DRN-4921348

The complaint

Mr M complains about two exclusions Westfield Contributory Health Scheme has included in its corporate health cash plan. Mr M feels the exclusions discriminate against scheme members who have long-term mental health conditions.

What happened

Mr M is covered under a group health cash plan. The policy provides a cash benefit for a number of medical and dental conditions.

The plan provides a cash benefit if a member is hospitalised for up to 28 nights. However, the plan excludes cover if an in-patient admission is related to a psychiatric condition. The plan also covers prescription charges up to an annual limit. But it excludes cover for annual prescription pre-payment certificates (PPC).

Mr M considers these exclusions are unfair and discriminate against those with long-term mental health conditions. He considers this to be a potential breach of the Equality Act 2010. So he complained to Westfield.

Westfield told Mr M that psychiatric inpatient stays were excluded because it was difficult to predict the length of a psychiatric stay and that they could last months. It told Mr M its stance on PPCs would be reviewed.

Mr M remained unhappy with Westfield's position and he asked us to look into his complaint.

Our investigator didn't think Mr M's complaint should be upheld. In brief, she felt this was a group scheme and that Mr M's employer had agreed the level of cover it wanted. And she considered the exclusions applied to all scheme members. So she didn't think Westfield had treated Mr M unfairly.

Mr M disagreed and so the complaint was passed to me to decide.

I asked Westfield to provide me with evidence which supported its assessment of the risks it had chosen to exclude – such as statistical or claims data. I also asked it if a review of its stance on PPCs had taken place.

Westfield confirmed no PPC review had taken place. It also said that the exclusion for psychiatric in-patient stays wasn't based on the potential duration of the stay. Ultimately, it said:

'*I think it is important to confirm that the plan is designed to cover "everyday health costs". While a wide range of treatments, expenses and services are covered by the plan, it's true to say that a number of common and also specialist services are not. We ensure that our customers are provided with full details of what's covered, and not covered, at the time of purchase. At the moment, psychiatric inpatient stays and pre-payment certificate for prescriptions is not covered by the plan.*

In depending on what services to include, and not include, we consider the value that all our customers derive from our plans, whilst keeping them affordable to ensure as many people can access cover as possible.'

It also told us that it had paid out significantly more in claims under this plan than it had received in premiums.

I issued a provisional decision on 10 July 2024, which explained the reasons why I didn't think Westfield had shown it had treated Mr M fairly, but why I wasn't intending to make any award. I said:

'It's important I make clear our role. We're not the industry regulator. We can't tell an insurer what risks it should and shouldn't cover. We can't direct an insurer to change its policy terms. And we have no power to fine or punish the businesses we cover. Our role is to consider complaints brought by individual consumers to decide whether a financial business has made an error which has caused a consumer to lose out. And, if so, what we think fair compensation should be.

In this case, it's clear that the plan Mr M has complained about is a group scheme. His employer is the plan holder and it was responsible for agreeing the cover terms with Westfield. So Mr M isn't a policyholder – he's a beneficiary of the plan. His complaint turns on his belief that the exclusions for psychiatric inpatient stays and PPCs are discriminatory and breach the Equality Act 2010. That's because he feels the exclusions affect people with mental health conditions.

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 Westfield 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.

Generally, a financial business can't discriminate against a consumer because of a protected characteristic – which include disability. Long-term mental health conditions can constitute a disability. However, there are some exceptions if certain conditions are met – which are set out in the Act. I've set out the disability exception below:

'A financial business doesn't contravene the provisions of the Act relating to disability discrimination by doing anything in connection with insurance business where:

- *the thing is done by reference to information that is both relevant to the assessment of the risk to be insured and from a source on which it's reasonable to rely, and*
- *it's reasonable to do that thing.'*

This exception requires a financial business to have carried out an assessment of risk from a reliable source. It isn't enough for it to rely on untested assumptions or generalisations.

In this case, it seems to me that whether a member if hospitalised for general surgery or illness, or a psychiatric condition, payment is limited to 28 days of a set benefit. And prescription reimbursements are limited to an annual amount too. It isn't clear to me why psychiatric inpatient stays or PPCs are excluded from cover. And I accept Mr M's point that these exclusions may affect some members more than others.

So, I asked Westfield for evidence of its assessment of risk to assess whether I think it's acted fairly or reasonably. I asked for evidence of statistical claims data or other evidence on which it based the exclusions. Despite repeated requests, no such information has been provided. So I don't think Westfield's shown it's acted fairly or reasonably. And I can understand why Mr M feels that he is being treated unfairly. Nor do I think the plan holder's overall claims ratio is relevant to the terms Mr M has complained about as an individual. It's unfortunate too that Westfield gave Mr M misleading information about the reason for the exclusion which it responded to his complaint – for which it's apologised.

With that said, Mr M has told us that he hasn't made a claim under the inpatient stay section or for prescription charges. He's told us that he complained proactively. So it doesn't appear that Mr M has made a claim which has been declined or that Westfield has taken any action which has caused him to lose out. On that basis, I don't think I could fairly or reasonably award Mr M any compensation for financial loss or material trouble and upset caused by the impact of Westfield's terms on him as an individual plan beneficiary. Should Mr M go on to make a claim for either an inpatient stay or for PPC prescription charges which Westfield turns down, he may be able to bring a new complaint to us about that decision specifically.

Overall, I don't think that Westfield has shown it treated Mr M fairly and reasonably. But as I've explained, I don't find that I can fairly make an award of compensation in these particular circumstances.'

I asked both parties to provide me with any further evidence or comments they wanted me to consider.

Mr M said that following my provisional decision, he'd made a claim for a PPC, which Westfield had turned down.

Westfield said it had nothing to add.

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, as neither party provided any substantive new evidence in relation to this specific complaint, I see no reason to change my provisional findings. So my final decision is the same as my provisional decision and for the same reasons.

I understand that Mr M has now made a claim for a PPC which has been declined. As we explained, if Mr M is unhappy with Westfield's decision, he'll need to make a new complaint to it about that particular issue alone. Once Westfield has had an opportunity to look into and respond to Mr M's concerns, we may be able to consider a new complaint about its decision to turn down his claim.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't make any financial award against Westfield Contributory Health Scheme.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 August 2024.

Lisa Barham
Ombudsman