DRN-5801396

The complaint

Mr E complains that AXA PPP Healthcare Limited ('*AXA*') has misled him regarding a claim made under his private medical insurance policy for a spinal injury.

What happened

The background is known to both parties, so I have only included a summary here. Mr E has been a member of a personal AXA PPP Healthcare Personal Health policy since December 2022. In 2023, Mr E was involved in a road traffic accident which resulted in him suffering with lower back pain.

In June 2024, a claim was authorised by AXA for Mr E to undergo scans, consultations and spinal injection(s) with a consultant at a local hospital.

On 12 July 2024, AXA's third party recovery team wrote to Mr E, setting out that it had written to Mr E's solicitor, who was acting on his behalf with a personal injury claim relating to the accident.

In December 2024, AXA wrote to Mr E again relating to his personal injury claim. It asked him to ensure with his solicitor that AXA's outlay of £2,110.43 had been included as part of your case before he agrees to settle the claim. It also reminded Mr E that it was part of the terms and conditions of the policy to make sure AXA's costs were included.

Mr E thereafter complained to AXA. He said that the email AXA had sent him conflicted with his recollection of the calls he had with it earlier in 2024.

In February 2025, AXA rejected the complaint. It said that when Mr E had informed AXA of his need to make a claim, he had explained how his injury was caused by a third party's actions. For that reason, it notified its relevant third party recovery team and liaised with Mr E's appointed solicitor regarding his personal injury claim.

AXA explained to Mr E that his insurance terms contained subrogated rights which allowed it to recover the outlay of his medical treatment from the third party – but it would only require repayment from Mr E in the event his personal injury claim succeeded.

Mr E thereafter lodged his complaint with this service. He said that his personal injury claim was ongoing and may take another year or more to resolve. He explained that if he was required to cover the cost of the claim, he would suffer a £2,110 financial loss, plus interest.

Mr E said that if AXA had properly informed him of its subrogated rights before his claim was finalised instead of telling him "*not to worry*" about third party costs, he'd have used the NHS for treatment instead. Mr E finally explained that he was concerned that interest would be accruing on the recovery of the claim payment, and he did not want to be liable for that sum.

One of our investigators reviewed the complaint, but he didn't think it should succeed. He noted that Mr E's policy terms contained subrogated rights permitting AXA to recover amounts paid for claims caused by third parties. On that basis, it had written to him

regarding his personal injury claim. He felt AXA's communications to Mr E had been clear and fair.

Our investigator listened to the call recordings provided by AXA, but he could not evidence where Mr E had been told not to worry if the third party didn't accept liability for the cost of his claim. He therefore couldn't agree that AXA had acted in a misleading manner.

Mr E disagreed. He reiterated that the screenshot from his mobile showed he had four calls with AXA – one on 28 May 2024, two on 24 June 2024 and one on 8 July 2024. However, AXA had only been able to send this service one call from 24 June 2024, the one from 8 July 2024 and two later calls from April 2025. He did accept that in none of the four calls supplied by AXA was it set out to him that he shouldn't worry about the costs of the treatment as in no circumstances would he be liable for it. But Mr E maintained this was what AXA's call handler had told him – so that statement must've been made in the first call of 24 June 2024.

Mr E also said that given subrogated rights were never discussed in any of the four telephone calls AXA had supplied, he questions how it could ever have known about his accident in the first place. He therefore believed AXA was likely withholding information.

AXA confirmed it had disclosed all evidence of calls undertaken with Mr E. It also provided a transcript from its online chat facility dated 28 May 2024. In that chat, Mr E explained his need to see a spinal specialist for ongoing back pain caused as a result of a car accident where the other party had accepted liability. AXA agreed it would principally cover referral to Mr E's chosen consultant, diagnostic tests, treatment including two steroid injections and a follow-up consultation, subject to Mr E obtaining a GP referral.

Mr E accepted he had forgotten about the online chat, but he still maintained that he would have expected AXA to explicitly tell him about subrogated rights before agreeing to authorise any claim under the policy. He also explained that he had needed to undertake two calls on 24 June 2024 because he wasn't given full information on MRI scans/injections and so he recalled that he had to call AXA back for confirmation of what it would pay for. AXA could therefore have told him about its position with third parties, but it chose not to do so.

Our investigator considered Mr E's further comments, but he still did not think the complaint should succeed. Though AXA did not have record of the earlier call on 24 June 2024 – it said this was because its call recording system only kept records when a customer spoke with a call operator – the investigator did not believe this changed the outcome of the complaint. He said that he felt AXA was reasonable in drawing Mr E's attention to the relevant policy terms once it became aware that it may be able to claim costs from the third party through his personal injury claim, so it hadn't therefore acted unfairly.

Mr E asked for his complaint to be referred to an ombudsman. He said AXA had denied him of making an informed decision on how to proceed with a claim. And it failed in a duty of care in telling him about the policy wording relating to subrogated rights.

AXA had nothing else to add. The complaint has now been passed to me.

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'd like to thank the parties for their patience whilst this matter has awaited an ombudsman's decision. I've reviewed all the information before me, including the representations Mr E made following our investigator's view.

In reaching my findings, I've set out the background to this complaint in less detail than the parties and I've done so using my own words. I've also focused on what I consider to be the central issues in the complaint. If there's something I haven't mentioned, it isn't because I've ignored it - rather, it's because I don't need to comment on every argument in order to reach what I believe is the right outcome in the circumstances. Our rules allow me to take this approach; it reflects the informal nature of our service, as a free alternative to the courts.

Having reviewed this complaint carefully, I agree with the outcome reached by our investigator – that means though I realise my decision will be disappointing for Mr E, I won't be asking AXA to do anything further to resolve the complaint. My findings are as follows:

- My role isn't to substitute my view for that of a business but instead, to determine if a business has acted fairly in all the circumstances of a complaint. Regulatory rules require AXA to handle claims promptly and fairly and to not unreasonably reject a claim. I've therefore considered the evidence provided by the parties alongside the terms and conditions for the policy to determine whether I believe AXA treated Mr E fairly and reasonably in dealing with the claim.

- I note that neither party has raised any concerns with the claim itself – where this dispute arises is that Mr E says he may have acted differently in making a claim altogether, had he known about the policy terms permitting AXA to seek recovery of the claim payment from the third party that caused his injury.

- The policy terms form the basis of the contract between the parties. Those terms say:

  > "*We, or any person or company that we nominate, have subrogated rights of recovery of the lead member or any family members in the event of a claim. This means we will assume the rights of the lead member or any family members to recover any amount they are entitled to that we have already covered under this plan.*
  >
  > *For example,* ***we may recover amounts from someone who caused injury or illness, or from another insurer or state healthcare provider*** *[my emphasis]. We may use external legal, or other, advisors to help us do this.*
  >
  > *The lead member must provide us with all documents, including medical records, and any other reasonable assistance we may need to exercise these subrogated rights.*
  >
  > *The lead member must not do anything to prejudice these subrogated rights.*
  >
  > *We reserve the right to deduct from any claims payment otherwise due to you an amount that will be recovered from a third party or state healthcare provider.*"

- I haven't seen any objective reason why AXA ought to disregard the terms of the insurance contract. Subrogation allows an insurer to recover the amounts it has paid under a policy from a third party – not Mr E/the policyholder. And this is borne out by the terms above.

- AXA was placed on notice of the right of recovery for the agreed claim by Mr E confirming his spinal issues arose as a consequence of a third party causing an accident. Given the clear policy wording above, AXA would therefore be entitled to make a recovery of the value of the claim it had paid for Mr E and I don't consider it

unfair or unreasonable for it to make such a recovery from the third party, if this is possible.

- I realise Mr E believes that AXA would seek to recover the claim value from him directly, but that isn't the case. AXA has told him how it would only do this in very specific circumstances. Though the policy terms allowed AXA to reserve the right to deduct from his claim – it did not do so. The claim was paid in full.

- Instead, AXA told Mr E on 12 December 2024 that it required notification if Mr E sought a claim against the third party which was *less* than the claim value – and only in that circumstance may it ask him to pay the balance of the claim with interest. AXA set this out merely to ensure that any recovery from the third party was for the actual cost of Mr E's claim (not an amount less than it had paid out), which I believe is a fair approach in the circumstances and complies with the policy terms.

- AXA also told Mr E in its email correspondence of 12 December 2024 that "*if, unfortunately, your whole claim is unsuccessful and you don't receive any compensation, then we'll not receive any of our costs either. It's only if you settle your claim and our costs are not included within those negotiations, that you could be making yourself liable*." I believe that communication is a sufficiently clear explanation to Mr E that AXA was principally seeking to recover the cost of treatment from the liable third party, not him – unless he failed to properly disclose the cost of his claim.

- I also appreciate Mr E's concerns about interest accruing, but AXA has explained in detail to Mr E after he pursued his complaint that it includes 8% interest in its claim to the third party, not directly to Mr E. This is part of its schedule in respect of litigation. At no time has AXA sought to recover any interest for the claim it paid for Mr E.

- I have also thought very carefully about what Mr E has said regarding the telephone calls of 24 June 2024 given only one of the two calls can be evidenced by way of a call recording. However, I do not place the same weight on this missing call that Mr E does. Put another way, I do not believe it affects the material outcome of this complaint.

- I have not seen any objective evidence that Mr E would have declined to go ahead with his claim, had AXA expressly drawn his attention to the terms in the policy relating to subrogated rights. I say this because the terms are included essentially with the purpose of permitting AXA to reclaim outlay from the third party. And before any claim was made, Mr E told AXA that the third party had accepted liability for the accident which caused his back pain.

- And even if I were to accept that Mr E was told not to worry about third party costs – I don't consider that this meant AXA misled him. The provision of the subrogated rights within the policy terms is for AXA to seek to recover the outlay from the third party, not Mr E, so AXA could fairly have reassured him on that basis.

- I am not therefore persuaded that Mr E would have done anything differently in the circumstances. AXA behaved fairly in respect of agreeing and settling his private medical insurance claim promptly under the policy terms. It has thereafter asserted its subrogated rights to ensure it is party to the separate personal injury claim which it is allowed to do; and if the cost of treatment is accounted for in any settlement,

this was an outlay that AXA paid on Mr E's behalf and is therefore recoverable from the third party in accordance with the policy terms.

- I don't find AXA to have acted unreasonably in any of the circumstances of this claim. So, though my decision won't be what Mr E has hoped for, I cannot uphold his complaint.

My final decision

I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 23 December 2025.

Jo Storey
Ombudsman