

The complaint

Mr L is unhappy that AXA PPP Healthcare Limited declined a claim he made on his private medical insurance policy and applied an exclusion to it.

What happened

Mr L had private medical insurance through his employer. He changed this to a personal policy when he left that employment. In February 2024 he saw a nurse practitioner in relation to suspected ear wax issues which were causing hearing issues.

In May 2024 Mr L took out a personal medical policy and then claimed for a referral to a specialist in relation to the hearing issues. AXA requested information from Mr L's GP and declined the claim on the basis that Mr L hadn't declared an NHS referral for hearing issues during the application process. They also added an exclusion to the policy.

Mr L complained to AXA as he said he was unaware of the NHS referral and the assessment of the claim meant the decision was made outside the 'cooling off' period when he could cancel the policy. AXA maintained their decision was fair. In their final response letter, they said Mr L ought to have disclosed the NHS referral. Mr L complained to the Financial Ombudsman Service.

Our investigator looked into what happened. Following receipt of evidence from Mr L's GP which said that Mr L wasn't made aware of the NHS referral he upheld the complaint. He thought Mr L had provided enough evidence that he'd had taken reasonable care when answering questions about his medical condition during the application process. However, he thought AXA had reasonably asked for more information during the claims process and so he didn't think it was unfair that the claim decision was given outside the cooling off period. He recommended AXA reassess the claim and remove the exclusion.

AXA didn't agree and asked an ombudsman to review the complaint. In summary, they said that a GP couldn't refer a patient without consent. They maintained that Mr L hadn't taken reasonable care when answering the question and that the GP's letter didn't include contemporary notes. So, the complaint was referred to me to make a 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.

The relevant law in this case is The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). This requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract (a policy). The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to 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.

AXA thinks Mr L failed to take reasonable care not to make a misrepresentation when he answered questions about his medical history. I've looked at the question Mr L was asked which was:

Do you have any treatment, consultations, investigations or diagnostic tests planned or pending?

Mr L didn't declare any medical conditions in response to the question. AXA says that he should have disclosed a referral to an ear, nose and throat (ENT) specialist for hearing loss which was made on 5 March 2024. Mr L says that he was unaware of the referral and that it was only when he formally requested a referral, to provide to AXA, that he was told that an NHS referral had already been made.

On balance, based on the available evidence, I'm persuaded that Mr L did take reasonable care when answering the question. Mr L has provided testimony that he attended an appointment with a nurse practitioner. That's consistent with the medical notes he's provided which say that he attended for ear irrigation but that both ears were clear. It says that a task was sent to GP for potential referral to have his hearing checked. Mr L says he's never met the GP who completed the referral and the GP has also confirmed in a letter Mr L wasn't made aware of the referral. Mr L said he didn't receive any further contact from the surgery and, based on the evidence that is available, I've found his testimony on that point to be persuasive and consistent. I've considered AXA's representations about consent being required for a referral but, in the circumstances of this case, I haven't found those representations to be persuasive.

I think it was reasonable that Mr L told AXA he didn't have any treatment, consultations, investigations or diagnostic tests planned or pending. He'd not had any further contact from his GP and I'm persuaded, on balance, that Mr L was unaware of the NHS referral. So I'm not satisfied that Mr L failed to take reasonable care when he failed to declare the NHS referral. This means I'm not satisfied Mr L's misrepresentation was a qualifying one. As that's the basis upon which AXA declined the claim and applied the exclusion, I'm not persuaded that was fair and reasonable in all the circumstances.

AXA has also said that they haven't seen the GP notes in relation to Mr L's consultations. If that's something that they feel would be beneficial it's open to them to request that information during the reassessment of the claim.

Mr L also felt that AXA acted unreasonably by asking for evidence in support of the claim which meant that he couldn't cancel the policy within the cooling off period. AXA is entitled to ask for information to validate the claim. That's very common in the private medical insurance industry. And, whilst I appreciate it meant that Mr L didn't have a claims decision within the cooling off period, I think AXA acted reasonably by requesting the information and providing a decision on receipt of it.

Putting things right

AXA needs to put things right by removing the exclusion from the policy. They should also reconsider the claim in line with the remaining policy terms and conditions.

My final decision

I'm upholding this complaint and direct AXA PPP Healthcare Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 October 2025.

Anna Wilshaw
Ombudsman