

## **The complaint**

Miss F complains that The Royal London Mutual Insurance Society Limited has turned down an incapacity claim she made on a personal income protection insurance policy.

## **What happened**

Miss F has held a personal income protection insurance policy for some years. When Miss F took out the contract, Royal London added a term excluding any claims arising directly or indirectly from a mental health or nervous disorder.

In 2020, Miss F was signed-off work suffering from PTSD. She made an incapacity claim on the policy for benefit. But Royal London declined the claim because it said PTSD was a mental health condition and was therefore excluded under the terms of Miss F's policy.

Miss F remained unwell and was unable to return to work. Subsequently, in February 2021, Miss F was diagnosed with symptoms of long Covid-19. And therefore, she made a new incapacity claim because she said long Covid was preventing her from working.

Royal London requested medical evidence to allow it to assess the claim. It calculated that Miss F's new 26-week deferred period would run from February until August 2021. And so it determined that Miss F needed to show she'd been incapacitated due to long Covid for the whole of the deferred period. Having considered the medical evidence, it didn't think there was enough medical evidence to suggest that long Covid prevented Miss F from carrying out the material and substantial duties of her own occupation. So it didn't think Miss F had shown she met the policy definition of incapacity. It also concluded that the evidence indicated that Miss F's symptoms overlapped with her symptoms of PTSD. Accordingly, it turned down Miss F's claim in 2022.

Miss F brought a complaint to us about Royal London's decision, which was considered by one of our investigators in March 2023. In brief, the investigator didn't think the medical evidence indicated that Miss F was unable to carry out the essential duties of her role as a result of her long Covid symptoms. So he didn't think it had been unfair for Royal London to conclude that Miss F hadn't shown she met the policy definition of incapacity. That complaint was closed in late March 2023 after both parties accepted the investigator's assessment.

Subsequently, in October 2023, Miss F was assessed by an occupational therapist (OT) who provided a report. This report concluded that Miss F continued to be affected by the symptoms of long Covid and the impact of her symptoms had left her unable to return to work. Miss F sent Royal London a copy of this report for its consideration.

Royal London reviewed the OT's report. But it maintained its claims decision and so Miss F asked us to look into a new complaint about Royal London's position.

Our investigator didn't think Miss F's new complaint should be upheld. He didn't think the OT report provided enough evidence to show that Miss F met the policy definition of incapacity. Therefore, he felt it had been fair for Royal London to maintain its decision to decline Miss F's claim.

Miss F disagreed. In summary, she disputed that her role had been largely sedentary. She said she'd been required to drive long distances each month and sometimes carry heavy items, too. She also questioned why Royal London hadn't appointed an independent medical examiner (IME) to assess her condition. She said it had taken her a long time to find an OT to assess her. And she explained how her symptoms had affected her and continued to do 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, whilst I'm very sorry to disappoint Miss F, and I know how upsetting my findings will be to her, I don't think it was unfair for Royal London to maintain its decision to turn down her claim. I'll explain why.

First, I'd like to reassure Miss F that while I've summarised the background to her complaint and her detailed submissions to us, I've carefully considered all that's been said and sent. I'm very sorry to hear about the circumstances that led to Miss F needing to make a claim and I don't doubt what a worrying and upsetting time this has been for her. In this decision though, I haven't commented on each point Miss F's raised and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

It's also important that I make the parameters of this decision clear. I will only be considering the issues Royal London dealt with in its final response letter to this particular complaint. It seems this final response was issued to Miss F on or around 6 December 2023. The letter explained that following a review of the OT's report, Royal London still didn't think Miss F's claim should be accepted. The final response letter made it clear that Royal London wouldn't be revisiting its previous handling of Miss F's claim, as it considered it had responded fully to her previous complaints about those issues.

And, as I've set out above, this service has already considered a complaint about Royal London's decision to turn down Miss F's incapacity claim. The investigator considered all of the medical evidence which had been available to Royal London when it first considered Miss F's claim for incapacity caused by long Covid. So this evidence was taken into account when Miss F's earlier complaint was assessed and closed in March 2023. It seems too that Miss F accepted the investigator's findings on that complaint. Therefore, it wouldn't be appropriate for me to comment further on that evidence *or* on Royal London's earlier claims decision.

Instead, my role here is to consider the new medical evidence, namely the OT's report of October 2023, to decide whether I think Royal London's decision to maintain the rejection of the claim is fair and reasonable.

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 this policy and the available medical evidence, to decide whether I think Royal London handled Miss F's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Miss F's contract with Royal London. In February 2021, Miss F made a claim for long Covid-related incapacity, given she wasn't fit for work. So I think it was reasonable and appropriate

for Royal London to consider whether Miss F's claim met the policy definition of incapacity. This says:

*'Loss of the physical or mental ability, before age 65, through an illness or injury to the extent that the person covered is unable to do the material and substantial duties of their own occupation. The material and substantial duties are those that are normally required for, and/or form a significant and integral part of, the performance of the person covered's own occupation that can't reasonably be omitted or modified.'*

This means that in order for Royal London to pay Miss F incapacity benefit, it must be satisfied that she had an illness or injury which prevented her from carrying out the material and substantial duties of her own occupation. And in Miss F's case, that the illness wasn't a mental health or nervous condition.

The policy says that Royal London will begin to pay incapacity benefit after the end of the deferred period. This means that in order for benefit to be paid, Miss F needed to have been incapacitated in line with the policy terms for the entire deferred period and afterwards. Due to Miss F's initial incapacity claim for PTSD being turned down, Royal London started a new deferred period for Miss F's long Covid claim, beginning in February 2021.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Miss F's responsibility to provide Royal London with enough medical evidence to demonstrate that symptoms of long Covid had led to her being unable to carry out the duties of her own occupation for the full 26-week deferred period between February and August 2021 and afterwards.

Royal London considered the OT's report of October 2023 and wasn't persuaded that it indicated Miss F had been incapacitated by long Covid for the deferred period beginning February 2021. So I've next looked at the OT's report to assess whether I think this was a fair conclusion for Royal London to draw.

The OT's report is dated 13 October 2023 and states that the OT visited Miss F at home to carry out an assessment of her functional abilities. The report states that Miss F reported that she'd been diagnosed with long Covid in February 2021 and had been referred to a long Covid service. The report also listed Miss F's reported symptoms. The OT noted that by the end of the assessment, Miss F was becoming fatigued and had struggled on a couple of occasions to recall information. The report set out Miss F's previous role and that it involved driving across a large area. It also stated that Miss F was in receipt of employment support allowance (ESA) and a personal independence payment (PIP).

Subsequently, the OT set out their summary and recommendations. These said:

*'(Miss F) continues to be affected by the symptoms of Long Covid. These are impacting on her ability to manage fatigue, cognitive functions and access the local community. This has resulted in her being unable to return to paid employment.'*

*'(Miss F) is having regular reviews from the Department for Work and Pension (DWP) in relation to her ability to work and being eligible for ESA. At present, as she is still receiving ESA, she is deemed to be unable to work.'*

I've thought very carefully about the OT's report. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It isn't my role to interpret medical evidence to reach a clinical finding – or to substitute expert medical opinion with my own - and it would be inappropriate for me to do so.

It's clear that in February 2021, Miss F was diagnosed with long Covid. I'm mindful that she was referred to the long Covid service and has undergone diagnostic testing. I also appreciate that at the time of the OT's report, in October 2023, Miss F was receiving PIP and ESA. However, I don't think a report dated over two years *after* Miss F made an incapacity claim shows that she met the policy definition of incapacity due to symptoms of long Covid between February and August 2021. Instead, the report is a picture of Miss F's symptoms much more recently. Nor do I think the OT's report explains why Miss F wouldn't have been able to carry out the material and substantial duties of her role between February and August 2021 – even if it suggests that Miss F's symptoms may affect her fitness to work now. I'd add too that simply being unfit for work and receipt of sickness benefits doesn't mean a policyholder will necessarily meet the terms of an income protection policy.

On that basis, I don't think it was unfair for Royal London to conclude that Miss F still hadn't shown she had a valid claim for incapacity due to long Covid during the deferred period beginning in February 2021.

I understand Miss F feels Royal London ought to have appointed an IME to assess her. But as I've said, it's a policyholder's responsibility to show they have a valid claim on their policy. And there's no obligation for Royal London to appoint a medical specialist. In this case, it concluded that it already had enough medical evidence to make a decision on Miss F's claim. It does remain open to Miss F to obtain new medical evidence in support of her claim, should she wish to do so. I'd expect Royal London to assess this evidence carefully and also to consider whether it might now be appropriate for it to begin a new deferred period. However, that will be for Royal London to decide. If Miss F is unhappy with any further assessment of this claim or any new claim she may make, she'll need to make a new complaint to Royal London about that issue alone.

Overall, despite my natural sympathy with Miss F's position, I don't think Royal London acted unfairly when it maintained its decision to turn down her 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 F to accept or reject my decision before 5 April 2024.

Lisa Barham  
**Ombudsman**