

The complaint

Ms A complained that Vitality Health Limited declined her private medical insurance claim.

What happened

Ms A has had private medical insurance with Vitality and its predecessors for many years. Her cover is on a continued personal medical exclusions basis. In 2009 Ms A had breast reconstructive surgery following a cancer diagnosis which her insurance covered.

In May 2022 Ms A asked Vitality to authorise a claim for tests and treatment relating to a swelling in her breast which she said might be due to her breast implant from the 2009 surgery. Vitality agreed to cover investigative tests and related consultations. But it told Ms A that it would need to see a medical report from her consultant before it could agree cover for further treatment as if the swelling was due to her breast implant it might not be able to cover that treatment.

In mid December 2022 Ms A sent her consultant's report to Vitality. Her consultant had advised her to have the breast implant removed.

Vitality declined to pay for the surgery. It said Ms A's claim wasn't covered under the policy terms about 'reconstructive surgery (cancer)'. It accepted it had delayed in responding to Ms A and in assessing her claim and paid her £450 compensation for the distress and inconvenience its poor service had caused.

Ms A complained to us. In summary she said:

- Vitality unfairly declined her claim for surgery. The reconstructive surgery policy terms are irrelevant to her case as she wasn't asking Vitality to pay for a breast reconstruction, even though her consultant suggested a replacement implant as an option.
- The investigative tests didn't show any problems within the implant. Her consultant told her that an implant, being a foreign body, is likely to trigger a chronic inflammation with acute episodes of swelling and pain which usually settle. Following her extremely painful flare-up in 2022, which didn't resolve, her consultant said the only way to solve the inflammation was to remove the implant.
- She believes Vitality should cover her claim under the chronic conditions policy terms and pay for the treatment to remove her breast implant as that should stop the acute flare-up of her chronic condition.
- She expected Vitality, whose obligation should be to provide her with prompt treatments, to cover her. She hadn't been clearly told that the acute inflammation from her chronic condition wouldn't be covered unless it was within five years following the original reconstructive surgery.

Our investigator said Vitality had reasonably declined the claim and that the £450 compensation payment for its poor service was fair.

Ms A disagrees and wants an ombudsman's decision. She emphasised her belief that Vitality had assessed her claim under the wrong policy terms. She clarified that she wasn't complaining to us about Vitality's service as she accepted Vitality's compensation payment for that matter.

Ms A cancelled her policy with Vitality at the end of 2022. She said she couldn't pay for her policy premiums and surgery if Vitality wasn't going to cover the treatment.

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

I'm sorry to read that Ms A has been in a lot of pain and has been very distressed by her situation. She's said Vitality has an obligation to cover the surgery she wants to have. But an insurance policy doesn't cover every situation a policyholder finds themselves in. The policy sets out the terms and conditions which include the risks an insurer wants to insure and these are the contract of insurance between the insurer and the policyholder.

I'm sorry to disappoint Ms A but I think Vitality reasonably declined her authorisation for surgery claim so I don't uphold her complaint.

Vitality has referred to the following policy terms when declining the claim:

'Reconstructive surgery (cancer)

We will cover initial reconstructive surgery necessary following surgery to remove a tumour. We will also cover reconstructive surgery necessary following the removal of healthy tissue for preventive reasons, providing the preventive surgery is eligible on this plan.

The reconstructive surgery must take place within five years of the original surgery to remove the tumour or tissue. If there are immediate complications arising from the initial reconstructive surgery, we will also cover the treatment to deal with those complications.

However, we will not cover surgery at a later point to correct a reconstruction, regardless of the reason it is required.

We will not cover more than one reconstructive surgical procedure to the same part of the body'.

Ms A says as she's asking Vitality to only cover the removal of the breast implant the above policy terms don't apply to her. She's referred to the following policy wording in the 'Exclusions – what's not covered' 'chronic (long term) conditions' section:

'Your plan covers the cost of treatment for acute conditions. These are conditions that respond quickly to treatment which aims to return you to the state of health you were in before suffering the condition, or which leads to your full recovery.....

What if my (chronic) condition gets worse?

If your condition gets worse and you suffer an acute flare-up of a chronic condition, then we may cover the treatment necessary to return you to the state of health you were in before your condition worsened’.

Ms A says Vitality should authorise the removal of the implant which would return her to the state of health before the episodes of acute inflammation of her chronic condition occurred.

Ms A’s consultant’s report of 8 December 2022 says:

‘(Ms A) has had a further flare-up with effusion around the expander device and is now having increasing problems and this will require to be addressed surgically.

I have again discussed the question of removal of the expander device and replacement with a definitive anatomical cohesive gel implant. The initial device was of course part of her cancer treatment and was not undertaken as a cosmetic procedure, but as a reconstructive procedure following mastectomy’.

Even if I agreed with Ms A that she had an acute flare-up of a chronic condition, in accordance with the policy definitions, the medical evidence is that the cause of her condition is the implant she had as part of her reconstructive surgery following her cancer. There are specific policy terms where a policyholder has had that procedure as I’ve set out above. I think those policy terms are clearly set out in the policy document. As Ms A’s claim arises from the reconstructive surgery I think Vitality reasonably assessed her claim under the ‘reconstructive surgery (cancer)’ policy terms.

Ms A’s choice not to have the replacement breast implant, an implant which she’s discussed with her consultant, doesn’t mean that the procedure just to remove the initial implant is covered.

Vitality’s managing director highlighted the relevant paragraph of the reconstructive surgery policy terms in his letter of 24 February 2023 to Ms A:

‘If there are immediate complications arising from the initial reconstructive surgery, we will also cover the treatment to deal with those complications. However, we will not cover surgery at a later point to correct a reconstruction, regardless of the reason it is required’.

Vitality said that paragraph of the policy wording meant it only covered immediate complications from the implant used in the initial reconstruction.

The implant used in the initial reconstructive surgery is the cause of Ms A’s inflammation and as she had the reconstructive surgery in 2009 it was 13 years before she contacted Vitality to authorise treatment to correct the complication. So I think Vitality reasonably considered her authorisation claim wasn’t for an ‘*immediate complication*’ of the surgery.

The policy is clear that Vitality won’t cover surgery at a later point to correct a reconstruction, regardless of the reason it’s required. So under the policy terms Ms A’s claim isn’t covered whether or not she has a replacement implant after the removal of the implant which has caused the complication.

I’m satisfied that Ms A’s claim isn’t covered under the relevant policy terms. Given the 13 year period of time between the initial reconstructive surgery and Ms A’s claim to remove the implant causing the complication I don’t think there’s any basis on which I can fairly and reasonably say Vitality should cover the claim.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 11 August 2023.

Nicola Sisk
Ombudsman