

## The complaint

Mr C complains Western Provident Association Limited (WPA) has acted unfairly in changing its policy terms and saying it will no longer cover certain claims.

Mr C brings the complaint on behalf of himself and his wife. For ease, my references will all be to Mr C.

## What happened

Mr C and his wife and children are beneficiaries of a private medical insurance scheme, taken out by Mr C's employer. The insurance is underwritten by WPA.

Mr C's daughter – Miss C – was diagnosed with a type of cancer in 2018, which resulted in her eye being surgically removed. Following the surgery, Miss C was fitted with a prosthesis via the NHS.

In mid-2021, Mr C got in touch with WPA to ask about the possibility of cover for private treatment to replace the prosthesis, due to delays and difficulties using the NHS, which they had been doing up until that time. WPA's notes state the staff member advised Mr C this would not usually be covered, but the case would be referred to be considered due to the circumstances. The notes reflect WPA called Mr C on 14 July 2021 and said a decision was made that the replacement of the prosthesis was covered under the policy. Miss C received a replacement prosthesis privately around October 2021, and WPA paid the claim.

At the end of 2022, Miss C required a further replacement prosthesis. WPA wrote to Mr C on 9 December 2022 and in summary it said:

- discretionary funding was provided for Miss C's treatment in 2021
- the purpose of the policy was to cover the costs of short-term treatment with curative intent for acute conditions
- Miss C's treatment fell outside the policy terms as her condition appeared to be stable, so the treatment was now related to ongoing monitoring and management
- it would no longer be able to fund the treatment but stated as a "one-off gesture of goodwill" it would pay up to £1,000 towards the upcoming treatment.

Mr C responded to WPA asking that it reconsider its position. He said Miss C would not need more than one replacement per year, and this would reduce to one every 18 months. And he said he'd been able to secure a reduction in the cost compared to the previous year.

WPA responded on 20 December 2022. It said it had reviewed the case and concluded the replacement prosthesis should be covered under the policy. It apologised that the previous letter stated this was not covered and said this was a misunderstanding. However it said it was considering making an update to the terms going forward. And it confirmed WPA would pay up to £1,000 towards Miss C's replacement prosthesis for the following year (2023).

In September 2023, Mr C contacted WPA for confirmation that it would cover the replacement prosthesis Miss C would need towards the end of 2023. WPA provided a letter

in November 2023 confirming this would be covered up to £1,500 for the policy year August 2023 to August 2024. Within this letter WPA advised it had updated the terms in regard to prostheses. It included the new term below and said this would be applicable from the next renewal in August 2024.

*“Prostheses*

*We will pay for:*

*The customary and reasonable cost for the provision of ocular and testicular prostheses after removal as part of the treatment for cancer.*

*We will not pay for any subsequent maintenance or replacement.”*

WPA said this meant cover is provided for one prosthesis following ocular surgery, and benefit for subsequent replacements would not be considered. It said it would pay the claim for the replacement prosthesis in that policy year ending August 2024, but would not provide any further benefits towards this in the future.

Mr C complained to WPA. In summary he said it seemed his daughter’s case had prompted WPA to review and re-write its policy terms to exclude the provision of prostheses to children with similar medical circumstances. He said he thought this was unfair and unethical. And he said the replacement prosthesis was active not passive, due to it being required to support Miss C’s bone growth.

WPA responded to the complaint. In summary it said:

- it was entitled to change the policy terms at renewal, and the policy did not have to be renewed if it no longer met the policyholder’s needs;
- the policy provides cover for the fitting of an active or passive prosthesis, but not any subsequent replacements or maintenance - the purpose of the policy is to cover active medical treatment of eligible acute conditions;
- the policy cover was not being changed, rather the terms were being updated to make them clearer, as they had been misinterpreted by WPA employees when handling claims in the past; and
- it acknowledged it had incorrectly advised Mr C in the past, and set an expectation that replacement prostheses were covered under the policy.

Unhappy with the response, Mr C brought the complaint to this service. And the case was passed to me to decide.

### **My provisional decision**

I issued a provisional decision to both parties as follows:

“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, whilst I’m sorry to disappoint Mr C, I don’t think this complaint should be upheld. And I’ll explain why.

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 the policy and the circumstances of Miss C's claim, to decide whether I think WPA acted fairly.

### *The original policy terms*

I've reviewed the terms and conditions which were in place up until August 2024 – these include the terms dated July 2021 and January 2022. Whilst these two documents contain some differences, such as the use of 'Scheme' and 'Group Scheme', the sections I've referenced below are otherwise the same, so I have included one version only.

Under 1.1 Purpose of your Scheme the policy states the following.

*“The purpose of your Scheme is to indemnify you for the customary and reasonable cost of elective, short-term, eligible treatment for acute conditions. Your eligible treatment must be established treatment and provided with curative intent.”*

*“Your scheme does not cover the long-term monitoring, management or treatment of incurable, prolonged or lifelong conditions.”*

And the following terms are defined as below.

*“Eligible treatment - Established treatment for which the scheme provides benefit, given by a provider of treatment we recognise for an acute condition which is not excluded by any personal exclusion and is within the terms and conditions of the scheme.”*

*“Acute condition – A symptom, disease, illness or injury that is likely to respond quickly to treatment which aims to return you to the state of health you were originally in immediately before suffering the disease, illness or injury, or which leads to your full recovery.”*

*“Curative intent applies to treatment that is administered with a reasonable expectation both that it will restore the patient close to the state of health enjoyed prior to the disease being diagnosed, and expect the patient to be disease free five years after commencement of the treatment.”*

The policy documents dated 2021 and 2022 specifically reference prostheses as follows:

*“Prostheses may be passive or active and must be medically necessary as an integral part of your procedure and constitute eligible treatment.”*

I've also reviewed the evidence supplied by the treating hospital. A letter from Miss C's treating medical professional (a Chief Ocularist), explains that the prosthesis needs to be replaced with one of an increased size in line with Miss C's continuing growth. He stated not replacing the prosthesis would cause bone growth issues which could not be later corrected with surgery.

Whilst I may not comment on every point Mr C has made, I've noted the highly sensitive nature of Miss C's condition, her young age and the impact to her life which

has been explained. Whilst I'm very sorry to hear of these circumstances, what I must determine is whether cover should have been provided for her replacement prostheses based on the terms and conditions in place at the time. Having done so, I agree that the replacement of the prosthesis is medically necessary for Miss C. However I'm unable to agree that the treatment constituted eligible treatment as defined by the policy.

The terms state the prosthesis can be active or passive, so I don't need to make a finding on which is the case here. And the terms require the treatment to be short-term, for an acute condition, and provided with curative intent. The replacement prostheses for Miss C are explained by the treating doctor to be required to keep up with her growth and to prevent bone growth issues and a sunken orbit. This doesn't persuade me that the prostheses have curative intent, or that they treat an acute condition. And so I'm satisfied WPA was not required to provide cover for the replacement prostheses, as the circumstances do not fall within the scope of the terms set out above.

#### *Incorrect and conflicting information supplied by WPA*

WPA accepted that it provided incorrect information to Mr C and set an expectation that the replacement of the prostheses was covered. I disagree that this sets a precedent for further claims, as essentially WPA paid the past claims for replacement prostheses in error, and it wouldn't be fair or reasonable for me to say it should continue to pay the claims in the future because of this.

I'm mindful that WPA changed its stance on cover for the replacement prostheses several times in its communications to Mr C, even after saying this had been reviewed at a senior level in December 2022. I've thought about the impact of this on Mr C and Miss C, in terms of being incorrectly advised that the policy would cover these costs, as well as what Mr C has said about the NHS waiting list. I've asked Mr C for an update, and he explained Miss C was not on the NHS waiting list due to the advice that the claims were covered and her receiving private treatment. He said the waiting list is 18 months long and Miss C is currently still awaiting an appointment or cancellation slot.

I've also taken into consideration the three replacement prostheses Miss C received privately, paid for by WPA outside of the policy terms, amounting to around £4,000. As I've explained above, I don't think this treatment was covered by the policy terms in place at the time of the claims, so Miss C has derived some benefit from WPA's errors in 2021 and 2022, and in 2023 WPA said it would cover the next replacement prosthesis as a goodwill gesture. I note WPA has not said it would make any attempt to reclaim any benefits it previously paid out in error.

Having considered these factors, whilst I think WPA's incorrect handling of the past claims has caused inconvenience, confusion and delays, I don't think it would be fair for me to direct WPA to pay any compensation. I say this because WPA has paid the claims for two replacement prostheses, which it was not required to do under the policy. And paid for a third as a gesture of goodwill due to the previous misinformation. I think this is sufficient to put things right.

#### *Changes to the policy terms*

I've carefully considered all of the points Mr C has made about the fairness of WPA's intended changes, and the impact it would have on his daughter. However, I'm satisfied that WPA is entitled to decide what it will or will not cover under its policy,

and to set the content of its terms and conditions. As the insurance is an annually renewable contract, I don't find it unreasonable that WPA said it would make amendments at the next renewal and gave notice of this.

As I've said, the policy is an annually renewable contract, so, should the policyholder (who in this case is Mr C's employer) be unhappy with the terms or find they don't meet their needs, they can choose not to renew the policy and seek cover elsewhere."

### **The response to my provisional decision**

WPA accepted my provisional decision. Mr C responded and said he was disappointed. He said the pain caused to his family had not been understood, and he thought it was ignorant to suggest his employer could seek cover elsewhere due to the cost implications.

### **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.

And I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I've considered again my provisional findings in light of the response.

It is a matter of fact that Mr C's employer is free to choose whether or not to renew its policy with WPA on an ongoing basis. Whilst I appreciate what Mr C has said about the potential costs of alternate cover due to Miss C's pre-existing condition, this hasn't changed my opinion on the fairness of WPA's actions in this case. So I see no reason to depart from the conclusions set out in my provisional decision and summarised above.

### **My final decision**

For the reasons I've given, it's my final decision that I do not uphold this complaint and I make no award against Western Provident Association Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 13 January 2025.

Gemma Warner  
**Ombudsman**