

## complaint

Mrs F's complaint is about AXA Insurance UK Plc's decision to reject her cancellation claim under her travel insurance.

## background

Mrs F had travel insurance as a benefit of her bank account, underwritten by AXA. She booked a holiday which she unfortunately had to cancel as she was diagnosed with cancer and needed an operation.

AXA rejected her claim. It said that her policy excluded claims relating to medical conditions if any investigations had taken place in the six months prior to a holiday being booked. It relied on the following policy exclusion:

*"Exclusions relating to your health.*

*You will not be covered under:*

*Section A – Cancellation or curtailment charges and early return*

*For any claims arising directly or indirectly from:*

- 1. Any Medical Condition You have, or have had, for which You are taking prescribed medication or are waiting to receive, or have received treatment (including surgery, tests or investigations) within the six months prior to opening Your Premier Account or within the six months prior to booking any Trip, whichever is later, unless You have contacted Us ... and We have agreed, in writing, to cover You. If you wish to apply for cover for such Medical Conditions, You need to contact us... at the following times... before booking a trip if your health has changed (... you have developed a new Medical Condition)."*

AXA said that two days before booking her holiday Mrs F had first seen her GP about symptoms that subsequently resulted in the diagnosis of cancer so it considered the exclusion applied.

Mrs F disagreed. She said her claim should be paid because she did not receive a diagnosis until several months after her original appointment with her GP. The fact that she had been referred for tests did not mean she had a medical condition and she had told AXA once she knew she had a condition and had to cancel the holiday. She referred her complaint to this service.

The adjudicator recommended the complaint be upheld. She was not persuaded that the policy exclusion AXA relied on applied to Mrs F's circumstances as the exclusion only stated that cover would not be provided if a *"Medical Condition"* had been investigated. The wording of the exclusion and definition of *"Medical Condition"* did not mention 'symptoms' so the adjudicator did not consider the exclusion applied to Mrs F's claim. The adjudicator also considered the policy did not make it sufficiently clear that a declaration was mandatory.

AXA disagreed so the complaint has been referred to me for a decision.

### **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The policy definition of “*Medical Condition*” is “*any disease, illness or injury*”. At the point that Mrs F booked her holiday, I do not consider that Mrs F had a medical condition as defined by the policy terms. At that time she had not yet received a diagnosis, she had only suffered from relatively minor symptoms. The policy wording does not exclude claims relating to any undiagnosed symptoms at the point a holiday is booked.

In any event, this is an on-going policy through a bank account. With such policies I only consider it reasonable for an insurer to restrict liability after the policy has started if a policyholder has a change in health that fundamentally alters the nature of the risk. In Mrs F’s circumstances this occurred when she was given the cancer diagnosis and at that stage it was reasonable for her to inform AXA of her change in health and she did so.

Overall, I am satisfied that AXA is not reasonably entitled to rely on the exclusion to decline the claim. It should meet the claim plus interest.

### **my final decision**

My final decision is that I uphold this complaint.

I require AXA Insurance UK Plc to pay Mrs F’s claim, plus interest at the gross rate of 8% simple from the date of claim to the date of payment (less any tax properly deductible).

I make no other award against AXA Insurance UK Plc.

Nicola Sisk  
**ombudsman**