

The complaint

Mr M complains that AXA PPP Healthcare Limited hasn't fully settled a medical expenses claim he made on travel cover provided as a benefit of a group private medical insurance policy.

What happened

Mr M holds travel insurance as a benefit of his employer's group private medical insurance policy.

In December 2023, Mr M was taking part in a winter sports holiday abroad. Unfortunately, he suffered an injury and was taken to hospital.

The following day, Mr M got in touch with AXA's medical emergency assistance team to make a claim. He said the treating doctors had told him he needed anterior cruciate ligament (ACL) surgery, which would be taking place approximately two hours later. In brief, AXA told Mr M that it would review the available medical evidence and consider the claim. It told Mr M that it couldn't guarantee the surgery would be covered or that Mr M would be reimbursed for the medical costs he might incur.

Mr M underwent surgery and paid the medical costs he incurred of broadly £21,500. He provided AXA with a medical report in support of his claim.

However, ultimately, AXA didn't agree to cover the full costs of the ACL surgery. Firstly, it said Mr M's planned trip had exceeded the maximum winter sports trip length set out in the policy. And secondly, it said that its medical advisers had concluded the medical report was limited in detail and that they felt Mr M could have been repatriated back to the UK for surgery. But it said the ACL surgery would have been covered by Mr M's private medical insurance cover had he undergone the operation in the UK. So AXA paid Mr M £8265.23 as a gesture of goodwill, because it calculated that's what it would have paid for Mr M to undergo private ACL surgery in the UK.

Mr M was unhappy with AXA's decision and he asked us to look into his complaint. He was also unhappy with the way AXA had handled the claim. After the complaint had been brought to us, AXA acknowledged that it had misfiled an invoice Mr M had sent it for a few weeks. So it offered to pay Mr M £100 compensation for this error.

Our investigator thought Mr M's complaint should be upheld. While he accepted that Mr M's overall trip was longer than the winter sports trip limit, he noted that Mr M's accident had happened well within the 17 day limit. So he didn't think AXA's position had been prejudiced as a result.

The investigator considered the medical report, along with the opinion of AXA's medical team. While he thought the complaint was finely balanced, overall, he felt it was fair to rely on the treating doctor's report to conclude that Mr M's surgery abroad had been medically necessary. So he recommended that AXA should settle the remainder of Mr M's claim and pay interest from the date Mr M had sent it the information it needed to make payment. He

also felt AXA's offer of £100 compensation was fair.

AXA disagreed and I've summarised its detailed response:

- It questioned our approach to breaches of the trip limit, given the clarity of the policy wording – and in particular, to the terms relating to trip limits. It considered the policy terms made it clear that if a policyholder's trip exceeded the maximum trip limit, there would be no cover;
- It considered Mr M had chosen to go ahead with the surgery at his own risk, as he'd known the claim hadn't been authorised;
- It felt the terms made it clear that its emergency medical assistance team's or its own opinion would determine whether or not treatment was medically necessary, rather than the treating doctor;
- It pointed to the medical report referring to both ACL 'reconstruction' and 'repair', which it felt was confusing. It asked us to consider the difference between the two types of surgery;
- And it provided us with articles from medical journals which it considered provided persuasive, independent medical evidence that Mr M's surgery could have waited until he returned to the UK.

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, I don't think AXA has handled this claim fairly and I'll explain why.

First, I'd like to reassure both parties that while I've summarised their detailed submissions to us, I've carefully considered all that's been said and sent. However, in this decision, I haven't commented on each and every point that's been made and nor do our rules require me to. Instead, I've focused on what I consider 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, amongst other relevant considerations, such as industry principles and guidance, the policy terms and the available evidence, to decide whether I think AXA handled this claim fairly.

Policy terms and conditions

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr M's employer and AXA. Page 12 of the policy includes a section called 'Trip length and trip limit'. This sets out the following term:

'Maximum length of a trip

Winter sports cover

The cover....above includes cover for any holiday or business trip at a winter sports resort up to a maximum total number of 17 days in any insured period.

Except as provided specifically by "Automatic Extension" (see the Important condition relating to your plan section), there is no cover under the plan for any single trip which lasts, or which was planned or expected to last, more than the relevant number of days shown.'

Section two – ‘Medical emergency and repatriation expenses’ provides cover, amongst other things, if an insured member needs emergency surgery or medical treatment. This section of the policy also includes a list of things AXA has chosen not to cover. AXA considers the following exclusions apply to this claim:

‘What is not covered

Any claims arising directly or indirectly from:

- *Any expenses which are not usual, reasonable or customary to treat your injury due to an accident, illness or disease.*
- *Any form of treatment or surgery which in the opinion of the Emergency Medical Assistance Service or us (based on information provided by the medical practitioner in attendance), can be delayed reasonably until your return to your home area.’*

I’ve gone on to consider whether I think AXA has fairly relied on the trip length limit and medical necessity terms when it assessed Mr M’s claim.

The trip length limit

Mr M told AXA that he travelled abroad on 20 December 2023 and that he was due to return to the UK on 7 January 2024. While he says he hadn’t planned to be at the winter sports resort for the full duration of his trip, I don’t think it was unfair for AXA to conclude that his total planned trip did exceed the 17-day winter sports trip limit. It seems to me then that there was a *technical* breach of the trip length limit.

However, I can depart from a strict interpretation of the policy terms if I feel their application produces an unfair result. That’s the case here. I don’t think it’s fair or reasonable for AXA to rely on a technical breach of the trip length limit to limit its liability in this case. Mr M’s injury occurred six days after his departure from the UK and he underwent surgery on day seven of his planned trip. So it seems to me that Mr M’s costs were incurred well within the 17 day trip limit. And I’m not persuaded that AXA’s position has been materially prejudiced here by the fact that Mr M’s planned trip lasted longer than the maximum trip limit.

This means that I don’t think AXA acted fairly when it relied on Mr M’s technical breach of the trip length limit to turn down this claim.

Necessity of Mr M’s surgery

First, I must make it clear that I’m not a medical expert. It’s not my role to make clinical decisions or to substitute clinical opinion with my own – and it would be inappropriate for me to do so. Instead, I must weigh up the available medical evidence to decide which evidence I find most persuasive.

I’m mindful that AXA had little time to assess whether or not Mr M’s surgery would be covered ahead of it taking place. The evidence indicates that Mr M was told that emergency surgery was medically necessary the day before he called the emergency medical assistance team. And the call took place only two hours before surgery was scheduled. I think AXA was reasonably entitled to ask for medical evidence to support the necessity of the surgery and I don’t think it was in a position to make a claims decision until it had this evidence. I’m satisfied too that it did tell Mr M that if the claim wasn’t authorised, he’d be liable for any costs he incurred. I would reasonably expect though that AXA would fairly assess the medical evidence Mr M went on to provide.

Dr A, the Head Physician and Orthopaedic Surgeon, at the treating hospital provided a

medical report in support of Mr M's claim, dated 3 January 2024. This includes the following:

'Mr M was treated in our hospital for the above mentioned repair. Reconstruction of an ACL Suture is only possible within the first couple of days to preserve the Ligament so there is an urgency to avoid a Reconstruction using a graft which is a more traumatic surgery.'

'Therefore we recommended Mr M to do the surgery to keep the integrity of the Ligament. The likelihood of success of a primary reconstruction via suture and augmentation is bet [sic] if surgery is performed within the first days after injury.'

On the other hand, AXA's medical advisers concluded that the surgery could have waited until Mr M returned to the UK – albeit he would have needed to be repatriated by air, with ground transport either side and with three seats on the plane for leg elevation purposes. AXA has provided links to medical articles which state that ACL repair should take place within 14 to 21 days in support of its position. It's also pointed out that ACL repair and reconstruction are different and that this is confusing.

It seems to me that given there was confusion about the report, as the expert in the situation, AXA had the opportunity to contact Dr A, as the treating specialist responsible for Mr M's care, to ask further questions about the type of surgery Mr M had had and why it had been felt to be an emergency. Especially given AXA was retrospectively assessing whether to reimburse Mr M's surgical costs, rather than urgently needing to pre-approve surgery. It didn't do so. I'm mindful that Dr A's first language most likely isn't English and that therefore, asking him follow-up questions to clear up any confusion might have helped AXA fairly assess this claim.

And, I've also carefully considered the contact Mr M had with the medical emergency assistance team before he underwent surgery. During the call, around an hour and a half before Mr M had the operation, the call handler told Mr M that the team would get in touch with the clinic and try to get some information from it. The call handler suggested the team would confirm with the hospital what the investigations showed and confirm that the surgery was good to go. Mr M clarified the timeframe for his surgery and asked if AXA could call the clinic soon, so it would have all of the necessary information by the time he got there. The call handler indicated that the team would send a request to the clinic and that the clinic should be supplying medical reports.

However, the medical emergency assistance team's records don't indicate that it took any action until the following day. And the notes suggest its focus at that point was more on Mr M's trip exceeding the trip length limit. In my view, despite the tight timeframe, the team could have done more to contact the clinic ahead of Mr M's surgery taking place, to try and understand whether the surgery was medically necessary. So I think there was a missed opportunity to understand the nature of the surgery and whether it was medically urgent.

Additionally, it seems to me that Mr M was very much leading the conversation with the call handler, on the understanding that surgery would be going ahead. I think there was also a chance for the call handler to have potentially explored with Mr M whether repatriation to the UK for surgery might have been a better option for him and which may have potentially mitigated his costs.

Therefore, I do think there were opportunities for AXA, as the expert in the situation, to have intervened before Mr M underwent surgery and incurred surgical costs.

I do appreciate that this complaint is finely balanced. I have thought about AXA's evidence and I've borne in mind the policy terms. It seems to me that AXA's liability here would always have exceeded the costs of surgery in the UK because of the costs it would have incurred

for Mr M's repatriation. But in any event, in the particular circumstances of this complaint, I find it's fair and reasonable to place more weight on the medical report provided by Dr A. That's because Dr A is an orthopaedic specialist, who had the opportunity to assess Mr M's injury and offer appropriate treatment tailored to Mr M. And AXA's terms say its medical assistance team's opinion on the medical necessity of treatment will be based on the information provided by the attending doctor. I'd reiterate too that as I've said above, I think AXA did have a small window of opportunity pre Mr M's surgery to explore potential repatriation and it didn't.

As such then, I agree with the investigator that the fair and reasonable outcome here, on balance, is for AXA to accept and settle the remainder of Mr M's claim, in line with the policy terms and conditions. I'd add that I haven't commented on whether or not the medical charges were reasonable and customary, as that isn't something AXA has commented on in any depth. And while AXA looked into what was reasonable and customary in the UK, this isn't relevant to what may or may not be reasonable and customary in the treating destination. So I don't think it would be reasonable or appropriate for me to consider that point here.

Compensation

I appreciate there were some delays in AXA's assessment of this claim – which seem, in part, due to practical difficulties in AXA being sent the evidence it needed to make a decision. However, it accepts that it did misfile an invoice it had requested from Mr M and which he ultimately sent to it on 26 March 2024. This resulted in a broadly four-week delay in the progression of the claim. It's offered Mr M £100 compensation to reflect the trouble and upset that error caused him and I'm satisfied that award is proportionate and fair to reflect the likely impact of a brief period of delay on him.

Putting things right

I direct AXA PPP Healthcare Limited to:

- Accept and settle the balance of Mr M's claim, in line with the remaining terms and conditions of the policy;
- Add interest to the settlement at an annual rate of 8% simple from 26 March 2024 (the date Mr M ultimately provided all the evidence AXA asked for) until the date of settlement;*and
- Pay Mr M £100 compensation.

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

AXA PPP Healthcare Limited must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint and I direct AXA PPP Healthcare Limited to put things right as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 February 2025.

Lisa Barham
Ombudsman