DRN-5470136

The complaint

Mrs O is unhappy that ReAssure Limited (ReAssure) declined her personal accident claim.

What happened

The background to this complaint is well-known to both parties. So, I've simply set out a summary of what I think are the key events.

Mrs O took out a personal accident policy in May 2011 and which ends in August 2034. ReAssure is the underwriter.

Mrs O was involved in a road traffic accident in March 2020. She injured her shoulder, upper arm, back, wrist, knees and ankles. The injury caused significant stress. Mrs O was absent from work from 27 October 2023, and she made a claim on her personal accident policy in January 2024.

ReAssure assessed the claim and declined it as it didn't meet the policy requirements. Mrs O appealed the decision but ReAssure maintained its position to decline the claim.

Unhappy, Mrs O brought her complaint to this service. Our investigator didn't uphold the complaint. She didn't think ReAssure had declined the two aspects of the claim unfairly.

Mrs O disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS').

ICOBS says that insurers should act honestly, fairly and professionally in accordance with the best interests of their customers, and that they should handle claims promptly and fairly. I've taken these rules into account when looking at this complaint.

At the outset I acknowledge that I've summarised this complaint in far less detail than Mrs O has, and in my own words. I won't respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern our service allow me to do this as we are an informal dispute resolution service.

I've started by looking at the policy terms and conditions that are relevant to this complaint. Mrs O has claimed for Accidental Permanent injuries resulting in loss of use of the elbow, hip, shoulder, knee and ankle or wrist and for Total Permanent Disablement (bodily injury).

I'll look at each in turn.

Page 8 of policy sets out the terms and conditions for Accident Permanent Injuries:

> *"We will pay this benefit if an insured person sustains bodily injury, which causes any of the bodily injuries listed below within 12 months of the date of the accident and during the term of the policy'.*

Bodily injuries are listed, which include those that are relevant:

> *'Paralysis of limbs – total and irreversible*
> *Loss of hands or feet – permanent physical severance*
> *Loss of use – of elbow, hip, shoulder, knee, ankle or wrist…'*

Accidental is defined in the policy as:

> *'a sudden identifiable event operating by violent external and visible means, which happens by chance and which could not be expected'.*

Loss of use is defined in the policy as:

> '*total and irrecoverable permanent loss of function.'*

And permanent is defined as:

> '*expected to last throughout the insured person's life, irrespective of when the cover ends.'*

Mrs O would need to show that she was suffering from a loss of use in one of the body parts named within 12 months from the date of her accident in March 2020.

I've considered the medical evidence Mrs O has provided. On 20 May 2020. A letter from the Department of Trauma and Orthopaedics said that Mrs O had a steroid injection in her knee and the relief to her was 65%. It also said Mrs O had arthritis in her knee.

Mrs O's GP records show that she had physiotherapy for her pain and was taking painkillers. And a note in January 2021 it states Mrs O had, in the last month, pain in her feet, hands and elbows.

A letter from Mrs O's GP dated 13 September 2024 states Mrs O had osteoarthritis of the knee dating back to 2010. And she was assaulted in 2020 which resulted in physical injuries and PTSD which affected mainly her back and shoulder. The GP said they couldn't comment on any permanent loss of function.

The policy is clear in that a total and irrecoverable loss of function has to be shown and which is permanent. It's not in dispute that Mrs O suffered a trauma and I am sorry for this. I can see that the accident had caused injury to Mrs O's knee, but the evidence suggests she already had problems with her knee prior to the accident. I can't safely say therefore that the accident caused a permanent loss of function to her knee, shoulder, upper arm, back, wrist, and ankles. I'm also not persuaded that the bodily injuries caused total and irrecoverable loss of function. I'm satisfied that this part of the claim wasn't declined unfairly by ReAssure.

Total Permanent Disablement, on page 8 in the policy states:

> '*We will pay this benefit if the insured person sustains bodily injury which causes total permanent disablement of the insured person within 24 months of the date of the*

accident and during the term of the policy.'

Total Permanent Disablement is defined in the policy as:

> *'in the opinion of a specialist consultant, and subject to the agreement of our Chief Medical Officer, the insured person is totally unable to perform any 4 of the following activities without the help of another person or the use of special devices and equipment, and has been so unable for a continuous period of at least 12 months, and will in all probability continue to be so unable for the rest of their life.*
>
> *• Dressing – the ability to put on and take off all necessary items of clothing*
>
> *• Washing and bathing – the ability to wash or bathe in order to maintain personal hygiene*
>
> *• Eating and drinking – the ability to ingest food and drink which has been prepared for consumption*
>
> *• Preparing food – the ability to prepare food and drink as the basis of normal regular meals*
>
> *• Using the toilet – the ability to get on and off the toilet, and maintain personal hygiene*
>
> *• Mobility – the ability to move from one room to another, or to get in and out of bed or Chair.'*

Based on the above, the evidence must support that Mrs O was unable to perform at least four of the six tasks listed above. And this must have been within 24 months from the date of the accident.

I've reviewed the medical evidence carefully. And Orthopaedic Surgeon (OS) prepared a report on 11 November 2022 following the accident on 10 March 2020. It was noted that Mrs O sustained a number of soft tissue injuries and whiplash. Mrs O wasn't admitted to hospital but did see her GP who prescribed medication and arranged physiotherapy. She had been unable to work for 16 months and had difficulties with household chores. She sustained similar injuries in two previous accidents to her knee, elbow, back and neck. The records show she had an injection to her knee in 2018 but in 2020, the pain had got worse due to the accident. The report states that Mrs O had a full range of movement in her neck, shoulders, elbows, hands, hips, knees, ankles and feet. Mrs demonstrated full movement in the right shoulder and there was no muscle wastage in the upper arm. The OS said he didn't think Mrs O would be disadvantaged in obtaining employment and her time off work was out of proportion for the severity of her condition. And in her general examination, the OS reported Mrs O had a normal gait, walked without assistance and appeared fit and well.

In August 2024, Mrs O had stopped seeing her physiotherapist. And based on a telephone call conducted on 7 August 2024, Mrs O could not satisfy the policy requirement of being unable to carry out at least four of the daily activities listed above.

The GP records I have referred to above also show that Mrs O doesn't meet the policy requirement for Total Permanent Disablement on this part of the claim. I appreciate that Mrs O has provided her sickness notes, and I understand she's in receipt of Employment and Sickness Allowance (ESA). But the eligibility criteria for ESA is different to that required of this policy. And GP sickness notes aren't of themselves sufficient to show the bodily injuries meet the terms of the policy. I'm satisfied that this part of the claim also wasn't

declined unfairly by ReAssure.

Overall, having considered everything carefully, I'm not persuaded Mrs O's symptoms are directly attributed to the accident in March 2020. Her medical records show that she's had problems with her knee of a degenerative nature prior to the accident. Whilst I understand and fully appreciate that she's experienced painful symptoms and trauma due to the accident, the evidence doesn't persuade me that she meets the policy terms for her claims. The bodily injury must be shown as having caused a total permanent loss of use to limbs or total permanent disablement within 12 months or 24 months respectively, from the date of the accident. I don't think the medical evidence sufficiently supports or meets the policy requirement as per the terms and conditions. I'm sorry to disappoint Mrs O but I can't reasonably ask ReAssure to pay the claims in the circumstances of this complaint.

My final decision

For the reasons given above, I don't uphold Mrs O's complaint about ReAssure Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 10 September 2025.

Nimisha Radia
Ombudsman