

The complaint

Mrs B complains Western Provident Association Limited (WPA) unfairly turned down her claim.

What happened

Mrs B is a beneficiary of her employer's private medical insurance policy. And the cover is underwritten by WPA.

In June 2023, Mrs B made a claim against the policy as she was experiencing ankle pain and swelling. WPA initially authorised a consultation and x-ray and paid the claim for these.

A letter from the consultant said Mrs B reported significant pain and swelling in her right ankle over the last three months, and this was no longer settling with rest. He noted Mrs B said she had always been "flat-footed" and used orthoses which were effective. The consultant said on examination Mrs B had "significant planovalgus deformities bilaterally". He diagnosed tibial posterior tendinopathy and recommended a period of rest and immobilisation. He provided a protective walking boot which Mrs B was to wear with her existing orthoses and said a refitting of the orthoses and an MRI scan were needed.

WPA declined the claim for further investigations and treatment on 3 July 2023. It said the claim wasn't covered due to the moratorium on the policy. And said as Mrs B had previously been provided with orthoses for both feet, she had not been symptom free for the required two year period.

Mrs B said her orthoses had been fitted seven years prior, so this was before the five year moratorium period started, and she'd had no symptoms as a result of the orthoses. She sent WPA a letter from her consultant which said:

"you stated to me that your symptoms from your tib post tendinopathy commenced 3 months ago, despite the fact that you have had occasional flat feet, this to my mind would not be a 'pre-existing condition'. 'Flat foot' is a descriptive term and not a diagnosis".

WPA said it had considered these points, but they didn't change its opinion that the claim wasn't covered. And Mrs B complained.

WPA responded and said it had reviewed the claim again, but maintained its position. It said the consultant's report stated Mrs B had always been "flat-footed" and the examination found "significant planovalgus deformities bilaterally". WPA said a planovalgus deformity is a form of flat-footedness which can be caused by dysfunction of the tibial tendon and is commonly treated using orthoses. It said Mrs B had continued to receive treatment during the moratorium period in the form of the use of orthoses. And it said the new diagnosis of tibial posterior tendinopathy was a related condition.

Unhappy with the response, Mrs B brought her complaint to this service.

An investigator here looked into what had happened and ultimately said they didn't think WPA had declined the claim unfairly.

WPA accepted the investigator's view. However Mrs B disagreed. She commented on the evidence the insurer supplied to support its view that her diagnosis of tibial posterior tendinopathy was a related condition. She said WPA had not established an irrefutable link or proved beyond a reasonable doubt that the conditions were related. And she asked for a decision from an ombudsman.

And so, the case has 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.

And I've looked at the relevant rules and industry guidelines, which say WPA has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

Mrs B's policy includes the following moratorium underwriting term.

"You cannot claim for any pre-existing condition that occurred during the five (5) years prior to the start date of your plan. Benefit will be considered for pre-existing conditions where you have been free from symptoms, treatment, medication or advice for two (2) years from the policy start date."

The policy defines pre-existing conditions as follows.

"Any condition, disease, illness or injury, whether symptomatic or not. This includes:
- *Anything for which you have received medication, advice or treatment; or*
- *Where you have experienced symptoms, whether the condition has been diagnosed or not, before the start of your cover."*

And the policy contains the following exclusion.

"Excluded conditions

Any related condition(s)

A related condition is where a current UK body of reasonable medical opinion considers another symptom, disease, illness or injury to be related to or associated with an excluded condition."

Firstly, I've considered whether I think Mrs B had a pre-existing condition which falls within the policy moratorium – and I think that she did. As Mrs B was receiving treatment for her feet in the form of orthoses during the five year moratorium period and prior to this. And whilst I've noted the consultant's comments, I've reviewed WPA's assessment of a pre-existing condition based on the definitions set out in the policy.

I've then gone on to consider whether Mrs B's claim in 2023, was for a related condition, and therefore fairly excluded from cover.

WPA has said Mrs B's claim is excluded because her newly diagnosed condition of tibial posterior tendinopathy is strongly related to her existing flat feet, which were being treated with orthoses. The claim was reviewed by the insurer's Chief Medical Officer, and they said

“posterior tibial tendinopathy is commonly associated with flat feet and planovalgus deformity”. And I’ve noted Mrs B’s consultant referenced her history of “flat-footedness” and identified “significant planovalgus deformities bilaterally” in his examination of her.

WPA also provided this service a series of links to online medical resources, which it said support a strong association between tibial posterior tendinopathy and flat feet. Mrs B commented on the evidence WPA supplied and I’ve also considered her arguments.

Having done so, I don’t think it would be fair for me to expect WPA to show an irrefutable link between the conditions, or to require it to prove this beyond a reasonable doubt. I say this because the policy exclusion states a related condition is one which a UK body of reasonable medical opinion considers to be related or associated to the excluded condition. And I’ve been sufficiently persuaded that it’s most likely the diagnosed condition of tibial posterior tendinopathy, is related to Mrs B’s pre-existing flat feet or planovalgus deformity, which was being treated on an ongoing basis with orthoses.

So it follows that I don’t think WPA unfairly declined Mrs B’s claim for further investigations and treatment.

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 Mrs B to accept or reject my decision before 3 October 2024.

Gemma Warner
Ombudsman