

The complaint

Mr and Mrs H complain because The Royal London Mutual Insurance Society Limited trading as Scottish Provident ('Royal London') hasn't paid Mr H's claim under their critical illness insurance policy.

What happened

Mr and Mrs H are insured under a critical illness insurance policy, underwritten by Royal London.

In 2019, Mr H made a claim under the policy for own occupation total permanent disablement, which Royal London declined. Mr and Mrs H brought a complaint to our service about the decline of the claim. A different ombudsman made a final decision about that complaint in November 2022.

Mr H offered to undergo a further occupational assessment, which Royal London refused. Mr H presented additional medical evidence to Royal London which hadn't been considered previously. Royal London said it didn't think this medical evidence demonstrated that the symptoms of Mr H's medical condition were permanent.

Unhappy, Mr and Mrs H brought a new complaint to the Financial Ombudsman Service. One of our investigators looked into what had happened and said she didn't think Royal London had acted unfairly or unreasonably in the circumstances. Mr and Mrs H didn't agree with our investigator's opinion, so the complaint has been referred to me to make a decision, as the final stage in our process.

I made my provisional decision about Mr and Mrs H's complaint in August 2024. In it, I said:

'Royal London didn't sell this policy so it isn't responsible for any complaint about the sale of the insurance. If Mr and Mrs H wish to complain about the sale of the policy then they'd need to contact the independent broker who they bought it from in the first instance.'

I have no power to revisit or comment on any of the evidence that was considered by our service under Mr and Mrs H's previous complaint and which was the subject of a final decision issued by another ombudsman in November 2022. I understand Mr and Mrs H disagree with this position but to do so would be to act beyond my statutory remit.'

Industry rules set out by the regulator say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when making my provisional decision.'

Both the terms and conditions of Mr and Mrs H's policy and their policy schedule define 'own occupation total permanent disability' as:

'...in our opinion, the life assured in respect of whom a claim is being made is, due to disability arising before age 65, permanently unable to perform the material and substantial duties of his own occupation as stated at the time a claim is accepted by us.'

The definition of 'total permanent disability benefit – own occupation' set out in Royal London's definitions guide varies slightly. This issue formed part of Mr and Mrs H's previous complaint with our service so I cannot consider or comment on the matter again. But, for the avoidance of doubt, regardless of which definition I accept as applying in this case, I'm satisfied that my provisional outcome would remain the same.

The onus lies on Mr H to provide evidence to demonstrate that he meets the policy criteria in order for a benefit to be paid to him. In making this provisional decision, it's not for me to reach my own conclusions based on the medical evidence or to substitute expert medical opinion with my own. Instead, the issue for me to determine is whether I think Royal London acted unfairly or unreasonably when it declined Mr H's claim based on the available medical evidence.

Royal London considered additional medical evidence provided by a consultant who I'll call 'Dr G' dated 26 April 2023. The additional medical evidence says that Mr H's symptoms 'may however significantly improve with significant weight reduction'. The report goes on to say '...it is difficult to fully predict at this stage how well his symptoms would improve and his potential functional status if significant weight loss was to be achieved'.

There's no dispute that Mr H's medical condition is permanent. Royal London has acknowledged this, so I don't agree with Mr and Mrs H's submissions that Royal London is ignoring evidence. However, the additional medical evidence provided doesn't demonstrate that Mr H's medical condition (and its symptoms) permanently prevent him from performing the material and substantial duties of his occupation.

So, I don't think Royal London has been unfair or unreasonable by declining Mr H's claim.

I understand Mr and Mrs H feel Dr G is an expert in a different area and that Royal London should be seeking the opinion of another doctor. But that other doctor felt the questions asked by Royal London were better answered by Dr G. The questions asked by Royal London relate to the policy criteria for a payment to be made to Mr H, so I don't consider that these questions were in any way unfair or unreasonable.

I understand Royal London has refused to arrange a further medical assessment for Mr H, despite Mr H's offer to undergo one. The previous final decision issued by a different ombudsman at our service didn't uphold Mr and Mrs H's complaint. The ombudsman didn't direct Royal London to arrange a further medical assessment, and I won't be directing Royal London to do this either. There are certain circumstances such as, for example, where an insured has provided medical evidence which goes some way towards demonstrating that they have a valid claim under a policy or where there's conflicting medical evidence from both parties as to whether a policyholder meets the policy definition, where I might consider it would be fair and reasonable for an insurer to arrange for a medical assessment. This isn't the case here and, in any event, Royal London has already paid for Mr H to be medically assessed.

Mr and Mrs H have also complained that Royal London shouldn't have relied on a report from a Consultant Occupational Physician dated 28 February 2021 when declining this claim in 2023. The previous complaint which Mr and Mrs H brought to our service related to a different claim decline, and to the consideration of the report at that point in time. So, I'm satisfied that I can consider and comment on Royal London's reliance on the report in 2023 within this provisional decision. I've seen no evidence that Royal London gave Mr and Mrs H any assurances after the report was submitted to them in 2022 that the report wouldn't be used to assess Mr H's claim. So, I don't think Royal London has acted unfairly by relying on this report as available medical evidence. And, in any event, even if I were to disregard the

content of the 2021 report, I don't think Royal London has acted unfairly or unreasonably by turning down Mr H's claim based solely on the content of the report dated 26 April 2023.

I'm sorry to disappoint Mr and Mrs H but I don't intend to direct Royal London to do anything further.'

Royal London said it had nothing further to add in response to my provisional decision. Mr and Mrs H responded with additional submissions.

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.

I've taken into account all of Mr and Mrs H's comments in response to my provisional decision and, in line with my remit, have addressed what I consider to be the key issues as follows:

- My provisional decision takes into account that this is an 'own occupation' claim and refers to the claim as such;
- I've already explained that I don't think Royal London has acted unfairly or unreasonably by declining Mr H's claim under *either* [my emphasis] definition of 'total permanent disability benefit – own occupation';
- It's clear that Mr and Mrs H remain unhappy with Royal London's handling of matters but what Mr and Mrs H are expecting Royal London to do simply isn't reflective of how insurance claims like this generally work;
- It's for Mr H to demonstrate that he has a valid claim and I don't agree that Mr H has provided medical evidence which goes some way towards demonstrating that he meets the policy criteria for a benefit to be paid to him;
- It's not for Royal London to bear the cost of proving Mr H's claim for him. Royal London already paid for a previous medical assessment and for me to direct Royal London to pay for a further medical assessment in these circumstances would go far beyond what I'd generally expect an insurer to do in a situation like this;
- If Mr H wishes to provide a new medical assessment to Royal London, then it's open to him to arrange for this at his own expense;
- An insurer is generally entitled to rely on all the available medical evidence when assessing a claim. And Royal London never said it wouldn't rely on the report dated 28 February 2021 when assessing this particular claim. And I've already explained that even if I thought Royal London shouldn't have relied on the February 2021 report, it wouldn't change my decision about Mr and Mrs H's complaint.

For these reasons, as well as for those outlined in my provisional decision, I won't be telling Royal London to do anything more.

My final decision

My final decision is that I don't uphold Mr and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to

accept or reject my decision before 16 October 2024.

Leah Nagle
Ombudsman