

complaint

Mr B has complained that AXA Insurance UK Plc (AXA) turned down a claim he made under his travel insurance policy.

background

I issued a provisional decision on this complaint in May this year. An extract from that decision follows:

“Mr B has a travel insurance policy with AXA through his bank account. He’s had this for many years.

Mr B had a heart attack when he was abroad on holiday and had to go into hospital. He made a claim but AXA rejected it. Initially AXA said Mr B wasn’t covered because he was over 80 years old and cover stops at this age. But it couldn’t find any evidence Mr B had been made aware of this previously. So it assessed the claim under the terms and conditions of the policy.

AXA still rejected the claim because it said the reason Mr B was hospitalised related to heart problems he had before booking his holiday. And because Mr B hadn’t declared any pre-existing conditions to AXA, those conditions weren’t covered under the policy.

Mr B complained to us through a representative and said he hadn’t received any letters from AXA reminding him that he had to declare his medical conditions. He also said the policy shouldn’t have been sold to him because he was over 80 years old. He wants AXA to pay the claim.

Our adjudicator was satisfied that AXA had showed it had sent letters to Mr B before he booked his holiday, which said he had to declare his medical conditions. Mr B didn’t agree.

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’ve given the parties 14 days to comment. I think this is sufficient because I haven’t reached a different outcome to that of our adjudicator. And because this complaint has been going on for a while I don’t think the parties will need more time to respond to this decision.

Mr B has complained that this policy shouldn’t have been sold to him because he wasn’t eligible for cover due to his age. Because the policy was sold to him by his bank and not AXA I can’t look at this aspect of his complaint here.

was the exclusion for pre-existing medical conditions significant?

Mr B’s policy says he should make AXA aware of any medical conditions he suffers from before he travels. The key facts document also says AXA won’t cover medical conditions for which Mr B is being prescribed medication or is awaiting treatment within six months of booking his trip unless they’ve been declared to AXA and it has agreed to cover them.

I don't think this exclusion is unusual because it's in most travel policies I'm aware of. But I think it's significant because it greatly reduces the scope of cover provided by the policy. So it has to be brought to the policy holder's attention.

did AXA do enough to bring the policy exclusion to Mr B's attention?

Mr B hasn't said he never received the policy documents or the key facts document. I think the pre-existing medical conditions exclusion is stated clearly in both those documents. So, on balance, I think it was brought to Mr B's attention, at least when he first got the policy.

But I'd still expect AXA to send him reminders about having to declare his pre-existing medical conditions and changes in health, especially because it's been many years since he first got the policy. AXA has sent a list of letters it says were sent to Mr B between 2003 and 2014. The list contains the names/codes for those letters but it doesn't say what the contents of each letter were.

AXA has also sent us a template of a letter enclosing a policy booklet which it says was sent to Mr B in July 2012- a year before he booked his holiday. Mr B says he didn't receive this letter or the booklet. The letter provides details about his bank account but doesn't mention anything specifically about declaring medical conditions. But the booklet says policy holders have to declare their medical conditions to AXA.

The list AXA sent us doesn't include this letter. In fact, it doesn't say that any letter was sent to Mr B in 2012. According to the list, Mr B was sent letters in 2011 and 2013 but none in 2012. So, on balance, I don't think the July 2012 letter was sent to Mr B.

AXA said that an annual eligibility letter was sent to Mr B in August 2013. Though this was after he booked his holiday it was before he travelled abroad. AXA says he still had time to declare his pre-existing medical conditions before going on holiday. The list AXA sent us confirms that a letter was sent to Mr B at that time. But AXA hasn't sent us a copy of that letter so I don't know what it says.

On balance, I think AXA has shown it has sent a number of letters to Mr B between 2003 and 2014. But I can't be sure whether any of those letters included reminders that he had to declare his medical conditions. So, on balance, I don't think AXA has shown that it has done enough to remind Mr B about this exclusion.

should Mr B have contacted AXA about his health anyway?

I think it's reasonable for a consumer to realise their travel insurer will want to know about a significant change in their health.

AXA said Mr B declared a pre-existing condition he had in 2008. This, it says, means he knows he has to tell it about his health conditions.

Mr B booked his trip in July and went away in October. He had a heart attack in November whilst on holiday. His medical records show that a few days before he went away he had a procedure where a tube (called a stent) was fitted into his heart. This procedure is normally done to treat weak or narrow arteries. And he'd had another stent inserted in January, which was about six months before he booked the holiday. His medical records also show that he had been diagnosed with unstable angina (not enough blood and oxygen flowing to the

heart) around the time when he had the first stent procedure. I consider these to be significant changes in Mr B's health.

Bearing in mind Mr B had declared another condition in 2008 I think, on balance, he was aware he had to declare his medical conditions to AXA. I think he should've declared these conditions when he was first diagnosed i.e. in January 2013.

Had Mr B declared these conditions in January 2013, which was before he booked his holiday, I think AXA would've informed him he wasn't covered under his travel insurance policy because of his age. So AXA wouldn't have covered him regardless of what his medical conditions were.

my provisional decision

For the reasons above, I'm not thinking of upholding Mr B's complaint against AXA Insurance UK Plc."

developments

Both parties have responded to my provisional decision. Mr B, through his representative, made the following points:

- It's very unlikely Mr B went on holiday in 2008 because he suffered a bereavement that year.
- AXA failed to comply with financial regulation rules. It failed to send a reminder to Mr B about his duty of disclosure, including sending him an eligibility statement every year.
- Rejecting Mr B's claim would only have been reasonable if there was evidence of fraud or if he hadn't taken reasonable care. Because AXA failed to send Mr B any reminders it can't now argue that he failed to take reasonable care.
- Had AXA gone through the eligibility process Mr B would've been made aware he wasn't eligible and would've bought cover elsewhere.
- As the specific condition AXA is relying on wasn't brought to Mr B's attention, it shouldn't be able to rely on it.
- The condition Mr B declared previously was more serious because it was an organ transplant. His heart condition wasn't as serious because he was treated successfully for it. If AXA knew about Mr B's transplant then this should've been addressed in his eligibility statement.
- Mr B was told he was healthy enough to go on holiday by his doctor.
- Had Mr B known he wasn't covered he would have either chosen not to go on holiday or he would've had treatment at a public hospital under the European health scheme. AXA can't be sure he wouldn't have been able to get cover from another insurer.
- AXA should've known Mr B wasn't eligible because of his age. This proves it has complete disregard for the rules regarding the eligibility process.

AXA made the following points:

- Mr B was sent documents about his bank account in 2011, 2012 and 2013 which included details about declaring medical conditions to his travel insurer.
- Mr B said he never received any mailings regarding his travel insurance but he knew he had to medically screen his organ transplant.
- Mr B was refused cover for his organ transplant. His unstable angina and stents were significant changes in his health and should've been declared.

- Mr B wouldn't have been able to get cover for his heart condition for cancellation, curtailment or medical expenses with any insurer because he was still having tests and investigations. So the argument about the eligibility process is irrelevant.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having done so I don't think this complaint should be upheld.

AXA has now provided copies of policy literature which, it says, was sent to Mr B by his bank in 2011, 2012 and 2013. These documents include details about his travel insurance and say medical conditions need to be declared. They also say anyone over 80 years old isn't covered. I appreciate Mr B says he didn't receive any of those documents but, on balance, I think they were sent.

Mr B said because AXA failed to comply with regulations about the eligibility procedure, he shouldn't be considered not to have taken reasonable care to disclose his medical conditions. Because I think AXA did send the documents I mentioned above, I think it did enough to bring the relevant exclusion to Mr B's attention. So, on balance, I don't think Mr B took reasonable care to provide full disclosure to AXA about his medical conditions.

But even if I didn't think AXA had done enough to bring the exclusion to Mr B's attention, I think the operations Mr B had to his heart along with the unstable angina were significant changes to his health and had to be declared to AXA. Mr B hasn't denied previously declaring his organ transplant, so I think he knew he had to declare his medical conditions and failed to take reasonable care to do so.

As I said in my provisional decision, had Mr B declared his heart conditions, AXA would've pointed out he wasn't covered because he was over 80 years old. Even if it hadn't, from what it said it wouldn't have provided cover for his heart conditions in any event.

Mr B said had he known he wasn't covered he would've either not gone on holiday or he would've sought treatment at a public hospital. Mr B's policy doesn't cover private treatment unless it's specifically authorised by AXA so it was reasonable for Mr B to be treated at a public facility where he could have used his EHIC.

I appreciate Mr B will be very disappointed with my decision. Unfortunately I don't think AXA acted unfairly or unreasonably in this case so I can't ask it to pay his medical fees.

my final decision

For the reasons above, I'm not upholding Mr B's complaint against AXA Insurance UK Plc. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 July 2016.

Anastasia Serdari
ombudsman