DRN-5760014

## The complaint

Miss P complains that AXA PPP Healthcare Limited declined to pay for physiotherapy under her private health insurance policy.

## What happened

Miss P took out a private health insurance policy with AXA as a continuation of cover from a previous group policy. The policy was underwritten as medical history disregarded and the cover started on 6 January 2024.

Miss P first called AXA on 3 October 2023 to ask for quotes, as she wanted to continue with the cover she had after her employment ended. AXA gave several quotes based on Miss P's needs and queries.

Miss P then called AXA on 5 January 2024 to take out a policy. AXA asked if Miss P had any planned or pending treatment, and she first said she was in the middle of physiotherapy. AXA then told her that this would result in a much higher premium. Miss P then said that she had nothing in the diary. So, AXA marked her answer to the question for planned or pending treatment as "no" and sold the policy on this basis.

Miss P started claiming for physiotherapy shortly after the policy started, which was recommended by a specialist in November 2023. AXA told Miss P in April 2024 that she should have answered the planned or pending treatment question as "yes" when she took out the policy. So, AXA said Miss P made a misrepresentation. It said that if Miss P wanted cover for the physiotherapy, she needed to pay a higher premium. Otherwise, the treatment would be declined, and an exclusion would be applied on the policy.

Unhappy with AXA's position, Miss P brought a complaint to this Service. One of our investigators reviewed the complaint. Having done so, she didn't think Miss P had made a misrepresentation. So, she said AXA should remove the exclusion, pay for the physiotherapy Miss P had had in line with the policy terms and conditions, and it should continue Miss P's policy with the premium at which it was sold to her. The investigator also recommended that AXA should pay Miss P £100 for the distress and inconvenience caused.

Miss P accepted the investigator's overall recommendation, but she wanted to be compensated for the time when she paid premiums to have physiotherapy cover without receiving treatment. Miss P's physiotherapist has confirmed that she had to cut short her treatment due AXA withdrawing cover. She says this left her in pain. Miss P has also since removed physiotherapy cover from her policy, due to AXA not paying for treatment.

AXA didn't agree with the investigator's findings. In short, it made the following key arguments:

- AXA's questions were clear. Miss P knew what AXA meant by "planned or pending treatment", and what she was being asked to declare. This had been discussed already on 3 October 2023, and she only changed her answer from "yes" to "no" when the agent said it would impact the premium on 5 January 2024.

- The agent asked several clarifying questions after Miss P said she had nothing "in the diary", which provided her with opportunities to give an accurate representation. However, AXA's agents won't repeatedly challenge a member on their answers to medical questions. If Miss P didn't understand the questions, she had the opportunity to ask for clarification.

- Miss P knowingly kept AXA from material facts that would help assess the risk it was being asked to insure.

As no agreement was reached, the complaint was passed to me to decide. I issued my provisional decision in July 2025. Here's what I said:

*"The key considerations under this complaint are the principles set out in the Consumer Insurance (Disclosure and Representations) Act 2012 ("CIDRA"). This is designed to make sure that consumers and insurers get an appropriate remedy if a policyholder makes what is called a "qualifying misrepresentation" under the act.*

*A misrepresentation is a "qualifying misrepresentation" when 1) a consumer fails to take reasonable care not to misrepresent the facts which the insurer has asked about, and 2) the insurer shows that without the misrepresentation it would not have entered into the contract at all or would have done so only on different terms.*

*I've first looked to see if Miss P failed to take reasonable care. The standard of care required is that of a reasonable consumer. One of the factors to be considered when deciding if a consumer has taken reasonable care is how clear and specific the questions asked by the insurer were. And if the insurer was, or ought to have been, aware of any particular characteristics or circumstances of the consumer, those are to be taken into account.*

*Miss P first discussed moving from a group policy to a personal one on 3 October 2023. She wanted to continue the underwriting terms while doing so. Miss P discussed several options and AXA gave her quotes for these. AXA asked Miss P the question about planned or pending treatment. But during this call, she wanted a quote for when her treatment had ended, as she anticipated this would be the case by the time she would take out the policy.*

*AXA has said that Miss P gave an incorrect declaration during this call, as she obtained a quote for a policy without having any planned or pending treatment, which wasn't correct at the time. But I think it was clear that Miss P was anticipating her treatment to end by the time she would buy the policy, so she was simply finding out how much the policy would cost in that situation.*

*Overall, I don't think the medical declaration during this call is material to the overall outcome of the complaint. This is because this conversation took place three months before the actual sale call, and it was discussed that Miss P's circumstances would likely change before she bought the policy as she anticipated her treatment to end by then. No policy was sold during this call, only several quotes were given.*

*Miss P then had a conversation with AXA on 2 January 2024, but no medical questions were asked during this call. There's also a gap of three days between this call and the sales call, so I don't think this call is material to the overall outcome.*

*That means that the material calls were those that took place on 5 January 2024, when Miss P bought the policy. AXA also asked her medical declaration questions during these calls. There were three calls due to issues in the phone line, but the calls continued without significant gaps in between and Miss P spoke with the same agent throughout. So, I think it's reasonable to consider these calls to be all part of the sale.*

*The first call started with Miss P saying that she wanted to go ahead with the quote she'd received previously. AXA then asked medical declaration questions. The question in dispute was asked as follows:*

> *"Does anyone have any treatment, any consultations, any investigations or diagnostic tests planned or pending?"*

*Miss P responded to say that she was "in the middle of having physio". The agent asked if the physio was referred by a specialist or a GP, and she said a specialist. The agent said this meant Miss P needed to declare this as "yes" and the quoted premium wouldn't be valid. After this, the signal was poor and the call was ended.*

*It's important to note that at this point, Miss P hadn't misrepresented. The agent asked her a clear question, and she answered it correctly. Towards the end of the call Miss P said she didn't have anything booked in yet, but the agent didn't seem to hear her. The agent then called Miss P back.*

*In the next call, the agent explained that the medical questions were key, and if Miss P answered "yes" to the planned and pending question, it would increase the premiums. Miss P explained that she didn't have anything in the diary, or anything booked in as yet. The agent then asked:*

> *"There is nothing in your diary [that would involve] seeing a specialist, any investigations, diagnostic test or treatment."*

*I've paraphrased the words between […] but these don't have any bearing on the outcome. Miss P answered this question "no". As the agent asked specifically if Miss P had nothing in the diary, I don't think Miss P misrepresented when she answered this as "no".*

*AXA has pointed out that Miss P made a claim for physiotherapy shortly after on 11 January 2024. But I've seen that Miss P hadn't booked this appointment before this call. So, I'm satisfied she didn't have any physiotherapy booked or in the diary during these calls.*

*The agent then asked once more the following:*

> *"And you haven't got any like, treatment for anything, there's no consultations you have to have in the future?"*

*AXA says that the agent didn't use the words "in the diary" in this question, and this was a further opportunity for Miss P to declare her planned physio. But I don't think this question is very clear. The agent had previously asked about anything in the diary, and this is how Miss P was answering the questions. She'd also previously told the agent that she was in the middle of physio. So, I think the agent should have either simply asked the original question again, or clarified to Miss P what the question meant if her answers about having nothing in the diary weren't sufficient.*

*And Miss P answered this as:*

> *"I haven't got anything in the diary as of this day, no, there's nothing in the diary at the moment."*

*And the agent then said Miss P can answer the question as "no".*

*I'm not satisfied that Miss P told AXA at any point that she didn't have any planned or pending treatment. When the agent asked this specific and clear question, Miss P said she was in the middle of physio. This was correct. The following questions by the agent were different to the medical declaration question, and not clear. For these, Miss P answered that she had nothing booked in or in the diary. This was also correct.*

*I think AXA was aware of Miss P's circumstances. She was in the middle of physio, but she had nothing booked or in the diary. And despite this, AXA said Miss P could answer the medical declaration question as "no".*

*Having considered the questions AXA asked and the answers Miss P gave, I don't think there was any misrepresentation. I'm satisfied Miss P took reasonable care not to misrepresent the facts that AXA asked her about, for the reasons I've explained above. And in any event, AXA was clearly aware of Miss P's circumstances, as above.*

*This means that there's no remedy available for AXA under CIDRA. So, it should remove the exclusion it applied on the policy and allow the policy to continue on the terms and price it was sold. It should also pay for any physiotherapy Miss P paid out of pocket as a result of this exclusion in line with the remaining terms and conditions of the policy, as well as simple interest at 8% on these amounts. AXA may request any reasonable evidence it needs from Miss P to enable it to do so.*

*The investigator recommended that AXA also pays Miss P £100 for the distress and inconvenience caused. Miss P accepted this, but she says she should also be compensated for the time she paid premiums to have physiotherapy cover but couldn't claim for this.*

*I don't think it would be fair for me to ask AXA to refund Miss P any premiums, as she can now claim for the physiotherapy treatment she paid for during the policy year. But it's clear that AXA applying the exclusion meant that Miss P's treatment was cut short, and this caused her distress and inconvenience. I don't think £100 fairly reflects that, and AXA should increase the compensation to £300 for the distress and inconvenience caused.*

*Miss P has explained that she recently removed physiotherapy cover from her policy due to the exclusion AXA applied. I think if Miss P wants to now reinstate that cover, AXA should allow her to do so. But this would be subject to Miss P back paying any premiums she would have continued to pay, had she kept the cover. If Miss P doesn't choose to do so, there's nothing AXA needs to do in this regard in the circumstances of this complaint."*

Miss P accepted my provisional decision, but she didn't think it would be fair for her to back pay premiums if she wanted to add physiotherapy back on cover. This is because she wasn't able to claim for physiotherapy during those months.

AXA didn't agree with my provisional decision, for the reasons it had previously given. AXA said it was evident Miss P's physiotherapy was ongoing, which meant that the declaration wasn't accurately completed by her. AXA doesn't agree with the £300 award because of this. It said that the terms of the handbook are that true, accurate and complete information must be given at all times, which wasn't done.

As both parties have now responded to my provisional decision, and the deadline to do so has passed, I'm issuing my final decision.

## 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 appreciate what Miss P says about having to back pay premiums for months when she had an exclusion added on the policy. But this is an option for her, if she wishes to have uninterrupted physiotherapy cover. The £300 award recognises the fact that Miss P missed out on having physiotherapy treatment due to the exclusion. And she could have still claimed for other physiotherapy that wasn't caught by the exclusion, had she needed to.

Alternatively, Miss P can also ask AXA to add physiotherapy on cover at renewal, without back paying any premiums. But this will be subject to the underwriting terms at that time.

AXA hasn't provided anything new for me to consider. So, I see no reason to depart from my provisional findings. For the reasons I explained in my provisional decision, I think the information Miss P gave AXA in response to the questions it asked was correct, and she didn't make a misrepresentation. Overall, I've reached the same decision and for the same reasons. I don't think AXA acted fairly and reasonably in the circumstances of this complaint, and it should put things right in the way that I've set out below.

## My final decision

My final decision is that I uphold Miss P's complaint and direct AXA PPP Healthcare Limited to take the following action:

- remove the exclusion applied on the policy,
- pay for physiotherapy Miss P paid out of pocket as a result of the exclusion, in line with the remaining terms and conditions of the policy (subject to receiving the required information from Miss P for these claims),
- pay 8% on the above amounts from the date Miss P paid the invoices until settlement*,
- allow Miss P to add physiotherapy back on cover as if it was never removed, subject to her back paying any premiums she would have paid, and
- pay Miss P £300 for the distress and inconvenience caused**.

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

**AXA must pay the compensation within 28 days of the date on which we tell it Miss P 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 Miss P to accept or reject my decision before 18 September 2025.

Renja Anderson
**Ombudsman**