

The complaint

Mr L complains that AWP P&C S.A. hasn't paid a claim under his private health insurance policy.

What happened

Mr L took out a private health insurance policy on 1 August 2021, provided by AWP. The policy was underwritten on a moratorium basis. This meant that any pre-existing conditions Mr L had in the five years before the policy start date wouldn't be covered. These conditions could become eligible for cover if Mr L didn't receive any treatment, advice or experienced symptoms or took medication for that condition for a continuous two years after the policy started.

Mr L made a claim for sinusitis in November 2023. AWP declined the claim as it said it related to a pre-existing condition. Mr L appealed the decision, and AWP sought information from Mr L's GP. After this, AWP maintained its decision to decline the claim, as it said Mr L had not been symptom free of the condition for two years after the policy started. So, it said the moratorium term applied. Unhappy with AWP's position, Mr L brought the complaint to our service.

One of our investigators looked into what had happened. And having done so, she was persuaded that the evidence showed Mr L hadn't had symptoms for two continuous years after the policy started. So, she said AWP should pay the claim with interest, and pay Mr L £300 for the distress and inconvenience caused.

AWP didn't agree with how the investigator had interpreted the evidence and it asked for an ombudsman's decision. As no agreement was reached, the complaint has 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.

Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr L's complaint.

The moratorium term is set out as follows in Mr L's policy terms and conditions:

"We do not pay for treatment of any pre-existing condition – all pre-existing conditions are automatically excluded from cover."

If you do not receive medical advice or treatment for, take medication for or experience symptoms of the pre-existing condition for a full, unbroken two-year period after the moratorium date, cover for that pre-existing condition may then be available.”

It's not in dispute that Mr L's claim relates to a pre-existing condition – sinusitis. What is in dispute is if Mr L was symptom free of this condition for a continuous two years after 1 August 2021. The medical evidence clearly shows Mr L started experiencing symptoms in September/October 2023. So, I've looked at the evidence to see if AWP has acted fairly and reasonably by saying Mr L wasn't symptom free, as per the policy terms, prior to this.

AWP asked Mr L's GP to fill out a medical report. In this, the GP was asked to *“describe in detail, the symptoms presented by the patient as recorded in their notes”*. The GP noted the following: *“Recurrent episodes of sinusitis dating back to 1999. As of 2019, worsening symptoms including headache, facial pain, congestion, nasal discharge.”*

AWP asked when the patient first had symptoms, and the GP noted the following: *“1999 – most recent episode in September 2023 (not seen or treated between August 2021 and August 2023.”*

The GP also confirmed the above timeline in an answer to another question in the report. AWP asked the GP why they had included a specific reference to this timeline in their report. The GP told AWP that *“I can confirm that after discussion with the patient, we had agreed to confirm that he was symptoms free between those dates”*.

AWP said it wouldn't place much weight on the GP commenting on Mr L being symptom free, as this had been added by the GP at the specific request of Mr L. Instead, AWP said that the evidence showed Mr L had been suffering from the condition since 1999, with worsening symptoms since 2019.

Mr L saw a consultant on 13 October 2023. The consultant confirmed they had looked after Mr L for many years, including carrying out sinus surgery previously. The consultant noted in their report that *“Intermittently he has had trouble with sinusitis and recently had quite a severe episode for which I recommended that he be admitted to [hospital].”*

Mr L had been admitted to hospital for acute sinusitis on 7 October 2023, and he was discharged two days later. The consultant also commented in their report that *“He seems to get sinusitis once or twice per year [...]”*

The consultant referred Mr L to another consultant, who saw him on 30 October 2023. In this report the consultant recorded the diagnosis as *“ongoing issues with recurrent sinusitis”* and noted that *“[Mr L] is prone to recurrent sinusitis and whilst the right side of his nose is currently under reasonably good control, he has still had further episodes of infection on the left-hand side.”*

AWP said both consultant reports supported that Mr L continued to experience symptoms of the sinusitis after taking out the policy. It said that taken as a collective, the various reports pointed to a condition that had been ongoing for many years. AWP didn't think the reports were consistent with Mr L's argument that he was symptom free between 1 August 2021 and 1 August 2023. Overall, AWP didn't think this was plausible, considering the extensive history of Mr L's condition.

AWP also noted that Mr L's consultant was finding quite advanced symptoms and suggested further surgery within a matter of days following a discharge from the hospital. It considered it unlikely that the consultant would have recommended surgery without trying more conservative treatments first if Mr L had been symptom free for two years prior to the hospital admission. Mr L had the recommended surgery in December 2023.

Mr L provided an email from his regular consultant in December 2023 in which they said that *"You have had previous problems with sinusitis but were symptom free between 2019 and September this year when you had a severe episode of acute sinusitis which necessitated admission for intravenous antibiotics"*.

AWP thought this email contradicted what the consultant had said in their formal clinic letter in October 2023. AWP didn't find this email persuasive, as it said the consultant had provided it on the instructions of Mr L, following an initial indication that his claim would be declined. AWP said this wasn't a formal clinic letter, as far as it knew it wasn't added on Mr L's medical records, and the consultant had no way of knowing if the information was true, rather than repeating what he had been asked to say by Mr L.

It's clear that Mr L had suffered from sinusitis for a long time – since 1999. Firstly, I'm persuaded that Mr L hadn't received any treatment or advice for the sinusitis between August 2021 and August 2023. I don't think it makes a difference that the GP confirmed this on the request of Mr L. The GP confirmed this in a formal medical report, in which they confirmed having access to Mr L's full medical notes.

There have been no arguments on either party if Mr L took medication for the sinusitis during the relevant period. So, I've then considered if the evidence supports that it's more likely than not that Mr L didn't experience symptoms of the sinusitis for two continuous years after 1 August 2021, and before September/October 2023 when there's medical evidence to show the symptoms started again.

Firstly, Mr L's GP told to AWP that *"I can confirm that after discussion with the patient, we had agreed to confirm that he was symptoms free between those dates"* – this referred to August 2021 and August 2023. I appreciate this would have been following a discussion with Mr L. But I think it's unlikely a medical professional would make such a statement if they had any reason to doubt it. Obviously, this doesn't *confirm* Mr L hadn't experienced symptoms during this period. But I do think it supports it.

I've then considered everything Mr L's consultants said. One of the consultants had treated Mr L for a long time, including carrying out previous surgery. I've considered AWP's comments about the consultant's report dated 13 October 2023. But it appears to me that the references to the frequency of Mr L's sinusitis are generic. The consultant said Mr L *"seems to get sinusitis once or twice per year"* (emphasis mine). However, it's not confirmed what period this applied to. I'm also mindful the consultant had a long history with Mr L. The consultant also referred to Mr L having trouble with sinusitis *"intermittently"*. And the consultant later confirmed in an email that Mr L had been symptom free between 2019 and September 2023.

Additionally, I find the other consultant's comments in their report dated 30 October 2023 similarly generic about the frequency of Mr L's sinusitis. I don't think this report confirms Mr L continued to experience symptoms during the relevant period.

Overall, considering the GP's comments, as well as Mr L's consultant's comments, I'm persuaded that it's more likely than not that Mr L hadn't experienced symptoms of the sinusitis for a continuous two years from 1 August 2021 onwards. Mr L has maintained he had been symptom free during this time, and two medical professionals confirmed this. I don't think the medical evidence AWP has referred to directly contradicts these statements, for the reasons I've explained.

For completeness, I have thought about the GP's comment that Mr L had worsening symptoms "as of 2019". But there's no further detail about the timeline of this. And I can see that Mr L sought advice from his consultant in June 2019, who investigated potential sinus disease. However, it was confirmed there was no sign of the disease, and no further investigation was recommended. I also note comments about nasal congestion in a clinic letter from July 2020, but it was confirmed there was no sign of infection, and the report doesn't make any specific reference to Mr L's sinusitis.

Having considered everything, I don't think AWP acted fairly or reasonably when it said the claim was caught by the moratorium term, and therefore declined. This would have caused Mr L unnecessary distress and inconvenience.

My final decision

My final decision is that I uphold Mr L's complaint and direct AWP P&C S.A. to:

- pay Mr L's claim in line with the remaining terms and conditions of the policy,
- add interest at the rate of 8% simple per annum from the date Mr L paid the invoices until the date of settlement*, and
- pay Mr L £300 for the distress and inconvenience caused when it unfairly declined his claim**.

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

**AWP must pay the compensation within 28 days of the date on which we tell it Mr L 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% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 7 February 2025.

Renja Anderson
Ombudsman