

The complaint

Mr D has complained that The Ancient Order of Foresters Friendly Society Limited trading as Foresters Friendly Society (Foresters) declined a claim made under his sickness and accident policy.

What happened

The facts of this complaint are well known to both parties, so I won't repeat them again here in detail. In summary Mr D submitted a claim for Permanent Total Disability following an accident in 2017 when he was seriously injured. Our investigator didn't find that Foresters had unfairly declined the claim, but she did recommend that £150 was paid in compensation for delay. Foresters agreed to this, but Mr D appealed.

Mr D is represented by Mrs D.

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.

Firstly though I'm aware I've summarised the background to this complaint. No discourtesy is intended by this. Instead, I've focused on what I find the key issues are. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've fully reviewed the file and having done so I agree with the conclusions reached by our investigator for the following reasons:

- The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr D's policy and the available evidence, to decide whether I think Foresters treated Mr D fairly.
- Benefit is payable under Mr D's policy for Permanent Total Disability if the policyholder is unable to perform any gainful employment and unable to exist independently and requires continual supervision and frequent attention of a third party for the six 'Activities of Daily Living' listed in the policy. The inability to carry out the six activities must be irreversible and permanent. This is a stringent definition.
- It is not in dispute that Mr D is unable to work, following a serious accident. However the medical evidence, and I won't repeat the sensitive details here, doesn't show that he meets the stringent policy definition with regards to the activities of daily living. These are 1) Feeding/Eating *Cutting meat, buttering bread, getting food and drink to the mouth using fingers or utensils.* 2) Dressing *Dressing oneself including fastening zips and buttons, getting clothes from wardrobes or drawers.* 3) Bathing/Grooming *Turning on taps, getting in and out of bath/shower, washing face and hands, drying oneself, combing hair.* 4) Toileting *Moving into and out of the bathroom, getting on and off the toilet unaided, recognising the need to void bladder*

and bowel in time to get to the toilet. 5) Mobility and Transfer Getting into and out of bed, transferring from one place to another, e.g. chair to bed chair to standing chair to chair 6) Walking Moving from one location to another – walking or wheeling or using a walking frame.

- I haven't disregarded Mrs D's submissions about the support and supervision Mr D needs. I note that Mrs D has given up her career to care for Mr D. But in all the circumstances, and given the documented improvements in Mr D's condition, I don't find it was unfair or unreasonable for Foresters to conclude on the basis of the medical evidence that Mr D didn't meet the policy definition for Permanent Total Disability when it assessed his claim.
- I've considered to the time taken by Foresters to assess Mr D's claim. As Mr D will appreciate, this wasn't straightforward, and a good deal of medical evidence was requested and follow ups required in some instances. Foresters is not able to control how long it takes for a physician, or their office, to reply. But we do expect an insurer to be proactive in this regard and make sure that answers are chased where need be. On the whole I find that Foresters were proactive. However, I note there was a lapse after the first response when further medical evidence was provided. I've seen no evidence that Foresters took any action for six weeks, and Mrs D was obliged to chase to find out what was happening. I agree that it would have been stressful for Mr D awaiting a response, especially given his poor health. I find compensation is merited and I agree with our investigator that £150 is a fair sum in the circumstances.
- For completeness I would make two further points. Firstly, I appreciate that Mr D thought the policy would cover him in the event he was unable to work following an accident. But the policy terms, although they set a high bar, are clear. I haven't considered the sale of the policy, as it was not sold by Foresters. Secondly, I am not able to make any finding with regard to the alleged breaches of the Equality Act, this is out with the function of this Service and is a matter for the courts.

My final decision

For the reasons given above I uphold this complaint in part.

I require The Ancient Order of Foresters Friendly Society Limited trading as Foresters Friendly Society to pay Mr D £150 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 October 2023.

Lindsey Woloski
Ombudsman