

The complaint

Mrs M complains that The Ancient Order of Foresters Friendly Society Limited unfairly declined a claim she made under her critical illness cover.

What happened

The history of this complaint is well known to both parties, so I won't repeat all the details here. In brief, Mrs M has critical illness cover through her employer. Most unfortunately, in May 2017, she was injured at work. Shortly after the incident she began to experience symptoms. She was diagnosed with persistent concussion symptoms. In a medical report, dated July 2023, the assessing specialist, Dr MG, considered Mrs M's ongoing symptoms to be permanent.

Mrs M submitted a claim for 'prolonged concussion symptoms' under her critical illness cover. She was told the claim was declined, as this wasn't a covered condition. So she provided Dr MG's report and asked for her claim to be reviewed under the covered condition of traumatic head injury.

This claim was also declined on the grounds that there had been no direct blow to the head, no loss of consciousness at the time, CT and MRI scans showed no abnormalities and clinical neurological examination could find no obvious abnormality. Foresters concluded the policy condition had not been met.

Mrs M brought her complaint to the Financial Ombudsman. Our investigator didn't uphold the complaint. She thought Foresters had acted fairly when it declined Mrs M's claim. She was satisfied Mrs M's circumstances didn't meet the policy definition for traumatic head injury and therefore a critical illness claim wasn't payable. Mrs M disagreed so the complaint has come to me for a final decision.

Pre-decision, Mrs M provided some further evidence about head injury and headache attributable to whiplash, as well as a letter, dated May 2024, from a consultant neurologist – Dr GG – following a recent clinic appointment. I've reviewed these documents, but should clarify that the scope of this complaint is the decline decision made by Foresters in July 2023.

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, I'm not upholding this complaint. I recognise my decision will disappoint Mrs M and I'm sorry about that, particularly as I appreciate Mrs M continues to experience symptoms that impact significantly on her daily life. I'll explain my reasons, focusing on the key points and evidence I consider material to my decision.

Mrs M's policy provides cover for traumatic head injury. Foresters relied on the following policy definition to decline the claim:

Traumatic head injury – Group A & C

Death of brain tissue due to traumatic injury resulting in permanent neurological deficit with persisting clinical symptoms.

Forester's reasons for the decline decision appear to be twofold. Firstly, that no traumatic head injury occurred, as evidenced by Mrs M's account of the incident, confirmed in Dr MG's report, following his review of Mrs M's medical records. And secondly, that in any event, the specific policy definition for *traumatic head injury* was not met.

I've reviewed the medical report from Dr MG. Dr MG explains that Mrs M's diagnosis of concussional injuries is more correctly referred to as a mild traumatic brain injury (mTBI). He notes that clinical examination and imaging in 2017 (CT scan and MRI) did not identify any abnormalities. A further hospital neurology department review with a consultant neurologist in May 2018, again recorded that all clinical neurological examination findings proved negative with no cerebellar signs.

Following his own examination in June 2023, Dr MG states that:

[Mrs M] preserves a full range of facial muscular movements and also preserves apparently full cranial nerve function including eye movements, visual fields and pupillary reflexes. Neurological function in all four limbs was likewise fully preserved without any obvious deficit of power, tone, sensation or reflex activity and neurological and vascular function in both right and left limbs was symmetrical. Gait and mobility did not show any obvious abnormality and there were no cerebellar signs.

Mrs M's reported symptoms are well documented. She underwent neuropsychological assessment in June 2018, and Dr MG notes that the opinion offered was 'her overall profile is consistent with post-concussion syndrome' with fatigue feeling to be particularly associated with poor memory and attention.

This diagnosis was reaffirmed by consultant neurologist Dr M, following review in February 2020. Mrs M's symptoms worsened in the second half of 2021, leading to her being unable to work.

In his summary & opinion, Dr MG notes:

The pattern of clinical symptoms and non-specific difficulties described by Mrs M is entirely in keeping with a pattern of persistent concussional symptoms. All of her difficulties would be regarded as symptomatology typical of this condition as would the fact that clinical neurological examination has been unremarkable throughout as have radiological investigations up to the level of plain MRIs.

So in Dr MG's opinion, the unremarkable results from neurological examination and imaging are consistent with Mrs M's diagnosis.

In trying to make out her claim Mrs M has fallen foul both of the condition covered - traumatic **head** injury [my emphasis] - and the specific policy definition for that condition. Mrs M argues it's wrong to distinguish between traumatic head injury and traumatic brain injury, as

medically, this is not done. A Google search for medical definitions supports the regular linking of the terms – as, to a degree, does Forester’s policy wording.

The specific policy definition makes it clear that ‘traumatic head injury’ requires a change in the brain. It’s not the case that any head injury caused by trauma is covered, for example, a fractured skull. But equally, not every traumatic injury resulting in brain change is covered – only those meeting the specific definition *and* arising from a traumatic head injury. It’s well established not all traumatic brain injuries are caused by traumatic head injuries. In Mrs M’s situation, it seems the most likely cause of her mTBI was a whiplash-type motion she experienced during the index incident.

I’ve thought about whether Forester’s policy wording is unreasonably restrictive. The Association of British Insurers (ABI) provides model wordings for members to use in critical illness policies. Although not a member – membership is voluntary – I can see, in its specific definition for traumatic head injury, that Foresters has adopted the ABI model wording for traumatic brain injury. This does limit the mechanism of injury giving rise to the critical illness. But as Foresters is not an ABI member, it’s free to decide whether and how the wording is used. Even for members, aside from mandatory provision for three core conditions - cancer, heart attack and stroke - insurers are free to decide which conditions they will – and won’t – cover. No critical illness policy provides cover for all conditions in all circumstances.

I can appreciate Mrs M’s reservations about Forester’s strict reliance on its policy term. But I don’t think Forester’s acted unfairly in declining Mrs M’s claim because her diagnosis did not arise from a traumatic head injury. Ultimately, Foresters is entitled to determine the terms under which it will cover particular conditions. And it’s entitled to rely on those terms when assessing claims.

I’ve also thought about the second reason for declining Mrs M’s claim – that she does not meet the specific definition in the policy. But again, I don’t think Foresters acted unfairly here either. I say this because none of the clinical examinations and scans done to date evidence death of brain tissue...resulting in neurological deficit.

Mrs M’s argument is that death of tissue can be inferred from her now permanent symptoms which neurologists have recorded following various consultations. But none of the clinical examinations or scans have confirmed this. I acknowledge Dr MG’s comment about the results of these examinations and scans. And Mrs M also argues reliance on the examinations and scans is unfair, saying a more powerful MRI scanner would be able to demonstrate she met the policy term, but she cannot access it on the NHS as it is for severe health cases only. I accept this may be so, but ultimately, the absence of objective evidence remains, and it is for the claimant to show they meet a policy term or condition.

I recognise this is very unfortunate for Mrs M, whose symptoms impact daily on her life. But from what I’ve seen, the particular circumstances of her ill-health fall outside the policy provisions. So overall, I don’t think Foresters acted unreasonably in declining her claim. Given this, I’m not going to ask Foresters to do anything more in respect of this complaint. Once again, I’m sorry to send unwelcome news to Mrs M.

My final decision

My final decision is that I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 October 2024.

Jo Chilvers
Ombudsman