

## **The complaint**

The estate of Mrs G complains that Westfield Contributory Health Scheme ('Westfield Health') didn't cancel a cash plan sooner.

The complaint has been brought by Miss G, as the executor of Mrs G estate.

## **What happened**

The late Mrs G was covered under a cash plan with Westfield Health. The premiums were collected from her pension through her previous employer.

Mrs G became disabled and moved into a care home. In October 2017, Miss G was granted authorisation to be Mrs G's representative under the Deprivation of Liberty Safeguards.

On 22 November 2017, Miss G sent Westfield Health documents issued by the Department for Work and Pensions (DWP) and Citizens Advice, which confirmed her appointment as Mrs G's representative. Miss G explained that Mrs G had experienced a brain injury and asked if she could make a claim for permanent disability under the plan.

Westfield Health responded to Miss G and said it couldn't provide her with any information relating to Mrs G's plan. It said that for her to act as Mrs G's agent, it would need to see a power of attorney document. It explained that some of its plans provided permanent disability cover, but only if the disability related to an accidental injury.

Miss G pointed out that an individual without mental capacity couldn't enter into a power of attorney. She said she intended to notify Mrs G's former employer about the benefit restrictions highlighted by Westfield Health, so they could consider the appropriateness and cost-effectiveness of maintaining premiums on what she thought appeared to be an inappropriate plan.

On 8 December 2017, Westfield Health emailed Miss G. It said that whilst it accepted she was acting as Mrs G's appointed representative, it didn't think the documents she'd provided meant she could act as Mrs G's agent in respect of the plan. It said that because of data protection law, it couldn't give her any of Mrs G's personal plan information. Westfield Health said that it noted Miss G's comments about the appropriateness and cost effectiveness of the plan, and whilst it appreciated she may feel the plan was no longer beneficial for Mrs G, it couldn't accept cancellation from her. However, it said that if she was a named deputy authorised by the Court of Protection, then she could be added as Mrs G's agent. Finally, it advised her to contact Mrs G's former employer to see if she could stop the premiums through them.

Miss G contacted Mrs G's former employer to ask them to stop paying premiums. They advised her they could only accept a request to cancel payroll deduction from Mrs G or someone with a power of attorney. They said Miss G could apply to the court of protection.

Westfield Health then decided to contact the DWP and the Citizens Advice to verify the documents previously sent to it by Miss G. Once it had done so, it decided to appoint Miss G

as Mrs G's agent. It emailed Miss G and advised her of this on 18 December 2017. In that email it said Miss G should notify it if she wanted to cancel Mrs G's cover.

In 2020, Mrs G sadly passed away. Westfield Health cancelled Mrs G's cover under the plan at this time.

Miss G made a complaint to Westfield Health on behalf of Mrs G's estate. She said she had asked Westfield Health on behalf of Mrs G to stop collecting premiums in 2017, but the plan had remained in place. She wanted Westfield Health to return the premiums paid since that date.

Westfield Health made Miss G aware of the email it had sent to her on 18 December 2017. However, Miss G said she hadn't received that email.

Initially Westfield Health refused to return any of the premiums. However, after further consideration, it offered to return the premiums for the period December 2017 to August 2020, when the plan was cancelled. This amounted to £533.10. Miss G was unhappy with this offer, as she thought Westfield Health ought to add interest, as well as additional compensation for the distress and inconvenience that she said Westfield Health had put her through. She therefore brought a complaint to this service on behalf of Mrs G's estate.

Our investigator didn't recommend the complaint be upheld. She didn't think Westfield Health had been wrong to initially refuse to accept Miss G as Mrs G's agent. She said that after Westfield Health had changed its mind on this, it had made Miss G aware of that and she couldn't hold Westfield Health responsible for Miss G not receiving this correspondence.

The investigator thought it was likely though that if Miss G had received the correspondence, she would've cancelled the plan, so she thought it was fair for Westfield Health to offer to return the premiums. However, she didn't think Westfield Health needed to pay interest, or additional compensation.

Miss G didn't accept our investigator's findings, 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.

I don't think Westfield Health acted unreasonably by initially advising Miss G that it couldn't communicate with her as Mrs G's representative. The information Miss G provided Westfield Health in respect of her appointment as Mrs G's representative under the Deprivation of Liberty Safeguards didn't give her control of all of Mrs G's financial affairs. As Westfield Health explained, Mrs G could be appointed a deputy by the Court of Protection, but that hadn't happened.

Nonetheless, Westfield Health then made the decision to allow Miss G to act as Mrs G's agent. That was up to Westfield Health.

Westfield Health advised Miss G of this in an email dated 18 December 2017. Given that the parties had been corresponding by email, I see nothing wrong with this. Unfortunately, Miss G says she didn't receive the email.

I've read Westfield Health's email of 18 December 2017. This said that in the absence of any legal documents, it had been unable to provide Miss G with information in relation to Mrs G's

cover. However, in view of the circumstances, it had contacted the DWP and Citizens Advice and verified the documents she'd provided. It had then decided to appoint Miss G as Mrs G's agent.

The email then went on to explain that Mrs G had held the cover since 1975, and that she had made several claims. Westfield Health said it couldn't comment on the appropriateness of the cover given Mrs G's change of circumstances, and suggested that Miss G seek independent advice on this. It said that if Miss G decided to cancel the plan, she should notify it accordingly. Though it also said that she would need to contact Mrs G's employer in order to stop the premiums, as it didn't request the premium payments and therefore had no authority to stop these.

As Westfield Health didn't receive a request to cancel Mrs G's cover, the plan remained in place. I don't think Westfield Health acted unreasonably here. It had no way of knowing that Miss G hadn't received the email.

Nevertheless, Westfield Health later decided to offer to return the premiums paid under the plan since the date of its email. I agree with our investigator that it's likely Miss G would've cancelled the cover on Mrs G's behalf at this time if she had read the email, so Westfield Health's offer seems fair in the circumstances. However, I don't require Westfield Health to add interest to the refund, as it continued collecting the premiums in good faith and hadn't actually received a cancellation request.

Miss G says that Mrs G couldn't have made use of the plan after 2014 as she was disabled. If Mrs G's health meant she was ineligible to make a claim under the plan and there was no risk to Westfield Health of a claim being paid, then our normal approach would be to require Westfield Health to return the premiums.

I've therefore looked carefully at the plan terms. I see the plan included a number of benefits, some of which Mrs G may not have been able to claim. However, I think there was the potential to claim for some of them – such as the hospital benefit. So I don't think it could be said that Westfield Health were under no risk of paying benefit under the plan. I therefore don't require it to refund premiums from 2014.

Miss G thinks Westfield Health ought to pay an additional sum of compensation for the distress and inconvenience she says she's experienced. However, as our investigator has explained, we can't compensate representatives for any impact experienced to them personally. That's because a representative isn't an eligible complainant under our rules. I therefore don't require Westfield Health to pay any compensation to Miss G – in respect of her role as Mrs G's representative before August 2020, or in her role as the executor of Mrs G's estate after August 2020.

### **My final decision**

Westfield Contributory Health Scheme has already made an offer to pay £533.10 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Westfield Health should pay £533.10.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs G to accept or reject my decision before 10 March 2022.

Chantelle Hurn-Ryan  
**Ombudsman**

