

## The complaint

Mr and Mrs B complain that AXA Insurance UK Plc acted unfairly and unreasonably when arranging the upgrade of Mr B's flight when Mrs B was repatriated home. They want compensation.

## What happened

Mr and Mrs B had a travel insurance policy with AXA. Mrs B became unwell on holiday and needed to be repatriated home. It was decided that Mrs B needed to be in business class on the aircraft, accompanied by a nurse. The travel arrangements were made through AXA and its agents. Mr B said that he paid for an upgrade for his seat (in excess of £3,000) on the proviso that he could be sat close to his wife during the flight; he said that this didn't happen. Mr B felt as a result the cost of the upgrade should be refunded by AXA.

Mr B complained to AXA. It offered £300 compensation as it felt the service given wasn't good enough in terms of communication and updates. AXA said that its team had been told that it couldn't be guaranteed that Mr and Mrs B could sit together, but accepted Mr B hadn't been told this. Mr B felt that this wasn't enough, not only because of the cost of the upgrade, but also because it had been a stressful situation and the stress was increased by Mr and Mrs B not being near each other when she was so unwell and she suffered from anxiety. Matters weren't helped by the fact that the nurse also wasn't booked to sit next to Mrs B, which caused the crew to have to move passengers around, some of whom weren't keen to do so,

Mr B complained to us. The investigator's view was that the complaint should be upheld. She noted that it wasn't clear if AXA had considered a curtailment or hospital benefit claim. But she felt Mr B had shown he'd only paid for the upgrade to be near Mrs B and he could've checked on her to the same extent that he was permitted if he hadn't upgraded.

The investigator pointed out AXA had accepted that it hadn't told Mr B that it had been told there was no guarantee he'd be near Mrs B, and that the policy covered "*reasonable*" transport expenses home for Mr and Mrs B. She didn't think that it was reasonable to expect Mr B to travel in a different class to his wife, who had been and remained unwell and was a nervous flyer refusing to fly without him (as told to AXA at the time).

The investigator also noted that the repatriation was delayed due to the nurse's details not being provided to the airline and was more stressful as the nurse wasn't booked to sit next to Mrs B. This followed a difficult departure from the hospital as no guarantee of payment had been provided in time. She said AXA should pay £300 compensation for the trouble and upset caused by all its failings and refund the upgrade cost to Mr B (together with interest).

AXA disagreed. It said it wasn't medically necessary to upgrade Mr B to business class with Mrs B and the nurse, and Mr B chose to upgrade. AXA didn't think Mr and Mrs B should get a refund and compensation and asked for an ombudsman's decision. The investigator said if AXA had given Mr B the right information about the seats, he wouldn't have paid for the upgrade.

## 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.

When I refer to AXA, I'm also referring to its agents. The relevant rules and industry guidelines say that AXA has a responsibility to handle claims promptly and fairly. I'm going to focus on the repatriation of Mr and Mrs B as no complaint has been raised about any other possible claims that could be made under the policy.

The policy says that it covers "*Reasonable additional transport or accommodation expenses incurred, up to the standard of Your original booking, if it is medically necessary for You to stay beyond Your scheduled return date. This includes, with the prior authorisation of AXA Assistance, reasonable additional transport or accommodation expenses for a friend or Close Relative to remain with You or travel to You from Your Home Area or escort You and additional travel expenses to return You to Your Home if You are unable to use the return ticket.*"

It's clear that the reference to "*medically necessary*" only refers to staying beyond the booked return date; this isn't relevant to Mr and Mrs B's case. The clause goes on to say that repatriation is also covered but the reference to "*medically necessary*" is from a different sentence and doesn't apply here in my view to the actual costs themselves – they need to be reasonable, not medically necessary. What does apply is the need for "*reasonable*" transport to be provided and there are further clauses that say only the identical class booked by the policyholder will be used for transport booked to get them home unless AXA agrees otherwise. But Mr and Mrs B were on a world cruise and weren't booked to fly; arguably no class applies.

Having seen the emails and contemporaneous notes of the calls between Mr B and AXA, it's clear that when it was decided that it was medically necessary for Mrs B to fly home business class accompanied by a nurse, Mr B explained that Mrs B was nervous and needed him to be in business class. There's no note that she had to see him, but the travel agent involved warned the seats mightn't be near each other. Mr B wasn't told this. Mr B explained that if he knew Mrs B wouldn't be near him, he would've travelled economy and visited her; he even provided evidence that the airline would've permitted this. Mr B's account, which I accept, was that he couldn't be seen at all by Mrs B and he had to visit her in the same way as if he'd come from economy.

The situation was made worse as Mrs B and the nurse weren't booked for either flight to sit next each other. Mrs B was unwell, needed medical support, and had to sit through the attempts of aircrew to get passengers to move. This was on top of the delayed repatriation due to the failure to provide the nurse's name to the airline and the hospital refusing to let her leave due to the failure of AXA to provide a guarantee of payment. Even the nurse commented that the hospital had not been pleasant.

Taking all the evidence into account, I'm persuaded that Mr B only paid for the upgrade in order to be near Mrs B and offer her support. This was not possible in a meaningful way due to where he was sat. And in any event, I think it wasn't reasonable for AXA to refuse to pay for Mr B's upgrade in the circumstances; there was no identical class of flight booked for his holiday, Mrs B was nervous and unwell, and they'd had a stressful time at the hospital and the delayed repatriation. I think it's fair and reasonable for AXA to refund the upgrade cost with interest.

AXA doesn't think that it's fair or reasonable for Mr and Mrs B to get compensation for both financial and non-financial loss. That ignores the long-established practice of this service.

AXA accepts its service wasn't good enough and the communication let Mr and Mrs B down. This caused trouble and upset, which is why it offered £300 compensation. I think this is fair and reasonable, though I note that the trouble and upset suffered by Mr and Mrs B also included the delayed repatriation due to AXA's failure, the difficulties leaving the hospital due to AXA's failure, and the failure to ensure the nurse was booked next to Mrs B. Overall though, I think £300 is the appropriate amount for compensation for trouble and upset and note Mr and Mrs B accepted this.

### **Putting things right**

AXA Insurance UK Plc should refund the upgrade paid by Mr B, together with interest of 8% simple interest a year from the date he paid for the upgrade until the date of refund. It should also pay £300 compensation for the trouble and upset caused to Mr and Mrs B.

### **My final decision**

My final decision is that I uphold the complaint and AXA Insurance UK Plc should refund the upgrade paid by Mr B, together with interest as outlined above, and £300 compensation for the trouble and upset caused to Mr and Mrs B if not already paid. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 1 October 2020.

Claire Sharp  
**Ombudsman**