

The complaint

Mrs M complains about the decision by Aviva Insurance Limited to turn down her private medical insurance claim.

What happened

Mrs M joined a group private medical insurance scheme on 1 April 2020. Later that year, Mrs M went ahead with dental surgery. She asked Aviva to cover the cost of this.

Aviva turned down the claim. It thought Mrs M's treatment was excluded under the policy. Aviva also said that even if the treatment had been eligible, Mrs M's specialist didn't meet its definition of a specialist. However, Aviva offered Mrs M £50 compensation for not providing her with a copy of the policy terms when she initially requested this.

Unhappy with Aviva's claims decision, Mrs M brought a complaint to this service.

I issued my first provisional decision on 16 February 2022. In that decision I concluded that Aviva couldn't rely on the following exclusion:

"Any dental treatment not involving an oral surgical procedure, including:

...

- dental implants, or treatment carried out to insert or help you wear dental implants"*

The reason for that was because Mrs M's treating specialist (Mr S) had made it clear that her dental treatment did involve oral surgical procedures.

However, I thought it was reasonable for Aviva to rely on the below second exclusion:

"Spectacles; contact lenses; hearing aids; dentures; other optical, dental, surgical or medical appliances or equivalent appliances (other than a prosthesis inserted into the body during the course of a surgical procedure)."

The reason for that was because I agreed with Aviva that the dental implant would be considered a dental appliance.

I asked the parties for any comments they wished to make on my provisional findings. Mrs M responded to say she didn't accept my position that her claim fell under the exclusion for dental appliances. First of all, Mrs M made the point that if someone had eye cancer, then the treatment for this wouldn't be excluded because they may need spectacles after, and only the cost of the spectacles should be excluded. Secondly, she thought the dental implant would be considered a prosthesis.

I issued a second provisional decision on 8 April 2022. Here's what I said:

"I've noted Mrs M's view on the exclusion for dental appliances in relation to physical items, but I don't agree. Mrs M has given an example where someone has eye cancer, and made the point that the treatment itself wouldn't be excluded, simply because that person may need spectacles after the treatment.

It might be helpful if I explain that the policy covers the treatment of acute conditions. An acute condition (as defined in the policy) is a disease, illness or injury that's likely to respond quickly to treatment.

Therefore, to use Mrs M's example, if someone needed treatment for eye cancer then I agree this treatment wouldn't fall under the exclusion for appliances. The treatment would be covered because it would be for an acute condition. If the person needed spectacles after the treatment, then the cost of those spectacles would fall under the exclusion.

However, Mrs M's situation differs from this example. That's because the treatment needed (the sinus surgery and the repositioning of the nerve) is only necessary to allow the dental implant to be placed in her jawbone. In other words, the treatment isn't needed for an acute condition, and is solely to allow the insertion of the dental implant.

I've also considered Mrs M's argument that a dental implant is akin to a prosthesis. I thought this was balanced. It could be argued that the dental implant replaces the root of the replacement tooth and therefore could be considered a prosthesis. However, it could also be argued that it's the crown that's later fitted to the dental implant which replaces the body part (the tooth). The dental implant merely provides the anchorage for the crown to be fitted.

I therefore asked Mrs M to obtain Mr S's view on the matter. He's said he considers both the implant and the crown to be a prosthesis. I will accept his view on this. Therefore, whilst I remain of the opinion that the implant would be considered a dental appliance, there's an exception within the exclusion for a prosthesis inserted into the body during the course of a surgical procedure. Based on Mr S's evidence, I'm satisfied the implant would fall under this exception.

The remaining issue is that Mr S isn't recognised by Aviva. However, we've checked with Aviva and it says that if Mrs M had required an eligible oral surgical procedure, then cover would've been available with a recognised oral maxillofacial surgeon in a hospital list covered by Mrs M's policy.

I've found that Mrs M did require an eligible oral surgical procedure. I've looked at Aviva's claim notes to see what happened, and I see that Mrs M called Aviva to make a claim before she had the treatment, and was told her claim was excluded. She therefore had the treatment with Mr S.

Mrs M has confirmed that if Aviva hadn't said her claim fell under the relevant exclusions, she would've been happy to have had the treatment with a specialist recognised by Aviva. It seems to me she was denied this opportunity because Aviva wrongly turned down the claim.

Therefore, on a fair and reasonable basis, I intend to require Aviva to pay the claim."

I asked both parties to provide any further comments they wished to make before I made a final decision.

Mrs M didn't have any further comments.

Aviva responded with the following points:

- The policy is designed to cover treatment of acute conditions. It says the claim isn't eligible because there isn't an acute condition being treated, and instead the treatment is only necessary to allow the dental implant to be placed in the jawbone.
- It clarified that it doesn't recognise dental specialists, and only recognises oral maxillofacial specialists as these meet its criteria of a specialist.
- Neither Mr S nor the clinic where he works are recognised by it.

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.

Aviva has referred to a statement in my provisional decision which said that the sinus surgery and repositioning of the nerve weren't needed for an acute condition, and were solely to allow the dental implant to be placed in Mrs M's jawbone.

To clarify, I meant the sinus surgery and repositioning of the nerve weren't necessary for acute conditions relating to the sinus or the nerve. They were instead to allow the insertion of an appliance. This statement related to Mrs M's argument that the relevant exclusion couldn't be relied upon where someone had a medical need for treatment as well as spectacles, but the spectacles would be excluded.

Aviva hasn't previously said that it doesn't think Mrs M's treatment was for an acute condition, but I've considered this.

The policy defines an acute condition as:

"A disease, illness or injury that is likely to respond quickly to treatment which aims to return you to the state of health you were in immediately before suffering the disease, illness or injury, or which leads to your full recovery."

Mrs M has explained that her tooth broke suddenly which left her in excruciating pain. Her tooth couldn't be repaired, and so the only solution was the dental implant. I'm satisfied this injury would fall under the above definition of an acute condition. The treatment for this acute condition was the dental implant. The sinus surgery and repositioning of the nerve were necessary to allow the insertion of the dental implant.

Aviva has again pointed out that neither Mr S nor the clinic were recognised by it. I accept that. Though as I explained in my provisional decision, Aviva incorrectly turned down Mrs M's claim at the outset. If it hadn't done so, then I'm satisfied Mrs M would've had the treatment with a specialist recognised by Aviva, and in a recognised facility. Consequently, I remain of the view that Aviva ought to pay the claim on a fair and reasonable basis.

My final decision

My final decision is that Aviva Insurance Limited should pay the claim. As Mrs M has paid for the treatment herself, Aviva should reimburse her directly. Interest should be added at the rate of 8% simple per annum from the date Mrs M paid the invoice to the date of settlement.

If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a

certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 May 2022.

Chantelle Hurn-Ryan
Ombudsman