

## **The complaint**

Ms M complains about AXA PPP Healthcare Limited's settlement of her medical insurance claim and that it added an exclusion to her policy.

My references to AXA PPP include its agents. Ms M is represented in her complaint by her partner but for simplicity I'll just refer to Ms M.

## **What happened**

Ms M has a Global Health Plan private medical insurance policy, AXA PPP is the insurer. She contacted AXA PPP to pre-authorise her ventral rectopexy with mesh and colpopexy surgery.

AXA PPP wouldn't authorise cover for the mesh element of the procedure and said it wouldn't cover any complications relating to the mesh. In summary it said:

- The use of mesh in the procedure wasn't established as effective so that part of the procedure wasn't covered by the policy terms.
- The most recent National Institute for Health and Care Excellence (NICE) guidelines supported its decision.
- The medical evidence Ms M had sent it didn't show the mesh element of the procedure was established as effective.
- Its Schedule of Procedures list, which showed the procedures it covered, said only 'laparoscopic rectopexy without mesh' would be covered, so Ms M would need to pay for the cost of the mesh fitting.

Ms M had the surgery including the mesh element in a European country, knowing AXA PPP's decision. She complained to us that AXA PPP hadn't fully taken into account the evidence she'd provided that the mesh element was effective and not experimental. She wants AXA PPP to pay her claim in full and cover any complications with the mesh.

Our investigator said AXA PPP had acted fairly in its settlement of the claim and in saying it wouldn't cover any complications with the mesh.

Ms M disagreed and wanted an ombudsman's decision. She provided a letter from her consultant who performed the surgery which she said supported her claim.

Before I made my decision we sent the consultant's letter to AXA PPP and asked if it had any comments. AXA PPP didn't give any comments on the letter.

## **What I've provisionally decided – and why**

I made a provisional decision as since our investigator's view Ms M had provided additional evidence. I explained why I was intending to not uphold this complaint. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And they mustn't turn down claims unreasonably.

On the evidence I have I'm intending to not uphold the complaint as I think AXA PPP reasonably declined to cover the mesh element of Ms M's procedure. I'll explain why.

Under the heading 'The types of drugs, treatments and surgery that are covered' the policy says:

*'Your policy covers you for established medical treatments.*

*There is no cover for any treatment or procedure that is experimental or that has not been established as being effective*

...

*For a surgical procedure to be covered it must be listed in our Schedule of Procedures and Fees.*

*We will also pay for treatment not listed in our Schedule of Procedures and Fees if, before the treatment begins, it is established that the treatment is recognised as appropriate by an authoritative medical body. This means procedures and practices must have undergone appropriate clinical trial and assessment, and be sufficiently evidenced in published medical journals'.*

The policy also says what's excluded from cover:

*'What is not covered?*

*We will not pay for treatment that has not been established as being effective or which is experimental.*

*You are not covered for complications that arise as a result of authorised or unauthorised unproven or experimental treatment'.*

The policy gives details for how to find the Schedule of Procedures and Fees.

I think AXA PPP correctly said the mesh element of Ms M's surgery wasn't covered under the policy terms. Its Schedule, which lists the procedures covered by the policy, says there's cover for laparoscopic rectopexy surgery but specifically says *'without mesh'*.

I also have to consider what's fair and reasonable in all the circumstances. And I note that the policy says AXA PPP will pay for treatment not listed in the Schedule of Procedures if *'before the treatment begins, it is established that the treatment is recognised as appropriate by an authoritative medical body...'*

I've considered the information in the links to the medical papers which Ms M provided. AXA PPP's letter to her of 26 August 2022 details why it wasn't persuaded by that evidence that the laparoscopic rectopexy with mesh surgery had been established to be effective. I think AXA PPP made a reasonable decision for the reasons it gave in the letter – in summary there was no high quality evidence that the procedure was effective.

AXA PPP also referred to the most recent NICE guidelines, from 20 June 2018, on 'Laparoscopic ventral mesh rectopexy for internal rectal prolapse'. I think it's reasonable for AXA PPP to use NICE guidelines as part of deciding whether the procedure is established to

be effective.

The most recent NICE recommendations on the procedure say:

*'1.1 Current evidence on the safety of laparoscopic ventral mesh rectopexy for internal rectal prolapse shows there are well-recognised, serious but infrequent complications. The evidence on efficacy and safety is limited in quality. Therefore, this procedure should only be used with special arrangements for clinical governance, consent and audit or research...'*

NICE 'Special arrangements' say:

*'This means that there are uncertainties about whether a procedure is safe and effective. We also recommend special arrangements if risks of serious harm are known. These will need to be carefully explained to a patient before they make a decision.'*

*A special arrangements recommendation places emphasis on the need for informed consent. This includes both the patient (or carer) and senior medical staff, such as the clinical governance lead in their trust.*

*Clinicians using these procedures should collect data, either by audit or research...'*

In summary the most recent NICE guidelines say that evidence on efficacy and safety on the procedure is *'limited in quality'* and there are uncertainties about whether the procedure is *'safe and effective'*. I think AXA PPP reasonably understood from those NICE guidelines that the procedure hadn't been established as being effective.

Ms M has now sent new evidence - a letter dated 10 January 2023 from her consultant who performed the surgery. The consultant says:

*'I performed a Ventral Mesh (organic) Rectopexy as well as a Sacrocolpopexy with Da Vinci Robot System (date in February 2022).'*

*The organic mesh is not only used by myself but by most of my surgeon colleagues in (the European country) and the UK. It is a highly recommended procedure (standard of care) and not experimental'.*

I've carefully considered what the consultant's letter says but I'm not persuaded that Ms M has provided sufficient evidence that the treatment is recognised, as defined by the policy terms, and has been established as effective.

The policy says AXA PPP will pay for treatment that's not in its Schedule of Procedures if *'before the treatment begins, it is established that the treatment is recognised as appropriate by an authoritative medical body. This means procedures and practices must have undergone appropriate clinical trial and assessment, and be sufficiently evidenced in published medical journals'*.

As the consultant's letter doesn't refer to clinical trials, assessments and medical journals which show the procedure with mesh is recognised, and since the NICE guidelines now established as effective, I'm not persuaded that Ms M has evidenced that AXA PPP should fairly and reasonably cover the treatment.

It may be that Ms M's consultant can provide specific information to show the procedure with mesh is now recognised and established as effective. Ms M may want to contact her

consultant to see if he can provide further evidence.

On the current evidence I've seen I think the procedure with mesh isn't covered by the policy terms and it's fair and reasonable for AXA PPP to rely on the NICE guidelines to say it shouldn't reasonably cover that treatment.

As the policy says Ms M's not covered for '*complications that arise as a result of authorised or unauthorised unproven or experimental treatment*' I think AXA PPP acted within the policy terms and fairly and reasonably in telling Ms M it won't cover complications relating to the mesh. It's not clear if AXA PPP has added such an exclusion to Ms M's policy but even if not it can decline cover for those complications under the policy wording'.

### **Responses to my provisional decision**

AXA PPP didn't respond. Ms M disagreed with my provisional decision. In summary she said:

- I hadn't taken into account all the evidence she'd submitted especially her consultant's letter saying organic mesh was being used by surgeons in the UK.
- The medical articles she'd provided gave enough information to show the procedure is used in the UK. I'd given no reason about why I disagreed with that information.

### **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.

I've carefully considered and reconsidered all the evidence Ms M and AXA PPP have provided. I'm sorry to disappoint Ms M but I still think AXA PPP reasonably declined to cover the mesh element of her procedure so I don't uphold her complaint.

I've explained in my provisional findings why I think AXA PPP reasonably understood from the most recent NICE guidelines for 'Laparoscopic ventral mesh rectopexy for internal rectal prolapse' that the procedure hadn't been established as being effective. The most recent NICE guidelines about the procedure say '*The evidence on efficacy and safety is limited in quality. Therefore, this procedure should only be used with 'special arrangements' (which NICE defines) for clinical governance, consent and audit or research*'.

I still don't think Ms M's consultant's letter, set out above, is sufficient evidence that the treatment is recognised, as defined by the policy terms, and has been established as effective. Ms M hasn't provided any further evidence from her consultant about clinical trials, assessments and medical journals which show that since the most recent NICE guidelines the procedure with mesh is now recognised and has now been established as effective. So I think AXA PPP reasonably considered that the most recent NICE guidelines are still relevant.

As to the information in the medical articles which Ms M provided I explained in my provisional findings that I thought AXA PPP's letter of 26 August 2022 to her, giving the reasons why it wasn't persuaded by that evidence that the procedure had been established to be effective, was reasonable. I think AXA PPP reasonably considered from the information that there was no high quality evidence that the procedure was effective.

For the reasons given in my provisional findings and these findings I think:

- The procedure with mesh isn't covered by the policy terms, and
- AXA PPP reasonably relied on the most recent NICE guidelines about the procedure with mesh to say it shouldn't fairly and reasonably cover that treatment, and
- AXA PPP acted within the policy terms and fairly and reasonably in telling Ms M it won't cover complications relating to the mesh.

**My final decision**

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 7 August 2023.

Nicola Sisk  
**Ombudsman**