

complaint

This complaint concerns the payment date for critical illness benefit claimed by Mrs V under her mortgage protection policy.

background

Mrs V was employed in an office-based role when in early 2005 she was diagnosed with a particular condition. Later that year, she stopped working because of that condition.

In 2006, she submitted a claim for total permanent disablement ("*TPD*") benefit under her policy. The Prudential Assurance Company Ltd ("*Prudential*"), however, did not accept her claim.

In 2007, Mrs V was medically retired from work.

In 2008, Mrs V again submitted a claim for TPD benefit under the policy. This time, Prudential accepted that she was unable to work because of her condition and awarded her waiver of premium benefit from April 2006. It did not, however, accept that her incapacity was necessarily permanent as there were still treatments available for her condition. It therefore did not accept her claim for TPD benefit.

Over the next couple of years or so, Mrs V's TPD claim continued to be reviewed in light of additional medical evidence. In May 2011, Prudential finally accepted the claim and the appropriate benefit was paid in full.

Mrs V remained unhappy with the time it had taken to admit her claim and felt that as her medical condition had not changed significantly since first being diagnosed, payment of her claim should have been made much earlier than it was.

Mrs V's mortgage protection policy was written on a decreasing basis and the date her claim was accepted therefore affected the amount of benefit paid.

Having received Mrs V's complaint on this matter, Prudential considered it had assessed her claim fairly, saying that it could not be determined that she could never resume her former occupation while there were still possible treatments available to relieve her condition. However, given the length of time she had been off work, a decision was eventually taken to pay the policy benefits even though not all treatment options had yet been exhausted.

Mrs V maintained her view on the timing of her policy benefit payment and referred her complaint to this service, where it was considered by one of our adjudicators. He requested additional information from her treating consultant to try and determine when her disability might have been regarded as permanent. The additional medical evidence, however, was inconclusive and our adjudicator therefore found that Prudential's decision to make payment when it did was not unreasonable.

In response, Mrs V pointed out that her condition was both progressive and incurable; therefore any treatment she may have received was unlikely to improve matters to the extent that she could have resumed her former occupation. She asked that the matter be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I uphold this complaint only in so far as I consider that Prudential should have paid the claim 28 days sooner than it did. I shall explain why.

In order for Mrs V's claim for TPD to succeed, she needed to meet the following policy definition:

The Life Assured, before his 60th birthday, having become totally and permanently unable as a result of an illness or injury to engage for profit or reward in the occupation in which he was engaged immediately prior to the start of that illness or injury.

Therefore, I must consider, in light of the medical evidence, at what point Mrs V could reasonably be regarded as 'totally and permanently' unable to resume her occupation as a result of her illness.

Mrs V has pointed to the fact that her employer retired her on the grounds of ill health. Whilst Mrs V's employer was able to make a decision on her continued employment and offer medical retirement, this does not necessarily mean that she met the above definition.

Mrs V's treating consultant has consistently referred to the fact that her condition is both incurable and gradually progressive. He notes, however, that there are a number of treatments which can be employed to relieve the symptoms of the condition and reduce the damage that it causes.

On receiving Mrs V's claim in June 2008, Prudential asked that she undergo an independent medical examination (IME) and sought a medical report from her consultant. Based on this information it accepted that she was 'incapacitated' such that she met the definition for waiver of premium benefit.

However, I agree with Prudential that at that stage it could not be reasonably sure that she would never be able to return to her occupation, as there were still treatments available which could alleviate her symptoms. The claim was not payable while there remained a reasonable prospect that Mrs V might be able eventually to undertake the generic duties of an administrative role.

Mrs V continued to be prescribed various types of medication in an effort to control her condition, but with limited success. In 2010, she was also considered for a more powerful therapy but failed the assessment for it. In a letter dated 27 May 2010, her consultant said:

"...[her failure of the assessment] is a double edged sword in that it means that her [condition] is not as poorly controlled as we feared but not quite well enough controlled to make her sufficiently well to go back to work or make her life easier".

I consider that this implies the consultant was still hopeful that if her condition could be brought under control, Mrs V might be able to return to the workplace.

In writing to Prudential in October 2010, the consultant reaffirmed his view that Mrs V's condition was incurable and gradually progressive. He also said, however, that whilst he was

unable to assess her overall functionality, many patients with her condition were able to continue working, although certain tasks might prove difficult. I consider that the consultant at this stage had still not ruled out the possibility that Mrs V might eventually be capable of returning to work.

Prudential requested that Mrs V undergo a second IME in December 2010, which proved inconclusive with regard to her level of disability.

In April 2011, the consultant reported that Mrs V was continuing to struggle with her condition and that he was still varying her medication to relieve her symptoms and hopefully improve her ability to care for herself. It was at this point that Prudential agreed that Mrs V's incapacity should be regarded as permanent.

There is no definitive medical evidence I can see which would have required Prudential to accept that Mrs V was 'totally and permanently' unable to resume her occupation. The timing of its decision to pay benefit therefore does not seem unreasonable.

I note, however, that although Prudential says it made the decision to pay Mrs V's claim on 26 April 2011, it did not formally accept the claim until 24 May 2011 because it said that acceptance of critical illness claims was subject to a 28 day deferred period. The policy terms, however, make clear that the 28 day period does not apply in respect of a claim for TPD benefit because it is superseded by a requirement that the disability has continued uninterrupted for a period of 12 months. Mrs V, of course, met this requirement. I therefore consider that Mrs V's claim was payable with effect from 26 April 2011. My adjudicator has contacted Prudential over this matter and it has agreed to this.

my final decision

It is my final decision that this complaint should be upheld in part.

I require The Prudential Assurance Company Limited to admit Mrs V's claim with effect from 26 April 2011 and to pay her the sum assured, minus the benefit already paid.

I further require Prudential to pay interest on the net amount at the simple annual rate of 8% from 26 April 2011 until the date of settlement. Finally, I require Prudential to pay Mrs V 28 days' interest on the benefit already paid at the simple annual rate of 8%.

David Poley
ombudsman