

The complaint

Mr and Mrs S are unhappy that AWP P&C SA has declined a claim they made on a private medical insurance policy.

What happened

Mrs S has an aggressive form of Multiple Sclerosis (MS). She's been receiving treatment but developed new lesions which indicated that the treatment was failing. She was considered for a form of stem cell treatment called Haematopoietic Stem Cell Transplantation (HSCT).

HSCT was available to Mrs S on the NHS but there was a backlog of over four to six months. So, she sought cover for the treatment under a group private medical insurance policy. The claim was declined on the basis that it was experimental or unproven. Mrs S complained but AWP maintained their decision to decline the claim. So, she made a complaint to the Financial Ombudsman Service.

Our investigator looked into what had happened. She didn't think AWP had acted unfairly when the claim was declined. Mrs S didn't agree and asked an Ombudsman to review her complaint. In summary, she said that HSCT was part of recommended treatment for MS.

In October 2023 I issued a provisional decision. I said:

AWP has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions say that there is an exclusion for experimental or unproven treatment or drug therapy which is defined as:

Any form of treatment or drug therapy which in our reasonable opinion is experimental or unproven, based on generally accepted medical practice.

Neither 'experimental' or 'unproven' is further defined by the policy. So, there's no further clarification in the policy about what criteria is used to determine if a treatment is experimental or unproven.

Based on the available evidence I'm not persuaded that AWP has fairly relied on this exclusion. That's because I don't think it was reasonable to conclude the treatment was experimental or unproven.

Mrs S could have been offered the treatment on the NHS. The letter from her specialist sets out why Mrs S met the relevant criteria for HSCT treatment on the NHS. It also explains that there are currently a number of NHS centres offering treatment in the UK and that over 300 procedures have been carried out. I'm satisfied that Mrs S's consultant has particular expertise in this area and note that he is a UK lead for the European group for Blood and Marrow Transplantation for autoimmune conditions.

There's no evidence that Mrs S was referred to a clinical trial – she was considered

eligible for HSCT treatment due to the failure of the other treatments. The NHS has criteria for who can access HSCT, but I don't think that automatically means the treatment is experimental or unproven. The fact that it's available on the NHS makes me think it's most likely to no longer be considered experimental or unproven.

I've also taken into account the NICE guidelines which say that further research into HSCT has been discontinued. However, I bear in mind that the treatment is now available on the NHS. And Mrs S's consultant has explained that the treatment has been commissioned in the NHS since 2011. He's also said that the NICE guidelines are currently in draft so will refer to HSCT in the future. In any event, I find the other evidence provided by Mrs S's consultant persuasive. So, I've placed more weight on the evidence from the consultant than the information in the NICE guidelines. And, as I've outlined above, there's no requirement in the policy for the treatment to be subject to the NICE guidelines.

In the particular circumstances of this case, I don't think it's reasonable to conclude the treatment is experimental or unproven.

Putting things right

AWP needs to put things right by:

- Settling the claim in line with the remaining policy terms
- Paying 8% simple interest per annum from the date the claim was rejected until the date of settlement.

If AWP considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give Mr and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Mr and Mrs S said that they didn't have anything further to add and believed that I'd interpreted the evidence in the way they understood it. AWP didn't respond to my provisional decision. So, I need to make a final decision.

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.

As AWP and Mr and Mrs S haven't added any further substantive comments there's no reason for me to reach a different conclusion to those which I reached in my provisional decision.

I remain persuaded, for the reasons I've outlined in my provisional decision and above, that AWP unreasonably declined the claim. So, I'm upholding this complaint.

Mr and Mrs S ought to be aware that they may need to provide further documentation to AWP to enable them to assess the claim.

Putting things right

Within 28 days from the date on which the Financial Ombudsman Service notifies AWP that Mr and Mrs S have accepted my final decision it needs to put things right by:

- Settling the claim in line with the remaining policy terms
- Paying 8% simple interest per annum from the date the claim was rejected until the date of settlement.

If AWP considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs S how much it's taken off. It should also give Mr and Mrs S a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr and Mrs S's complaint and direct AWP P&C SA to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 17 November 2023.

Anna Wilshaw
Ombudsman