

## **The complaint**

Miss B is unhappy that ReAssure Limited has stopped paying a claim she made on a mortgage payment protection plan.

## **What happened**

Miss B has an insurance policy which is designed to cover her monthly mortgage repayments if she is unable to work because she's ill. Miss B successfully claimed on the policy and was receiving the monthly benefit.

In 2021 ReAssure reviewed the claim and carried out a functional capacity assessment. They concluded Miss B no longer met the policy definition of incapacity, so they stopped making payments to her. Miss B complained but ReAssure maintained their decision was correct. Unhappy, Miss B complained to our service.

Our investigator looked into what had happened and upheld the complaint. He said ReAssure hadn't demonstrated Miss B no longer met the definition of incapacity. He thought that the functional capacity assessment showed Miss B was unable to carry out three of the required activities of daily living (walking, climbing and bending). So, he thought Miss B still met the relevant criteria for incapacity.

ReAssure didn't agree. They said there were two elements to the test relating to bending and Miss B must be unable to perform both elements to meet the definition.

In November 2021 I issued a provisional decision explaining I was intending to uphold Miss B's complaint but for different reasons. I said:

ReAssure accepted Miss B's claim and so it's for them to demonstrate that she no longer meets the definition of incapacity.

The policy terms say that Miss B will be considered to be incapacitated if she is unable to perform three or more of the following as a direct result of an accident or illness or incapacity which has occurred after the policy date – walking, bending, communicating, reading, writing or climbing.

Each activity has a further definition. Under 'bending' it says:

The ability to get into or out of a standard saloon car, and the ability to bend or kneel to pick up an object from the floor and straighten up again.

It's not in dispute that Miss B could carry out communicating, reading and writing. It's also not disputed that she could not carry out walking and climbing.

So, the claims decision turned on whether Miss B was unable to carry out the activities described as bending. ReAssure says Miss B must be unable to get in and out of a standard saloon car and unable to bend or kneel to pick an object off the floor and straighten up again.

The functional capability report, which was carried out remotely, says:

Miss B was not observed bending. She reported that if she tried to bend, she would be at significant risk of falling and if she knelt she would not be able to stand back up without the assistance of another person. Given that she was alone, an examination of this appeared inappropriate, and she politely declined.

Miss B reports she can bend at the waist enough to sit down into a chair or a saloon car however she is unable bend to pick items up off the floor or kneel down for reasons stated above. She reports she is unable to bend down to pick something up off the floor even from a sitting position which is why she needs to use her grab aid when dressing her lower half.

The report concluded:

Although she may be able to perform a particular activity or range of movement once, the overall evidence suggests that it is unlikely she would be able to do so repeatedly, reliably or safely... Although she appears able to get in and out of a car independently, she is unable to pick something up from the floor level.

I don't think it was fair and reasonable for ReAssure to terminate the claim. I say that because:

- The claim was terminated because Miss B said she could sit in a car. I don't think the conclusion Miss B could get in and out of the car fairly reflects the overall evidence in the report.
- The report says Miss B reported she can bend at the waist enough to sit down into a chair or a saloon car. But Miss B also said she could get herself into and out of the car using her stick and the car to hold onto. I also note that whenever she needed to sit in a car she'd be accompanied by a friend. So, I don't think it's fair to say Miss B could independently get in and out of the car.
- I also think it's important to bear in mind the wider evidence referenced within the report. Miss B was taking a significant amount of pain relief, has considerable adaptations to assist her day to day living (including an electronic hoist for her bathroom) and is registered as disabled. And, the report also noted that whilst she may be able to perform a particular activity or range of movement once that it was unlikely she'd be able to do so repeatedly, reliably or safely.
- I think ReAssure could have done more to explore Miss B's ability to get in and out of a car before stopping the payments on this basis alone. The conclusions in the report don't fairly reflect the totality of the evidence. And I think it would have been reasonable for ReAssure to question this further before stopping payments.
- I don't think it was fair and reasonable to conclude Miss B could get in and out of a car based on the description she gave in the report and the wider medical evidence. So, I don't think it was fair for ReAssure to say that she didn't meet the definition of incapacity on that basis. I think the medical evidence indicates it is most likely that she couldn't perform three of the activities set out in the policy – walking, climbing and bending.

### **Putting things right**

ReAssure needs to put things right by:

- Reinstating the claim and covering all of the missed payments since the claim was terminated
- Refunding Miss B the premiums she's paid since the claim was terminated (as Miss B didn't need to pay premiums when a valid claim was made)
- Paying 8% simple interest per year on all the payments from the date the claim was stopped until the date of settlement.

If ReAssure considers that it's required by HM Revenue & Customs to deduct income tax from that interest it should tell Miss B how much it's taken off. It should also give Miss B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Miss B said that she didn't have any further comments to make or evidence to submit. ReAssure didn't reply to my provisional decision.

### **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.

As Miss B and ReAssure didn't make any further comments or submit any further evidence there's no reason for me to reach a different decision to my provisional decision.

I'm upholding Miss B's complaint for the reasons I've outlined above and in my provisional decision.

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### **My final decision**

I'm upholding Miss B's complaint about ReAssure Limited and directing it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 19 December 2022.

Anna Wilshaw  
**Ombudsman**