

Before the Arbiter for Financial Services

Case No: 053/2019

NO & MI

(‘the Complainants’)

vs

Axeria Insurance Ltd (C55905)

(‘the Service Provider/Insurer’) and

April UK (Insurance Services) Ltd

Hearing of the 22 June 2020

The Arbiter,

Having seen the complaint whereby the Complainants complained about the fact that their health insurance policy has been cancelled after one year by April UK (Insurance Services) Ltd (‘April UK’) as a result of the Service Provider’s decision to withdraw from the UK private medical insurance market. They claimed that as a result of this, one of the Complainants no longer has cover for any re-occurrence of breast cancer, and the other has been forced to go into a 12-month NHS waiting list for an ankle fusion operation.

The Complainants stated that neither the Service Provider nor April UK have gone into liquidation and, indeed, are both very much still in business, and the withdrawal from the UK Health Insurance market was a planned choice that the Insurer made thereby forcing April UK to terminate their health insurance policy.

If there was not a legal obligation for the Service Provider to give notice to April UK of their intention to quit the UK private medical insurance market at least two months in advance, the Complainants questioned whether there was an ethical one so that the latter did not mis-sell insurance and make promises that

they could not keep. April UK's inability to continue insuring them beyond the first year meant that they had to move to another insurer on a Moratorium basis as opposed to a Continuation of Cover basis.

They claimed that they have moved from their previous medical healthcare insurer on the basis that April UK's premium would not be related to their claims thus providing greater pricing stability, as these would also be in line with their age, medical inflation and changing costs of meeting claims and would not rise dramatically when they reach the age of 70. April UK offered insurance on a Continued Medical Exclusion basis (switch) and Complainants insisted that this was particularly important as they wished to protect their existing medical history.

They received communication from April UK advising them of the cancellation whereby they have also been informed that AXA PPP Healthcare had agreed to offer them *'access to a new policy with a guarantee of no additional personal medical exclusions forming part of the agreed terms'*.

However, they maintained that their monthly premium payment would more than treble for such Continuation of Cover basis which meant that the insurance continuation that April UK offered them was completely beyond their financial reach.

The Complainants claimed that ethically, the Service Provider and April UK have acted in an unprincipled and unscrupulous manner which has caused both of them anxiety about their future healthcare and made it impossible to regain comprehensive healthcare cover in their later years, unless they spend approximately three times the price of healthcare cover originally provided by April UK, which cover will also rise annually.

They affirmed that the cancellation of April UK's policy had particularly implications for Shirley's future private health cover, namely any health problems previously covered by their previous insurers and by April UK would no longer be covered, and this includes problems relating to her knees, shoulders and feet as a result of osteoarthritis and, perhaps most importantly, breast cancer, unless they were able to pay the much-increased costs of AXA PPP Healthcare cover.

The Complainants argued that April UK didn't accept that they have any responsibility which is unreasonable as they made promises in their original contract with them that they have failed to keep. They claimed that the issue has had severe implications for their current and ongoing healthcare as they find themselves unable to receive timely, private healthcare for any pre-existing medical conditions that applied before taking up insurance with April UK as well as those that occurred during the year that they were insured with them and, instead, they have no other choice but to go onto a very long National Health waiting lists.

They stated that their monthly premium with April UK was £338.75, whilst the monthly like-for-like premium quoted by AXA PPP was £1,200, and hence the difference between the premiums is £861.25 per month, which makes £10,335 per annum. In this respect, since moratorium lasts for 5 years, they are seeking a settlement of £10,335 for 5 years, thus totalling £51,675.

Having seen the reply by the Service Provider which states that:

From the complaint filed with the OAFS dated 17 June 2019, and the documentation enclosed therewith (the 'Complaint'), it transpires that the basis for the Complainants' request for the compensation of GBP51,675.00, is linked to the Company's careful decision to withdraw from the UK Private Medical Insurance market, in the sense that the Company is no longer offering or renewing Private Medical Insurance in the UK. In this connection, the Complainants are alleging that the Policy was mis-sold to them.

In this regard, the Company refers to the key facts which were provided to the Complainants once the Policy was sold to them (vide Page 4 of the Policy document which is being enclosed herewith and marked as Document AXS1), which includes the following wording:

HOW LONG WILL MY COVER LAST?

Your policy will be arranged for 12 months from the start date on your Certificate of Registration provided that premiums have been paid by you. Before the end of your policy year, we will contact you to tell you the premiums and terms the policy will continue on, if the policy is still available. We will renew the policy on

*the new terms unless you ask us to make changes or tell us that you wish to cancel. **If the policy is no longer available, we will do our best to offer you an alternative (emphasis added).***

WHEN DOES MY POLICY END?

Your policy will cease:

[...] At the end of the policy year, if the policy you have is no longer available and we do not have an alternative policy to offer you.

Reference is also made to Document A enclosed with the Complaint in which the Complainants were clearly advised not to cancel their existing cover with their previous insurer until they receive their full policy documentation from APRIL UK, and have had the opportunity to review the content (vide Underwriting Basis paragraph).

It is very important to note that the Company respected to the full its commitments under the Policy. Although the Company's decision to withdraw from the UK market was communicated to the Complainants in September 2018 (6 months after effective date and 6 months before maturity date of the Policy), the Company honoured all the obligations under the Policy to the full up to maturity date, being 31 March 2019. In fact, once the decision to withdraw as aforesaid was taken by the Company, such decision was communicated to the Complainants in very clear terms in virtue of Document D and Document E enclosed with the Complaint.

Moreover, the Complainants were also offered an alternative in terms of the Policy, in that the Complainants were offered access to a new policy with AXA PPP healthcare at renewal of the Policy '*with a guarantee of no additional personal medical exclusions forming part of the agreed terms,*' (vide Document D and Document E enclosed with the Complaint).

In virtue of the said Document D and Document E, the Complainants were also clearly informed that the arrangement with AXA PPP healthcare offered to them did not provide for automatic policy renewal, but they had to specifically apply for it and the premium for the new policy was yet to be determined. This shows that neither APRIL UK nor the Company had any control or discretion in determining the premium calculated by AXA PPP healthcare.

It is pertinent to highlight that the Company's Policy wording and decisions are in line with the practice on the UK market insofar as Private Medical insurance is concerned.

In light of the above, we feel that there is no basis for which the Complainants can request compensation for GBP51,675.00 for the simple reason that the premia charged by the proposed insurer, being AXA PPP healthcare, are higher than those which were charged by the Company. After all, the Company proposed AXA PPP healthcare only as a suggestion in accordance with its obligations under the Policy and the Complainants were under no obligation to continue their Policy with AXA PPP healthcare. The fact that the Complainants were disappointed with the Company's decision as explained herein above, shall not render the Company responsible for any mis-selling as is being alleged by the Complainants in their Complaint.

The Company's position is therefore such that the Complainants' request for compensation is without doubt not justified and should not be upheld as the Company fulfilled all its obligations under the Policy and, accordingly, the Company should not be held liable to pay any compensation to the Complainants and any costs relating to the Complaint.

Having seen the statements and the evidence submitted by both the Complainants and the Service Provider

Considers

Preliminary

The Arbiter notes that the complaint has been filed both against **Axeria Insurance Ltd (C55905) and April UK (Insurance Services) Ltd.**

Since April UK (Insurance Services) Ltd is neither licensed nor authorized by the Malta Financial Services Authority and does not fall within the definition of '*financial services provider*' within the terms of Chapter 555 of the Laws of Malta, the Arbiter does not have competence to decide in its regard. This without prejudice to the right of the Complainants to file a complaint on the same matter with the UK Financial Services Ombudsman or in any other relevant forum.

Consequently, the Arbiter will decide this case in relation to Axeria Insurance Ltd only.

MERITS OF THE CASE

The main issue being contested in this complaint is what is being referred to by the Complainants as the cancellation of health insurance following the Service Provider's decision to withdraw from the UK private medical insurance market, which decision has had severe implications on their current and ongoing healthcare.

On the other hand, the Service Provider argued that the Key Facts which were provided to the Complainants once the policy was sold to them, clearly included reference to the fact that the policy will be arranged for a period of 12 months and, amongst others, should the policy be no longer available, they will do their best to offer an alternative. The Service Provider emphasised further that they have honoured all the obligations under the Policy up to the maturity date and that the Complainants were also offered an alternative in terms of the Policy which, however, did not provide for automatic policy renewal.

The Arbiter shall determine and adjudge the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.

The Arbiter notes that in the complaint form, the Complainants indicated both Axeria Insurance Ltd and April UK as the financial service providers they are complaining against. For the sake of clarity, it must be noted that Axeria Insurance Ltd are the underwriters whereas April UK is the company which sold the policy to the Complainants.

Since the Arbiter has already decided that he has no competence in relation to April UK, he will deal with the allegations levelled against Axeria Insurance Ltd.

It has to be underlined from the outset that Axeria Insurance Ltd, being the underwriters of the policy, are bound by the terms contained in the policy document.

The *Policy Summary/Key Facts* which form part of such Policy Document clearly state that:

“Your policy will be arranged for 12 months from the start date on your Certificate of Registration provided that premiums have been paid by you. Before the end of your policy year, we will contact you to tell you the premiums and terms the policy will continue on, if the policy is still available. We will renew the policy on the new terms unless you ask us to make changes or tell us that you wish to cancel. If the policy is no longer available, we will do our best to offer you an alternative.”¹

The term *policy year* in the above caption is also specifically defined in the policy as:

“An annual contract commencing from the start date or annual renewal date on the policyholder’s Certificate of Registration.”²

On the expiration of such twelve-months’ contract, it is at the discretion of the insurer, that is, Axeria Insurance Ltd, to determine whether to renew such contract or not, and if so, on what terms.

Based on the above statements, it is factually clear that the policy was a twelve-month contract, which therefore implies that the Service Provider has acted in line with the terms of the policy.

It results that this is not an issue of cancellation – it is simply a matter where, on the expiration of the twelve-month contract, which is also considered as the renewal date, the policy has not been renewed.

The correspondence sent to the Complainants is a proof of this, whereby the latter were informed that:

“There is no impact on your policy at present. You will remain covered by your policy until the renewal date shown above and all claims for treatment received up to this date will be processed in accordance with the terms and conditions of your policy. However, on your renewal date, your APRIL UK policy cover will end.”³

¹ a fol. 37

² a fol. 40

³ a fol. 14

It would have surely been considered a breach by Axeria Insurance Ltd should they have, for no justified reason, decided to terminate the policy prior to the renewal date. However, this was not the case.

In view of the above, the Arbiter cannot conclude that Axeria Insurance Ltd has breached or failed to honour its obligations according to the policy and was in its rights not to renew the policy after it had expired.

The question of alleged '*mis-selling of the policy*' by April UK cannot be considered by the Arbiter for the above-stated reasons relating to his competence.

In light of the above, the Arbiter cannot uphold this complaint.

Due to the special nature of this case, each party is to bear its costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services