

The complaint

Mrs M complains that AXA PPP Healthcare Limited trading as AXA Health declined her private medical insurance claim.

What happened

Mrs M has private medical insurance, the insurer is AXA PPP.

Mrs M saw a private consultant for her acid reflux and she said she was given two options for treatment. The first option is a Stretta procedure - endoscopic radiofrequency ablation for gastro-oesophageal reflux disease (GORD). The second option is a Nissen fundoplication. Mrs M told us that both procedures are suitable for her but she and her consultant decided the Stretta procedure was the better choice as being less intrusive it was less risky with a quicker healing period. She sought cover for the treatment under her policy.

AXA PPP declined the claim. It said the Stretta procedure isn't approved by the NICE (The National Institute for Health and Care Excellence) guidelines so the procedure is considered as unproven. And as there isn't a suitable alternative treatment to the Stretta procedure, under the policy terms there's no cover for the Stretta procedure. AXA PPP paid Mrs M £50 compensation for her distress and inconvenience due to poor communication in its claim decline letter.

Mrs M complained. She wants AXA PPP to cover the Stretta procedure in full. In summary she said:

- AXA PPP hadn't recognised that there was suitable alternative treatment, the Nissen fundoplication. As her symptoms are now severe, affect her quality of life and her amount of medication isn't good for long term use she would have whichever procedure AXA PPP would cover. But she wants the less intrusive and less risky Stretta procedure.
- She understood the Stretta procedure is available on the NHS in certain circumstances, so it wasn't clear why AXA PPP didn't consider it suitable for her. AXA PPP hadn't contacted her consultant for information about which treatment option was best for her.

AXA PPP told us that a Nissen fundoplication is an alternative treatment in that it's another choice of treatment for Mrs M's condition. But it said the policy terms are clear that the treatment must be 'equivalent', not simply an alternative. It understood the ordinary meaning of 'equivalent' to be 'equal in value, amount, function, meaning'. It didn't consider a Nissen fundoplication to be equivalent to the Stretta procedure.

Our Investigator said AXA PPP had unreasonably declined the claim. He considered that Nissen's fundoplication and a Stretta procedure to be equal in meaning and purpose as they're intended to achieve the same outcome of treating Mrs M's GORD, so it was fair to consider those treatments as equivalent. Our Investigator recommended that AXA PPP cover the Stretta procedure subject to the remaining policy terms and conditions.

AXA PPP provided more evidence which it said showed Nissen's fundoplication and a Stretta procedure aren't equivalent treatment. In summary it said:

- It isn't convinced by the available evidence (Level 2 randomised control trial evidence) that the Stretta procedure is an effective treatment in the medium to long term so it doesn't accept that procedure is intended to achieve the same outcome as Nissen fundoplication. It detailed the evidence it's aware of:
 - - Meta analysis in 2014 concluded '*In a meta-analysis of trials, we found that Stretta for patients ... does not produce significant changes, compared with sham therapy, in physiologic parameters*' (details given), and
 - A Systematic review in 2017 that included much lower evidence studies concluded '*The Stretta procedure significantly improves subjective and objective clinical endpoints, except LES basal pressure, and therefore should be considered as a viable alternative in managing (GORD)*'. But AXA PPP said in that review and in the studies comparing the Stretta procedure with Nissen fundoplication and another treatment (Laparoscopic fundoplication), Stretta was consistently inferior to Nissen fundoplication in terms of medium term outcomes (patients being free from symptoms of reflux), the likelihood of being able to stop or reduce anti reflux PPI treatment or the need for repeat surgery. It provided a link to the relevant NICE briefing published in July 2016.
- There are other aspects of 'equivalent' to consider. People with GORD have a range of symptom severity and impact. People with intransigent symptoms or intolerance to medication are offered surgical intervention such as the Nissen fundoplication, but the decision to have this surgery isn't taken lightly and most people undergoing this have symptoms that continue to substantially affect their lives. The Stretta procedure is a completely different type of treatment sitting between medication and surgery and, in AXA PPP's experience, it's offered by a small group of practitioners to patients who may never be eligible for a Nissen fundoplication. It's offered earlier in the course of the disease to patients with less severe symptoms so isn't equivalent to the Nissen fundoplication.
- It's important that we take into account the complexity of healthcare provisions, medical evidence and indications for surgery when considering whether treatment is equivalent.

AXA PPP's new evidence didn't change our Investigator's mind so the matter has been referred to me to decide.

Before I made my decision I asked AXA PPP to tell me the cost it would cover for the Nissen's fundoplication, which it provided. I asked Mrs M to provide a quote from her consultant for the Stretta procedure, which she provided. I provided more details in my provisional decision below.

What I provisionally decided – and why

I made a provisional decision explaining why I was intending to not uphold the complaint. I said:

'AXA PPP has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

The policy terms and conditions say AXA PPP will pay for 'conventional treatment' which has been proven to be effective and safe. The policy defines 'conventional treatment' as treatment that:

- *is established as best medical practice and is practised widely within the UK; and*
- *is clinically appropriate in terms of necessity, type, frequency, extent, duration and the facility or location where the treatment is provided; and has either*
- *been approved by NICE (The National Institute for Health and Care Excellence) as a treatment which may be used in routine practice; or*
- *been proven to be effective and safe for the treatment of your medical condition through high quality clinical trial evidence (full criteria available on request)'.*

The NICE guidance about the Stretta procedure published on 28 August 2013 says:

'Recommendations

1.1 The evidence on the safety of endoscopic radiofrequency ablation for gastro-oesophageal reflux disease (GORD) is adequate in the short and medium term but there is uncertainty about longer-term outcomes. With regard to efficacy, there is evidence of symptomatic relief but objective evidence on reduction of reflux is inconclusive. Therefore, this procedure should only be used with special arrangements for clinical governance, consent and audit or research'.

So I think AXA PPP reasonably considered the Stretta procedure to be non-conventional treatment which the policy refers to a 'unproven' treatment.

The policy says the cover for unproven treatment is more restrictive than for conventional treatments as:

'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'.*

The policy also says that *'If there is no suitable equivalent conventional treatment, there won't be any cover for the unproven treatment'.*

So the issue I have to decide is whether AXA PPP reasonably considered that there's no suitable equivalent conventional treatment to a Stretta procedure.

The policy doesn't define the meaning of 'equivalent'. So I think it's reasonable for me to consider the ordinary dictionary definition of the word, which is generally that 'equivalent' means 'equal in value, amount, function/purpose, meaning' to something else.

I think a Stretta procedure and Nissen fundoplication are equivalent in so far as the purpose of both is to improve the symptoms of GORD. But I think AXA PPP reasonably took into account wider issues when considering whether the two procedures are equivalent.

The NICE guidance on the Stretta procedure was published in August 2013, so nearly 11 years ago. The guidance was the procedure should only be used with special arrangements for clinical governance, consent and audit or research as there was uncertainty about longer term safety outcomes. And objective evidence on the procedure's reduction of reflux was inconclusive.

I think AXA PPP reasonably understood the later research and publication it refers to doesn't override NICE's guidelines. Mrs M says that she understands that the Stretta procedure is available on the NHS. But my own research shows that the procedure doesn't appear to be widely available on the NHS and that, where lifestyle changes and medication hasn't helped or medication shouldn't be taken on a long term basis, the Nissen fundoplication is the main procedure used to treat GORD.

AXA PPP says the Stretta procedure is offered earlier in the course of the disease to patients with less severe symptoms so isn't equivalent to the Nissen fundoplication. I've seen no evidence to the contrary about when the Stretta procedure is offered, so on the basis that AXA PPP is correct I think it reasonably considered that Nissen fundoplication isn't equivalent treatment.

Mrs M's consultant's letter of 4 September 2023 says he recommended the Stretta procedure because of the symptoms discussed at her appointment. The consultant doesn't give any information as to why he's recommended that procedure rather than the Nissen fundoplication. He's given no information to demonstrate that since the NICE guidelines the safety and efficacy of the Stretta procedure has now been established. And he's given no evidence about whether and why the Nissen fundoplication should/shouldn't be considered to be an equivalent procedure.

Mrs M says AXA PPP didn't contact her consultant to see why he recommended the Stretta procedure. But the issue isn't whether that procedure would be a better choice for Mrs M, it's whether that unproven procedure has equivalent treatment.

On the current evidence I've seen I think AXA PPP reasonably considers that there's no suitable equivalent conventional treatment to the Stretta procedure. And, as the policy says if there's no suitable equivalent conventional treatment there won't be any cover for the unproven treatment, I think that AXA PPP correctly declined Mrs M's claim under the policy terms.

Mrs M's claim isn't covered by the terms and conditions but I also need to consider what's fair and reasonable in all the circumstances. There may be certain circumstances where we might think it's fair and reasonable for the insurer to pay for the cost of the alternative treatment to the cost of the conventional treatment that would have been covered by the policy. The information on costs shows me that AXA PPP's cover for the Nissen fundoplication would be just over half the quoted cost for the Stretta procedure. But I don't think it would be fair and reasonable for me to tell AXA PPP to take that action in these circumstances where it's Mrs M's personal choice not to have the covered treatment.

Overall, I don't think AXA PPP has to take any further action'.

Responses to my provisional decision

AXA PPP said it had nothing further to add. Mrs M said:

'I will now have to proceed with the more intrusive surgical option and AXA (PPP) will have to cover this according to the policy I have. This makes no sense at all. Should there be any adverse effects as a result of this more intrusive option I hold you responsible'.

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'm sorry that Mrs M was disappointed by my provisional decision. In reply to Mrs M's response our Investigator reminded her that my provisional decision could be subject to change if new information was provided and if she wanted to make any further submissions to let him know by the deadline we'd given. That deadline had now passed and Mrs M hasn't provided any new information.

As I've no new information from either Mrs M or AXA PPP I've no reason to change my mind about the conclusion I reached in my provisional decision.

I understand that as I've decided AXA PPP reasonably declined to cover the Stretta procedure under the policy then Mrs M will have the Nissen fundoplication procedure for her condition, which she says AXA PPP will cover. AXA PPP will be able to assess exactly what it will cover for that procedure when Mrs M makes her pre-authorisation claim. But even if AXA PPP agrees to fully cover the Nissen fundoplication that doesn't mean it unreasonably declined to cover the Stretta procedure.

For the reasons I've set out above I'm satisfied that AXA PPP reasonably said that Mrs M's pre-authorisation claim for the Stretta procedure isn't covered by the policy terms. And in these circumstances, where it's Mrs M's personal choice not to have the covered treatment, I don't think it's fair and reasonable for me to tell AXA PPP to pay what it would have paid towards the Nissen fundoplication for Mrs M to have the Stretta procedure (which would have meant AXA PPP contributing about half the cost).

Overall, AXA PPP fairly and reasonably declined the claim.

My final decision

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 26 July 2024.

Nicola Sisk
Ombudsman