

## **The complaint**

Mrs R is unhappy with how Vitality Health Limited handled a claim made under a private medical insurance policy to cover the costs of a (revision) total wrist arthroplasty, including its ultimate decision to not cover the claim without further evidence.

## **What happened**

Many years ago, Mrs R underwent a total wrist replacement, following a failed wrist fusion.

In 2022/2023 she had increased swelling and pain in her wrist and arm, with associated pins and needles in her fingers. Diagnostic tests confirmed a loose replacement component in the wrist, polyethylene synovitis and a lot of bone osteolysis. Her consultant orthopaedic surgeon ('Mrs R's consultant') advised in September 2023 that there were two options; removal of the arthroplasty and wrist fusion with a large bone block or a revision total wrist replacement.

Mrs R chose the second option and Mrs R's consultant advised that the revision procedure would most likely involve a particular wrist prosthesis. She was advised of the risks and Mrs R's consultant confirmed that whilst they'd done many wrist replacements before, they hadn't done a revision procedure using this particular wrist prosthesis.

Ultimately, Vitality said without a multi-disciplinary team assessment, it wouldn't cover the procedure under the policy. Mrs R ended up having the procedure on the NHS with the same consultant orthopaedic surgeon.

She's very unhappy that her claim wasn't covered by Vitality and that it delayed making a decision, insisting on a multi-disciplinary team assessment which she says wasn't needed - or alternatively had already occurred but the advice of the multi-disciplinary team wasn't accepted by Vitality.

So, Mrs R brought her complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold her complaint. Mrs R disagreed and raised a number of points in reply. These didn't change our investigator's opinion, so I've been asked to consider everything afresh and make a 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.

The Insurance Conduct of Business Sourcebook ('ICOBS') says insurers must act fairly and promptly when handling claims made under the policy. And it mustn't unreasonably decline a claim.

At the outset, I acknowledge I've only summarised the points made by Mrs R – and in my own words. I won't respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to be able to fulfil my statutory remit.

Further, so that everyone is clear, I've only considered the complaint points raised by Mrs R up to the date of Vitality's final response letter dated November 2023.

### **The relevant terms of the policy**

The policy terms say Vitality won't pay for certain treatments and that includes:

Treatment...which, based on established medical practice in the UK:

- is considered to be unproven, or
- for which no standard treatment protocol exist, or
- for which there is insufficient evidence of safety or effectiveness

Please see "Treatment that is not established medical practice in the UK"...for further information.

The section on "Treatment that is not established medical practice in the UK" says:

The plan does not generally cover... treatment that is not considered to be established medical practice in the UK, or where there is insufficient evidence of safety or effectiveness. This includes... treatment that has not been reviewed and approved for general use in the NHS.

However, we may consider a contribution towards the costs of such treatment where this is part of a properly controlled UK clinical trial or where we believe there is adequate evidence that the treatment is safe and effective. We would expect any treatment to be recommended by an appropriate multidisciplinary team (MDT).

An MDT is a group of professionals from one or more clinical disciplines who together make decisions regarding recommended treatment of individual patients.

You must contact us before undergoing treatment to check what we will cover.

### **Has Vitality acted fairly and reasonably?**

From what Vitality says it doesn't seem to dispute that the surgery Mrs R wanted covered (and would be considered 'treatment' under the terms of the policy) is established medical practice in the UK, albeit it says that it was rare and complex.

I'm not a medical expert but from the medical evidence I've been provided (which I refer to in more detail below), I'm satisfied that Vitality has fairly concluded that a revision total wrist replacement with a prosthesis is a rare and complex procedure.

Vitality also says it's UK established medical procedure to have multidisciplinary involvement in complex hand and wrist surgery (like the procedure Mrs R wanted covered). And until a multidisciplinary assessment had taken place, it wasn't able to confirm whether the procedure would be covered.

It's relied upon the following in support of its position:

- guidance issued by The British Society of Hand Surgery and the National Clinical Strategy for Orthopaedic Surgery 2022 (hand and wrist surgery) about MDTs.
- advice from its medical affairs team – including its medical director – which said the proposed procedure was rare and there is limited guidance. I've seen evidence that Vitality's medical affairs team met towards the end of October 2023 and concluded that if the procedure did go ahead, it should be carried out at a highly specialised centre and a proper MDT, panelled appropriately, should take place. It concluded that the MDT should include the clinical recommendations, who should undertake the procedure and where the procedure should take place. Vitality's medical director also said that the MDT has a governance role to ensure the quality and safety of care by overseeing and monitoring the impact of treatment decisions made by individual clinicians particularly in complex cases.

Mrs R has provided evidence from another consultant orthopaedic consultant (a consultant that Vitality recommended to her when considering this claim and who it described as "a leader in national and international hand surgery"). This consultant confirmed that there was no requirement for a MDT assessment and The British Society of Hand Surgery isn't a regulatory body so isn't able to make that recommendation.

However, importantly I find in this case, this consultant goes on to say: "nevertheless, revision wrist replacement is complex procedure, and I would readily and routinely discuss the management of particularly difficult cases with other colleagues and would sometimes engage a second surgeon to help with the procedure".

So, in the circumstances, I find that Vitality has acted fairly and reasonably by asking for a MDT assessment to take place before they could further consider covering the claim. I think the overall evidence is consistent with Vitality's position that it's established medical practice in the UK for a MDT assessment to take place when considering the type of procedure Mrs R sought cover for under the policy.

The parties disagree about whether The National Institute for Health and Care Excellence (NICE) has issued guidance for this type of procedure.

The policy terms don't make specific mention to the NICE guidelines. However, I'm satisfied that any applicable NICE guidance would be a relevant consideration to take into account in the circumstances of this case when considering whether treatment is established in the UK. That's because as stated in an email from NICE to Mrs R dated March 2023: "NICE's role is to balance best care with value for money across the NHS...providing rigorous, independent assessment of complex evidence to produce guidance and advice for practitioners".

I've seen nothing which persuades me that NICE has provided guidance for a **revision** total wrist replacement using a particular prosthesis.

Guidance is only provided for total wrist replacements more generally and says:

There is evidence that total wrist replacement relieves pain, but this is based on small numbers of patients and there is insufficient evidence of its efficacy in the long term. The procedure is associated with a risk of the recognised complications of prosthetic joint replacement. Therefore, total wrist replacement should only be used with special arrangements for clinical governance, consent and audit or research.

It goes on to say:

This procedure should be undertaken only on carefully selected patients, by surgeons with special expertise in interventions for the hand and wrist.

So, even if this guidance is relevant (as referred to by Mrs R and I make no finding on), I'm not persuaded that it supports Mrs R's complaint. I think the NICE guidance on total wrist replacements supports that this procedure is, by itself, complex and should only be undertaken on selected patients. And it would offer further support to Vitality's position that a MDT assessment should take place before agreeing to cover a **revision** total wrist replacement (which I think it's fair to assume based on the medical evidence is a rarer and more specialised procedure than a standard total wrist replacement).

Further, and in the alternative, I'm satisfied that there were other specific factors in this case which fairly and reasonably resulted in Vitality requesting a MDT assessment. These include:

- Mrs R's consultant says in a letter to Mrs R's health centre dated July 2023 that although they've undertaken many wrist replacements before, they hadn't done a revision replacement using the particular prosthesis. They'd offered to refer Mrs R to another unit where there is expertise in this type of procedure, but Mrs R was happy to remain with them.
- A letter from Mrs R's consultant to Vitality from the end of October 2023 also confirms that they personally had not revised a wrist prosthesis before (although they went on to say they would have an experienced hand and wrist surgeon to assist with the revision procedure)).
- Two hand and wrist orthopaedic consultants were approached by the manufacturer of the prosthesis to be used for the revision (after Mrs R's consultant enquired about the suitability of the prosthesis in Mrs R's case) and concluded that although they would have "no problem" with revising the wrist replacement with the particular prosthesis, they were "not sure I would do it as my first case so maybe consider referral to a local expert".

Notwithstanding Mrs R's submissions that Vitality hadn't acted fairly by insisting on a MDT assessment before agreeing cover, she says a MDT assessment had taken place.

From what I've seen, the evidence supports that Mrs R's consultant had consulted with the manufacturer of the implant to see whether they felt it was a reasonable solution for Mrs R. And he told Vitality on 6 November 2023 that it had forwarded the case to the two most experienced surgeons in the UK for this prosthesis and both commented that it was a sensible option for this case. Mrs R's consultant also said they would not be presenting another MDT.

I've seen the email dated September 2023 from one of the consultant orthopaedic surgeons the prosthesis manufacturer contacted (and was said to be endorsed by the other). It consists of five short sentences and explains why the revision using the prosthesis would be suitable. I find that it's fair and reasonable for Vitality to conclude that this didn't amount to a MDT assessment to the standard it reasonably required, and, for example, it didn't provide opinion on the most suitable clinical recommendations (weighing up all clinical options) from a multi-disciplinary team.

Vitality also offered Ms R the option to see other consultant orthopaedic surgeons who'd undertaken this type of procedure before to review her case. I think that was fair and reasonable in the circumstances of this case given the experience of Mrs R's consultant (who'd confirmed they hadn't done this type of procedure before) and the advice from two

other consultant orthopaedic surgeons who were contacted by the manufacturer of the prosthesis referred to above.

Mrs R ultimately declined that offer and Mrs R's consultant carried out the procedure on the NHS. Mrs R says surgery took place without a MDT assessment along the lines requested by Vitality being undertaken. That may be the case and I am pleased that Mrs R was ultimately able to have the surgery she wanted. However, for all the reasons set out above, I'm satisfied that Vitality has acted fairly and reasonably by requesting a MDT assessment along the lines it suggested before it would consider agreeing to cover the cost of the treatment under the policy.

I don't think it was trying to be unnecessarily obstructive and I think that's supported by offering Mrs R the option to see other consultants to discuss this procedure.

### **The handling of the claim**

Looking at the time timeline of events, I'm satisfied that Vitality hasn't unnecessarily delayed the progression of the claim. Overall, I'm satisfied that it was proactively and promptly looking to progress the claim for Mrs R and establish whether cover could be provided.

I know Mrs R will be disappointed, but I hope it helps her to know that her complaint has been considered by someone independent of the parties.

### **My final decision**

I don't uphold Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 28 November 2024.

David Curtis-Johnson  
**Ombudsman**