

## **The complaint**

Mr T complains about the benefit he's been paid by The Royal London Mutual Insurance Society Limited for an incapacity claim he made on an income protection insurance policy.

## **What happened**

The background to this complaint is well-known to both parties, so I haven't set it out in detail here. Instead, I've set out what I think are the key events.

Mr T holds a personal income protection insurance policy, which provides cover for his own occupation.

In December 2020, Mr T was diagnosed with an illness, which resulted in chronic symptoms. He became unfit for work from February 2021 onwards, so he made a claim on the policy. On the claim form, he stated that he was a self-employed craftsman, supplemented with contract work. He provided Royal London with evidence of his self-employed earnings.

Royal London accepted Mr T's claim and calculated benefit, in line with Mr T's earnings in the year prior to his incapacity.

Mr T was unhappy with the benefit calculation, as he felt it was too low. He noted that the policy included a term which allowed Royal London to assess income over a longer period, where a policyholder's income had fluctuated. So he considered that Royal London should calculate benefit on his average earnings over a three-year period, which was more representative of his actual income.

Royal London said that benefit had been calculated in line with the policy terms and conditions. But it said that it would consider further information from Mr T, such as evidence of earnings outside of those set out on Mr T's P45; his tax returns; business plans or projections; bank statements/invoices for Mr T's craft business and evidence of any payments from the government's Covid-19 support schemes. It also recognised there'd been mistakes in the way it had handled the claim and paid Mr T total compensation of £450.

Mr T remained unhappy with Royal London's position and he asked us to look into his complaint.

Ultimately, our investigator felt that Royal London had calculated the policy benefit fairly and in line with the contract terms and conditions. He didn't think Royal London needed to calculate an average of Mr T's pre-incapacity earnings over a longer period. That's because he didn't think it would reflect Mr T's usual income. While Mr T earned a significantly higher earned income as an employee and contractor, in early 2020, he'd started working as a craftsman, supplementing his income with contracting work.

Mr T disagreed and I've summarised his responses to our investigator. He said that prior to 2019, he'd worked in a series of short-medium term roles. So the fluctuation in his employment status is typical of his career throughout the life of the policy. He'd taken out the policy which covered fluctuating income, so that his earnings could be averaged over high

and low years. Mr T said that at the time he became too unwell to work, his career as a craftsman was largely still aspirational – in reality, his role was still as a freelance contractor. He said his craft business hadn't been fully set-up.

While Mr T had taken some time out of work during 2019, he said his average earned income over three years remained above the amount required to maximise the value of the policy. He still felt the policy clause allowing Royal London to average his earnings should be applied to the claim. Mr T's 2020-21 earnings had been very low due to the impact of Covid-19 on his contracting work and he'd been ill for some months. Therefore, his total income had been for only 7 months work, rather than 12. This meant that taking into account Mr T's 2020-21 earnings didn't lead to a fair assessment of his usual earned income. He felt Royal London had relied on policy terms which weren't set out clearly in the contract.

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 very sorry to disappoint Mr T, I think Royal London has calculated benefit fairly and I'll explain why.

First, I'd like to reassure Mr T that whilst I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. Within this decision though, I haven't commented on each point he's raised and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. So I've considered, amongst other things, the terms of Mr T's policy and the available evidence, to decide whether I think Royal London treated him fairly.

I've first considered the policy terms and conditions, as these form the basis of Mr T's contract with Royal London. Page 12 of the policy sets out how disability benefit is calculated (and this information is broadly reflected in Mr T's specific policy schedule.) The policy says:

*'The annual amount of disability benefit will be restricted to 50% of your pre-disability annual salary or earned income.'*

Royal London has defined what it means by earned income. As Mr T was self-employed, I've set out below the relevant definition:

*'For a self-employed person, salary or earned income means:*

- *Your share of pre-tax profit (after deduction of trading expenses and adjustment for capital allowances) from your trade, profession or vocation for the purpose of Income Tax (Trading and Other Income) Act 2005, Part 2 trading income **in the 12 months prior to you becoming disabled**; and or*
- *Your salary or earned income earned by HM Revenue and Customs or by the tax authorities in the relevant country for earnings outside the United Kingdom.'* (My emphasis added).

In my view, Royal London has made it clear in the policy terms and conditions that it will calculate benefit based on a policyholder's earned income in the 12 months prior to their

disability. As Mr T stopped working in February 2021, I think Royal London was contractually entitled to calculate benefit based on Mr T's earnings in the 12 months before that date.

Mr T provided Royal London with evidence of his earned income for the 12-month period prior to his incapacity. This shows that during that period, Mr T earned £11,530.97 in a contracting role.

The policy does include provision for Royal London to average earnings. It says:

*'If you make a claim, we may average earnings over a different period, if in our reasonable opinion, your salary or earned income fluctuates significantly and using a different period would give a better indication of your usual earned income.'*

This term doesn't *require* Royal London to take an average of a policyholder's earnings over a period of time. The decision to assess claims in this way is at Royal London's discretion. So Royal London isn't bound to apply this term to its consideration of Mr T's claim.

It's clear Mr T feels strongly that it would be fairer for Royal London to calculate benefit using an average of his earnings over a period of years. He also considers that his main role has generally been as a freelancer and that he was in the process of setting-up the craft business.

I can see from the evidence Mr T provided, that at times, he earned substantially more annually as an employee than his earnings in the 12 months prior to his illness. I agree that averaging his earnings over a period of years would lead to a calculation of higher benefit. So I've carefully considered whether I think it would be fair and reasonable for me to direct Royal London to use an average of Mr T's earnings. On balance, I don't think it would be fair and reasonable for me to make such a direction and I'll explore this further.

Mr T completed a claim form. On the form, Mr T stated that his 'precise' occupation was as a craftsman, also supplemented by project work. He also stated on the form that he worked 'part time' as a contractor. He said that all work was either at home, or he travelled to a workshop. Mr T said that he was 'recently self-employed' setting up his craft business, which was supplemented by part-time project work. The form also asked whether there had been a significant change in the last three years. Mr T answered: *'Yes. In 2020, I started up a new business... This was still at an early stage and therefore not yet earning full potential.'* As such then, even if Mr T was continuing to take on project work while the crafts business was at an early stage, it seems he considered this to be his main role. In my view, this isn't commensurate with an employed full-time role, even if facets of the part-time job were the same.

It's also clear from the claim form that Mr T told Royal London he'd been out of work between May 2019 and February 2020. I understand he was undertaking renovation work during that time. However, it doesn't appear that Mr T was earning income during that period either. I don't think this can reasonably be treated as a fluctuation in Mr T's income.

I think it was reasonable for Royal London to rely on the evidence Mr T gave it at the time of the claim. Based on that information, I think it was fair for it to conclude that Mr T had broadly significantly changed his own occupation – given the switch from an employed role which ended in May 2019, to a self-employed business, which was supplemented by part-time project work. And in the 12 months before the claim, Mr T's self-employed earnings were significantly lower than his employed earnings during 2017, 2018 and 2019. So taking these factors into account, I don't think taking an average of Mr T's earnings over a longer period would provide a better indication of Mr T's 'usual income' for the occupation he was carrying out in the 12 months before his illness.

Overall, I sympathise with Mr T's position, as I don't doubt that the first the pandemic and then his illness, had a real effect on his ability to work as he'd planned to. I was also sorry to hear about the impact his illness has had on him. But I don't think I can fairly conclude that Royal London should calculate benefit using an average of his earnings. I find that Royal London has calculated benefit fairly, reasonably and in line with the policy terms.

Royal London maintains that if Mr T feels its missing any of his earnings for the period February 2020 until January 2021, it would be happy to take this information into account. It's also offered to write to HMRC to ask for this information should he wish it to do so. In my view, this is a fair response and it remains open to Mr T to provide further information about his earnings to Royal London should he wish to.

It's clear Royal London accepts that it didn't provide Mr T with the best service it could have done, in terms of service delays. So it's paid Mr T total compensation of £450 to recognise these errors. In my view, this was a fair and appropriate response from Royal London. This means that I'm not directing Royal London to do anything more.

### **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 T to accept or reject my decision before 4 May 2023.

Lisa Barham  
**Ombudsman**