

The complaint

The executors for the estate of Mr B complain about the decision by Aviva Insurance Limited to turn down a personal accident claim.

What happened

The late Mr B held personal accident cover with Aviva. The executors made a claim after Mr B sadly passed away following surgery. Aviva turned down the claim, as it thought Mr B had died from a known risk/complication of the surgery and said this was excluded under the policy. Unhappy with Aviva's claims decision, the executors brought a complaint to this service on behalf of Mr B's estate.

Our investigator looked into things and recommended the complaint be upheld. She didn't think Aviva had shown that Mr B's death had been caused by a known risk of the surgery. She recommended Aviva pay the claim, plus interest.

Aviva didn't accept our investigator's recommendations, and so the matter has been passed to me for 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 policy pays benefit in the event of accidental death. Aviva doesn't dispute that Mr B's death was accidental, however, it says the claim falls under the following policy exclusion:

'1. We will not pay any claim caused by:

...

- known risks associated with a medical or surgical procedure.'*

Mr B attended hospital for an inguinal hernia repair. During the procedure, Mr B's left femoral artery (iliac artery) was damaged which caused a major haemorrhage. An off-duty consultant vascular surgeon (Professor M) then attended who carried out a graft procedure. Mr B was transferred to another hospital where it was found there was reduced blood flow to his lower left leg, and an above knee amputation was carried out. Sadly, Mr B's condition deteriorated, and he passed away.

The hospital carried out a review of care, and said Mr B had sustained a catastrophic vascular injury during the operation, and that vascular injury is a recognised but rare complication of inguinal hernia repair. They also said that *'significant injury to the external iliac artery has been described but is extremely unusual.'*

I've also read a statement written by the treating surgeon. He explained he has performed inguinal repairs on a regular basis for over 30 years. He said that before the surgery took place, he pointed out the risks and specifically referred to those of general anaesthesia as well as bleeding and infective complications, recurrence and chronic groin pain.

A medical examiner for the hospital (Ms L) wrote a detailed and lengthy report. Ms L said she had spoken to the surgeon, who felt what happened was a 'freak accident' and had never seen it happen in his career. Ms L also asked Professor M for his thoughts. Professor M said he and the treating surgeon hadn't ever come across an injury like this from a hernia repair, and that it was very rare and very unusual. It was noted the artery wasn't heavily calcified or diseased, just a bit atherosclerotic (narrowed). Ms L summarised Professor M's comments as *'This will never happen again – has never seen it in 26 years as a vascular consultant, it was a freak accident in a routine procedure.'*

Ms L concluded that Mr B had died as a result of a rare complication of surgery to treat a hernia. She said *'This is the only such incident seen in the careers of the general and vascular surgeons involved. It is an extremely rare complication of surgery and is very unlikely to happen again.'*

An inquest into Mr B's death was opened, and the Coroner concluded *"Mr [B] suffered a rare and significant complication of surgery. This was likely to have been the biggest factor contributing to [his] death."*

I've checked what the NHS says about inguinal hernia repair. It says it's a routine operation with very few risks (though a small number of hernias can come back after surgery). It then lists the potential complications, though none of these include the transection of blood vessels.

Aviva has directed us to a separate NHS website (specific to one NHS trust) which says that a rare complication of inguinal hernia surgery is *'injury to blood vessels and other organs'*.

So the hospital review of care report, and the NHS website referred to by Aviva both say that vascular injury is a recognised complication of inguinal hernia repair. However, this is quite vague. I would imagine that damage to blood vessels would be a known risk of the majority of operations, if not all.

I note that Professor M has been a surgeon for 26 years, and the treating surgeon confirmed he's carried out inguinal hernia repairs on a regular basis for over 30 years. Yet crucially, neither the treating surgeon nor Professor M had come across such an injury in their extensive careers. If such an injury were a known risk of the surgery, I would have expected Professor M to have said this, but instead, he described it as a *'freak accident'*. Interestingly, Professor M felt confident enough to say it would never happen again. I wouldn't expect a surgeon to make such a statement for a known risk of the surgery.

I haven't seen a copy of the consent form that Mr B signed before having the surgery, though Ms L has referred to it in her report. This apparently told Mr B the risks of the procedure were *'GA [general anaesthesia], bleeding, infection, recurrence, chronic pain'*. The treating surgeon confirmed these same complications were discussed with Mr B beforehand. In my mind, this further supports that transection of the iliac artery wasn't a known risk, as it wasn't identified or discussed with Mr B as a potential complication of the surgery.

Taking everything into account, whilst I appreciate damage to blood vessels is a known risk associated with the surgery, given how unusual it is for there to be damage to the external iliac artery, I think it would be fair and reasonable for Aviva to pay the claim.

My final decision

My final decision is that I uphold this complaint. I require Aviva Insurance Limited to pay the claim in line with the remaining policy terms. Interest should be added at the rate of 8% simple per annum from a month after the claim was made to the date of settlement*.

*If Aviva considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell the executors for the estate of Mr B how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the executors of Mr B's estate to accept or reject my decision before 1 January 2025.

Chantelle Hurn-Ryan
Ombudsman