

The complaint

Miss H1 and Miss H2 complain because AXA PPP Healthcare Limited ('AXA PPP') declined claims made under a private medical insurance policy and retrospectively added exclusions to the policy.

Miss H1 and Miss H2's complaint has been brought to us by a representative. All references to the submissions of Miss H1 and Miss H2 include those of their representative where relevant.

What happened

Miss H1 held a private medical insurance policy, provided by AXA PPP. In March 2022, Miss H1 completed an application form answering questions about Miss H2's previous medical history on Miss H2's behalf, and Miss H2 was added to the policy with no exclusions on her cover.

In 2023, Miss H1 tried to make claims under the policy for Miss H2's medical conditions. AXA PPP said the claims weren't covered and retrospectively added exclusions to Miss H2's cover. Some of these exclusions have since been removed/amended by AXA PPP but, for the sake of completeness, the full list of exclusions which have been mentioned are as follows:

- any investigations and treatment related to hypertension, any underlying cause and conditions arising therefore or associated therewith;
- any investigations and treatment related to fatigue, any underlying cause and conditions arising therefrom or associated therewith;
- any investigations and treatment related to dizziness and any underlying cause;
- any investigations and treatment related to menstrual troubles, any underlying cause and conditions arising therefrom or associated therewith;
- any investigations and treatment related to chronic fatigue syndrome and conditions arising therefrom or associated therewith, including psychiatric troubles.

Unhappy with AXA PPP's stance, Miss H1 and Miss H2 brought their complaint to the attention of our service.

One of our investigators looked into what had happened and said she thought AXA PPP should remove some of the exclusions listed above. AXA PPP didn't agree with our investigator's opinions so the complaint was referred to me to make a decision, as the final stage in our process. I made my provisional decision about Miss H1 and Miss H2's complaint earlier this month. In it, I said:

'The terms and conditions of Miss H1 and Miss H2's policy say AXA PPP will not pay for any medical conditions which it isn't told about when the policyholder joins. The policy also says AXA PPP can apply different terms of cover if it isn't given accurate information by the policyholder.'

However, I don't think it's fair or reasonable for AXA PPP to rely on the policy terms and conditions (or the wording of the policy application form) to decline cover and retrospectively

add policy exclusions in this case. I'll explain why.

This is a 'fully medically underwritten' policy. Miss H1 was asked questions about Miss H2's medical history when Miss H2 was added to the policy. This means AXA PPP had the opportunity to request all the medical information it wanted to know before adding Miss H2 to the cover. Therefore, in line with our service's long-standing, published approach to cases like this, I think the principles set out in the Consumer Insurance (Disclosures and Representations) Act 2012 ('CIDRA') are relevant, and I think it would be fair and reasonable to apply these principles to the circumstances of this complaint.

CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out an insurance policy. The standard of care required is that of a reasonable consumer.

If a consumer fails to take reasonable care, the insurer has certain remedies provided the misrepresentation is – what CIDRA describes as – a 'qualifying misrepresentation'. For the misrepresentation to be a qualifying one, the insurer must show it would have offered the policy on different terms, or not at all, if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

What AXA PPP is attempting to do here is to retrospectively amend the contract to reflect the fact that, if Miss H2's medical history hadn't been misrepresented, it would've entered into the contract on different terms (i.e., by applying some or all of the exclusions it has mentioned). But I don't think AXA PPP is reasonably entitled to do this, as I don't think it has shown that Miss H1 made a 'qualifying misrepresentation' under CIDRA.

When Miss H2 was added to this policy, the following questions were asked:

'3.1 Has anyone to be added to this policy consulted with a medical practitioner, been admitted to hospital or nursing home, or suffered from an intermittent or recurring illness during the last five years?

In your answers, please include:

- Member name*
- Symptoms/Condition/Diagnosis*
- The area of the body affected
(eg right leg, left eye).*
- Date of onset, frequency & severity of symptoms, date of last symptoms*
- Details of any part or current medication or treatment*
- Current status (eg fully recovered/on-going)*

...

3.3 Has anyone to be added to this policy had any medical condition, disability or health problem, not mentioned above, whether or not a doctor has been consulted? This includes but is not limited to: gynaecological or menstrual problems.....'

Miss H1 didn't declare any information on behalf of Miss H2 in response to these questions, which I'm satisfied were clear and specific. However, having reviewed Miss H2's medical records, I don't think Miss H1 took reasonable care not to make a misrepresentation about Miss H2's medical history.

Miss H2's medical records show that she consulted a doctor in February 2021 (so, around 13 months before she was added to the policy) for symptoms including dizziness, feeling lethargic and irregular, heavy periods and Miss H2 was prescribed medication.

When considering what information I think AXA PPP ought reasonably to have been told about, I've also taken into account the content of the medical information form completed by Miss H2's GP, the GP referral letter dated 18 August 2023 and the GP letter of 23 November 2023.

Overall, I think Miss H1 ought reasonably to have told AXA PPP that Miss H2 had seen a doctor and been prescribed medication for the symptoms mentioned in the February 2021 medical records, so I don't think she took reasonable care when answering the questions AXA PPP asked.

However, in order for AXA PPP to demonstrate that this was a 'qualifying misrepresentation' and invoke the legislative remedies available to it under CIDRA (including, but not limited to, the retrospective amendment of the cover), AXA PPP needs to provide evidence to show what it would have done differently if Miss H1 had told it about Miss H2's doctor's consultation in February 2021.

As outlined on our website, we'd generally expect this evidence to take the form of either an underwriting guide or a written statement from an underwriter confirming what (if any) exclusions would have been applied if the insurer had been told the information in question.

It's not sufficient for AXA PPP to simply point to policy terms which refer, in a vague and general way, to it applying different terms, or to say that an underwriter would make a decision on each individual case. AXA PPP needs to demonstrate that it would have treated any policyholder with the same characteristics and in the same situation as Miss H2 in the same way.

Our investigator said she thought AXA PPP was entitled to retrospectively apply the policy exclusion relating to menstrual troubles. I disagree. AXA PPP has provided no evidence at all to show what cover it would have offered to Miss H2 if it had known about the February 2021 doctor's visit.

And, in particular, I don't think AXA PPP has provided any fair or reasonable explanation for its decision to add a retrospective policy exclusion relating to chronic fatigue syndrome.

As AXA PPP hasn't demonstrated that there is a qualifying misrepresentation under CIDRA, it has no remedy available to it under the legislation and so it isn't entitled to add any retrospective exclusions to Miss H2's cover.

Miss H1 and Miss H2 don't appear to have had any financial losses as a result of AXA PPP's decision to decline Miss H2's claims to date, but if there are any such financial losses then these should be presented to AXA PPP for consideration in the first instance.

I also think AXA PPP should pay compensation for the impact of its actions on Miss H1 and Miss H2. I've seen no evidence to support a conclusion that AXA PPP's actions were fair and reasonable in this case and I think it provided inaccurate explanations to Miss H1 and Miss H2 about its entitlement to apply retrospective exclusions to Miss H2's cover. Miss H1 has experienced worry, frustration and inconvenience as a result of the situation and Miss H2 has had to wait to receive treatment because of what I currently think were AXA PPP's unfair actions.

Overall, I consider that a total payment of £250 compensation would be fair and reasonable

in the circumstances for the distress and inconvenience which Miss H1 and Miss H2 have experienced.'

So, my provisional findings were that AXA PPP should remove all the exclusions relating to Miss H2 from the policy, consider any invoices for any private treatment which Miss H2 may have undergone and pay a total of £250 compensation for the distress and inconvenience which Miss H1 and Miss H2 experienced.

Miss H1 and Miss H2 accepted my provisional decision. AXA PPP didn't. In summary, AXA PPP said:

- not all of the exclusions listed are currently applied to the policy;
- Miss H1 clearly understood the questions asked on the application form, and its application form and policy wording allow it to vary the terms if a misrepresentation is made;
- it has never been required by our service to provide such extensive underwriting information in the past, and my provisional decision is concerning and inconsistent with conclusions our service has previously reached relating to CIDRA;
- its application of exclusions to Miss H1's policy demonstrates that Miss H2 would have been treated in the same way.

AXA PPP also provided extracts from its underwriting guidance in respect of dizziness and menstrual troubles.

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.

I find AXA PPP's response to my provisional decision surprising. Both the relevant law (CIDRA) and the Financial Ombudsman Service's approach to misrepresentation are very clear and I don't agree that my provisional findings are inconsistent with our service's general approach to this subject.

I understand that all the exclusions listed in my provisional decision don't currently apply to the policy. My provisional decision acknowledged that some of these exclusions have since been removed but I specifically stated that I would be addressing all the exclusions mentioned over the course of the claim for the sake of completeness.

CIDRA applies to the circumstances of this case so, regardless of what the policy terms and conditions say, AXA PPP needs to comply with the provisions of CIDRA if it wishes to invoke the remedies set out therein, which include the retrospective amendment of cover.

It's not in dispute that I think Miss H1 misrepresented the answers to questions 3.1 and 3.3 in respect of Miss H2's medical history. What is in dispute is whether AXA PPP has demonstrated what it would have done differently from a policy underwriting perspective if Miss H1 had answered the questions correctly.

When this complaint was considered by our investigator and when this complaint was referred to me, AXA PPP had provided no underwriting evidence at all to show what terms it would have applied if it had been told about Miss H2's doctor's consultation in February 2021.

As AXA PPP had not provided any underwriting evidence in support of its position, I didn't think our investigator's finding that AXA PPP was entitled to apply the exclusion for

menstrual troubles was fair or reasonable in the circumstances. AXA PPP has described my lack of alignment with the investigator's opinion as 'concerning', but my reasons for disagreeing with the investigator's opinion on this point were fully explained in my provisional decision.

The application of entirely different exclusions to Miss H1's cover based on her own individual circumstances in no way demonstrates that AXA PPP was fairly entitled to add the exclusions it did to Miss H2's policy for different medical conditions, or that AXA PPP would have treated other policyholders in the same situation as Miss H2 in the same way as it treated Miss H2.

AXA PPP has queried what specific information our service would require in order to satisfy CIDRA's requirements. I've already explained in my provisional decision that our website sets out the information which our service would expect to see in every case of this type. It's for AXA PPP to ensure it is complying with regulatory requirements in relation to the fair handling of claims and complaints and to ensure that learnings from previous decisions issued by our service are taken into account.

In response to my provisional decision, AXA PPP has now provided an extract from its underwriting guidance confirming that, if it was told about heavy and irregular periods in March 2022, it would have applied a policy exclusion for menstrual troubles. I share Miss H1 and Miss H2's frustrations that AXA PPP didn't provide this evidence sooner. Nonetheless, I must now take this underwriting guidance into account, and I'm satisfied this demonstrates that AXA PPP would have added an exclusion for menstrual troubles to Miss H2's cover had there not been a misrepresentation. So, I'm now satisfied that AXA PPP is entitled to retrospectively apply an exclusion for menstrual troubles, and Miss H1 and Miss H2 have told our service that they are prepared to accept this.

However, AXA PPP has still provided no underwriting evidence which confirms that it would have applied exclusions for hypertension, fatigue, dizziness and/or chronic fatigue syndrome if it had been told about the February 2021 doctor's consultation when Miss H2 was added to the policy. As AXA PPP hasn't demonstrated that it would have applied these exclusions then, under the applicable law, it cannot fairly retrospectively apply exclusions relating to these symptoms and conditions.

For these reasons, and for the reasons set out in my provisional decision, my findings in relation to the policy exclusions (apart from the menstrual troubles exclusion), the consideration of any invoices and the compensation award remain unchanged.

Putting things right

AXA PPP Healthcare Limited needs to put things right and do the following:

- remove all exclusions relating to Miss H2 from the policy, apart from the exclusion relating to menstrual troubles, and issue new policy documentation to Miss H1 and Miss H2 to reflect this;
- consider any invoices for any private treatment which Miss H2 may have undergone, in line with the remaining policy terms and conditions (disregarding all exclusions apart from the exclusion relating to menstrual troubles);
- pay Miss H1 and Miss H2 a total of £250 compensation for the distress and inconvenience they experienced.

AXA PPP Healthcare Limited must pay the compensation within 28 days of the date on which we tell it Miss H1 and Miss H2 accept 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

I'm upholding Miss H1 and Miss H2's complaint about AXA PPP Healthcare Limited and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H and Miss H to accept or reject my decision before 19 February 2025.

Leah Nagle
Ombudsman