

## **The complaint**

Mr P complains that The Benenden Healthcare Society Limited has cancelled his healthcare plan.

## **What happened**

Mr P was a member of Benenden's healthcare plan and he paid monthly contributions. Over the past few years, Mr P has unfortunately suffered from a number of worrying symptoms and so he asked Benenden for help in arranging diagnostic tests.

Unfortunately, Mr P was unhappy with the care he'd received from medical professionals, including those Benenden had arranged for him to see. And he felt it was withholding medical information from him. So he complained to Benenden.

Benenden ultimately offered for Mr P to see a specialist outside of the plan terms and outside of its usual process. However, it had concerns about the way Mr P communicated with its staff and it felt Mr P had made abusive and threatening calls to it. It noted Mr P found telephone calls stressful. So it asked Mr P to communicate with it in writing or by email only.

But as Mr P continued to make calls and to send emails which Benenden considered abusive and threatening, it decided to cancel Mr P's plan membership.

Mr P is very unhappy with Benenden's decision to cancel his plan. He felt it had discriminated against him in breach of the Equality Act 2010. So he asked us to look into his complaint.

Our investigator explained that it wasn't our role to decide whether Benenden had acted lawfully, as that was a matter for the courts. She sympathised with Mr P's long-standing medical conditions. But she was satisfied that the plan terms allowed Benenden to cancel a member's plan for reasons which included verbal abuse of or threats to staff. And having listened to the calls between Mr P and Benenden's staff and having considered emails Mr P had sent to Benenden, she felt he'd used offensive language. She was also satisfied that Benenden had asked Mr P to communicate politely and respectfully with its staff on a number of occasions and that it had asked Mr P to only communicate with it in writing. But Mr P had continued to make calls to Benenden's staff.

The investigator did think Benenden had also taken reasonable steps to help Mr P, including covering costs outside of the plan terms and arranging a single point of contact for him. Overall, she felt Benenden's decision to cancel Mr P's plan had been proportionate. And she didn't think it had been unfair for Benenden to terminate the contract.

Mr P disagreed and so the complaint's been passed to me to decide.

## **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 sorry to disappoint Mr P, I don't think Benenden acted unfairly when it cancelled his plan and I'll explain why.

First, I'd like to reassure Mr P that while I've summarised his detailed submissions to this service, I've carefully considered all he's said and sent us. I appreciate Mr P suffers from a number of worrying health conditions and it's clear how strongly he feels about his complaint. But it's important I make it clear at the outset that this decision will only address Mr P's complaint about Benenden's decision to cancel his plan. I've issued a separate decision which concerns whether or not we have the power to look into Mr P's concerns about the way Benenden responded to Mr P's claims for medical services.

The relevant rules and industry guidelines say a business should provide support and help with understanding and enable customers to pursue their financial objectives. I've taken these rules into account, amongst other relevant considerations, when deciding whether I think Benenden treated Mr P fairly.

I've first considered the membership terms and conditions, which set out the terms of the contract between Mr P and Benenden. Page 37 says:

*'We don't tolerate the misuse or abuse of our services:*

- If you verbally or physically abuse or threaten one of our employees, representatives, or service partners, you may be refused further services.*

Benenden's Memorandum and Rules document states, on page 13:

#### *'EXPULSION*

*Any Member shall be expelled from membership:...*

*5.3 in the circumstances specified in Rule 10.4 or 10.5'.*

And page 15 sets out Rule 10.5 as follows:

#### *'Disqualification from benefits*

*10.5 Any Member or Nominee whose behaviour is in breach of the requirements of the Regulators' Code of Conduct, contrary to the Benenden values or may bring the organisation into disrepute may be expelled from membership at the discretion of the Board and will not have the right to re-apply for admission.*

*For the avoidance of doubt, such behaviour will include, but not be restricted to, verbal or physical abuse of, or threats to, an employee or representative of the Society, or of a provider contracted by the Society.'*

I've listened to calls between Mr P and Benenden's members of staff. While I don't think it would be helpful for me to repeat the content of those calls here, I'm satisfied that Mr P did use offensive language, including using swear words and suggesting that Benenden was engaging in criminal activities.

And having considered a sample of the emails Mr P sent Benenden's staff, I can see that he did use offensive terms and swear words on multiple occasions.

Benenden sent Mr P a letter, on 28 July 2023, which stated the following:

*'We appreciate that members contacting us may be in pain and anxious about their symptoms.*

*However, we do expect that all our staff are spoken to in a polite and respectful manner, and we will not tolerate verbal abuse of any kind, under any circumstances. I would respectfully refer you to 10.5 of our Memorandum and Rules.*

*Whilst I understand that you are going through a difficult time, and we would not wish to add to your distress, after reviewing your recent contact with our office, I do have concerns regarding the manner in which you have conducted your telephone conversations with our staff. It is for this reason that in future should you wish to contact us to request support as a benefit of your membership, or for any other reason, you will be required to do so via email or post and we will correspond with you in the same manner.'*

From the calls I've listened to, it's clear that Mr P did receive the letter and was aware of Benenden's request that he contact it via email or post only. And he continued to contact Benenden by phone, continuing to use offensive language and refer to Benenden committing criminal acts. He also sent further emails containing offensive language. On that basis, Benenden exercised its discretion to cancel Mr P's membership in line with rule 10.5.

It's clear that Mr P believes that given his health conditions, by cancelling his plan, Benenden has discriminated against him and has breached the provisions of the Equality Act.

It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not Benenden has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

Benenden says that in November 2021, Mr P made it aware that he had mental health difficulties and struggled to adapt to stressful situations. This was noted on Mr P's file, so that Benenden could provide Mr P with appropriate support. This included:

- Benenden funding a consultation with a second specialist outside of the plan terms due to Mr P's concerns about the original specialist;
- Between November 2021 and January 2022, one of Benenden's advisers took responsibility for being Mr P's point of contact to reduce the stress he was experiencing and contacted Mr P's clinical specialists on his behalf – again, outside of the plan terms;
- Benenden's agreement to pay for a test which Mr P had self-funded, which wasn't something included by the plan;
- The request for Mr P to correspond in writing, which gave Mr P the opportunity to communicate with Benenden in a way which removed the immediate stress of a telephone call.

Based on what I've seen, I do think Benenden took reasonable steps to support Mr P and to ensure he wasn't prevented from accessing its services or disadvantaged as a result of his health. Even if I'm wrong on this point though, I've considered whether I think it may have made a difference to the situation if Benenden had given Mr P a further warning about his

communications with its staff before terminating his plan.

In the circumstances, given the content of the calls, I don't think that Benenden acted unfairly in suggesting that Mr P should communicate with it in writing. However, Mr P continued to send Benenden emails which I consider to have been offensive and threatening in tone and he continued to contact it by phone – again, using offensive language. This behaviour continued over a period of months, rather than being a one-off event. And on balance and having listened to the calls and read the emails which followed Benenden's letter of 28 July 2023, I don't think a further warning to Mr P ahead of plan cancellation is likely to have resulted in a different outcome here.

I'd add too that Benenden says that in order to obtain authorisation for its services, it requires referral by an NHS GP. But Mr P doesn't have an NHS GP and so Benenden doesn't think it would be appropriate for it to continue to take contributions when Mr P can't benefit from some of the services it provides. I don't think this is unfair or unreasonable. It's clear Mr P feels Benenden has discriminated against him given the problems he's experienced. But having looked at all the evidence, I don't think Benenden has acted unfairly, unreasonably or disproportionately when it relied on its rules to cancel Mr P's plan.

Overall, despite my natural sympathy with Mr P's position, I don't uphold this complaint.

### **My final decision**

For the reasons I've given above, 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 P to accept or reject my decision before 27 June 2024.

Lisa Barham  
**Ombudsman**