

Report

Full investigation - *Return to Work Act 2014*

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| Complainant | [REDACTED] |
| Claims Agent | Gallagher Bassett Services |
| Ombudsman reference | 2019/08708 |
| Date complaint received | 2 October 2019 |
| Issues | <ol style="list-style-type: none">1. Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the <i>Return to Work Act 2014</i> by failing to notify the complainant at first instance that payments for services provided by Corporate Health Group were rejected2. Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the <i>Return to Work Act 2014</i> by failing to adequately communicate with the complainant about resolving issues related to the complainant's injury claim3. Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the <i>Return to Work Act 2014</i> due to an unreasonable delay in resolving the unpaid invoices related to the complainant's claim |

Jurisdiction

The complaint is within the jurisdiction of the Ombudsman under the *Return to Work Act 2014* (the RTW Act), The Ombudsman can investigate alleged breaches of the Service Standards in Schedule 5 of the RTW Act by a claims agent or self-insured employer. Gallagher Bassett Services is a claims agent for the purposes of the RTW Act.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking a response from Gallagher Bassett Services (the agent)
- clarifying the agent's response
- seeking more particulars from the complainant
- considering the Schedule 5 Service Standards under the RTW Act
- considering the Ombudsman Act, the RTW Act, the *Return to Work Regulations 2015*, and Gallagher Bassett's Customer Service Charter
- preparing a provisional report and providing it to the relevant parties for comment
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Procedural fairness

I provided a copy of my provisional report to:

- the complainant
- the agent

The agent provided a response to my provisional report and I have addressed that response where necessary in the body of this report. The agent indicated that it agreed with my views.

The complainant did not respond to my provisional report.

My views remain as set out in my provisional report.

Background

1. [REDACTED] (the complainant) suffered a workplace injury of a psychological nature which lasted for a period of approximately four weeks during October and November 2018.
2. The complainant was able to return to work immediately after this period.
3. The complainant underwent three consultations with Dr Martin Russell from Corporate Health Group (CHG) related to his workplace injury on the following dates:
 - 11 October 2018 - \$146.00
 - 25 October 2018 - \$79.00
 - 6 November 2018 - \$79.00.
4. The complainant's injury claim was approved on 20 December 2018.
5. Costs for the medical treatment received by the complainant during October and November 2018 remained unpaid by the agent until 15 October 2019, some ten months later.

Unpaid Invoices

6. Initial invoices for the complainant's medical treatment were submitted electronically by CHG on 28 October 2018 and 23 November 2018.

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

7. Both invoices were rejected by the agency on 19 November 2018 and 12 December 2018 as the complainant's injury claim had not yet been accepted.
8. The agency was unable to locate in its records any notification of the rejection of the invoices being sent to the complainant.
9. It was not until May 2019 that the complainant learned of the unpaid invoices for the medical treatment related to his workplace injury. This occurred when the complainant received a final notice for payment from CHG.
10. On 22 May 2019, Mr Peter Jackson (**the complainant's employer**) sent an email to the agency as follows:

...As discussed today, I have received several statements from Worcomp Pty Ltd for the claim reference in the subject, the most recent of which is attached.

Please confirm that you have received their accounts, and let me know if there is anything else you need from me.

11. In the agent's response provided to my Office on 11 February 2020, the agent advised that the statement provided by the complainant's employer did not have the consultation dates required that would allow the invoice to be processed for payment.
12. On 23 May 2019, the agent then emailed CHG (and copied in the complainant's employer) requesting that copies of the invoices be sent directly to the agent's Provider Payments Team:

...Can we please have a copy of invoice 1082557, 1086987 & 1091285 as per the attached statement.

Our records for this claim show that we have not yet paid these and have received the attached statement from the employer.

Only payment made to CHG for this claim is an appointment 20/12/2018

Please provide to [...] - we will arrange payment

Please note the claim number for [REDACTED] is 46283233/00.

13. On 31 May 2019, SA Unions Advocate Mr Danny Conner, by email, provided the agent with invoices for medical treatment in connection with the complainant's injury and requested confirmation that the agent would attend to payment as a matter of urgency:

...I confirm we are assisting [REDACTED] in relation to the above claim (46283233/00)

[REDACTED] [sic] claim was accepted in a determination dated 20 December 2018 for a closed period from 4 October 2018 to 5 November 2018.

We have attached invoices for medical expenses sought from [REDACTED] by WORCOMP Pty Ltd for treatment provided to [REDACTED] as part of his compensable condition.

By return please confirm you will attend to payment of the accounts as a matter of urgency.

14. There was no response to Mr Conner's email from the agent.
15. In response to enquiries made by my Office, Ms Jodie Chilvers, Customer Feedback Officer, on behalf of the agent, advised that although there was no response to Mr Conner's email, the invoices provided by Mr Conner were forwarded to the Provider

Payments Team for processing. However, the invoices were not processed due to CHG supplying an inactive Medicare provider number for Dr Russell, which only came into effect on 28 March 2019, after the dates of the complainant's consults. The agent notified CHG of this issue and requested an amended invoice.

16. On 1 June 2019, CHG manually submitted invoice 1135966 containing all three dates of the complainant's consultations. The invoice was rejected as, again, Dr Russell's Medicare provider number which was supplied was after the consult dates. The agent advised my investigation that an email was then sent to CHG on 25 June 2019 advising CHG that the agent's system was unable to process the invoice due to the incorrect provider number being supplied.
17. I consider it reasonable to assume that the invoice submitted by CHG on 1 June 2019, was the same invoice submitted by Mr Conner on 31 May 2019.
18. On 11 September 2019, Mr Conner by email, advised that the invoices had still not yet been paid and that the complainant was being pursued by a debt collection agency:

...Despite the email sent you on 31 May 2019...the outstanding medical account has not been paid.

██████████ is now being pursued by debt collectors.

Please confirm receipt of this email and that you will attend to the outstanding account immediately.

19. Mr Conner sought confirmation that the agent received the email and that payment would be made. However, the agent was unable to locate in their records any response being provided to Mr Conner.
20. In the same email, Mr Conner also copied in Minter Ellison, whom I understand provides legal representation to the agent. Minter Ellison then sent an email to the agent's Dispute Resolution Officer requesting for the appropriate team to address the matter. The Dispute Resolution Officer responded to Minter Ellison advising of the issue with the incorrect Medicare provider number being supplied by CHG and also forwarded Minter Ellison's email to the Claims Team managing the complainant's claim requesting for the matter to be resolved. No record of action by the Claims Team as a result of this email was able to be located.
21. In a separate email to the agent dated 12 September 2019, the complainant's employer also queried the non-resolution of payment for the complainant's medical expenses as follows:

Per the attached email, those invoices should have been the last thing required to pay the outstanding amounts

I understood this was resolved in May.
22. On 19 September 2019 the complainant phoned the agent to discuss the outstanding costs for the medical treatment he received and stated CHG were threatening to sue him if his account remained unpaid. The complainant was informed by a Claims Officer from the agent that the matter would be looked into and that he would be contacted back. In the agent's response, it states that at this time, the Claims Officer did look into the matter internally and also with CHG, however there was no evidence of the complainant being subsequently contacted back by the Claims Officer.
23. On 28 September 2019, a Claims Officer from the agent responded to an email sent by the complainant's employer on 12 September 2019 as follows:

...We sincerely apologise for the delay in our response.

We sent a request to CHG in May for the invoices corresponding to the statement however we haven't received anything from CHG.

I'm following this up.

24. A further follow up email was sent to the complainant's employer on 30 September 2019 from the agent, advising that:

...My apologies I sent that email a little too quick - I've just realised they've sent me the invoice for different dates (11 October 2018, 25 October 2018, 6 November 2018).

I'll follow up again.

25. In response to enquiries made by my Office, the agent has advised that on 30 September 2019, CHG electronically submitted invoice 1172481 which had all three consult dates listed. However, the Medicare provider number had not been amended and the agent was still unable to process any payment.

26. It was also at this point in time that it appears the agent, as evidenced by its response to enquiries made by my Office, was acting on the statement provided by the complainant's employer on 22 May 2019, causing further delays:

...with no further information provided as to what that date list related to, it was taken that these dates were the date of consult.

As the statement does not supply enough information for us to be able to enter into RTWSA's system, we have been chasing up invoices for these dates of consults. We were only informed yesterday (8 October 2019) that the dates listed on the statement are for the dates of the invoices and not the consult dates.

27. On 1 October 2019 the complainant emailed a Claims Officer from the agent in further efforts to resolve the matter:

...if we can't have this resolved by COB today then we need to arrange a sit down room until it is resolved. It is getting beyond a joke.

This mismatch between CHG and GB is unacceptable. Listing it for debt collection and then requiring that I have to take a mediating role between your two organisations to bring such a trivial matter to a close is disgusting. I am suffering considerable stress mediating this matter and my employer is losing my time while I do so.

28. The complainant's email sent on 1 October 2019 was not responded to until 12 October 2019 by a Claims Officer from the agent as follows:

Dear [REDACTED]

This is an update email to advise that this matter has definitely been prioritised and is being actioned.

The delay has been due to CHG uploading their invoice with incorrect provider number. Our payments team is liaising direct with CHG to rectify the issue they have also requested CHG call off the debt collectors, which CHG advised they have done.

Payments team is going to let me know as soon as the account is processed, and I'll advise you also, but based on the actions taken you should not get any more contact from the debt collectors chasing the money.

29. On 2 October 2019 the complainant complained to Ombudsman SA that the outstanding invoices remained unpaid, close to twelve months since the initial consultation related to the worker's injury occurred.
30. On 5 October 2019, a Claims Officer from the agent sent the following email to CHG:

Dear CHG Accounts

Could someone please action this preferably on Tuesday in Natalie's absence. The injured worker is quite distressed that he is receiving communication from debt collectors and wants this sorted out ASAP.

Natalie responded to my initial email but sent through invoices for the incorrect dates. We are needing invoices for:

- 16/10/18
- 31/10/18
- 20/11/18.

31. As referenced at paragraph 26, on 8 October 2019, it appears the confusion over the dates of invoice and consult came to light and was clarified by an email sent from Mr Kyle Daddow at CHG Finance:

...the attached invoice is correct.

The date on the statement is the date of invoice, not the date of service.

It is also an old statement (May 2019)

It appears they were since billed directly to the patient and then on 30/9/19 following below email rebilled to the company with the claim details.

32. Further, it appears that on the same day, the Claims Officer sent the following email to the Payments team:

Hi team

Can you please pay the attached as a priority as IW is quite distressed about debt collectors. Please advise me once done so I can inform the IW.

(Invoice is second attachment, first attachment is the statement).

33. The agent advised that on 8 October 2019, CHG manually submitted invoice 1172481 to the agent for payment without the necessary changes and the invoice was again unable to be processed due to the incorrect Medicare provider number being provided. An email was sent on behalf of the agent advising CHG of this error.
34. On 9 October 2019, a Customer Feedback Officer from the agent phoned Mr Daddow at CHG Finance to discuss the ongoing matter. Mr Daddow agreed to resubmit an amended invoice. The Customer Feedback Officer also requested that CHG inform the debt collector that the matter was being resolved and to cease contacting the complainant. Mr Daddow advised this would occur.
35. On 11 October 2019, CHG Finance sent the following email to the agent:

...the only invoice owing is the one attached, the below dates you are chasing (statement attached) are the dates of the original invoices sent, these were credited and billed to the patient.

Patient has advised he now has an accepted claim number so we rebilled the invoice to

you (first attachment)

The only amount owing is \$304 (invoice attached)

The correct provider number is 206834KX (the one on the invoice is incorrect as we have now moved buildings)

Can you advise if this is all you need to pay the invoice attached and can you confirm this is being paid as the patient is threatening legal action if it's not paid ASAP.

36. On 21 October 2019, my Office was informed that an outstanding invoice for all three consultations for medical treatment related to the complainant's workplace injury was paid in full to CHG by the agent on 15 October 2019.

Relevant law

37. The statement of service standards in the RTW Act outlines what a worker can reasonably expect when engaging with a Corporation:

Schedule 5-Statement of Service Standards (the service standards)

Part 1-Introduction

1-Aim of these standards

- (1) These standards are intended to meet the reasonable expectations of workers and employers about how the Corporation should deal with them by–
- (a) setting out principles that will be observed by the Corporation when it is dealing with a worker or an employer; and
 - (b) providing a procedure for lodging and dealing with complaints about breaches of these standards; and
 - (c) providing consequences and remedies for breaches of these standards.
- (2) These standards recognise that when a worker or an employer deals with the Corporation, it is reasonable for the worker and the employer to expect the highest standards of service and fairness.

38. The service standards encourage positive relationships between the Corporation and workers. They acknowledge that the Corporation and the worker need to work together to achieve the best outcomes for all. Clause 3 under Schedule 5 of the RTW Act provides:

3-Spirit of these Standards

These standards encourage positive relationships between the Corporation, workers and employers and acknowledge that the Corporation, workers and employers need to work together in order to achieve the best outcomes for all, especially by adopting early intervention and return to work processes when a worker is injured at work.

39. The following service standards under Part 2, Clause 4 under Schedule 5 of the RTW Act are relevant:

Part 2-The standards

4-The standards

The Corporation will-

Standard 4(e)

- (e) treat a worker and an employer fairly and with integrity, respect and courtesy, and comply with stated timeframes

Standard 4(f)

- (f) be clear about how the Corporation can assist a worker and an employer to resolve any issues by providing accurate and complete information that is consistent and easy to understand (including options about any claim, entitlements, obligations and responsibilities).

40. Part 3, Clause 5 under Schedule 5 of the RTW Act provides:

Part 3-Complaints about breaches of these standards**5-Overview**

(1) A worker or an employer who has a concern about whether the Corporation has complied with any of these standards may–

- (a) raise the issue or concern directly with the Corporation so that it can be dealt with in an immediate way; or
- (b) lodge a complaint with the Ombudsman (including in a case where the matter is a concern in relation to a self-insured employer or a provider of services engaged by a self-insured employer).

(2) In connection with the operation of subclause (1)–

- (a) the preference is to attempt to resolve a matter directly with the Corporation; and
- (b) if the matter is referred to the Ombudsman, the Corporation will comply with any recommendation of the Ombudsman in order to ensure compliance with these standards; and
- (c) without limiting subclause (3), sections 17(1) and 25 of the Ombudsman Act 1972 do not apply in relation to a matter referred to the Ombudsman.

41. Part 3, Clause 7 under Schedule 5 of the RTW Act provides:

7-Remedies

If it is found that the Corporation has breached any of these standards, the Corporation is to do 1 or more of the following:

- (a) provide a written or oral apology;
- (b) furnish a written explanation;
- (c) meet with the worker or employer to consider his or her views and to achieve a resolution of the matter;
- (d) furnish information to the worker or the employer, in an appropriate form, which outlines, where relevant–
 - (i) the status of any claim and extent of entitlements; and
 - (ii) the review rights that exist under this Act; and
 - (iii) the services that are available and the timeframes that should apply

in relation to a dispute;

- (e) provide a worker with a copy of his or her file in accordance with section 180 of this Act or under the Freedom of Information Act 1991;
- (f) invite feedback about any response and ensure that any questions are answered or requests are responded to in an appropriate manner;
- (g) take any other reasonable steps to remedy the matter.

Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the *Return to Work Act 2014* by failing to notify the complainant at first instance that payments for services provided by CHG were rejected.

42. The agent does not currently have an official policy in place which requires either an injured worker or service provider to be notified if an invoice cannot be reimbursed to a service provider. However, in the agent's response to enquiries made by my Office, the agent stated that there is an expectation that its staff notify both parties of this, (the injured worker and the service provider) so that they are each aware that the agent is not taking on this responsibility.
43. The agent further stated that it expects its staff to advise both the worker and the service provider of why an invoice is not able to be covered for any reason by the worker's claim; and work with the service provider to amend any problems with an invoice which prevents an invoice from being paid. This appears to some degree to contradict information provided by the agent in the preceding paragraph.
44. In light of this, I have considered whether the agent was 'clear about how...[it]...can assist a worker...to resolve any issues by providing accurate and complete information that is consistent and easy to understand (including options about any claim, entitlements, obligations and responsibilities)', in accordance with Standard 4(f).
45. The complainant received medical treatment from Dr Russell of CHG on 11 October 2018, 25 October 2018 and 6 November 2018 in relation to the workplace injury he suffered.
46. CHG electronically submitted (invoice/s uploaded directly into RTWSA's system via an online portal) invoice 1082557 to the agent on 28 October 2018 for the medical consultation which occurred on 11 October 2018.
47. CHG electronically submitted invoice 1091285 to the agent on 23 November 2018 for the medical consultation which occurred on 6 November 2018.
48. On the material provided to my Office, it does not appear that an invoice was submitted by CHG to the agent for the medical consultation which occurred on 25 October 2018.
49. It is apparent that the initial invoices for the complainant's medical treatment were submitted by CHG to the agent, prior to the complainant's work injury claim being approved on 20 December 2018.
50. By email dated 9 October 2019, the agent's Customer Feedback section advised my Office that the aforementioned initial invoices submitted by CHG were rejected for payment by the agent as the complainant's work injury claim had not yet been accepted and interim payments had not been accepted by the complainant.
51. I understand from the agent that if a worker is incurring medical expenses whilst awaiting the outcome of a work injury claim, a claims agent will ordinarily speak to the

worker about interim payments to cover income and medical expenses. However, such payments will be recovered from the worker in the event that the injury claim is not accepted.

52. I commented in my provisional report that there was no evidence before me to show that the agent spoke to the complainant about interim payments and, if so, whether the worker rejected the option of interim payments whilst awaiting the outcome of his injury claim. In response to my provisional report, the agent stated:

Whilst of relatively low consequence to the end result of this matter, we note your comment on page 10 that no evidence has been provided that we spoke with [REDACTED] about interim payments.

We wish to confirm that Return to Work Specialist (Lisa Forrest) spoke with [REDACTED] on 17 October 2018 in relation to interim payments. Interim payments were also offered via letter dated 23 October 2018. A further email was sent to [REDACTED] on 31 October 2018, asking if he wanted to access interim payments, as his sick leave entitlements were almost exhausted.

53. Regardless, I accept that the complainant did not learn of the unpaid invoices until May 2019, when he received a final notice for payment from CHG. The agent has not provided any information to suggest otherwise.
54. Noting that the complainant's work injury claim was approved on 20 December 2018, and he did not hear further from the agent until receiving notice from CHG in May 2019, it is not surprising that the complainant assumed that costs for the medical treatment he received had been paid by the agent.
55. However, noting that the agency was aware that the complainant was incurring medical expenses prior to the determination of his work injury claim, I consider it unreasonable that the agent failed to notify the complainant of the rejected invoices.
56. In my view, it is clearly good administrative practice and consistent with Standard 4(f) for the agency to notify a claimant that invoices have been rejected, explain the reasons and discuss the claimant's options (such as interim payments, where applicable). None of that appears to have occurred in this situation.
57. With reference to the agent's response at paragraph 43, it is unclear whether the agent notified CHG of the rejected initial invoices. Had the agent worked with CHG in the initial stages of the invoices first being submitted, the agent would have been able to advise CHG as to the reasons for the rejection. This likely would have resulted in the issue of the unpaid invoices coming to the attention of the complainant sooner than May 2019.
58. Whilst it appears that CHG also may have been in a position to notify the complainant of the rejected invoices, I am of the view that the agent did not clearly assist the complainant in resolving the issue of the rejected invoices at first instance by providing accurate and complete information. At the time the complainant's injury claim was accepted, I consider it reasonable that the complainant should have been notified of the rejected payment of invoices for services provided by CHG and that the invoices at that time remained unpaid.

Opinion

In light of the above, my view is that the agent acted in a manner that was in breach of the Service Standard 4(f) set out in schedule 5 of the *Return to Work Act 2014*.

I include a recommendation to remedy this breach at the end of this report.

Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the *Return to Work Act 2014* by failing to adequately communicate with the complainant about resolving issues related to the complainant's injury claim

59. I have considered whether the agent failed to adequately communicate with the complainant about resolving issues related to the complainant's injury claim from May 2019 onwards, after the complainant received a final notice of payment from CHG.
60. Following ongoing attempts by the complainant's employer and his union advocate to resolve the payment for medical treatment provided to the complainant by CHG, the complainant phoned the agent on 19 September 2019 and stated that CHG were threatening to sue him if the account remained unpaid.
61. Although the complainant was informed by a Claims Officer from the agent that the matter of the outstanding costs for the medical treatment he received would be looked into, and although the matter was looked into internally, the agent was unable to locate any evidence of the complainant being contacted back by the Claims Officer.
62. I acknowledge that during this period the agent was making attempts to resolve the payment of the costs owed to CHG.
63. It is apparent that the invoices provided to the agent by CHG were unable to be processed due to an inactive Medicare provider number for Dr Russell being supplied. In addition, there was evident confusion arising from a statement provided by the complainant's employer which led to confusion over consultation and invoice dates.
64. The complainant contacted the agent by email on 1 October 2019 as follows:
- ...if we can't have this resolved by COB today then we need to arrange a sit down room until it is resolved. It is getting beyond a joke.
- This mismatch between CHG and GB is unacceptable. Listing it for debt collection and then requiring that I have to take a mediating role between your two organisations to bring such a trivial matter to a close is disgusting. I am suffering considerable stress mediating this matter and my employer is losing my time while I do so.
65. The 1 October 2019 email was not responded to by the agent until 12 October 2019 when it advised the complainant of the issue concerning CHG uploading invoices with an incorrect Medicare provider number for Dr Russell.
66. Between May and October 2019, I am of the view that the agent failed to adequately communicate with the complainant about resolving issues related to the complainant's injury claim.
67. It is evident that the complainant was not notified by the agent until the email of 12 October 2019 in which the agent informed the complainant of the delay as being attributable to CHG uploading invoices with an incorrect Medicare provider number.
68. The complainant clearly felt frustrated that he was required to take on a 'mediating' role between CHG and the agent in an effort to resolve the matter.
69. There was no response from the agent to Mr Connor's email dated 31 May 2019 requesting the agent to attend to payment urgently of the invoices provided in the email relating to the costs of medical treatment for the complainant's workplace injury.
70. There was no response from the agent to Mr Connor's email dated 11 September 2019, advising that the invoices still had yet not been paid and that the complainant was being pursued by a debt collection agency.

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71. I consider that the agent should have been more transparent during this period of time by keeping both the complainant and his representative informed of the matter, in particular by notifying of the issue concerning the provision of the inactive Medicare provider number (on several occasions) by CHG and the error which arose from the statement provided by the complainant's employer. Without that information, it is understandable that the situation caused the complainant to feel considerably distressed.
72. Rather, it is evident that between May 2019 and October 2019, the complainant was not kept informed as to the efforts being made by the agent to resolve the matter.
73. I also note the agent's response to my enquiries dated 27 March 2020 and its expectation that staff:
- advise both the worker and the provider of why an invoice is not able to be covered for any reason by the worker's claim
 - work with the service provider to amend any problems with an invoice which prevents an invoice from being processed/paid
74. In all the circumstances, I consider that the agent was not clear in how it could assist the complainant to resolve the payment of the outstanding CHG account and also failed to provide accurate and complete information relating to why this issue was yet to be resolved. On that basis I consider that the agent failed to comply with Service Standard 4(f).
75. Further, in the agent's Service Charter, the agent commits that it will:
- return a call within 1 business day if unavailable when the call is made
 - acknowledge all enquiries by email within 2 business days
 - reply to all written enquiries within 3 business days
 - acknowledge complaints within 2 business days and respond within 5 unless otherwise agreed
 - contact all stakeholders within 2 days of receiving a new claim
 - contact stakeholders within 2 days of making a decision affecting a claim.
76. The agent further stated in its response:

We do not consider we have complied with Gallagher Bassett's Service Charter of responding to phone calls within 1 business day and acknowledging emails within 2 business days.

We also do not consider we have complied with ReturnToWorkSA service standards of responding to phone calls and acknowledging emails within 1 business day.

On that basis, I consider that the agent failed to comply with Service Standard 4(e).

Opinion

In light of the above, my view is that the agent acted in a manner that was in breach of the Service Standards 4(e) and 4(f) set out in Schedule 5 of the *Return to Work Act 2014*.

I include a recommendation to remedy this breach at the end of this report.

Whether Gallagher Bassett breached the Service Standards under Schedule 5 of the *Return to Work Act 2014* due to an unreasonable delay in resolving the unpaid invoices related to the complainant's injury claim

77. The complainant underwent three consultations with Dr Russell from CHG related to his workplace injury.
78. The consultations occurred on 11 October 2018, 25 October 2018 and 6 November 2018.
79. Costs for the medical treatment received by the complainant during October and November 2018 remained unpaid by the agent until 15 October 2019.
80. I have considered whether the approximate 12 month delay between when the invoices were first submitted to the agent and the subsequent payment by the agent is in accordance with Standard 4(e).
81. Standard 4(e) sets out that the agent will 'treat a worker and an employer fairly and with integrity, respect and courtesy, and comply with stated timeframes'.
82. The agent does not currently have an official policy which outlines a specific timeframe for the payment of invoices relating to medical costs associated with a worker's injury claim.
83. However, with reference to the agent's Service Charter, the agent's commitment is that it will:
 - return your call within 1 business day if we are unavailable when you call
 - acknowledge all enquiries by email within 2 business days
 - reply to all written enquiries within 3 business days
 - acknowledge complaints within 2 business days and respond within 5 unless otherwise agreed
 - contact all stakeholders within 2 days of receiving a new claim
 - contact stakeholders within 2 days of making a decision affecting your claim.
84. Further, the agent will 'make claim payments as required by legislation or an agreed timeframe'.
85. I understand that there is no stated timeframe for the payment of medical costs by an agent for services incurred by an injured worker provided for in the Return to Work Act or the Return to Work Regulations. While I understand that, as in the current situation, there may be external factors (such as provision of incorrect or incomplete information) that impact on timeframes, in my view invoices should be processed as soon as reasonably practicable.
86. In its response to my enquiries dated 7 April 2020, the agent has stated that it 'does not believe the approximate 12-month delay is a reasonable timeframe to arrange for payment of these invoices'. I agree.
87. In light of the agent's acknowledgment that the approximate 12-month delay in arranging payment of the invoices associated with the complainant's medical costs was unreasonable I have formed the view that the agent acted unfairly.
88. In my view, it is not fair that the complainant should have been put in a position of being approached by debt collectors or having to 'mediate' between CHG and the agent to resolve the matter.
89. On that basis, I consider that the agent breached Service Standard 4(e).

Opinion

In light of the above, my view is that the agent acted in a manner that was in breach of the Service Standard 4(e) set out in Schedule 5 of the *Return to Work Act 2014*.

I include a recommendation to remedy this breach below.

Summary and Recommendations

In light of the above, my final view is that the agent:

- breached Service Standard 4(f) as set out in Schedule 5 of the Return to Work Act by failing to notify the complainant at first instance that payments for services provided by CHG were rejected
- breached Service Standards 4(e) and 4(f) as set out in Schedule 5 of the Return to Work Act by failing to adequately communicate with the complainant about resolving issues related to the complainant's injury claim.
- breached Service Standard 4(e) as set out in Schedule 5 of the Return to Work Act by demonstrating a lack of fairness, respect and courtesy and compliance with stated timeframes due to an unreasonable delay in resolving the unpaid invoices related to the complainant's injury claim.

To remedy these breaches, I recommend under Schedule 5, Clause 7 of the Return to Work Act that the agent:

1. provide a written or oral apology to the complainant for the breaches of Standard 4(e) and 4(f)
2. review its internal processes to provide written guidance to relevant staff that requires:
 - written notification to injured workers and service providers where an invoice cannot be paid, including reasons and options for progressing payment
 - processing and payment of invoices as soon as reasonably practicable.

Final comment

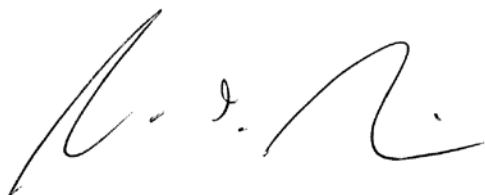
I am pleased to note from the agent's response to my provisional report that on 21 August 2020, it contacted [REDACTED] and provided a verbal apology for the breaches of Service Standards 4(e) and 4(f). I also acknowledge that the agent appears to already be undertaking the recommended review.

That said, in accordance with section 25(4) of the Ombudsman Act, the agent should report to the Ombudsman by **18 December 2020** confirming what steps have been taken to give effect to the recommendations above; including

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

I have also sent a copy of my report to the Minister for Industrial Relations and ReturnToWorkSA as an exercise of my discretion under section 26(3) of the Ombudsman Act.

A handwritten signature in black ink, appearing to read 'W. Lines', with a stylized flourish at the end.

Wayne Lines
SA OMBUDSMAN

22 September 2020