

Consultant 235

26 April 2013

Dear Ms Hawes

I am a consultant anaesthetist and am writing to submit comments to the Competition Commission (CC) in relation to the ongoing private healthcare market investigation.

I note from the CC's website that next month is the deadline for all submissions prior to the issue of provisional findings and so I would ask that you take account of my comments in formulating these findings.

The issue I would like to raise relates to the conduct of AXA PPP, which is threatening to "derecognise" me if I do not agree to reduce my fee for sedation/anaesthesia for [redacted] surgery to their maximum allowance. Their maximum allowance is about half my usual fee.

At present, AXA PPP patients are free to make up any shortfall between my fee and AXA PPP's demands, I would be restricted from making such shortfall charges to patients.

I understand that AXA PPP is taking a similar approach with other consultants. As well as seriously affecting the livelihood of myself and other consultants, this conduct is entirely adverse to the interests of patients because it restricts their choice of consultant and puts at risk the level of care they receive. Clearly, therefore, it is an issue that the CC should seek to remedy as part of its investigation.

I set out below some further background information about my role, my concerns in relation to AXA PPP's conduct, the relevance of this issue to the CC's investigation and what I believe the CC should do.

My background

I am a consultant anaesthetist at [redacted], but only a minority of my work is in the NHS.

Approximately 75% of my work is in the private sector. Amongst those who refer patients to me, I have received regular referrals (for more than a decade) from two orthopaedic surgeons and two ophthalmologists. [redacted]

My fees for private work are notified in advance to patients and the patients either settle directly with me and then make a claim from their private medical insurance company, or they send the bill straight to the insurance company which pays me what it allows for anaesthesia. If there is a shortfall, the patient is responsible for meeting it.

In relation to my work with the two ophthalmologists, my fee for [redacted] procedures has remained unchanged for more than ten years at £300-£350. I believe this fee is entirely fair and reasonable and reflects my time and expertise in looking after this patient group. I understand that my fee is no higher than that charged by many other consultants undertaking similar work.

The technique usually involves deep sedation with local anaesthesia (but it may be general anaesthesia) with the level of attention and monitoring pre, intra and post operatively, being the same regardless of the mode of anaesthesia, and requiring the very highest standard of care. Patients are always advised of my name and fee for anaesthesia at the time of booking the procedure with the surgeon, and I am the usual anaesthetist for the surgeons with whom I have established regular working relationships.

My concerns

As explained above, patients are currently free to decide to meet any payment shortfall between AXA PPP's maximum allowance and my fee for sedation/anaesthesia for [✂] surgery.

However, AXA PPP have now written to me requiring me to reduce my fee to no more than their maximum allowance (which is £175). In other words, patients would no longer have the option of paying to-up fees. I have been told that I will be "derecognised" by AXA PPP if I do not agree to do this. In essence, AXA PPP are no longer prepared to allow their patients the choice to make up any payment shortfall.

It is worth noting in this context that my fee for sedation/anaesthesia for [✂] surgery is in fact less than that provided for by at least one other private medical insurance company.

"Derecognition" means that AXA PPP will write to all the surgeons with whom I work or may work to say that it will not pay any charges (ie my charges and those of the surgeon) if I am involved. I understand that this will apply to all surgical specialties, not just ophthalmology. Ophthalmology represents only a minority work, so that if AXA PPP write to all my referrers, it appears that the referrers will no longer be able to refer any work to me, even work where my fees do not exceed the maximum level imposed by AXA PPP. My entire practice would be devastated by this, since AXA PPP are, of course one the largest private health insurers in the country, and I would no longer be able to accept work for their members.

Being "derecognised" by AXA PPP would thus have a direct effect on my income and reputation, as all AXA PPP patients will be directed away from any surgeon with whom I work, or may work. Moreover, there is a significant risk that surgeons will not want the administrative complication of having to separate AXA PPP patients from other patients – such that I will lose my work for all private patients, not just those insured by AXA PPP.

As you will understand, I am very concerned that AXA PPP intends to "blacklist" me in this way. [✂]

Relevance to the CC's investigation

I appreciate that the CC's remit is not to consider individual cases. However, my understanding is that AXA PPP is adopting similar approach in relation to other consultants – and so its conduct will have a significant impact on the market as whole.

I note from the CC's annotated issues statement published on 28 February 2013 that one of the theories of harm you are considering is the "*buyer power of insurers in respect of individual consultants*".

Specifically, at paragraph 110, the CC states that "*Bupa in particular, and Bupa and Axa-PPP together, represent a very large proportion of the private market for consultants. As such, they have a significant effect on the operation of the market as a whole*".

It is clear that AXA PPP is seeking to use its buyer power to try to force me and other consultants to agree not to charge patients for shortfalls in fees. If we do not, we face "derecognition".

Even though the consequences of "derecognition" are significant, I would expect there will be other consultants who will seek to resist AXA PPP's demands. In practice, most of these consultants are likely to be the more established and experienced consultants who are prepared to run the risk of "derecognition". If they are "derecognised", this will mean that

these consultants will no longer be available to patients insured by AXA PPP, reducing patient choice and putting at risk the level of care these patients receive.

Put simply, AXA PPP insured patients will be deprived of the ability to choose the consultant they want.

I note that the issue of consultants being restricted from charging shortfall payments (or “top-up fees” using the CC’s terminology) is considered in the CC’s annotated issues statement, with the CC concluding that:

“We are concerned that these practices can be expected to lead to a reduced choice of consultants available to patients insured by these insurers”; and

“Our current thinking is that the buyer power of Bupa, or of Bupa and Axa-PPP together, restricts patients choice in the market for consultants through the prevention of ‘top-up’ fees”.

For the reasons I have explained above, I consider that the CC’s concerns are entirely merited.

What should the CC do?

Given the significant adverse effects on patients associated with consultants being restricted from charging shortfall payments, the CC should seek an undertaking from the insurance companies preventing them from imposing such restrictions. If the companies are not prepared to give such undertakings, the CC should put in place an order to this effect.

More generally, I believe the buyer power of AXA PPP and the other private medical insurance companies requires further detailed scrutiny. If the CC is not able to undertake this level of scrutiny as part of its current investigation, I would urge the CC to recommend that the OFT conduct a market study of the private medical insurance market as a matter of urgency.

If I can be of any further assistance on this issue or you would like any further information, please do not hesitate to contact me.