

## **The complaint**

Miss G complains that Society of Lloyd's hasn't paid a claim she made on a personal accident insurance policy.

## **What happened**

In April 2022, Miss G unfortunately suffered a serious accident which caused severe head injuries. She had to undergo craniotomy surgery and she's sadly been left with life-changing impact on her cognitive function.

Miss G wasn't able to return to the physical job role she had before the accident. But in January 2023, she was able to go back to work part-time, carrying out administrative tasks. As Miss G couldn't return to the job role she'd had before and as the accident had had a permanent impact on her concentration, fatigue and memory (amongst other things), she made a claim on the policy for Permanent Total Disablement. (PTD)

Lloyd's looked into medical evidence so it could assess Miss G's claim. As Miss G had been able to return to part-time work and as her doctors felt she'd made a good recovery, it didn't think she'd met the definition of PTD. So it didn't agree to pay her claim. It did agree it hadn't handled her claim as well as it could have done though and it paid Miss G £150 compensation.

Miss G was very unhappy with Lloyds' decision and she asked us to look into her complaint. She didn't think Lloyd's was treating her in line with the Equality Act 2010. That's because she felt Lloyd's required her to show she could never work anywhere for any employer again. She considered the burden of proof was too high. She also felt this meant the policy effectively required employers not to make reasonable adjustments under the Equality Act, which she believed to be unfair. And she thought that given the nature of her injuries, Lloyd's ought to pay her claim under the loss of limb policy benefit.

Our investigator didn't think Lloyd's had acted unfairly when it didn't agree to pay Miss G's claim. She understood that Miss G had suffered very serious injuries. But she didn't think the medical information showed Miss G's claim was covered under either the PTD definition or loss of limb benefit. This meant our investigator didn't think Lloyd's needed to pay the claim. And she thought the compensation Lloyd's had already paid Miss G was fair.

Miss G disagreed. She told us that since bringing the complaint, it looked like she'd need to be medically retired. So 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, while I'm very sorry to disappoint Miss G, I don't think it was unfair for Lloyd's to turn down her claim and I'll explain why.

First, I wanted to say how sorry I was to read about Miss G's accident and about the impact

her injuries and follow-up operations have had on her. This has clearly been a very worrying, distressing and difficult time for Miss G and her family.

I also need to make it clear that my decision will only look at whether I think Lloyd's handled Miss G's claim fairly up until the date it sent its final response to her complaint – on 21 December 2023. That's because under our rules, we can only look at complaints and evidence a financial business has already had the chance to consider and respond to.

It seems things have moved on since December 2023 and that Miss G says it's likely she'll now be medically retired by her employer. If Miss G has got some new medical evidence which she thinks supports her claim, she can send this on to Lloyd's directly for it to look at. It will then be for Lloyd's to decide whether it thinks that evidence shows Miss G's claim now meets the PTD definition. And if Miss G is unhappy with any new decision by Lloyd's, she can consider bringing a new complaint to us about that issue alone.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've considered those rules, along with other important considerations, such as regulatory principles, the policy terms and the medical evidence, to decide whether I think Lloyd's treated Miss G fairly.

I've looked carefully at the policy terms, as these explain the contract Miss G entered into with Lloyd's. Miss G made a claim for PTD. Page six of the policy includes Lloyd's definition of PTD. It says:

*'Disablement which entirely prevents the insured person from attending to any business or occupation of any and every kind and which lasts twelve consecutive months and at the expiry of the end of that period is beyond hope of improvement.'*

So Lloyd's will only pay PTD claims if:

- a policyholder can't carry out any business or occupation because of their disablement;
- if that disablement lasts more than 12 months and;
- if, after 12 months, the policyholder has no hope of improvement.

It's a policyholder's responsibility to show they have a valid claim on the policy. This means Miss G needed to send Lloyd's enough medical evidence to show that she was covered for PTD benefit before it could pay her claim.

Lloyd's asked for information so it could decide whether Miss G's claim met the definition of PTD. Miss G's claim form said she'd ended her 'incapacity' from work in January 2023 – about nine months after her accident. A letter dated June 2023 from Miss G's consultant neurologist said that Miss G had 'made very good progress'. The medical evidence said that Miss G might undergo more surgery in January 2024. And the medical information included a report from an occupational health physician dated August 2023, which was sent to Miss G's employer. The report said that Miss G was working 12 hours per week. The physician didn't think that Miss G would be able to carry out the duties of her previous job. But they recommended that Miss G's employer provide her with significant adjustments so she could do administrative work.

The medical information Lloyd's was sent shows that Miss G wasn't entirely prevented from working in any and every kind of occupation. I understand Miss G can't do her previous role and that she's been seriously affected by her injuries. But as she has been able to work part-time and as the neurologist said Miss G had made very good progress, I don't think it was unreasonable for Lloyd's to decide that Miss G hadn't shown she met the PTD definition.

And so this means I'm not telling Lloyd's to pay Miss G's PTD claim.

The fact that Miss G may be (or may go on to be) in receipt of an ill-health pension doesn't have any impact on the outcome of this complaint. Different criteria apply for the payment of a PTD claim under the terms and conditions of the policy which Miss G is insured under.

Miss G thought her injuries were comparable to the loss of a limb, so she also thought Lloyd's should pay her loss of a limb benefit. It isn't clear to me that Miss G did make a claim to Lloyd's for loss of limb benefit. But I think it's appropriate for me to address this issue within this final decision. So I've looked at the way Lloyd's has defined loss of limb in the policy. This says:

*'Permanent loss by physical separation of a hand at or above the wrist, or of a foot at or above the ankle, and includes permanent total and irrecoverable loss of a hand, arm, foot or leg.'*

I appreciate Miss G suffered a serious head injury in the accident. But I don't think it would be fair for me to say that the type of injury she had or the impact the injury's had on her is the same as the loss of a hand, arm, foot or leg.

It's clear how strongly Miss G believes that Lloyd's hasn't treated her in line with the Equality Act. It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not Lloyd's has breached the Equality Act 2010, we're required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

Having looked very carefully at all the evidence, I don't think Lloyd's acted unfairly or unreasonably when it didn't agree to pay Miss G's claim. Nor do I think that the relevant contract terms and conditions are unfair or unreasonable. I hope that it helps Miss G to know that someone impartial and independent has looked into her concerns.

I can see though that Lloyd's accepts it should have explained some things to Miss G more clearly than it did, such as the reasons why it wanted more medical evidence. It's apologised for that error and it's paid Miss G £150 compensation to apologise for this mistake. I think this is a fair and reasonable way for Lloyd's to have put things right.

Overall, I'm very sorry to upset Miss G and I know my decision will be very disappointing for her. As I've said, if Miss G has new medical evidence, she can send this on to Lloyd's directly for it to review. But based on the information that was available to Lloyd's when it assessed Miss G's complaint in December 2023, I don't think it treated her unfairly. And so I don't think Lloyd's acted unreasonably when it didn't agree to pay Miss G's claim.

### **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 Miss G to accept or reject my decision before 6 September 2024.

Lisa Barham  
**Ombudsman**

