

complaint

Mr C is unhappy that his travel insurance claim for medical expenses was declined by AXA Insurance UK Plc (“AXA”).

background

Mr C was in France when his left knee went from under him. He was in severe pain and had knee replacement surgery in France. He made a claim under his AXA travel insurance policy. The policy provides cover under an “*emergency medical, additional accommodation and travelling costs*” benefit. Mr C’s claim was for the medical expenses and associated costs he’d incurred, including his hospital stay.

AXA declined the claim. They felt the surgery was not a medical emergency and that Mr C could’ve returned to the UK for treatment.

Mr C was unhappy and brought his complaint to us. Our investigator upheld the complaint. He thought AXA should pay the claim plus £200 due to the delays caused.

Initially, AXA agreed with our investigator’s opinion. They paid Mr C £200 and requested evidence of the medical costs he’d incurred in order to calculate his claim payment. However their position changed when they assessed this further information.

It took AXA a number of months to confirm their position on whether they’d pay Mr C’s claim for the expenses he’d incurred due to his knee operation. During this time, they requested copies of Mr C’s medical records and said they’d cover any costs incurred in obtaining these.

In September 2017, AXA confirmed they disagreed with our investigator’s opinion. They still thought the operation was not an emergency and that Mr C could’ve returned to the UK.

AXA offered to pay Mr C’s repatriation costs as they said this is what the policy would’ve covered in his circumstances. They calculated the repatriation costs as £704 – after deducting the cost of an economy flight because Mr C didn’t have a return flight booked.

AXA also offered a further goodwill gesture of £296. We sent Mr C AXA’s breakdown of how they’d calculated their total offer in September 2017.

Mr C didn’t accept this offer so the complaint was passed to me to make a decision.

I issued my provisional decision on this case on 2 January 2018 where I explained I didn’t intend to uphold Mr C’s complaint. I made the following provisional findings:

- The policy doesn’t define ‘emergency’ so I considered it here to mean that medical circumstances would require immediate or near immediate action.
- I didn’t think Mr C’s knee injury was an emergency under this definition. There was a significant period of time between when his knee went from under him and when the operation took place. And Mr C travelled back to the UK for two days between the initial injury and the operation.
- In line with the above, I thought AXA’s offer to pay repatriation costs in line with the policy terms was fair.

- I considered AXA's total offer of £496 in recognition of the delays a fair amount in the circumstances.
- I thought AXA should stand by their offer to pay the costs Mr C incurred in obtaining his medical records.

I attach my provisional decision of 2 January 2018, which forms part of this final decision.

In response to my provisional decision, AXA chose to pay Mr C their offer of settlement.

Mr C also responded to my provisional decision. He gave his own summary of what had happened on his claim and complaint so far. He also said the following:

- he's a business man who travels regularly between France and the UK and that he wasn't on a holiday when the accident occurred
- he never recalls receiving a policy document or certificate
- he was in pain and could hardly walk when this happened
- he's not interested in AXA's offer to pay repatriation costs
- he did go back to the UK for one day for business before returning to France. But he feels he shouldn't have done so, because his knee got worse which is why he then contacted the hospital. He points out that any contact with the hospital occurred after his short trip back to the UK.

my findings

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

Having done so, I still think that AXA's offer of settlement is fair.

I understand Mr C didn't want to travel because it was painful and difficult for him to do so - and the note from the surgeon confirms travel wouldn't be easy for him. But to be covered under this particular insurance policy, the medical circumstances have to be more than difficult - they must constitute an *emergency*. And I've previously defined this as requiring *immediate or near immediate attention*.

I don't doubt Mr C's knee must've caused him a great deal of pain and discomfort, and that knee replacement surgery must've been a horrible experience. But I don't have enough to say that the medical circumstances were an emergency. They didn't require – and didn't receive – immediate medical attention.

Whilst it may have been more arduous than usual for Mr C to travel back to the UK to receive treatment, it was still feasible - particularly taking into account the various adjustments AXA planned to put in place. And I know repatriation plans such as this one are specifically designed to transport people in very severe medical circumstances.

Mr C chose to stay in France to have the operation rather than taking up AXA's offer of repatriation. I can't see that he shared the details of the repatriation plan with his surgeon – if he had, the surgeon may have thought travel would be easier than previously anticipated. He'd noted that Mr C was unable to move or travel easily – and I do understand movement wasn't easy for Mr C at this time. But I haven't seen anything from his surgeon or the

hospital to indicate that they considered his knee injury as an emergency or that they treated it as such. And whilst certainly very painful and distressing, I wouldn't generally consider injuries of this kind as emergency medical situations.

I accept Mr C's point that his knee may have worsened during his short trip back to the UK. But this in itself doesn't mean the injury would come under the 'emergency medical cover' the policy provides. This policy is only designed to cover emergency situations whilst abroad, rather than providing general medical cover for procedures the policyholder opts to have overseas.

Taking all the above into account, my decision remains that I find AXA's offer fair. This offer included:

- repatriation costs
- £496 in total for compensation for the delays caused
- reimbursing what Mr C paid to obtain his medical records

I note AXA have paid Mr C following my provisional decision and sent him and us a breakdown of this payment. However the 'amount payable' for compensation is listed in this recent breakdown as £269. In AXA's original offer made in September 2017, this was £296.

As £296 was originally offered on top of the £200 which had already been paid, I'd expect AXA to stand by this. So I'd expect them to issue Mr C with the £27 discrepancy between the two amounts.

my final decision

For the reasons I've explained above, I feel AXA's offer made in September 2017 is fair in the circumstances of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 March 2018.

Artemis Pantelides
ombudsman

complaint

Mr C is unhappy that his travel insurance claim for medical expenses was declined by AXA Insurance UK Plc (“AXA”).

background

Mr C was in France on holiday when his left knee went from under him. He was in severe pain and had knee replacement surgery in France.

Mr C made a claim under his travel insurance policy with AXA. This policy provides cover under an “*emergency medical, additional accommodation and travelling costs*” benefit. Mr C’s claim was for the medical expenses and associated costs which he’d incurred in relation to the operation he had, including his hospital stay.

AXA declined the claim. They felt the surgery was not a medical emergency and that Mr C could’ve returned to the UK to have treatment.

Mr C was unhappy and brought his complaint to us. Our investigator upheld the complaint. He thought Mr C’s knee replacement surgery was urgent and should come under the emergency medical cover provided by the policy. He didn’t think it was fair to expect Mr C to travel home to the UK for treatment. He based this opinion on a medical certificate from Mr C’s surgeon in France which stated Mr C was unable to move easily or travel.

Our investigator thought that AXA should pay the claim along with a further £200 for trouble and upset caused to Mr C.

Initially, AXA agreed with our investigator’s opinion. They paid Mr C £200 and requested evidence of the medical costs he’d incurred in order to calculate his claim payment. However their position changed when they received and assessed this further information from Mr C.

It took AXA a number of months to confirm their position on whether they’d pay Mr C’s claim for the expenses he’d incurred due to his knee operation. During this time, they decided they also needed further information from Mr C and requested copies of his medical records. They said they’d cover any costs Mr C incurred in obtaining these.

In September this year, AXA confirmed that they disagreed with our investigator’s opinion and still felt Mr C’s claim should be declined. They still felt that the operation was not an emergency and that Mr C could’ve returned to the UK.

AXA didn’t dispute the medical certificate dated 19 September 2016 from the treating doctor in France. But they say this was the second medical certificate produced, and that the first, dated 31 August 2016, didn’t advise against travel.

AXA also made the following additional points over the course of this complaint in order to support their decision that the surgery wasn’t an emergency:

- over a month passed between Mr C seeing the surgeon and the date of his operation
- if the operation was urgent they would’ve expected Mr C to be allocated an emergency slot at the hospital

AXA has offered to pay Mr C's repatriation costs as they say this is what the policy would've covered in his circumstances. They've calculated the repatriation costs as £704 - after deducting the cost of an economy flight because Mr C didn't have a return flight booked. AXA also offered a goodwill gesture of £296. In total they're now offering Mr C £1,000. I can see Mr C received a breakdown of how this offer was calculated in an email from our service on 28 September 2017.

Mr C hasn't accepted this offer so the complaint has been passed to me to make a decision.

my provisional findings

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

I think it would be useful for me to start by outlining what exactly I'm considering in this decision.

AXA have declined Mr C's claim for the medical expenses he incurred as they don't believe his surgery would be covered under his policy's emergency medical cover. They've relied on the policy exclusion which states *"treatment or surgery which in the opinion of AXA Assistance can wait until your return to your home area."*

I need to decide whether I think AXA's decision to decline the claim on this basis is fair.

The policy doesn't define 'emergency' or 'urgent'. So I need to think about what 'emergency medical cover' might mean. Taking into account dictionary definitions of the word emergency, I'd consider that the medical circumstances would need to require immediate – or near immediate - action.

I've thought about the evidence provided by both parties. I can see that the medical certificate dated 19 September 2016 states that Mr C *"cannot move around easily or travel"*. But I don't think this means this was an emergency situation or that surgery would be required immediately – and indeed, it didn't occur until 17 October 2016.

Having listened to the calls where Mr C notifies AXA of his claim, it appears that his knee went from under him in early August 2016. There's a significant period of time between this and when the operation took place on 17 October 2016. So while I fully appreciate Mr C must've been in a great deal of pain and would've had his movement restricted, I wouldn't consider this as an emergency.

Additionally, Mr C tells AXA during one of these calls that he actually returned to the UK for two days between when the injury occurred and the date of the call. This makes me think that AXA's repatriation offer – which included extra legroom, taxis and wheelchair assistance at both ends – was reasonable and that the operation wasn't an emergency.

Taking into account all of the above, I think AXA was fair to decline Mr C's claim for emergency medical expenses as they did. And I think their offer to pay the repatriation costs in line with the policy terms is fair in the circumstances.

As outlined above, AXA have caused some delays during this complaint process. But they have already paid Mr C £200 and are offering a further £296 as a goodwill gesture. As our awards for compensation are quite modest, I'd consider a total of £496 as a fair amount in these circumstances and wouldn't ask AXA to pay further compensation for the delays caused.

As AXA have previously said they'd pay the costs Mr C incurred in obtaining his medical records, I'd expect them to stand by this offer and reimburse Mr C the £58.80 which he paid. I believe a copy of this invoice was provided to AXA in June 2017.

my provisional decision

For the reasons I've explained above, I feel AXA's offer is fair in the circumstances of this complaint.

I invite both parties to send me any comments or information they'd like me to consider before I make my final decision.

Artemis Pantelides
ombudsman