

The complaint

Ms M complains that AXA PPP Healthcare Limited (AXA) has assessed her private medical insurance claim unfairly.

What happened

Ms M has a private medical insurance policy which she took out in August 2013. AXA is the underwriter on the policy.

In November 2023, Ms M called AXA to submit a claim for cryosurgery on her foot as she had Morton's Neuroma (a condition that causes pain and soreness to the foot and toes, caused by a thickened nerve). She wanted to know if the specialist (who I'll call Mr A) doing the treatment would be covered under her policy. AXA advised that cover would only be for up to 60% of his fees. AXA authorised an initial consultation, tests and a follow-up appointment. In the same call, Ms M asked if three other specialists were covered for the conventional open surgery. AXA said they were all fully covered. It authorised for Ms M to see Mr A.

On 11 January 2024, Ms M called AXA to inform it that her cryosurgery was scheduled for 12 February 2024.

AXA called back the following day and explained to Ms M that it would pay 60% of Mr A's fees plus £50 for the surgeon. Ms M said the cryosurgery was a lot more expensive.

Unhappy with this, she made a complaint. On 30 January 2024, Ms M called for an authorisation code for her cryosurgery procedure which AXA gave to her.

AXA issued a final response on 1 March 2024. It said under the terms of the policy, £347.27 can be paid. The information it gave about covering 60% of the fees was an error. This is because for unproven treatment, AXA will contribute an equivalent amount based on a U average cost. And AXA will cover £50 to pay the specialist for suitable equivalent treatment.

AXA said an equivalent conventional treatment to the cryosurgery would be a steroid injection.

Ms M didn't agree that a steroid injection was a suitable equivalent conventional treatment to cryosurgery. She said a suitable equivalent treatment would be open surgery for excision of the nerve. She had this procedure in 2003 and AXA covered the costs. Whilst it was successful for several years, the condition returned, and Ms M tried first line treatments of orthotics and steroid injections, and these didn't work. She had no option therefore but to try

surgery to relieve her pain. Ms M consulted a surgeon, and he suggested conventional surgery, but this was a far more invasive form of surgery, requiring general anaesthetic and months of recovery. And in contrast, cryosurgery which she chose was considered less risky, performed under local anaesthetic and as an out-patient. Ms M said Mr A preferred to carry out cryosurgery, but he also performs conventional open surgery. She said the steroid injection isn't an equivalent treatment to cryosurgery but is an earlier step in treatment which

was no longer suitable to treat her conditions. Ms M would like AXA to pay the equivalent cost of the actual conventional treatment which would be open surgery.

AXA maintained its position and only agreed to pay £347.27 plus £50 of the cryosurgery treatment. It said cryosurgery is an unproven treatment under the NICE (National Institute of Clinical Excellence) guidelines. And the equivalent conventional treatment to this is a steroid injection.

Ms M brought her complaint to this service. Our investigator upheld the complaint. He thought there wasn't sufficient evidence to show why AXA says the equivalent treatment to cryosurgery would be a steroid injection. And its medical adviser had also acknowledged that another steroid injection wouldn't have been appropriate for Ms M. So, he recommended that AXA settle the claim by paying Ms M the shortfall in line with the equivalent open surgery procedure. It should also add 8% simple interest per annum from the date the invoice was paid to the date of the settlement.

AXA didn't agree and asked for the complaint to be referred to an ombudsman. So, it's been passed to me. AXA says in summary:

- There are significant differences in the levels of complexity and recovery times, over and above the size of skin incision/puncture site, between cryosurgery and open surgery. Because of the significant differences, AXA considers the two as not equivalent but alternative treatments.
- The closest equivalent given by AXA is a steroid injection. It accepts that the member having already had this treatment with lack of response would not represent equivalence in terms of options at this stage of the member journey. However, this alone does not mean that open surgery is the equivalent option. The place of treatment alone in the member journey is not the only factor in defining equivalent.
- Regarding complexity of the treatment, this service has based the argument solely on the presence or not of a 'small skin incision'. This is not the sole factor in assessing whether two treatments are similar in complexity and therefore meet equivalence.

I issued a provisional decision to both parties on 25 September 2024. I said the following:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 terms of this policy and the circumstances of Ms M's claim, to decide whether AXA treated her fairly.

For the avoidance of doubt, I'm not medically qualified and it therefore wouldn't be appropriate for me to make a finding on the conditions referred to here. My focus will therefore be on the information provided by both parties and whether I think the actions taken by AXA are fair and reasonable given the circumstances.

My understanding is that there's no dispute here that the treatment Ms M had is unproven. So, the key issue for me to decide is whether it's fair and reasonable for AXA to decide that the equivalent conventional treatment to the cryosurgery is the steroid injection.

The relevant terms and conditions that apply in this case are set out on page 14 of Ms M's policy booklet.

These state the following:

'The cover for unproven treatment is more restrictive than for conventional treatments.

Unproven treatment must:

- be authorised by us before it takes place; and*
- take place in the UK; and*
- be agreed by us as a suitable equivalent to conventional treatment; and*
- have high quality evidence of its safety.*

[...]

If we agree to pay for your unproven treatment, the amount we will pay will depend on how much it costs and how much we would pay if you have conventional treatment for your medical condition instead.

The amount we pay for unproven treatment will depend on how much we would pay if you have conventional treatment for your medical condition instead.

- If the unproven treatment costs less than the equivalent conventional treatment we will pay the cost of the unproven treatment; or*
- If the unproven treatment costs more than the equivalent conventional treatment we will pay up to the cost we would have paid for the equivalent conventional treatment. We will pay up to the amount we would have paid a Health For You specialist and hospital in the hospital list. To understand what the equivalent conventional treatment is we will look at the treatment other patients with the same medical condition and prognosis would be given.'*

The unproven treatment Ms M had was authorised by AXA. And the unproven treatment (cryosurgery) costs more than the equivalent conventional treatment (steroid injection).

So, I'll go on to consider whether I think the steroid injection is an equivalent conventional treatment to the unproven cryosurgery treatment.

Various medical websites state that cryosurgery is also known as cryoablation. The procedure involves using image guidance (MRI, CT, or ultrasound), a needle like probe is inserted through the skin creating extreme cold which causes reversible destruction of the nerve, and which disrupts the pain signals. So, it's my understanding that this form of treatment essentially is used for chronic pain. The procedure is done under local anaesthetic as a day patient.

Open surgery, on the other hand, requires an incision with general anaesthetic and the foot will stay numb for a minimum of six hours following the procedure. Recovery takes a lot longer than a cryosurgery procedure, requires specialised dressings and patients are generally unable to walk for around three weeks. The procedure is considered more invasive.

Information on the Morton's Neuroma Centre's website states that open surgery is a

preferred technique when less invasive procedures such as cryosurgery have been unsuccessful.

NICE guidelines state that if symptoms persist after a steroid injection, the affected nerve can be surgically removed. I take from this that a procedure such as open surgery, which requires removal of the nerve, would be the next considered option following a steroid injection. The guidelines also state that evidence on the safety and efficacy of this treatment is inadequate in quality and quantity.

It's important to note that Ms M decided to have the cryosurgery to treat her Morton's Neuroma condition. She decided on this treatment because she's suffered from this for several years, and she's also had the conventional open surgery in the past. But unfortunately, Morton's Neuroma returned for her. Before she decided to go ahead with the cryosurgery in February 2024, she said she tried the first line treatments of orthotics and steroid injections.

It seems that cryosurgery or cryoablation is essentially a way to relieve or control pain. Whereas open surgery essentially involves removal or disruption of the nerve. Open surgery is usually recommended when cryosurgery has been unsuccessful. There's also a significant difference between the procedures carried out as I've explained above. Based on all of the above information, I'm not persuaded that an equivalent form of treatment to cryosurgery is the open surgery. I'm more persuaded that an equivalent form of treatment is the steroid injection. This is mainly because it is a form of pain control similar to the cryosurgery.

AXA's medical advisor has acknowledged that having already had a steroid injection which wasn't effective, another injection wouldn't be appropriate at this stage of Ms M's treatment. I agree with this, and I can understand why she opted for the cryosurgery. The medical advisor also said the cryotherapy treatment involved passing a needle through the skin, similar to a steroid injection and the formation of a cold area at the tip of the needle.

I completely understand the reasons why Ms M chose cryosurgery as a form of treatment specifically for her even though the treatment is seen as unproven at this stage. Ms M went ahead with this treatment on the understanding that the full costs of the treatment wouldn't be covered. Based on her having to live with this condition and the various forms of treatment she's had over the years; I think she would have always taken the option of the cryosurgery for her condition. She was made aware by AXA that there were specialists who would be fully covered but this would have been for the open surgery procedure, not the cryosurgery. AXA has always said the costs for the cryosurgery would never be fully covered. Ms M had the option of open surgery, but she chose the cryosurgery.

I'm not persuaded that the steroid injection is an earlier step to treatment than cryosurgery. Or it's the first line of treatment necessarily. From the evidence I've seen, it depends on the journey and the severity of the condition. The evidence I've seen suggests that a steroid injection is an equivalent way treating or controlling the pain. Open surgery is considered when other forms of treatment have been unsuccessful. Ms M said she's tried a steroid injection and so opted for cryosurgery to relieve her pain. I therefore think the two treatments – cryosurgery and the steroid injection are both ways of treating pain.

I've carefully considered whether I think the equivalent conventional treatment to cryosurgery is a steroid injection. I think it is. There are significant differences between the cryosurgery and open surgery. And more similarities between cryosurgery and the steroid injection. While they may not be exactly equivalent, on balance, the likely comparison would, in the circumstances, have to be with the steroid injection. Both the cryosurgery and steroid injections are used for treating pain control. I appreciate that Ms M will be disappointed. And

whilst I understand why she had this treatment; it doesn't necessarily mean that AXA is responsible for having to cover the costs as if it was an open surgery.

The test is whether AXA has assessed Ms M claim by paying for an unproven treatment as if it was an equivalent conventional treatment for her medical condition instead. Overall, I'm satisfied that AXA has fairly assessed Ms M's claim in line with the terms and conditions of her policy.

Neither party responded to my provisional 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.

Having done so, as I received no further comments or arguments from Ms M or AXA, I see no reason to depart from the outcome reached in my provisional decision.

Overall, therefore I'm satisfied that AXA assessed Ms M's claim in line with the terms and conditions of her policy, and I think this was done fairly and reasonably. It follows that I don't require AXA to do anything further.

My final decision

For the reasons given above, I don't uphold Ms M's complaint about AXA PPP Healthcare Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 11 November 2024.

Nimisha Radia
Ombudsman