DRN-6058830

The complaint

Mrs S complains that AXA PPP Healthcare Limited applied an exclusion retrospectively under her private health insurance policy and declined a claim as a result of this.

What happened

Mrs S has been represented by Mr S. He called AXA in November 2024 as he wanted to take out a private health insurance policy as a continuation of a group health insurance policy from January 2025 onwards. However, after AXA said it would apply some exclusions on his and another family member's cover, Mr S ended up taking out a policy to cover Mrs S only.

Mrs S got in touch with AXA in February 2025 to make a claim. However, AXA noted that the treatment had already been planned before the policy started. So, it said that had it known this before the policy started, it would have applied an exclusion on the policy. Following this, AXA applied the exclusion retrospectively and declined the claim.

Mr and Mrs S weren't happy with AXA's position. Mr S said that there was no planned or pending treatment when he took out the policy on Mrs S's behalf, and AXA should have spoken directly to Mrs S about her medical declaration.

AXA accepted that it should have spoken with Mrs S when Mr S and the other family member were removed from the policy, and she became the sole policyholder. To put matters right, it offered to cover the treatment if Mrs S paid a significantly higher premium. Or it would refund all the premiums Mrs S had paid, if she wanted to cancel the policy from inception instead. Mrs S remained unhappy as she wanted the policy to continue on the terms it was taken out, without an exclusion. So, she brought a complaint to this service.

One of our investigators reviewed the complaint. Having done so, he didn't think there was anything else AXA needed to do, to put things right. He said it had acted fairly and reasonably when it applied the exclusion on Mrs S' policy, as the evidence showed her treatment was planned or pending when the policy was taken out. But he thought AXA should pay Mrs S £100 compensation for the distress and inconvenience caused in how it handled the claim.

AXA agreed with the investigator's findings, but Mr and Mrs S didn't. They said a consultant had confirmed the treatment wasn't planned or pending. As no agreement was reached, the complaint was passed to me to decide.

Since then, Mr S has shared the report from the consultant from December 2024. This was following an appointment after the policy was taken out, but before Mrs S' cover started. AXA has accepted that this report showed the treatment wasn't planned or pending, and it would have considered Mrs S' claim, but it never had a copy of this report. However, as Mrs S had since chosen to cancel the policy and receive a full refund, there was no claim to consider under the policy. But following my communication with both parties, it agreed to pay Mrs S a total of £200 for the distress and inconvenience caused.

Mrs S didn't accept AXA's offer, as she considered the distress and inconvenience AXA caused to be significant. Mr S didn't think it was fair that cancelling the policy would impact the claim. And when the policy started, there was no planned or pending treatment, and AXA failed to speak with Mrs S or seek her permission to speak with Mr S when taking out the policy.

I issued my provisional decision in December 2025. Here's what I said:

"*The main 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 facts which the insurer has asked about, and 2) the insurer shows that without the misrepresentation it would not have entered the contract at all or would have done so only on different terms. If there is no qualifying misrepresentation, the insurer cannot do anything.

Firstly, I appreciate AXA didn't speak directly with Mrs S when going through her medical declaration and it accepts it ought to have done. Whilst I think Mr S did act on Mrs S' behalf when taking out the policy, I've considered what a reasonable consumer would have done when taking out the policy – which is the standard of care required for the point 1) above. 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.

The key question here was if Mrs S had any "treatment, consultations, investigations or diagnostic tests planned or pending". And AXA explained that 'treatment' meant "anything that was needed to diagnose, relieve or cure a disease, illness or injury and that's including medication still prescribed by a specialist".

I think this question was clear. And based on a consultant report from June 2024 that Mrs S shared with AXA, the treatment Mrs S claimed for in February 2025 was already recommended at the time, and she was referred to another consultant. And the report from this consultant from December 2024 (which AXA only received a copy of recently) confirmed that Mrs S had been on a waiting list for surgery prior to this appointment.

So, when the medical declaration was made in November 2024, I'm satisfied there was planned or pending treatment, as Mrs S was on a waiting list for surgery. So, I think a reasonable consumer would have answered this question as "yes" at that time. This means that I think Mr S, on behalf of Mrs S, failed to take reasonable care when answering this question as "no". And even if AXA would have spoken with Mrs S directly, I think she also should have answered this question as "yes" given that she was on a waiting list for surgery at the time. So, I think there was a misrepresentation.

AXA has confirmed that had this question been answered as "yes", it would have applied a relevant exclusion on the policy. So, I'm satisfied the misrepresentation was a qualifying one. AXA has accepted that the misrepresentation was careless, rather than deliberate or reckless, which means that it's entitled to treat the contract as it would have done had a correct declaration been made. And this is what it did by applying an exclusion on the policy.

AXA also offered to have the treatment covered but said that Mrs S would have needed to pay a significantly higher premium. But if AXA would still have provided cover under the same terms, and it would have charged a higher premium, CIDRA says it may settle any claims proportionately. However, I don't think this make a difference to the outcome considering what's happened since which I'll address next.

Mr S has recently shared the report from Mrs S' consultant from December 2024. This confirmed that Mrs S was taken off the waiting list for surgery. Based on this, AXA says that had it known this before the policy started in January 2025, it would have accepted the treatment wasn't planned or pending. This means that Mrs S' treatment wouldn't have been caught by any exclusion, as AXA wouldn't have applied this on the policy.

But as AXA didn't have a copy of this report until recently, I don't think it acted unfairly or unreasonably at the time, based on the information it had. I think Mrs S had the opportunity to share this report with AXA when it declined her claim, as AXA was clear why it was doing so. This is also why I think it's unlikely that this would have come to light even if AXA had spoken to Mrs S directly when the policy was taken out. At the time, Mrs S was still on a waiting list for surgery. And when AXA told her in February 2025 that it declined her claim because this treatment was planned or pending at the time the policy started, I can't see that she shared this report with AXA to dispute the matter.

So, to put matters right, Mrs S has two options. She can either keep her policy as it was taken out, without the exclusion, and ask AXA to consider a claim for any private treatment she had, subject to the repayment of premiums. She would also be able to claim for any NHS benefit for any treatment she had that would have been eligible under her policy.

Alternatively, she can accept AXA's offer to cancel her policy from inception and keep the fully refunded premiums. However, this would mean that AXA doesn't need to consider any claims for her. I would only expect it to do so if premiums remained paid at the time of any treatment. I don't think AXA needs to pay Mrs S any interest on these premiums because this offer was available for Mrs S already shortly after her claim was declined in February 2025, and AXA was on risk for any other claims she may have needed to make up until then.

Mrs S should let me know in response to this decision which option she prefers.

I think AXA caused Mrs S unnecessary distress and inconvenience when it didn't speak to her directly about her medical declaration. I think this would have avoided a lot of confusion along the way. Overall, I think AXA should pay her £200 to compensate her for this. However, I don't think I can fairly hold AXA responsible for the distress and inconvenience Mrs S went through when she wasn't able to claim for her treatment under her policy. This is because for the reasons I've explained in this decision, I think AXA acted fairly and reasonably at the time based on the information it had."

AXA responded to say it accepted my provisional decision, but Mrs S didn't. I've summarised the comments Mr S made on her behalf as follows:

- Mrs S wants the unfairness of AXA's processes and the distress caused to be a matter of public record.
- The NHS treatment had a significant impact on Mrs S as a self-employed individual.
- The answer to the question about planned or pending treatment was correct, as this was agreed between Mrs S and her consultant, and confirmed in December 2024. Mrs S informed Mr S of this prior to the call he had with AXA.
- AXA never requested evidence from the consultant, and it has said this would have made a difference to the claim.

- The policy was in paid in full at the time of the claim and Mrs S' surgery.
- AXA never requested to speak to Mrs S when applying for the policy. She would have offered the correspondence with her consultant if prompted. AXA also never sought permission for Mr S to represent Mrs S.

As both parties have now had the opportunity to review and respond to my provisional findings, 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.

The comments Mr S has made aren't fundamentally new, or ones I didn't consider when I reached my provisional decision. Based on the consultant's report in December 2024, Mrs S was on a waiting list for surgery up until then. So, I'm satisfied that she had planned or pending treatment in November 2024, which means it would have been reasonable to answer the question about this at the time as "yes". I see no reason to depart from the findings I reached in my provisional decision on this part of the complaint.

Mr S says that had AXA spoken with Mrs S, she would have offered the correspondence with her consultant if prompted. But it's for a policyholder to show they have a valid claim. So, it was for Mrs S to send AXA any information she wanted it to consider in support of a valid claim.

Additionally, AXA did ask Mrs S when she made a claim about when it was decided she needed the surgery. And she told AXA about a report from June 2024. AXA then told Mrs S it wouldn't be able to pay for the surgery as it was planned or pending when the policy was taken out, and she knew she needed the surgery. Mrs S didn't share the consultant's report from December 2024 with AXA at this point, or when both Mr S and Mrs S spoke with AXA during a complaint call and the matter was discussed further.

Overall, I think AXA acted fairly and reasonably based on the information it had when it declined Mrs S' claim and applied an exclusion on her policy. So, I don't think I can fairly hold AXA responsible for the impact this had on her at the time. And I'm not persuaded that speaking to Mrs S directly in November 2024 would have changed anything. This is because Mrs S didn't tell AXA about the consultant's report from December 2024 when she spoke with AXA during her claim or the complaint. And in any event, what AXA has now offered to do to put things right is fair and reasonable in all the circumstances of the complaint.

I appreciate Mrs S' policy was paid in full at the time of the claim. So, if Mrs S now wants to make a claim, she needs to ensure that the premiums remain paid for that time period. But as AXA has already refunded the premiums she paid, I don't think AXA needs to take any action until she repays the premiums it refunded.

I accepted in my provisional decision that AXA should have spoken to Mrs S in November 2024. And had it done so, I think this would have prevented a lot of confusion along the way. But I think £200 is fair compensation to reflect the unnecessary distress and inconvenience caused. However, I can't see that there's been any other impact on Mrs S when AXA didn't seek her permission for Mr S to represent her.

Having considered everything again, I've reached the same overall conclusions I did in my provisional decision, for the same reasons.

My final decision

My final decision is that I uphold Mrs S' complaint in part and direct AXA PPP Healthcare Limited to pay Mrs S £200 compensation for the distress and inconvenience caused*. It should also allow Mrs S to choose one of the following options:

- Cancel the policy from inception and return the premiums she paid (as it has already done); or

- Subject to Mrs S repaying her premiums, allow her to keep the policy without refunding any premiums, remove the exclusion applied, and consider any claims for private treatment that Mrs S had and paid for that were caught by this exclusion, as well as claims for any NHS benefit for treatment Mrs S had that would've been eligible under her policy.

*AXA must pay the compensation within 28 days of the date on which we tell it Mrs S 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 Mrs S to accept or reject my decision before 10 February 2026.

Renja Anderson
Ombudsman