

complaint

Mr H1 and Mr H2 complain about how AXA Insurance UK Plc ('AXA') dealt with a claim under their travel insurance policy when Mr H2 was injured abroad. Mr H2 says AXA delayed repatriating him to the UK, as a result of which his health has been affected.

All references to AXA include the agents it has appointed to handle claims.

background

Mr H1 held a travel insurance policy, provided by AXA. The policy covered Mr H1 and Mr H2, as well as another family member.

Unfortunately, while on holiday abroad in 2013, Mr H2 was found in unexplained circumstances with serious injuries and was taken to hospital.

A claim was made with AXA on the day Mr H2 was admitted to hospital, but cover wasn't confirmed under the policy until ten days later. The following day, Mr H2 had surgery abroad and he was repatriated to the UK by air ambulance 20 days after he was taken to hospital.

On his return to the UK, Mr H2 says he was told the original operation hadn't been performed well and he would need a hip replacement in the near future as a result. Mr H2 subsequently had a hip replacement less than a year after his accident had happened.

Unhappy, Mr H1 and Mr H2's representative complained to AXA about the way the claim had been handled. He said the hospital abroad told AXA the operation Mr H2 needed was complex and he should have the operation in the UK, but AXA wouldn't allow it. He also said AXA's delays in arranging Mr H2's repatriation had impacted on his recovery, his sporting life and his ability to follow his chosen career path.

AXA investigated the complaint and sent a final response letter. AXA said due to the limited information available about the circumstances of what happened to Mr H2, it needed some questions to be answered before cover could be confirmed. It said the treating hospital sent incorrect information and delayed sending a toxicology report, which meant it couldn't confirm cover. AXA said it would have preferred to repatriate Mr H2 before his operation, but the surgery could be performed abroad, and it hadn't forced the treating hospital to carry out the operation. AXA acknowledged, overall, it didn't communicate as effectively as it could have and offered Mr H1 and Mr H2 £500 compensation for the distress and inconvenience caused.

As Mr H1 and Mr H2 remained unhappy, their representative brought their complaint to the Financial Ombudsman Service.

When the complaint was first brought to us, Mr H2 was in the process of pursuing legal proceedings abroad. One of our adjudicators suggested that Mr H1 and Mr H2 should withdraw their complaint from our service pending the outcome of these legal proceedings. Our adjudicator thought it would be difficult to quantify what fair and reasonable compensation would be based on the information we had at that point. Our adjudicator explained we could re-open Mr H1 and Mr H2's complaint once the legal proceedings had been resolved.

In the meantime, the adjudicator contacted AXA to ask it to increase its offer of compensation and make an interim payment to Mr H1 and Mr H2. He said, based on the information he had seen, he thought AXA could have repatriated Mr H2 five days after his accident. He said he thought AXA's delays had resulted in a very serious medical outcome for Mr H2.

AXA agreed to increase its offer of compensation to £2,000. It also offered to appoint a medical expert in pelvic injuries to give an opinion on whether any delays and/or the surgery abroad had impacted on Mr H2's recovery.

AXA paid this compensation and began to make arrangements to instruct a medical expert, and Mr H1 and Mr H2 withdrew their complaint from our service in 2014.

Mr H1 and Mr H2's representative contacted us in 2015 to let us know Mr H2's legal proceedings against the hospital abroad would no longer be going ahead, but he was still pursuing a claim through a criminal injuries compensation scheme. However, new solicitors were subsequently appointed to deal with Mr H2's medical negligence claim. When the original medical expert was unable to complete his opinion because of gaps in Mr H2's medical records, a new expert was appointed.

In 2016, the representative contacted us to let us know Mr H2's legal proceedings were still unresolved and, in 2017, told us Mr H2 was waiting for a court ruling to force the hospital abroad to release his full medical records.

In March 2018, the representative let us know Mr H2's medical records had been released. However, following a report from a consultant orthopaedic surgeon (who I'll call Mr T) in August 2018, Mr H2's new solicitors said they wouldn't be taking his medical negligence action forward.

So, in October 2018, we re-opened Mr H1 and Mr H2's complaint. The original adjudicator who'd looked into the complaint didn't think the content of the report from Mr T was in line with the offer AXA made in 2014. So, our adjudicator recommended that AXA should obtain a further medical report from the same expert. Our adjudicator later amended his recommendations following comments from the representative and said AXA could obtain a further report from a different expert.

AXA and Mr H1 and Mr H2's representative agreed to this but, in June 2019, AXA said it was having difficulty finding a UK specialist in the field who was prepared to provide a further report, but it had found one abroad.

After receiving a number of updates from AXA about when it expected to receive the new medical report, in December 2019 AXA said the specialist abroad was no longer able to provide this report.

Mr H1 and Mr H2's complaint was then passed to me to decide. I made my provisional decision about the complaint in February 2020. In it, I said:

"At the outset, I'd like to say how sorry I am to hear about what happened to Mr H2 and how the events abroad have impacted on his life. Mr H2 has pursued a number of different avenues to gain a better understanding of what happened, and I hope my explanation of what I think AXA's role in the situation was is helpful to him in moving forward."

I've aware of how long Mr H1 and Mr H2 have been waiting for an answer to their complaint from this service. We're an informal alternative to the civil courts and we make decisions based on what we think is most likely to have happened in the circumstances, taking into account all the information and evidence that has been presented to us. I agree with the original adjudicator that, based on the evidence we had available to us in 2014, it would have been difficult for us to decide what AXA's role in events was and what appropriate compensation would have been. But, at this point, we have the benefit of knowing legal proceedings against the treating hospital weren't taken forward, and we also have the benefit of seeing Mr T's report.

I've reviewed all the information I have to decide whether I think AXA dealt with Mr H2's claim in the way I'd expect an insurer to do. While I think there were failings by AXA in this case, I don't agree with a number of the conclusions reached by our adjudicator. I'm sorry to disappoint Mr H1 and Mr H2 but I hope the detailed reasoning I've set out will help them understand why.

AXA's responsibilities

Industry rules set out by the regulator of the financial services industry say an insurer must handle claims promptly and fairly. The terms and conditions of Mr H1 and Mr H2's contract with AXA outline its obligations to them.

The policy says AXA's emergency assistance service is available for advice and making arrangements for repatriation 24 hours a day, 365 days a year. The emergency assistance service is described as having:

*"the medical expertise, contacts and facilities to help should **You** be injured in an accident or fall ill. The Emergency Assistance Service will also arrange transport to **Your Home Area** when this is considered to be medically necessary..."*

Under 'Section 2 – Emergency Medical and Other Expenses', the policy says:

*"In the event of **Your Bodily Injury** or illness **We** reserve the right to relocate **You** from one hospital to another and arrange for **Your** repatriation to **Your Home Area** at any time during the **Trip**. **We** will do this if in the opinion of the Emergency Assistance Service or **Us** (based on information received from the **Medical Practitioner** in attendance) **You** can be moved safely and/or travel safely to **Your Home Area** to continue treatment".*

While a policyholder and their family may have preferences about where medical treatment is carried out, AXA has the discretion to make important decisions during a medical emergency – including decisions about whether it is medically necessary to repatriate a policyholder to the UK for treatment or whether it's more appropriate for the policyholder to have medical treatment abroad.

I'd expect AXA to use this discretion in a fair and reasonable way, taking into account the medical information available to it and acting in the best interests of the policyholder.

When dealing with a medical emergency such as the one Mr H2 found himself in, an insurer is entitled to make reasonable enquiries to satisfy itself that a policyholder has a valid claim under their policy before confirming cover. And, an insurer is entitled to ask to see medical evidence from the treating doctor and have this reviewed by their own medical team before

deciding whether to approve treatment or repatriation.

Generally, it's not unreasonable for an insurer to insist on seeing such information before making a decision, but I would expect the insurer to regularly chase information requests and to communicate effectively with the policyholder about the progress of their claim.

I've reviewed AXA's notes to gain an understanding of what happened here, and I've set out what I think are the key points below.

day 1

On the day Mr H2 was admitted to hospital, AXA was notified about the claim at around lunchtime. AXA called one of Mr H2's family members back within an hour. During both conversations, the consumption of alcohol was mentioned.

Mr H1 and Mr H2's policy, in common with most travel insurance policies, contains a general exclusion for claims arising from drinking too much alcohol. The policy also contains an exclusion for claims arising from the use of drugs, other than in limited circumstances.

In the early afternoon, AXA sent a request to the treating hospital asking for a medical report, as an insurer usually would when dealing with a medical assistance claim. AXA also asked for details of Mr H2's blood alcohol levels and told Mr H2's family it would need to see a police report. Given the circumstances of the claim and what AXA had been told about what happened, I don't think these were unusual or unreasonable requests by AXA.

day 2

AXA received and reviewed Mr H2's first medical report from the treating hospital just before 2pm.

This medical report said, "the only test that came back positive on arrival at the hospital was carabinoides [sic] for possible administration of morphine post-accident". The report went on to say, "if you want the patient may already be repatriated in regular flight with stretcher escorted by nurse".

It would subsequently transpire that Mr H2 never tested positive for cannabis. Our adjudicator concluded this mistake was made by AXA, but I'm satisfied this wasn't the case. The mistake was made by the hospital in medical reports written by the treating doctor. AXA had, at this stage, no way of knowing that what the treating doctor said about Mr H2 testing positive for cannabinoids was incorrect.

At 2.34pm AXA chased the hospital for details of Mr H2's blood alcohol levels, as it hadn't received these in response to its request the previous day. AXA also asked whether Mr H2 needed surgery because the medical report was silent on this point. And I've seen evidence that AXA asked the treating hospital for a copy of Mr H2's toxicology report as well. Given what the medical report said about Mr H2's drugs test result, I think it was reasonable for AXA to consider it needed to see the toxicology report for itself before it could confirm cover.

When Mr H1 called AXA for an update at 2.42pm, AXA said it was chasing a medical report and Mr H1 said he'd send this to AXA himself.

AXA received the second medical report at 5.05pm and, within minutes, had requested an urgent translation. However, when the translation was received at 10.11pm the same evening, AXA doesn't appear to have actioned it.

day 3

When Mr H1 contacted AXA for an update at 10.51am, AXA realised it hadn't reviewed the medical report which had been translated the previous evening.

AXA then reviewed the medical report, but this still didn't confirm what Mr H2's blood alcohol levels were. The medical report said Mr H2 needed surgery and that he was awaiting repatriation. AXA noted there didn't seem to be any reason why Mr H2 couldn't have the treatment abroad and escalated the medical report to one of its doctors to review.

That afternoon, AXA reviewed a police report outlining the circumstances in which Mr H2 was found and spoke to a nurse at the treating hospital, who was unable to give it any information about why Mr H2 hadn't been operated on.

At 3.46pm, AXA's doctor reviewed Mr H2's medical reports and noted Mr H2 needed immediate surgery. AXA's doctor asked for clarification of whether the current medical facility was adequate to perform the surgery needed. AXA's doctor said, if so, it wouldn't be necessary to repatriate Mr H2 before the operation.

On the same day, at 4.53pm, AXA chased the hospital for a toxicology report as it still hadn't received this. Mr H2's family were given an update at 6.05pm about the information AXA still needed to confirm cover under the policy.

day 4

A note on AXA's file at 10.31am says it had tried to telephone the hospital over ten times that morning to ask about Mr H2's apparent positive test for cannabinoids. AXA's notes indicate it was also trying to ask the hospital about the operation Mr H2 needed.

At 12.52pm, AXA sent a further request to the hospital for a toxicology report and asked to speak to Mr H2's doctor as soon as possible.

AXA received a medical report at 2.30pm which said the hospital was waiting for AXA's instructions about repatriation. The medical report again referred to a positive test for cannabinoids – which we now know to be incorrect – and said there was no relationship between these and the drugs administered to Mr H by the hospital.

This was further incorrect information provided by the treating hospital. AXA couldn't reasonably have known at this point that the information the hospital was providing was wrong because it hadn't been provided with the toxicology report despite its numerous requests.

The medical report from the treating hospital went on to say:

“Regarding the surgery for this patient in the Public hospital of..., although he can be operate there, we informed you that this time of the year the Publico hospital of...didn't gathers the necessary conditions for this operation, it will be better to be operated in a specialized center in England”.

After unsuccessfully trying to get in touch with Mr H2's treating doctor to clarify the meaning of "necessary conditions", AXA's doctor interpreted the above statement to mean the hospital was capable of carrying out the operation but did not have the necessary resources to do so during the summer season.

I don't think this was an unreasonable position for AXA to take but, nonetheless, it began to look into air taxi repatriation options for Mr H2 to come back to the UK subject to the exact circumstances of Mr H2's accident being confirmed. But, at this point, AXA was still waiting for information it needed to be able to confirm cover – namely the toxicology report showing Mr H2's blood alcohol levels and drug test results.

While requesting air taxi quotes for Mr H2's repatriation that evening, AXA also continued to chase the treating hospital for the toxicology report.

AXA spoke to one of Mr H2's family members at 7.58pm to give them an update and to ask for further information about the circumstances of Mr H2's accident, as the medical report it received that day had mentioned a robbery.

day 5

Shortly after receiving quotes to repatriate Mr H2 – which it would have been possible to do that day if cover had been confirmed - AXA again chased the hospital for a toxicology report.

AXA subsequently asked the hospital for this information twice that afternoon. AXA also again asked the hospital why it couldn't perform the surgery Mr H2 needed, and Mr H2's family were given a number of updates explaining that AXA was still making a decision on cover.

As our adjudicator referenced, AXA had sourced an air taxi which would have been able to repatriate Mr H2 to the UK on day 5 of his claim. But I don't agree with our adjudicator's conclusion that there was no valid reason for AXA's failure to put Mr H2 on the air taxi on day 5. AXA was still waiting for – and regularly chasing – information it needed in order to confirm cover.

I don't think it would have been fair or reasonable to expect AXA to arrange for Mr H2's repatriation at this point when it still had valid concerns about the circumstances of the claim in the absence of a toxicology report. And I'm satisfied AXA was, at the same time as requesting the information it needed, trying to establish whether the hospital abroad could operate on Mr H2. So, overall, I think AXA was doing all it could to gather the information it needed to make medical decisions in Mr H2's best interests.

day 6

AXA's notes reiterate its doctor had recommended an air taxi was needed for Mr H2. However, this was subject to AXA having sight of the toxicology report, which it was still chasing from the hospital. AXA also asked the hospital for reasons why Mr H2's surgery wasn't being performed.

The only information AXA seems to have been given from the hospital on day 6 was that Mr H was receiving non-surgical conservative treatment.

AXA also again asked Mr H2's family for further information about the robbery mentioned on

the medical report it had received two days previously.

day 7

At around midday, AXA and Mr H1 discussed the options of moving Mr H2 to another medical facility abroad or repatriating him to the UK. Mr H1 expressed a desire to have Mr H2 repatriated to a specific hospital in the UK.

AXA contacted the hospital for the outstanding information it needed more than once on day 7 and continued to ask the hospital for the reasons why it couldn't perform Mr H2's surgery.

At 10.26pm, Mr H2's family contacted AXA to express particular concern about one of Mr H2's injuries and AXA said it would update them as soon as possible the following morning.

day 8

AXA's internal notes show its Head of Medical Services expressed serious concerns about Mr H2's medical condition on day 8. She said:

'the gold standard for having this surgery in the UK is within 24-48 hours – a delay of a few days is acceptable but there is increasing risk with each passing day of future ongoing complications as a result of this...

I am concerned that this young man may have ongoing health problems as a result of the continuing delay with his treatment"

She emphasised the need to urgently confirm whether Mr H2's claim was covered under his policy and to clarify the hospital's position on performing surgery, so a decision could be made about whether to move Mr H2 as soon as possible.

At 10.45am, AXA spoke to the hospital and was told by one of Mr H2's doctors that the hospital was awaiting a decision from AXA about whether Mr H2's claim was covered and if they didn't have confirmation of this within a week, they'd operate immediately. AXA subsequently received written confirmation of this and responded asking for the surgery to go ahead sooner. The hospital replied at 1.34pm to say surgery could go ahead three days later, on day 11.

Meanwhile, AXA was continuing to request the toxicology report from the hospital so it could make a decision on cover.

I've seen a copy of Mr H2's toxicology report which appears from the date stamp to have been faxed to AXA at 2.18pm on day 8. This confirms Mr H2's blood alcohol levels were just over the UK drink driving limits and says he tested negative for marijuana but positive for opioids.

AXA spoke to Mr H2's family at 8.36pm to say it was still waiting to make a decision about whether the claim was covered but the necessary surgery would be going ahead abroad. Mr H2's family expressed a strong preference for him to be repatriated to have the surgery, but AXA said there could be a longer wait for Mr H2 to have the operation in the UK.

day 9

AXA reviewed Mr H2's toxicology report at 2.45pm and noted his positive test for opiates could relate to the medication he was given on admission to hospital.

During a conversation with Mr H2's family at 7.27pm, AXA said a decision on cover had not yet been made. Mr H2's family said they felt Mr H2 was being coerced into having surgery abroad and a further conversation took place about the circumstances of what happened to Mr H2.

day 10

AXA confirmed Mr H2's claim was covered at 4.58pm, with Mr H2 due to have surgery abroad the following day.

AXA contacted Mr H2's family shortly after cover was confirmed to say it thought Mr H2 should be fit to fly five to six days after his operation on a commercial flight with a nurse escort. Mr H2's family said this contradicted information they'd been given, which was that Mr H2 wouldn't be fit to fly for two to three weeks.

surgery and eventual repatriation

Mr H2 had surgery on day 11. On day 12, AXA received a medical report from the treating hospital to say Mr H2 wouldn't be fit to fly for at least five to seven days after his operation. The medical report went on to say he may need a nurse escort.

On day 15, AXA began to speak to Mr H2's family about making repatriation arrangements and, on day 16, Mr H2's family told AXA he might need a further operation on his return to the UK.

At this point, AXA again began to make enquiries with the hospital. It asked why the surgery hadn't been successful and what were the advantages and disadvantages of Mr H2 having any follow-up surgery aboard. They also sought urgent confirmation that Mr H2 was fit to fly by stretcher.

AXA's notes from day 16 record the hospital's communications were not good and it was being kept on hold endlessly. Nonetheless, AXA began to request both air taxi and air ambulance quotes in preparation for Mr H2's repatriation.

When AXA received these quotes that evening, I can see it tried to contact the hospital at least three times to obtain the information it had asked for earlier that day.

After telephoning the hospital on the morning of day 17, AXA received a medical report confirming Mr H2 was fit to fly by stretcher with a nurse escort and re-hospitalisation on arrival in the UK. An initial repatriation plan was approved and communicated to Mr H2's family at 2.11pm.

On day 18, Mr H2's family were told he would be repatriated two days later. AXA spoke with Mr H2 directly on day 19 to confirm the details of what would happen, as it was unable to contact his treating doctors. Mr H2 was repatriated by air ambulance on day 20 and Mr H1 returned to the UK on his amended original return flight.

Shortly after his repatriation on day 20, Mr H2 told AXA he had a fracture which hadn't been

picked up abroad and when he'd been operated on, plates had been put in the wrong place.

summary of AXA's actions

Having taken all the above into account, I think it's clear there were failings on the part of AXA. However, I think it's also clear not all of the delays were caused by AXA and I think much of what happened in the initial days after Mr H2's admission to hospital was outside of AXA's control.

I understand Mr H1 and Mr H2 said they were told by the doctor who first examined Mr H2 that he had a very serious and complex injury and an operation would need to be carried out in the UK or possibly in a different hospital abroad. However, based on the information I've seen, the earliest AXA became aware there might be any difficulty with the treating hospital carrying out the operation was on day 4.

The reasons provided by the treating hospital as to why the operation was best carried out in the UK were unclear and AXA made repeated attempts to clarify why this was, while simultaneously obtaining quotes to repatriate Mr H2 on day 5.

However, I don't think AXA was unreasonable in failing to repatriate Mr H2 at that point, because it couldn't be sure the claim was covered. This was as a result of incorrect information provided by the treating hospital, which AXA made repeated and persistent attempts to clarify.

Given the circumstances of what happened, I think AXA was entitled to make reasonable enquires to satisfy itself that Mr H2 wasn't under the influence of alcohol or drugs when the accident happened and I think, up until day 8, AXA was making every effort to get the information it needed.

By day 6, the need to take action and make a decision on how Mr H2 was to be treated was becoming more urgent and I think on day 8, having received the information from its Head of Medical Services, was the point AXA should have taken action regardless of whether cover had been confirmed, possibly by accepting the claim on a disclaimer basis.

It was also on day 8 that AXA seems to have received the toxicology report and I think there was an unreasonable delay by AXA in confirming cover between day 8 and day 10. If AXA was going to repatriate Mr H2 then I think day 8 was the earliest point at which it should reasonably have done so. But it's worth noting that, by then, the operation had already been confirmed abroad for day 11.

I don't think I can fairly say AXA pressured the hospital into carrying out the operation. If the hospital wasn't capable of carrying out the operation, then I think the responsibility was on it to make AXA aware of this. The comments in the medical report on day 4 say the operation can be performed abroad and I don't think AXA's interpretation of the meaning of what the hospital was saying was unreasonable. I also note AXA made repeated attempts to clarify the position with the hospital. I haven't seen any evidence that AXA was ever told the hospital wasn't skilled enough to perform the surgery.

I think AXA was doing its best to gather information from and liaise with what seems to have been an uncooperative medical facility. And I've seen no evidence to suggest the cost of repatriation influenced how AXA handled Mr H2's claim – in fact AXA was proactively seeking repatriation quotes before cover was even confirmed.

As I've mentioned above, I think there was an unreasonable delay by AXA in confirming cover. AXA also delayed actioning a translated medical report on day 2 – although I don't think this made a difference to the overall progress of the claim. Also, it seems from AXA's file that it contacted Mr H2 directly on day 12, the day after his surgery, which I don't think should have happened in the circumstances.

Mr H1 has also complained about having to chase AXA for updates, having to provide documentation himself and being given conflicting information about repatriation methods. I'm pleased to see AXA has acknowledged it didn't communicate as effectively as it should have. I'm also pleased to see from AXA's file that it contacted the hospital directly in response to concerns Mr H2's family raised about the food and the room he was in.

Mr H1 has mentioned being repeatedly asked about the circumstances of what happened to Mr H2. I can understand why such questioning will have been upsetting for Mr H2's family and perhaps AXA could have made their enquiries more sensitively. However, given the circumstances of what happened and the mention of a robbery in the medical report on day 4 which AXA wasn't aware of previously, I don't think it was unreasonable for AXA to seek as much clarity as it could about the circumstances.

medical evidence

When making a decision about a case like this, it's not part of my role to reach my own medical conclusions or to substitute expert medical opinion with my own. Instead, I've weighed up all the medical evidence to decide what I think is most likely in the circumstances.

I've considered the available evidence to decide whether I think I can fairly say any unreasonable failure by AXA to repatriate Mr H2 on day 8 is likely to have impacted on his recovery.

Mr H2 says he was told a better job could have been done, and the surgeons abroad had not been strong enough to fully reduce his fracture and had thrown a bone away. I've seen some of Mr H2's UK medical records which mention joint disruption unchanged since x-rays dating back to the time of his accident, and I understand a hospital in the UK was prepared to carry out further corrective surgery although Mr H2's doctors ultimately advised against this.

I've taken into account what Mr H1 and Mr H2 have said about a UK surgeon's written comments that "it was unfortunate that he was not managed in a centre of excellence where surgery could have been done sooner". I've also considered Mr H1 and Mr H2's comments about various aspects of the 2018 consultation with Mr T. But I've also considered Mr T's qualifications and the detail set out in his report. In particular, Mr T said:

"This was an extremely serious injury...and in my opinion the chance of obtaining a good result ie a comfortable hip with a prospect of being able to avoid hip replacement surgery for a good many years, was remote".

Mr T said the surgery Mr H2 underwent was gradually becoming regarded as a more specialised procedure but:

"...even in the most experienced hands it is not always possible to obtain an

anatomical reduction...The films which I have seen show that a less than perfect but probably acceptable reduction has been achieved...The surgical procedure was achieved without damage to the sciatic nerve which indicates a good level of technical expertise and the fixation did not fail and was not unduly prominent”.

In conclusion, Mr T said:

“It is my opinion that even if [Mr H2] had been transferred to a more specialist unit it is unlikely that there would be any long term significant change to the outcome ie left total hip replacement at a young age”.

Overall, I think Mr T’s report is persuasive evidence that earlier surgery and/or repatriation is unlikely to have a significant impact on Mr H2’s health.

compensation

Turning to the level of compensation which I think is appropriate in this case, Mr H1 and Mr H2 are both insured under this policy. This means they are both eligible complainants under our rules, so I can consider the impact of AXA’s actions on them both.

Taking into account the mistakes which I feel AXA made in this case, I have no doubt Mr H1 and Mr H2 will have suffered distress and inconvenience as a result.

If this complaint had come to me without any offer from AXA, I’d have made an award of compensation in the range of what this service considers ‘substantial’ (£500 - £2,000). AXA has already made an award at the top end of this scale.

I’m sorry to disappoint Mr H1 and Mr H2. I know this won’t be the outcome they were hoping for, especially having pursued their complaint for as long as they have. But I think the £2,000 compensation which AXA has already paid is fair and reasonable in the circumstances and I don’t intend to recommend that AXA should pay anything further.”

AXA responded to my provisional decision and said it had nothing further to add. Mr H1 and Mr H2’s representative replied to my provisional decision with detailed additional comments.

my 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 reviewed in detail the information provided and submissions made by both parties, but I haven’t addressed every point raised – nor am I obliged to. Instead, I’ve focused on what I think are the key issues. But I want to assure both parties that I’ve read and considered everything that has been sent to me.

When a complaint is brought to the Financial Ombudsman Service, an adjudicator or investigator will review what has happened and give an initial assessment about the case. This initial assessment sets out a non-binding opinion. The second and final stage of our process is for an ombudsman such as myself to review the case independently and impartially from the outset and make a final decision. An ombudsman’s final decision, if accepted by the consumer, is legally binding on both parties. If the ombudsman’s decision differs from the opinion given by the adjudicator or investigator – as mine does here – a

provisional decision will be sent first, to give both parties the opportunity to comment on the ombudsman's reasoning before a final decision is made. My provisional decision explained why I disagreed with several conclusions reached by our adjudicator.

I'm not bound to follow our adjudicator's findings. I'm also not bound by any discussions our adjudicator may have had with other colleagues, who didn't review all the submissions in their entirety. A final decision about a complaint is reached solely by the ombudsman who is deciding the case, after considering all the information available. No ombudsman, no matter how senior, can change another ombudsman's decision.

I understand Mr H1 and Mr H2's representative is disappointed that I haven't agreed with our adjudicator's conclusions, but my provisional decision sets out the detailed reasons why this is.

AXA's final response letter sets out an apology for various aspects of how it handled Mr H2's claim. I have the power to require a business to pay compensation for financial and non-financial loss, and compensation for non-financial loss is the appropriate remedy here. I've considered AXA's payment of £2,000 compensation as an overall award for everything that happened, taking into account all the circumstances. While I understand our adjudicator expressed this payment as being specifically for communication failings, when considering a complaint like this, our service wouldn't usually break compensation for non-financial loss down into separate sub-headings. Instead, we'd generally consider compensation as a global award for the overall distress and inconvenience experienced, and this is what I've done here.

In his response to my provisional decision, Mr H1 and Mr H2's representative has commented on some of the wording I've used in setting out the background to the case. My intention isn't to understate Mr H1 and Mr H2's complaint but, as an independent and impartial service, it's preferable that I outline the facts of what happened in neutral language.

Mr H1 and Mr H2's representative has also clarified various points around Mr H2's initial operation, his criminal injuries claim and his medical negligence claim. The background section of this decision sets out the facts as I have understood them from the information that was communicated to us. I'm sorry if this contains any inaccuracies but I don't think what the representative has said about these issues has a bearing on the outcome of the complaint.

There are a number of comments made by Mr H1 and Mr H2's representative in response to my provisional decision which I've already addressed and which I don't intend to repeat. These include:

- the initial indication that Mr H2 needed further corrective surgery on his return to the UK (although Mr H2's doctors ultimately advised against this);
- the suggestion that AXA delayed the claim because it was trying to avoid the costs associated with repatriating Mr H2;
- AXA's delays in confirming cover on receipt of the toxicology report (which I've already taken into account when considering what award of compensation I think is fair and reasonable in the circumstances);
- Mr H1 having to provide medical documentation to AXA himself;
- AXA's failure to communicate effectively with Mr H1 and Mr H2.

However, I do want to outline again what my role is when making a decision about this complaint. I haven't made any judgments about clinical negligence. What I've done is weigh up all the information available to me to decide whether I think AXA handled this claim and Mr H2's repatriation in a way that was fair and reasonable in the circumstances.

We're an informal dispute resolution service and we assess complaints impartially based on the evidence which is provided to us. Regardless of reasons why Mr T's report was commissioned, I think the report contains information which is relevant to the circumstances of this complaint. So, it's reasonable for me to rely on the content of this report when reaching my conclusions.

Complaints are brought to us so we can provide an answer to whether we think a business has acted fairly and reasonably in the circumstances, and it's for us to decide if we think we have enough information to reach a decision about a case. I'm satisfied AXA has attempted to obtain a further medical report but has encountered difficulties in doing so. I can understand why Mr H1 and Mr H2 are unhappy with this position but my powers to require AXA to obtain a report from a third party in circumstances where AXA has been unable to find a third party who is prepared to write such a report are limited. Based on the information I've seen, I think AXA has made reasonable endeavours to find an expert to provide a report, without success. And I think it's unlikely allowing AXA any further time to find an expert will result in a report being forthcoming. So, I've made my decision based on the information and evidence which is available to me at this time.

As Mr H1 and Mr H2's representative has correctly pointed out, we'd generally consider the opinion of a treating doctor to be persuasive medical evidence. But, particularly in a case where a customer has been admitted to hospital, I'd usually expect to see these opinions set out in writing so there is a documentary record of a customer's medical condition for the benefit of all involved. I don't think it was unfair or unreasonable for AXA to request medical reports in writing from the treating hospital. I've considered and given weight to the written reports which I've seen from Mr H2's treating doctors when making my decision. I haven't seen any information which would lead me to conclude that AXA was acting against the medical advice of Mr H2's treating doctors or that AXA should have had any concerns about the ability of the treating hospital to carry out the necessary procedure before day 4.

Mr H1 and Mr H2's representative has referred to a note from AXA's doctor on day 3 which says "...most important is an immediate reduction...". However, the doctor's comments go on to say clarification was needed about whether the treating hospital was adequate to perform surgery and, if so, it would not be necessary to repatriate Mr H2. While it's clear this doctor was saying an operation was needed, I don't think it's reasonable to interpret the comments quoted as medical advice that repatriation was necessary at that point. And I haven't seen any evidence that AXA played any part in delaying the operation being carried out abroad.

When AXA received details about the ability of the treating hospital to perform the procedure on day 4, I think this information was confusing and misleading. I appreciate Mr H1 and Mr H2's representative disagrees with the provisional conclusions I reached on this point and I've considered the extracts from the communication he has quoted. But the communication also says Mr H2 "...can be operate there [sic]...". So, when read overall, I don't think AXA interpreted this communication unreasonably. I've also noted the observations made by AXA's chief medical officer on the same day, but I think these need to be considered in the context of the information AXA had from the treating hospital at that point and the requests AXA's made for clarification from the hospital about whether it could perform the surgery

Mr H2 needed. Overall, I don't think it's fair to say AXA wasn't handling the claim reasonably at this stage.

I've reviewed all the evidence again in light of what Mr H1 and Mr H2's representative has said about where the mistake about the positive cannabinoid test originated. Based on the information I've seen, I remain satisfied that this mistake was made by the hospital and not by AXA.

I understand AXA didn't tell Mr H1 and Mr H2 what was causing the delay in confirming cover – it was waiting for the toxicology report, to clarify both alcohol test and drug test results. In my experience of dealing with complaints like this, it's usual practice for an insurer to liaise directly with the treating hospital to obtain information such as a toxicology report. As Mr H1 experienced, it can cause further distress to a customer at an already upsetting time if an insurer requests medical information via the policyholder. While it may have been better customer service if AXA had explained to Mr H1 what information it was waiting for from the hospital, even if it had done so, I don't think I can fairly say this is likely to have reduced the overall length of time it would have taken AXA to confirm cover. I say this because of the clear difficulties AXA was encountering in communicating with and obtaining information from the hospital. I'm not aware of whether AXA had any difficulties communicating with this hospital in previous cases. There's no indication it did but, even if that was the case, what's relevant here is what happened in Mr H1 and Mr H2's case and it's difficult to see how AXA could have dealt with the hospital any differently.

I agree with Mr H1 and Mr H2's representative that AXA didn't handle this claim in a fair or reasonable way after a certain point – but I think this was from day 8 rather than from any earlier date. An insurer isn't obliged to accept a claim on a disclaimer basis – this is something it may decide to do when handling a claim, based on its own commercial judgment. But there comes a point when I think it might have been reasonable for AXA to consider accepting Mr H2's claim on this basis and I think this was on day 8.

Mr H1 and Mr H2's strength of feeling is clear about what they think the consequences of AXA's actions on Mr H2 have been. However, I don't think the evidence I've seen supports a conclusion that repatriating Mr H2 on day 8 is likely to have resulted in a different medical outcome for him.

Mr H1 and Mr H2's representative has provided a contemporaneous handwritten note demonstrating AXA was told about the possibility of Mr H2 having been mugged on day 1. However, given the content of the police report and the circumstances of what happened, I remain of the opinion that AXA's further questions about this weren't unreasonable.

I've also considered Mr H1 and Mr H2's representative's comments regarding AXA's questions about Mr H1's position within the company who brands this insurance policy. I understand these concerns but there's no evidence Mr H2's claim would have been handled differently if Mr H1 was in a more senior role at that company.

Mr H1 and Mr H2's representative has raised concerns about the way in which AXA has handled his subject access request. But, as we've explained in separate correspondence, this isn't something we can provide any further assistance with at this point.

I want to emphasise that I don't in any way underestimate the effects of these unfortunate events on Mr H1 and Mr H2. I think it's clear there were failings by AXA in this case, but I think AXA's payment of £2,000 is fair and reasonable compensation for these failings.

This means I won't be changing my provisional findings, so I won't be directing AXA to do anything further.

my final decision

My final decision is that I don't uphold Mr H1 and Mr H2's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H1 and Mr H2 to accept or reject my decision before 30 April 2020.

Leah Nagle
ombudsman