

The complaint

Mr and Mrs T complain that Aviva Insurance Limited hasn't settled a claim Mr T made on a personal private medical insurance policy.

As Mr T brought the complaint to us, I've referred mainly to him.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr and Mrs T took out a personal private medical insurance policy through a broker in January 2019. The policy was underwritten on moratorium terms. This meant Aviva wouldn't cover any conditions Mr and Mrs T had had in the five-year period before the policy began unless they'd been 'trouble-free' for a continuous two year period after the start of the contract.

In March 2023, Mr T was referred to a specialist for chronic hip pain. Aviva authorised Mr T to undergo an initial consultation and diagnostic tests. Mr T saw a consultant who concluded that Mr T needed both hips replaced and who scheduled Mr T to undergo left hip surgery on 15 June 2023.

Mr T subsequently spoke with Aviva in mid-April 2023. While on 19 April 2023, Aviva wrongly sent Mr T an email confirming full cover, later the same day, Aviva discussed the claim with Mr T again. Mr T let Aviva know the planned date of the surgery. During the call, it was established that Mr T had had left hip pain since 2013; that he'd had an x-ray in 2020 and that he'd likely had physiotherapy for the condition in 2022. So the call handler explained to Mr T that his claim might not be covered and that Aviva would need to obtain further medical evidence to assess the claim.

Aviva wrote to Mr T's GP to ask for medical information. This evidence was received on 12 June 2023 and indicated that Mr T's claim for left hip replacement was caught by the terms of the moratorium. On 13 June 2023, the treating hospital called Aviva to check whether Mr T's claim was covered. Aviva stated that the claim hadn't yet been authorised.

It reviewed the evidence and told Mr T that his claim for left hip surgery wasn't covered on 16 June 2023. However, Mr T had undergone surgery the day before.

Mr T was very unhappy with Aviva's position and he asked us to look into his complaint.

Our investigator thought Aviva had made it sufficiently clear to Mr T during its calls with him that his claim hadn't been authorised and that it was waiting for information. He noted that Mr T hadn't called Aviva back before proceeding with the operation. So he didn't think Aviva had led Mr T to believe that his operation was covered and he felt Mr T had chosen to go ahead with the surgery knowing that it might not be paid.

However, the investigator considered that Mr T had made the date of his surgery clear in

mid-April 2023. He felt therefore that Aviva should have made more efforts to chase the surgery for the medical records to allow it to assess the claim. So he didn't think Aviva had met its regulatory obligation to handle Mr T's claim promptly and he recommended that Aviva should pay Mr T £100 compensation.

Aviva accepted the investigator's recommendation but Mr T did not. So the complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Mr T, I think the fair outcome to this complaint is for Aviva to pay him £100 compensation and I'll explain why.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the policy terms and the available evidence, to decide whether I think Aviva handled Mr T's claim fairly.

The policy terms and conditions

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr T and Aviva. Mr T took out the policy on moratorium terms. Pages 24 and 25 of the policy terms explain what Aviva means by moratorium underwriting as follows:

'We do not cover treatment of any pre-existing condition, or any related condition, if you had:

- symptoms of*
 - medication for*
 - diagnostic tests for*
 - treatment for, or*
 - advice about*
- that condition in the five years before you joined the policy.*

However, we will cover that condition if you do not have:

- medication for*
 - diagnostic tests for*
 - treatment for, or*
 - advice about*
- that condition during a continuous two year period after you join the policy.*

With mori underwriting the claims process may take a bit longer, as each time you make a claim we'll look at your medical history, and may ask for information from your GP, to understand if your symptom or condition is new or pre-existing.'

In this case, the medical evidence shows that in March 2023, Mr T was referred to a specialist for chronic left hip pain, which affected his mobility. It seems he'd had an x-ray in 2013, which showed degenerative changes. The GP's referral stated that Mr T had had an x-ray in September 2020. The notes suggest that Mr T's symptoms had worsened since 2013 and that there'd been progression of osteoarthritic changes in his left hip. The GP's 2023 referral letter also said that Mr T had seen physiotherapists but that he hadn't found the exercises helpful. And during a call with Aviva, Mr T indicated that he'd last seen a

physiotherapist about a year beforehand – in 2022.

Based on that evidence then, it seems that Mr T had experienced symptoms of left hip pain in the five years before the policy was taken out, that he had a pre-existing diagnosis of osteoarthritic hip changes and that he hadn't been 'trouble-free' for a continuous two year period after the policy began. I say that because Mr T had had an x-ray around eighteen months after the cover started and it seems that he saw a physiotherapist broadly two years later. So I don't think Aviva acted unreasonably when it concluded that Mr T's claim was specifically excluded by the terms of the moratorium. And as such, I don't think it acted unfairly when it decided the claim wasn't covered.

Did Aviva lead Mr T to believe his claim would be paid?

Like the investigator, I've listened carefully to the calls between Mr T and Aviva dated 18 and 19 April 2023. During the call of 18 April, the call handler clearly explained that Mr T had only initially been authorised for an initial consultation and diagnostics and that Aviva would need to reassess the claim for treatment. They also explained that Aviva would need medical evidence. It seems to me that Mr T understood what the call handler had said. And I don't think I could fairly find that Aviva led Mr T to believe his surgery would be covered during this call.

I accept that on 19 April 2023, Mr T was sent an email which confirmed full cover. However, only a short while later, on the same day, Aviva called him. In brief, the call handler clearly explained the way the moratorium worked and outlined their concerns as to why Mr T's claim for surgery might be caught by it. They explained that they'd ask Mr T's GP for medical evidence so that Aviva could assess whether or not the claim was covered. Again, in my view, Mr T seemed to understand what the call handler had told him. So I think he ought reasonably to have known not only that Aviva hadn't authorised the surgery but also that there was a real possibility that the claim might not be covered.

I can't see any further communication between Mr T and Aviva before he underwent surgery. I've seen nothing to suggest that after 19 April 2024, Aviva told Mr T his surgery would be covered. And I've listened to a call dated 13 June 2023 between the treating hospital and Aviva. During the call, the hospital asked whether the surgery would be covered. Aviva made it clear that the claim hadn't yet been authorised. So I think Mr T ought to have known that the surgery hadn't been authorised and that if he proceeded with it as planned, there was a chance that he could be liable for the costs. Given the cost of the surgery and given Aviva's stated position only two days before the scheduled date of Mr T's operation, I think it might have been reasonable for Mr T to have checked with Aviva before going ahead with it.

On that basis, overall, I don't think I could reasonably conclude that Aviva led Mr T to believe that his claim would be paid or that Mr T relied on any misinformation by Aviva to his detriment.

Aviva's handling of the claim

As the investigator explained, Aviva suggested that it couldn't have known the date of Mr T's scheduled operation. I don't agree. During the call of 19 April, Mr T told the call handler that the surgery had been booked for 15 June 2023. So I think it had been put on notice that there was a timeframe of around six weeks to obtain the GP records, assess them and provide Mr T with a claims decision. I think the records were requested reasonably promptly. And I don't think I can hold Aviva responsible for delays in the GP practice sending the relevant information. I'm aware too that Aviva did chase the practice.

With that said, I think Aviva could have chased the GP more often than it did and stressed

the urgency of obtaining the information. And I note from the date stamp on the evidence that it was received by Aviva on 12 June 2023 – three days before the surgery. So I think, in the circumstances, it could have assessed the evidence more urgently than it did and communicated its decline decision to Mr T ahead of the surgery to manage his expectations.

This means I don't think Aviva met its regulatory obligation to handle Mr T's claim promptly. So I need to decide what I think fair compensation should be. As I've explained above, I'm satisfied the policy didn't cover Mr T's surgery. And I'm satisfied Aviva made it sufficiently clear to both Mr T and the treating hospital that it hadn't authorised the claim. Moreover, I think Mr T had been made aware that the claim might not be covered and why. So I don't think it would be fair or reasonable for me to direct Aviva to pay this claim.

In the circumstances, I think Mr T was caused a modest amount of upset and inconvenience by Aviva's failure to chase up the records as often as it could have done. So I too think that the £100 compensation that Aviva has now agreed to pay is fair, reasonable and proportionate to reflect the impact of that error on Mr T.

Putting things right

I sympathise with Mr T's position because I appreciate he's liable for the significant costs of the surgery. But overall, I'm satisfied that the fair outcome here is for Aviva to pay him £100 compensation.

My final decision

For the reasons I've given above, my final decision is that I uphold this complaint in part.

I direct Aviva Insurance Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 30 August 2024.

Lisa Barham
Ombudsman