DRN-4668209

The complaint

Mr M complains that Western Provident Association Limited (WPA) has turned down a claim he made on a group private medical insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In March 2020, Mr M took out a personal private medical insurance with WPA, which was underwritten on a moratorium basis. In 2021, Mr M moved his cover to a group private medical insurance policy, which was also underwritten by WPA. Mr M's policy was set-up on a continued moratorium. This meant that WPA wouldn't provide cover for any conditions Mr M had had in the five years before the moratorium began unless he'd been insured for at least a two year period and had been continuously trouble-free during that time.

Subsequently, in November 2022, Mr M contacted WPA's private GP service because he'd been suffering from bilateral knee pain. He was referred for private investigation. He made a claim on the policy for the cost of diagnostic treatment, which WPA authorised and paid.

Mr M was diagnosed with medial femoral condyle defects in both knees, as well as a ruptured posterior cruciate ligament (PCL) and extruded menisci. His treating specialist recommended that he undergo AutoCart surgery, which the specialist stated was relatively experimental in nature. Mr M asked WPA to authorise the cost of the surgery.

WPA looked further into Mr M's claim. It noted that the private GP's referral letter stated that Mr M had a five-year history of intermittent knee pain. And it said that its medical adviser thought Mr M had likely been experiencing symptoms for some time. So it concluded that Mr M's claim was caught by the moratorium clause and was therefore excluded from cover. It added that as AutoCart surgery was experimental, it wasn't covered by the policy terms on that basis either. Therefore, it turned down Mr M's claim.

Mr M was unhappy with WPA's decision and he asked us to look into his complaint. In brief, he said that when he'd referred to a five-year history of knee pain, he'd been referring to an MRI he'd undergone in 2014 – which pre-dated the moratorium start date. And he also said that he only experienced knee symptoms when he played sport. Due to the impact of Covid-19, Mr M said he'd been unable to play sport for around two years and that therefore, he'd been trouble-free during that time. So while he accepted that experimental knee treatment might not be covered, he didn't think it was fair for WPA to exclude all cover for his knees.

Ultimately, our investigator didn't think WPA had treated Mr M unfairly. She thought the evidence indicated that Mr M had experienced symptoms of his knee condition in the five years before the policy began. And she also thought the policy clearly excluded experimental treatment. So she felt it had been fair for WPA to turn down Mr M's claim.

I issued a provisional decision on 21 February 2024 which explained the reasons why I didn't think it had been unfair for WPA to turn down Mr M's claim. I said:

'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 this policy and the available medical evidence, to decide whether I think WPA treated Mr M fairly.

I've first considered the policy terms and conditions, as these form the basis of the group contract. It's common ground that Mr W was insured on a continued moratorium basis. The policy says:

'If you have moratorium underwriting you will not be eligible to claim for at least two years, for any condition(s) which you had during the five years before your scheme membership starts. We call these pre-existing conditions.

***If you do not have any symptoms, treatment, medication or advice for pre-existing conditions for two continuous years** after the scheme starts, benefit will then be available. We refer to this as a two year clear period…*

This means that you will not be able to claim for:

- *Any conditions that existed during the five years before the date you joined us, unless you have a two year clear period after your join date.' (My emphasis added).*

In my view, this policy makes it clear that if an insured member is underwritten on moratorium terms, WPA won't cover any pre-existing conditions they'd had in the five year period before the policy began unless they've been trouble-free for a continuous two year period after the policy start date. In Mr M's case, it means that WPA won't cover any conditions that existed between March 2015 and March 2020 – unless Mr M had been trouble-free for at least 2 consecutive years after the policy began.

WPA considers that Mr M's claim is caught by the terms of the moratorium. So I've looked carefully at the available medical evidence to decide whether I think this was a fair conclusion for WPA to draw.

First, I've looked carefully at the private GP referral letter dated 7 November 2022, which followed Mr M's consultation with the GP. The letter states:

'Patient contacted us on our remote advice service – phone call for five years bilateral knee pains, mainly on the right. Recurrent taking few weeks each time to recover worse last 3-6 months' [sic]

I've also listened to a copy of the call between Mr M and the private GP. The GP's referral letter appears to be an accurate reflection of what was discussed – Mr M did tell the GP that he'd been experiencing intermittent knee pain, 'probably' for five years. Five years of intermittent knee pain would mean broadly that Mr M's knee pain had begun in around November 2017 – around two and a half years before the moratorium start date. And it would mean too that he'd been experiencing symptoms since the start of the continued moratorium in March 2020.

Mr M says that because neither he nor the private GP had access to his medical records, he was disadvantaged by using the private service. He says that he'd actually undergone an MRI for knee pain in 2014 and he'd been referred for physiotherapy. He said it was this he'd been referring to during the call with the private GP. But he said he'd not received any medical follow-up after that point until November 2022 when he'd contacted the private GP for a referral. Having seen a copy of Mr M's medical records, I appreciate that he doesn't appear to have seen a doctor or specialist for knee pain since 2014. And I've considered this

carefully. I'm mindful too that the specialist's diagnosis of Mr M's knee problems in 2022 doesn't appear to be the same as the diagnosis reached in 2014 – as at that point, Mr M's menisci and ligaments appeared to be intact. In contrast, in 2022, the specialist diagnosed Mr M with:

'Left knee:

Significant medical compartment failure with an osteochondral lesion in the medial femoral condyle…The medial meniscus is degenerate and extruded…

Right knee

Functionally, he has a ruptured PCL. He has a significant bone marrow lesion in the medial femoral condyle with chondral failure as well. The meniscus on this side is also starting to deteriorate and become extruded.'

It's clear that Mr M feels strongly that as he wasn't able to take part in impact sports during the Covid-19 period, he wasn't experiencing symptoms during the first two years of cover and any knee claims shouldn't be excluded by the moratorium.

On the other hand, WPA has provided the opinion of its own Chief Medical Officer (CMO) and its orthopaedic advisor. They initially said:

'The changes are chronic and degenerative in nature with a previous PCL rupture and I think it is highly unlikely this has only become symptomatic in the last 3-6 months'.

The CMO and adviser have now also added the following:

'We believe the degenerative changes in the knee are linked to the proposed surgery. With regard to how long (Mr M) is likely to have had symptoms, it is not possible to be specific, and our contention is, on the balance of probabilities it is likely to be greater than 3-6 months, and perhaps more realistically the 5 years he told the initial referrer.'

I've considered the totality of the evidence very carefully. While I've considered what Mr M has said about his previous knee problems, I don't think it's unreasonable for WPA to rely on the information he gave the private GP about the duration of his symptoms. It remains the case that Mr M told the GP that his symptoms had been intermittent for around five years, which would seem to fall squarely within the moratorium period. And WPA has also provided medical evidence from its CMO and an orthopaedic adviser which would appear to show, on balance, that Mr M was potentially experiencing symptoms for around five years – and longer than a 3-6 month period. As such then, I don't think it was unreasonable for WPA to conclude that Mr W likely hadn't been trouble-free for a continuous two year period after the policy began.

Taking this into account, whilst I sympathise with Mr M's position, I currently don't think WPA acted unfairly when it concluded that his knee pain was pre-existing and therefore excluded by the policy terms. It's open to Mr M to obtain further medical evidence from his treating doctors which supports his position and to send this to WPA for its review. I'd expect WPA to review any new medical evidence in line with its regulatory requirements and the policy terms.

WPA also declined this claim because it felt Mr M's treatment was experimental. I'm aware it now covers this type of surgery. However, I don't think I need to make any further finding on this point, as I'm already satisfied that WPA didn't act unfairly when it turned down Mr M's claim on the basis that his condition was pre-existing. So I don't think the surgery type is

material here.'

I asked both parties to send me any additional information they wanted me to consider.

WPA didn't respond by the deadline I gave.

Mr M didn't accept my provisional findings and I've summarised his response:

- He couldn't undo what had been said to the remote GP and he had to accept it was reasonable for WPA to rely on the call transcript as opposed to his post declaration, but in his view, only for the five year limb of the moratorium;

- Instead, on balance, he didn't think the transcript gave any weight to deciding whether he was symptom-free in the two-year period. He felt it raised more of a possibility, as he'd referred to symptoms being intermittent and gave a three to six month time statement, speaking of a recovery period of a few weeks;

- His real issue was that WPA was questioning his integrity. He'd declared that he'd been symptom-free for two years and he questioned why he wouldn't tell the truth. He also questioned why WPA had continued to take his premium if it felt he hadn't provided accurate information;

- He had real issues with the available medical evidence. He felt WPA's clinical staff had downgraded the likelihood of his condition causing symptoms during the two-year period. He said WPA's CMO hadn't had an opportunity to examine him. And he referred to the fact that he hadn't sought medical advice or treatment for some years between 2014 and 2022;

- He had cancelled the Autocart surgery and adopted a wait-and-see approach, as his symptoms had subsided following a change to his exercise regime. He accepted he has a degenerative condition, but in his circumstances, this didn't equal symptoms and pain;

- He indicated that he intended to undergo further medical testing, partly to help compile a medico-legal response to WPA. He asked whether I could delay making a final decision until he had obtained new medical evidence.

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.

Having done so, whilst I'm very sorry to disappoint Mr M, I still don't think it was unfair for WPA to turn down his claim and I'll explain why.

First, I'd like to reassure Mr M that while I've summarised his response to my provisional decision, I've carefully considered all that he's said. In this decision though, I haven't commented specifically on each point he's made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

New medical evidence

Our investigator explained to Mr M that it wouldn't be appropriate for me to consider any new medical evidence he may be able to obtain from his treating specialist as part of this complaint. That's because my decision focuses on whether it was fair and reasonable for

WPA to turn down his claim based on the medical evidence which was available to it when it issued its final response to Mr M's complaint. I appreciate I included WPA's CMO's and orthopaedic adviser's further comments in my provisional decision. However, those comments were based on a review of the existing medical evidence WPA already had.

Of course, it remains open to Mr M to ask his specialist to provide him with further, new medical evidence in support of his claim. Mr M should send any such new evidence to WPA for its review and, as I explained in my provisional decision, I'd expect WPA to review this evidence in line with its regulatory obligations and the contract terms. If Mr M remains unhappy with the outcome of any further review of his claim, he may be able to make a new complaint about that issue alone.

Did WPA act fairly based on the evidence it had available?

It's clear how strongly Mr M believes that WPA has questioned his integrity. Based on all I've seen though, I don't think WPA concluded that Mr M had provided it with deliberately misleading or inaccurate information. It seems to me it simply concluded, based on the available medical evidence, that Mr M's claim was caught by the scope of the moratorium.

I explained in my provisional decision why I thought it was fair for WPA to rely on the call between Mr M and the remote GP when it considered whether Mr M had been 'trouble-free' for a two year period. It remains the case that given he said he'd had intermittent knee pain for around five years (which spanned both the original moratorium start date and the two years afterwards), I don't think it was unfair for WPA to conclude that he'd most likely experienced knee symptoms during the two year post-sale period. I appreciate these knee symptoms may have flared and subsided over time and that Mr M didn't need to seek medical attention for a number of years. But the call recording and GP letter are both contemporaneous pieces of evidence from the time of claim which indicate that Mr M had likely experienced symptoms of knee pain between 2017 and 2022.

Mr M has also referred to the fact that neither WPA's CMO nor its orthopaedic adviser have had the chance to examine him at first hand. I accept this is the case. But it isn't unusual for a CMO to review existing medical evidence to reach an opinion on whether or not a policyholder's condition is covered. And it remains the case that WPA's clinical staff, who are medically qualified, considered, on balance, that Mr M had been experiencing symptoms of knee pain - which were linked to his proposed surgery - for longer than three to six months and more likely, closer to the five year period he stated to the remote GP.

Taking together the evidence which was available to WPA when it assessed Mr M's claim and issued its final response to his complaint, I still don't think it was unfair or unreasonable for it to conclude, on balance, that Mr M hadn't been trouble-free for the two year limb of the moratorium. So it follows that I still don't find WPA acted unfairly when it turned down Mr M's claim.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 19 April 2024.

Lisa Barham

Ombudsman