

The complaint

Mr N has complained about the settlement of a claim and the service received from AXA XL Insurance Company UK Limited under his international health policy.

What happened

The background to this complaint is well known to the parties and not in dispute. In summary On 9 July 2023 whilst on holiday on a European island Mr N sustained an injury to his knee and attended a local hospital. It advised it didn't have availability for the surgery Mr N required.

The following day Mr N was assessed at a second hospital on the island and was discharged home with a scheduled check-up in 48 hours' time. AXA was notified of the claim the same day.

On 11 July Mr N flew by helicopter from the island to the mainland and on 12 July had surgery followed by a programme of physiotherapy in Europe which continued following Mr N's return to the UK.

AXA accepted the claim and paid for surgery costs and offered €1,000 towards the helicopter costs. It said the helicopter wasn't pre-authorised, and it wasn't medically necessary, but it would've funded transport to another hospital on the island. AXA declined to pay the physiotherapy costs in the UK on the basis that it had already paid for 60 sessions during the policy year and the policy limit was 20 sessions. AXA acknowledged there were delays and poor communication during its handling of the claim and offered £250 compensation.

Unhappy with AXA's response Mr N referred his complaint here. He felt that physiotherapy in the UK is covered under the "post hospital treatment" section of his policy. Additionally, he said that travel to the mainland was essential as it was the only option available to have the surgery as soon as possible. Mr N has said that he was in a lot of pain.

Our investigator didn't recommend that the complaint be upheld. She didn't find that AXA had done anything wrong with regard to the claim but felt the offer of compensation for the service issues was fair. Mr N appealed. I issued a provisional decision explaining that I was minded to uphold the complaint regarding transportation, but not the physiotherapy costs. I said as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although I've summarised the background and arguments, no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. Having done so I am minded to uphold this complaint in part. I'll explain why.

The relevant regulator's rules provide that insurers must handle claims promptly and fairly

and mustn't unreasonably reject a claim. So I've considered, amongst other things, the relevant law, the policy terms and the available evidence, to decide whether I think AXA treated Mr N fairly. This complaint concerns two main issues, which I will consider in turn.

Transportation by helicopter

Mr N's policy provides emergency medical evacuation in the following circumstances: Emergency Medical Evacuation means the medically required expense of emergency transportation and medical care en route to transport you, if you have a critical medical condition to the nearest Hospital where appropriate care and facilities are available, and not necessarily to your Home Country. The Assistance Company should be contacted to approve and arrange all Emergency Medical Evacuations. In dire emergencies in remote or primitive areas where the Assistance Company cannot be contacted in advance, the Emergency Medical Evacuation must be reported as soon as possible.

The first point here is that the policy requires the Assistance Company (AXA's agent so I'll just refer to AXA) to approve and arrange all Emergency Care Evacuations and specifically excludes cover where advance pre-authorisation is not obtained. I'm aware that an email was sent advising AXA that Mr M had been transferred to another clinic for the surgery to be done, but that the evacuation wasn't approved before it took place. For the avoidance of doubt I don't consider that this was a dire emergency in a remote or primitive area where AXA couldn't be contacted in advance. So I've considered whether I find that AXA was prejudiced by this.

I'm satisfied from the medical evidence – both the assistance company and the treating consultant – that it was necessary for surgery to take place as soon as possible. Mr N needed very specialist surgery, and he wasn't fit to fly commercially. Accordingly I asked AXA if it was able to demonstrate that there was a specialist orthopaedic surgeon on the island at the time able to perform the surgery. It didn't respond to my request. However detailed testimony from Mr N is that there wasn't. Accordingly there is nothing to show AXA was prejudiced by the failure to obtain authorisation, save for the fact that it might have been able to arrange the evacuation at a discounted price.

Further AXA has accepted that there were communication issues. Mr N wasn't familiar with local hospitals and didn't speak the native tongue. I find that it was for AXA to make the enquiries for Mr N rather than him doing it himself. I'm not persuaded that it did so with expediency given the urgency of the need for treatment. I find the offer of compensation is merited and £250 is fair.

The cost of surgery on the mainland was correctly paid by AXA. It was covered by Mr N's policy under inpatient treatment benefits - as it would have been had surgery taken place on the island. But I find AXA should also pay for the emergency transportation by helicopter, for the reasons given above. If AXA can demonstrate that it would have cost less if it had been arranged by the assistance company, it may pay that sum, with interest. Otherwise it should reimburse Mr N in full, again with interest. It may deduct any payment made representing the costs of a ground transfer to another hospital on the island.

Physiotherapy

Mr N's policy provides cover for rehabilitation care and physiotherapy. It is not in dispute that physiotherapy was necessary for Mr N's recovery. I appreciate that Mr N feels that physiotherapy should fall under the rehabilitation care benefit which has a lifetime benefit limit of £100,000. However the policy terms define rehabilitation care as: medically necessary treatment received as an inpatient, carried out under the constant supervision of a specialist in a recognised rehabilitation unit of a hospital immediately following inpatient

treatment for an illness or injury covered by your plan. Providing that the purpose of the treatment is to restore health and mobility after an accident, injury or illness to a state in which you can be self-sufficient. To be self-sufficient means restoring your ability to do independent daily activities of living without the need for outside medical help.

So I find that all physiotherapy Mr N had as an inpatient is covered by his policy. I note that AXA agreed to cover all 60 sessions that Mr N had abroad, not all of which were as an inpatient. But I don't find that the physiotherapy Mr N had when back in the UK was covered under this section. The evidence doesn't show that the physiotherapy in the UK was as an inpatient but does show that Mr N had reached a degree of self-sufficiency.

Post hospital treatment under Mr N's cover (International Plus) refers to outpatient services. Physiotherapy benefit under outpatient services is limited to a maximum of 20 sessions during the policy year. Mr N had had the maximum to which he was entitled under the policy.

I don't find that Mr N acted to his detriment when having physiotherapy in the UK, as AXA had advised him, correctly in my opinion, that it wouldn't be covered.

So my provisional decision was to uphold the complaint in part and that I was minded to require AXA to:

- Pay Mr N the cost of the transportation by helicopter and any onward costs to the mainland hospital where he was treated. If AXA can show it would have been able to obtain the same service at a discounted cost, it may pay this discounted cost. AXA may deduct the allowance for transportation on the island, if already paid.
- Pay interest on the cost of transportation and any onward costs at the rate of 8% simple per annum from payment until settlement.
- Pay Mr N £250 in compensation (if not already paid).

I invited both parties to respond.

AXA had responded to my pre-provisional decision request, but its response crossed with my provisional decision. It therefore incorporated its comments into one response. In summary it said:

- Our primary stance is that the terms of the policy have been correctly applied regarding the partial decline of the physiotherapy costs and the full decline of the helicopter transfer costs. In addition to the policy terms having been correctly applied, our stance regarding the helicopter transfer is fair and reasonable, due to the insured's actions having prejudiced our position regarding the costs of the claim.
- If you do not agree with the above and determine that we are liable for additional transfer costs to the (country's) mainland, our secondary stance is that the insured should have sought treatment in (city R) instead of (city M). This would have led to a significantly lower transfer cost being incurred.

Mr N accepted my provisional decision. In response to further questions Mr N said:

- AXA didn't suggest surgery in city R or make any such enquiries in July 2023. He said that from 9 -11 July 2023 when the accident happened, and before the reply from the hospital in city M, that there were no instructions, emails, or calls from AXA for a hospital in city R or anywhere else. Mr N said he had to use his limited resources to find solutions to his problem. He made the point that he was a tourist in a country

where he did not speak the language. He felt that AXA disregarded his situation and abandoned him.

- He felt that the payment of interest was fair – he had submitted documents in August 2023.
- Mr N asked me to note that in addition to the helicopter costs and ambulance car (from heliport to hospital €200) there were similar costs for return transportation. But he asked only to be reimbursed the cost for transportation to the hospital when he needed to save his life and health. He paid for the return trip himself although he believed it would be fair to reimburse him for that also.

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'm grateful to the parties for their replies to my provisional decision which I have considered with care. As Mr N has accepted my provisional decision I make no further comment about the physiotherapy costs, and I don't uphold that aspect of the complaint.

Importantly, the policy terms require pre-authorisation. And AXA has said it could have declined the claim on this ground alone. But it recognises that if it felt the transfer was medically necessary and would have been authorised had Mr N waited a little longer, it would be unreasonable and unfair for it to refuse to cover the costs.

However it argues that this is not the case here. It says that needing surgery 'as soon as possible' (which is not disputed) and needing surgery immediately i.e. on an emergency basis are two very different things. AXA says the hospital on the island discharged Mr N on 10 July 2023 with a checkup scheduled for 48 hours later and that if he had required immediate surgery the hospital would simply not have done this. AXA therefore states that this was clearly not an emergency medical evacuation as defined in the policy nor was the helicopter transfer necessary.

But having carefully considered all the evidence I don't find that is a reasonable argument. Mr N had a critical medical condition. The first hospital he attended on the island told him urgent surgery was required but there were no surgeons specialising in such complex matters. The following day he attended the second hospital, the main one on the island I understand, which identified a multi-fragmented fracture of the left patella but said two reasons didn't lead to immediate surgery. First was the presence of knee oedema and the second was the surgeon was on annual leave.

The orthopaedic surgeon who did operate confirmed that all displaced patellar fractures come with significant oedema at the moment of surgery and this isn't normally a reason for postponing surgery – and it wasn't in Mr N's case. It is unfortunate that the specialist surgeon at the second hospital was on leave and it seems that there was no other surgeon at this hospital able to perform the complex surgery Mr N required. Indeed Mr N was informed that other hospitals on the island would not perform orthopaedic surgeries on the knee. He was advised that the closest facility for such complicated and specific surgery was in city M. AXA says that had Mr N reported back to the hospital on 12 July 2023 as the hospital had requested him to do, he would likely have had surgery arranged shortly afterwards. I'm not persuaded that this is correct. The only specialist orthopaedic surgeon was on leave until 14 July – it is not realistic to assume he would have operated on Mr N straightaway. Then followed the weekend. I think it fair to say that had Mr N reported back on 12 July it is unlikely his surgery would have taken place 'as soon as possible'.

In response to my request, AXA asked its agent whether the surgery could have been performed on the island. It said that it could not be definitive that there was availability on the island of appropriate facilities and surgeons at the time of the incident but on the balance of probabilities there is a wide range of suitable and available facilities. And if there was no suitable availability at the time then it would be the responsibility of the facility to escalate care – and city R would have been a preference over city M.

This doesn't persuade me that Mr N would have been able to have the complex surgery he required on the island. It seems that it might have been a possibility but given that Mr N was in extreme pain and unable to mobilise I don't think it was unreasonable to seek treatment as soon as he was able. I find that the operating surgeon's comments support this necessity:

(Mr N) experienced a complex displaced articular fracture of the left knee patella. This kind of fracture causes the complete interruption of the extensor apparatus of the knee, making active motion impossible. Given the involvement of the articular surface and the degree of displacement, these fractures are treated surgically to achieve anatomic reduction and stable fixation allowing the patient to start functional recovery and motion as soon as possible. Prompt and thorough surgical treatment lowers the risk of further damage to the joint (articular cartilage damage, bone necrosis) as well as surrounding soft tissues (i.e. skin necrosis). Furthermore, early mobilization significantly lowers the risk of other medical complications such as DVT and pulmonary embolism. The fracture pattern in this specific case made bending of the knee, necessary for a standard commercial flight, impossible as the knee was immobilized in full extension, and the severity of pain experienced by the patient allowed the bedridden position as the best and safest option.

I accept that this was a very stressful situation for Mr N to be in – having been discharged, the surgeon on leave and no indication when surgery might take place. Mr N didn't have the experience of AXA's agent and understood that the closest hospital where such surgery could be performed was city M. Mr N's daughter did call to request authorisation on 11 July 2023, but it is not in dispute that pre-authorisation wasn't given before the transfer was arranged and paid for on Mr N's behalf.

I should say I make no criticism whatsoever of AXA's agent and accept that they are a highly experienced expert medical assistance provider. I appreciate that to now explore whether a surgeon may have been available to carry out the surgery at the time – either on the island or in city R – would be a time consuming and expensive exercise. But it means I haven't seen anything to persuade me that such specialist surgery would have been available in the time frame required. That said I have seen an email from October 2023 with a note that the agent's doctor had advised: *The patient had a complex fracture requiring specialist expertise and required a timely operation (a finely balance decision based on clinical findings at the time). I cannot comment on when and where these were available in (the island) at that particular time.* And notwithstanding that the agent is the expert here, it wouldn't be fair for me to disregard Mr N's evidence of what he was told at the hospital.

I understand Mr N's disappointment that AXA made no contact with him having been advised of his accident. AXA says the way that its policy works is that it would have been for the hospital to communicate with Mr N regarding surgery and then provide its agent with billing details. It seems likely that Mr N didn't appreciate this. Nevertheless I accept that in any event pre-authorisation should have been sought. And as I'm not persuaded surgery could have taken place 'as soon as possible' on the island I remain of the opinion it would be fair and reasonable to reimburse Mr N the cost of the transfer to the mainland. I haven't disregarded the submission that it would have been less costly to fly to city R, but again I've seen nothing to confirm the availability of an appropriately qualified surgeon at the time in that city.

My statutory remit is to determine complaints by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case. For the reasons given here and in my provisional decision I remain satisfied that it is fair and reasonable to require AXA to pay Mr N the cost of the transportation by helicopter and any onward costs to the mainland hospital where he was treated. AXA has indicated, via its agent, that the transfer costs to city M, including ground ambulances would not have been more than €12,500. I'm satisfied that €12,500 is a fair estimation.

My provisional decision was for AXA to add interest to this sum, the investigator advised Mr N that I was no longer minded to do so. Mr N responded that he felt that it would be fair to add interest. But I take into account that had Mr N waited for authorisation, AXA may have been able to arrange the transfer for €12,500 at the time – so Mr N wouldn't have been out of pocket. In these circumstances I don't require interest to be added to the settlement.

I note Mr N's submission about paying for the return – but that did not form part of this claim or complaint, so I make no further comment.

My final decision

My final decision is that I uphold this complaint in part. I require AXA XL Insurance Company UK Limited to:

- Pay Mr N €12,500 – which is the estimated cost of the transportation by helicopter and any onward costs to the mainland hospital where he was treated. AXA may deduct the €1000 allowance for transportation on the island, if already paid.
- Pay Mr N £250 in compensation (if not already paid).

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 21 March 2025.

Lindsey Woloski
Ombudsman