy. Ultimately, he opted to keep the cover on the same terms.

Ahead of renewal in 2021, Mr B spoke to AXA about the premium once again. During the call, the call handler explained that AXA was offering new policies. They said that Mr and Mrs B would effectively be starting as new members and that any recent medical problems, would likely be excluded from cover. Mr B decided not to amend the policy and he and Mrs B paid a premium of around £10,190 for joint cover.

At renewal in 2022, Mr and Mrs B paid an annual premium of around £12,908.

Prior to the 2023 renewal, Mr B spoke with AXA again. At this point, Mr B decided to go through a quote for a new Personal Health Plan, on 'switch' underwriting terms. He went through a medical declaration. And he opted to change the cover to a 'Guided Option' which reduced the number of specialists he and Mrs B could see. Mr and Mrs B's new premium accordingly reduced to around £5750. The call handler told Mr B that the option to take out a new policy had been available for a few years.

Mr and Mrs B were very unhappy about the price they'd been charged for the cover since 2020. They considered that if AXA had told them about the option to take out switch cover in 2020 and 2021, they'd have been able to take out effectively like-for-like cover considerably cheaper. So they felt AXA ought to have told them about the option to take out the Personal Health Plan in both 2020 and in 2021. And they felt they'd significantly overpaid for cover.

AXA didn't agree that it had made any errors. It said that in 2020, Mr B had told it he wanted to keep his cover exactly the same. And that in 2021, its call handler had told Mr B about the option to take out a new policy, but he hadn't wanted to proceed, given his existing medical conditions. So Mr and Mrs B asked us to look into their complaint.

Our investigator didn't think AXA had treated Mr and Mrs B unfairly. He concluded that Mr and Mrs B had wanted cover to remain on the same terms at the 2020 and 2021 renewals.

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

I issued a provisional decision on 3 July 2024 which explained the reasons why I didn't think AXA had shown it treated Mr and Mrs B fairly at the 2021 renewal. I said:

'The relevant regulator's principles say that financial businesses must provide consumers with information which is clear, fair and not misleading. They also say that financial

businesses must have regard to the interests of their customers and treat them fairly. I've taken those principles into account, amongst other relevant considerations, when deciding whether I think AXA treated Mr and Mrs B fairly.

It's clear that the premium Mr and Mrs B were charged for the new Personal Health Plan in 2023 was substantially cheaper than the price they were charged in 2020, 2021 and 2022. They say the new plan provided like-for-like cover. And they say that AXA's call handler told them that the new plan had been available since 2018. So I understand why they may feel that AXA ought to have highlighted the availability of the new product to them during the calls of 2020 and 2021 and provided them with the chance to take-up cheaper cover.

I've listened carefully to the calls Mr B had with AXA ahead of renewal in 2020 and in 2021. During both calls, it was apparent that Mr B wanted to discuss the renewal price. In 2020, Mr B asked if there was 'anything else' AXA could do about the premium. The call handler gave Mr B the option to increase his excess to bring down the price. They didn't explain that Mr B could look into taking out a new policy. With that said though, during the call, Mr B told AXA that he wanted the cover to stay exactly the same. So in line with AXA's process, the call handler wasn't prompted to take Mr B through potential new underwriting options. This means I'm not persuaded that AXA made any error when it renewed Mr B's policy on the existing terms in 2020.

Even if I'm wrong on that point though, AXA has told me that in 2020, new policies would have only been available to Mr and Mrs B based on moratorium underwriting terms. Moratorium underwriting generally means that any medical conditions a policyholder has had symptoms of or suffered from in the five years before the policy began won't be covered. It seems ensuring continuity of cover for Mr and Mrs B's medical conditions was very important to them. And therefore, on balance, I don't think they'd likely have chosen to take out a new moratorium policy even if the price was significantly lower.

As such then, I don't think AXA treated Mr and Mrs B unfairly at their 2020 renewal and I don't think they'd have likely gone ahead with taking out a cheaper policy at that point.

However, I'm not currently persuaded that AXA treated Mr and Mrs B fairly at the 2021 renewal. By this point, AXA was offering new policies on 'switch' terms meaning that existing medical cover is transferred to a new policy. I accept that the call handler did tell Mr B that there were new policies available. They explained that Mr B could amend his hospital lists and that he could look at changing the underwriting. I acknowledge that, ultimately, Mr B chose not to go ahead with taking out a new plan based on new underwriting terms.

But, whilst explaining new underwriting, the call handler stated that 'recent medical problems' were likely to be excluded. This was technically correct – under the terms of a switch policy, AXA asks medical questions and recent conditions may go on to be excluded from the terms of the new contract. In response though, Mr B said he 'didn't want to go down that route because there was past history of blood pressure, stents being inserted, (Mrs B) with a hip replacement etc.' He stated that other policies offered cheaper cover but starting from scratch, with no cover for pre-existing conditions at all. It seems to me then that Mr B had understood that all pre-existing medical conditions would be excluded rather than exclusions only being potentially applied for recent conditions.

In my view, as the expert in this situation, AXA had an opportunity to correct Mr B's understanding on this point. But the call handler simply answered, 'yes'. Mr B said: 'So there's not really much point.' The call handler responded: 'Understood. Yes and absolutely fair points, I quite understand that.' As such then, I think the call handler effectively confirmed that there'd be no cover for any of Mr and Mrs B's medical conditions. And I think that if they'd clearly explained that only recent conditions might be excluded, subject to *underwriting, Mr B would likely have explored that option.*

I say that because at the 2023 renewal, Mr B was told about the underwriting process and that recent medical conditions might be excluded. But he was given clearer information about the way a medical switch would work and about the potential for the exclusion of recent conditions. Based on that information, Mr B opted to go through the underwriting process for a Personal Health Plan, resulting in a much lower premium.

AXA has told me that a Personal Health Plan would have cost Mr and Mrs B approximately £4106 in 2021. This also takes into account the change in specialist list Mr B chose in 2023. Given the substantial difference between the price they actually paid for cover and the price they would have paid for the new plan, I presently think they'd most likely have opted to take out the Personal Health Plan in 2021. This means I think Mr and Mrs B suffered a financial loss as a result of AXA's failure to properly explain the switch process at the 2021 renewal. And it follows that the policy would have renewed on Personal Health Plan terms at the 2022 renewal. AXA has told us that the premium for that policy year would have been approximately £4370, as opposed to the £12,190 Mr and Mrs B did pay. Again then, I think AXA's errors have caused Mr and Mrs B to suffer a significant financial loss.

So I need to think about what I consider fair compensation should be. I currently think the fair outcome to this complaint is for AXA to calculate and pay Mr and Mrs B the difference between the premiums they actually paid for the 'Assure' Policy in 2021 and 2022 and what they would have paid for those policy years had they taken out the Personal Health Plan. I also currently think it should add interest to the settlement at an annual rate of 8% simple from the date those premiums were paid until the date of settlement. The interest is to compensate Mr and Mrs B for the loss of access to that money and their resulting potential loss of amenity.'

I asked both parties to provide me with any further evidence or comments they wanted me to consider.

AXA initially responded to say that it felt Mrs B might not have been eligible for a full switch to a Personal Health Plan in August 2021. That's because, in early 2022, it authorised and paid for her to undergo hip replacement surgery. So it believed she might have had surgery planned or pending at the time of renewal. And this would've resulted in cover for Mrs B's hip being excluded from cover under the terms of any new switch policy.

Mr and Mrs B provided us with copies of clinic letters from Mrs B's treating specialist, which confirmed that at the time of the 2021 renewal, Mrs B didn't have surgery planned or pending. We provided this evidence to AXA and I explained why I still felt the fair outcome to the complaint was for AXA to pay the fair compensation I'd set out in my provisional decision.

AXA agreed that the evidence indicated Mrs B didn't have surgery planned or pending in August 2021 and it let us know that it accepted the settlement I proposed. It said that the usual terms of Mrs B's Personal Health Plan would apply from 2021 onwards, so her no claims discount would be affected by claims she made after that date.

Mr and Mrs B accepted most of my provisional findings. However, in brief, they felt that the call handler in 2020 could have mentioned the availability of the new policy, even though moratorium terms would have applied to any switch. They said that had they been given the choice to take out a new moratorium policy, it was highly likely that they'd have taken the risk and accepted the offer.

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 for the same reasons.

I've thought carefully about Mr and Mrs B's further submissions regarding the 2020 renewal. I accept it's possible that if they'd been made aware of the opportunity to take out a new, cheaper policy on moratorium terms, they would have done so.

But it remains the case that during the 2020 renewal call, Mr B told the call handler that he wanted the cover to stay exactly the same and so, in line with AXA's process, the call handler wasn't prompted to tell Mr B about the new product or explain how it worked. And I'm still persuaded that ensuring continuity of medical cover for Mr and Mrs B was very important to them. So I still don't think, on the balance of probabilities, that it's more likely than not that they'd have gone ahead with a new moratorium plan which wouldn't have provided *any* cover for conditions they'd had in the five years before the policy began.

As such, I still don't think AXA acted unfairly or unreasonably at the 2020 renewal.

AXA has now accepted that Mrs B was eligible for the Personal Health Plan in 2021 and so I don't think I need to make any further finding on that point. I'm pleased to note that it's now agreed to the settlement I set out in my provisional decision. It's told us that if Mr and Mrs B accept my final decision, the terms of the Personal Health Plan will apply from 2021 onwards – which means that claims made since the 2021 renewal will be taken into account when calculating the applicable no claims discount. This means that AXA will be putting Mr and Mrs B in the position they *would* have been in had they been offered and taken-up the Personal Health Plan at the 2021 renewal, as I've concluded they'd most likely have done.

Overall, I still find, on balance that if Mr and Mrs B had been made aware of the option to take up the Personal Health Plan at the 2021 renewal, they'd have likely explored this option. And so I still find that AXA's failure to fully explain the switch process at the 2021 renewal caused them to suffer a significant financial loss which AXA needs to put right.

Putting things right

As I explained in my provisional decision, I think the fair outcome to this complaint is for AXA to calculate and pay Mr and Mrs B the difference between the premiums they actually paid for the 'Assure' Policy in 2021 and 2022 and what they would have paid for those policy years had they taken out the Personal Health Plan. I find that it must add interest to the settlement at an annual rate of 8% simple from the date those premiums were paid until the date of settlement.*

My final decision

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

I direct AXA PPP Healthcare Limited to put things right as I've set out above.

* If AXA considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs B how much it's taken off. It should also give Mr and Mrs B a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B and Mr B to accept or reject my decision before 28 October 2024.

Lisa Barham
Ombudsman