

The complaint

Mrs P complains that AXA PPP Healthcare Limited has turned down a claim she made on a personal private medical insurance policy.

While Mrs P's solicitor is now representing her, I've referred to Mrs P for ease of reading.

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 P holds a personal private medical insurance policy, which includes Comprehensive Cancer Cover. Unfortunately, some years ago, Mrs C was diagnosed with a rare form of cancer, which spread to her liver. She made a claim on the policy for Delcath chemosaturation treatment.

AXA turned down Mrs P's claim because it said Delcath wasn't covered by the policy terms. So Mrs P asked us to look into her complaint.

Another ombudsman considered Mrs P's complaint and issued her final decision in September 2020. She explained the reasons why she didn't think AXA had unfairly turned down Mrs P's claim. I understand Mrs P subsequently self-funded Delcath treatment, which was very successful in treating her condition.

Unfortunately, in July 2024, a scan found that Mrs P's cancer had progressed. So she got in touch with AXA to make another claim for Delcath treatment.

But AXA turned down Mrs P's claim. That's because the policy required treatment to be 'conventional' treatment. And AXA didn't think Delcath treatment was conventional treatment for Mrs P's condition. So it still didn't think the claim was covered by the policy terms.

Mrs P was very unhappy with AXA's decision and so she brought a new complaint to us.

Our investigator didn't think Mrs P's complaint should be upheld. While she sympathised with Mrs P's position, she didn't think it had been unfair for AXA to conclude that Delcath treatment didn't meet its definition of conventional treatment.

Mrs P disagreed and both she and her solicitor provided further submissions. In brief, they felt AXA's decision and policy terms were wrong at law and under regulatory principles. And they considered there was ample medical evidence to show that Delcath treatment is safe and that it's widely and effectively practiced for patients in the UK who have Mrs P's rare form of cancer. Therefore, they maintain that Mrs P's treatment is covered by the policy terms.

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 cause Mrs P further upset, I don't think it was unfair for AXA to turn down her claim and I'll explain why.

First, I'd like to say how sorry I was to read about Mrs P's diagnosis and about the progression of her illness. I don't doubt what a worrying and stressful time this has been for Mrs P and it's clear how important is to her to undergo Delcath treatment.

It's also important to set out that I'm not a medical expert. This means I can't make clinical decisions or substitute clinical opinion with my own – and it would be inappropriate for me to do so. Instead, my role is to independently and impartially assess the evidence that both parties have provided to decide whether I think it was fair and reasonable for AXA to conclude, based on the available evidence, that Mrs P's claim wasn't covered by the policy terms.

I'd like to reassure Mrs P that while I've summarised the background to her complaint and the detailed submissions she and her solicitor have sent 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, alongside other industry principles and guidance (including those quoted by Mrs P), the contract terms, and the available evidence, to decide whether I think AXA handled this claim fairly. I've also taken into account the law, which is a relevant consideration under the rules that govern our service, but I'm not bound to strictly apply this. My legislative remit is to decide what I think is fair and reasonable in the overall circumstances of an individual case.

I've first considered the policy terms and conditions, as these form the basis of the contract between AXA and Mrs P. Page seven of the policy handbook says:

'Like all health insurance policies, 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 P chose to add Comprehensive Cancer Cover, I think AXA has made it clear enough that this doesn't mean all claims for all cancer treatment will be covered. I think the policy terms make it clear that some things won't be covered, and I don't think there's any requirement for AXA to personalise or tailor the cover to meet Mrs P's specific needs as she has suggested.

Page 12 of the handbook says that AXA provides cover for 'eligible treatment' and it's defined what it means by this as follows:

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

- *falls within the benefits of this policy and is not excluded from cover by any term in this handbook; and*
- *is of an acute condition (for details see 3.5); 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 4.25); and*
- *does not cost more than an equivalent treatment that delivers a similar therapeutic or diagnostic outcome; and*
- *is not provided or used primarily for the convenience or financial or other advantage of you or your specialist or other health professional.'* (My emphasis added.)

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 has also defined what it means by 'conventional treatment' and I've set out the relevant definition below:

'What do you mean by conventional treatment?

We define conventional treatment as treatment that is established as best medical practice, and is practised widely in the UK. It must also be clinically appropriate in terms of necessity, type, frequency, extent, duration and the facility or location where the treatment is provided.

In addition, to meet our definition it must be approved by NICE (The National Institute for Health and Care Excellence) as a treatment which may be used in routine practice. Otherwise, it must have high quality clinical trial evidence proving it is effective and safe for the treatment of your medical condition (full criteria available on request).

Are there any additional requirements for drug treatments?

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 13 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. Our general position is that there is no cover for treatment or surgery that are not conventional treatment. We call this unproven treatment.

In some cases we will consider covering surgery not listed in the schedule of procedures and fees. We may also consider other treatments and diagnostic tests which are not conventional treatments. We must agree to the treatment before you have it, including what costs (if any) we will pay.

The cover for unproven treatment is more restrictive than for conventional treatments. We will only pay for treatment that we agree is a suitable equivalent to conventional treatment...

If there is no suitable equivalent conventional treatment, there won't be any cover for the unproven treatment.'

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.

It's clear that when assessing this claim, AXA took into account the available evidence from Mrs P's treating specialists (including a letter we received in November 2024 which was addressed from one of Mrs P's treating oncologists and which we subsequently shared with AXA in line with our rules). And that AXA referred that evidence on to its medical advisory team for review. In my view, that was a reasonable and appropriate response from AXA. It's clear too that the medical advisory team and AXA's claims team took into account the relevant NICE guidelines for the Delcath chemosaturation treatment which had been proposed for Mrs P 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 P'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.*
 - *The procedure should only be done in specialist centres by a melanoma multidisciplinary team that includes an interventional radiologist, an anaesthetist, an oncologist and a clinical perfusion scientist trained and experienced in the 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.'*

AXA's medical team therefore concluded that NICE hadn't approved the treatment as routine treatment for Mrs P's specific condition. And they also concluded that the Delcath 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 medical team also took into account evidence from the American Society of Clinical Oncology's FOCUS phase 3 trials into chemosaturation treatment. They said that trial wasn't able to report outcomes on comparable groups and the control (best available care) arm was halted. They also said the final publication was a single arm trial. They didn't think it showed evidence of improved overall survival or progression free survival with treatment compared to best available care. Therefore, the team maintained it doesn't meet the policy requirement for a conventional treatment. Nor did AXA think there was sufficient information to demonstrate moderate or high-quality evidence of safety and effectiveness of the treatment.

I appreciate the November 2024 letter sets out positive patient outcomes for chemosaturation. It seems Mrs P's treating team considers the FOCUS trial supersedes the NICE guidelines. And that other insurers cover this treatment. I entirely appreciate that Mrs P and her treating team felt that the Delcath chemosaturation treatment was best for her and,

as I've said, it isn't my role to interfere in clinical opinion or decide on the most appropriate form of treatment.

However, 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, as well as other studies Mrs P has referred to. And in my view, it wasn't unfair for AXA to conclude that Mrs P's proposed treatment wasn't conventional treatment and that it 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 medical advisory team's conclusions that NICE hadn't approved the treatment as routine treatment for Mrs P's cancer; that Delcath hadn't been licensed for that specific use by the relevant regulatory bodies and that there wasn't enough evidence to show its safety and efficacy.

Additionally, I don't think it's unfair or unreasonable for AXA to compile its own internal guidance - based on available medical evidence - to determine what it classifies as conventional treatment, so long as it is treating all policyholders in the same situation in the same way. In this case, I'm satisfied that AXA has shown it treated Mrs P in the same way it would have treated any of its other policyholders in the same situation. So I don't think AXA has singled Mrs P out in any way.

I'm mindful too that Mrs P doesn't consider her proposed chemosaturation treatment to be a drug treatment, in line with the AXA's policy terms. But I don't think whether the chemosaturation treatment is a drug or not makes a material difference to the outcome of this complaint. That's because whether the chemosaturation treatment is a drug or another form of treatment, it remains the case that AXA doesn't consider it to be conventional treatment for Mrs P's condition. And therefore, the proposed treatment still isn't covered by the policy terms.

Taking all of the above into account, I don't think AXA acted unfairly when it turned down Mrs P'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 P to obtain alternative, conventional treatment. However, no alternative conventional treatment has been identified in this case by Mrs P's treating team. So 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 Mrs P's contract with it.

Overall, despite my natural sympathy with Mrs P's position and while I'm very sorry to cause her further upset, I don't find AXA has treated her 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 P to accept or reject my decision before 13 March 2025.

Lisa Barham
Ombudsman