

The complaint

Ms M complains that AXA PPP Healthcare Limited has turned down a claim she made on a group private medical insurance policy.

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.

Ms M is insured under her employer's group private medical insurance policy. In 2021, Ms M underwent hip replacement surgery.

However, in late 2022, Ms M subsequently began to experience pain and a deformity on her hip which was caused by the original surgical scar. Ms M was referred to a consultant plastic surgeon who recommended that Ms M could undergo either scar revision surgery or excess tissue removal with a fat transfer. Ms M opted for the scar revision surgery, which AXA ultimately agreed to cover.

Unfortunately, the revision surgery was unsuccessful. So Ms M made a claim for surgical tissue removal with a fat transfer.

AXA looked into the claim. It said the policy only covered a member's first reconstructive surgery following an accident or previous surgery. And that the policy didn't cover treatment which was linked to previous reconstructive surgery. AXA referred the matter to its medical adviser, who concluded that Ms M's scar revision surgery had been reconstructive surgery and that the new proposed surgery was linked to the scar revision surgery. So AXA didn't think the claim was covered by the policy terms and it didn't agree to pay for Ms M's surgery.

Ms M was unhappy with AXA's decision and she asked us to look into her complaint. She felt that the scar revision surgery hadn't been reconstructive surgery and that the proposed tissue removal operation was an entirely separate procedure.

Our investigator didn't think AXA had treated Ms M unfairly. She considered all of the available evidence and she didn't think it had been unfair for AXA to conclude that the claim wasn't covered by the policy terms.

Ms M disagreed and 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 Ms M, I don't think it was unfair for AXA to turn down her claim and I'll explain why.

First, I'd like to reassure Ms M that while I've summarised the background to her complaint and her submissions to us, I've carefully considered all she's said and sent us. I was sorry to

hear about the circumstances that led to Ms M needing to make a claim and about the impact this has had on her life.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken into account those rules, together with other relevant considerations, such as regulatory principles and guidance, the medical evidence and the policy terms, to decide whether I think AXA handled Ms M's claim fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between Ms M's employer and AXA. The policy provides cover for 'eligible treatment' – which the contract states (amongst other things) is *'treatment which falls within the benefits of the plan and is not excluded from cover by any other term in (the) handbook.'*

Page 41 of the policy terms sets out the cover AXA provides for 'reconstructive surgery'. This says:

'We do cover reconstructive surgery, but only in certain situations.'

What is covered?

We will cover your first reconstructive surgery following a medically documented accident or surgery for a medical condition.

We will do this so long as:

- we agree the method and cost of the treatment in writing beforehand.*

What is not covered?

We do not cover treatment that is connected to previous reconstructive or cosmetic surgery.'

AXA considered the available evidence and it sought the opinion of clinical members of its staff. It ultimately concluded that the tissue removal surgery wasn't covered: firstly because it felt the scar revision had been the first reconstructive surgery and secondly, because it felt the proposed surgery was linked to the scar revision surgery. So I've carefully considered the available evidence to decide whether I think this was a fair conclusion for AXA to draw.

In November 2022, Ms M's original treating orthopaedic surgeon referred her to a consultant plastic surgeon. In brief, the orthopaedic surgeon stated that Ms M had developed pain and a bulge in her hip scar. They stated that the bulge was due to subcutaneous fat and looked as if her scar had contracted and/or undergone soft tissue necrosis. The orthopaedic surgeon said they were unsure whether it would be technically possible to revise the scar or improve its cosmetic appearance.

Ms M accordingly saw the consultant plastic surgeon in February 2023. And I've summarised below what I consider to be the key sections of the clinic letter:

'On examination, there appears to have been a detachment of the subcutaneous fat tissues distal to the suture line resulting in a concave deformity. Interestingly enough, the scar itself is fine and not too stretched. There are no palpable abnormalities within the area, such as a fat necrosis or collection.'

We discussed two potential options of surgical correction of this deformity. Firstly, a scar revision which may have a more predictable result but would have to be followed by at least 3 months of postsurgical support. The quality of the second scar may not be as good as the

first one and if the deformity is not completely corrected, or recurs over time, then further treatment may be necessary. The second option would be to remove the excess soft tissue on the lower buttock with fat transfer and regraft it into the depressed area distal to the scar. This technique would not involve a significant new scar but is less predictable in outcome and may also need further treatment.'

The letter stated that Ms M had chosen to undergo scar revision surgery. It seems to me that the surgeon had given Ms M the option of having either revision surgery to treat the hip deformity or the removal of excess tissue. And that the surgeon made it clear that if scar revision surgery didn't work, then more treatment might be needed.

Following Ms M's claim for the tissue removal surgery, AXA got in touch with the plastic surgeon to ask for more information. I've set out below what I consider to be the key parts of the consultant plastic surgeon's response:

'We discussed two options of correction surgical scar revision and fat transfer but I did point out to her that neither of them would be guaranteed to correct the deformity completely and both of these may require further revisional surgery. A surgical revision of the scar with reattachment of the soft tissues of the right buttock was performed (in May 2023). Everything appeared to settle well and the patient followed my postoperative instructions regarding taping and support garments very diligently. At her last review...almost 3 months post surgery...a significant deterioration with a partial re-drooping of the buttock tissues became apparent, which I cannot quite explain. She is very concerned about this and I have explained to her that the only other surgical option is now to move the excess tissue from the lower buttock into the hollowing of the upper buttock is [sic] fat transfer.'

AXA referred the plastic surgeon's response to its medical adviser, who concluded both that the scar revision surgery had been reconstructive surgery and that the excess tissue removal surgery was linked to the scar revision surgery. I don't think this was an unreasonable position for AXA to reach as I'll go on to explore.

'Reconstructive surgery' isn't defined in the contract terms. But I think it's reasonable to apply a definition taken from a well-known dictionary. This says that reconstructive medical treatment:

'Involves changing the shape of part of a person's body, either because it has been badly damaged or to improve someone's appearance.'

It's important I make it clear that I'm not a medical expert. So I must necessarily carefully consider all of the expert medical and other evidence to decide which evidence I find most persuasive. In this case, I've placed particular weight on the evidence provided by Ms M's treating doctors, which AXA's notes show it also considered.

And it seems to me, taking the medical evidence into account, that both surgeries were aimed at reshaping part of Ms M's body (her hip scar and deformity) following the original hip replacement surgery. The medical evidence also indicates that though the scar revision surgery was distinct to excess tissue removal, both operations were aimed at correcting the hip deformity (and Ms M's pain). So I don't think it was unreasonable for AXA's medical adviser to classify the scar revision surgery as Ms M's first reconstructive surgery. The plastic surgeon also made it clear that if the scar revision failed, further revisional surgery might be needed. It seems the scar revision didn't succeed and it was for that reason that the excess tissue surgery was proposed. As such then, I also don't think it was unfair for AXA to rely on its medical adviser's conclusion that the second surgery was connected to the scar revision surgery.

So whilst I sympathise with Ms M's position and I'm sorry to hear about the pain and difficulty she's experiencing, I don't think AXA acted unreasonably when it ultimately concluded that her claim wasn't covered by the policy terms. And overall, I don't find it was unfair for AXA to turn down this claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 19 November 2024.

Lisa Barham
Ombudsman