

The complaint

X has complained that AXA France IARD ('AXA') unfairly declined her claim.

What happened

X has a personal accident insurance policy with AXA. After an incident in which X sustained injuries, she made a claim for permanent total disability (PTD) benefit which AXA declined. It said that although X's disability was permanent, it wasn't total.

X was awarded Employment Support Allowance (ESA) in 2015 and following a work capability assessment by a doctor in 2017, her allowance was increased. This was because X was assessed as having severe health problems and wasn't able to work.

X complained to AXA but it maintained its decision to decline the claim and so she referred her complaint to this service.

Our investigator looked into the complaint and found that X had proven that she met the definition of PTD and said AXA should pay the claim. He also recommended £250 compensation for the poor way in which the claim was handled.

AXA said it didn't dispute that X's condition was permanent. But said there was no mention of a total disability. And so it doesn't believe X's condition meets the definition of a PTD as defined by the policy. It also said X cannot benefit from permanent partial disability (PPD) as the policy was upgraded after her incident and so PPD benefit wasn't available at the time of the incident.

So the case has 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.

I issued my provisional decision on 8 April 2022 which I adopt as my final decision. Thank you to both sides for responding. As both sides have accepted my provisional decision, I see no reason to depart from my provisional findings. I have set my decision out in full here.

The relevant rules and regulations say AXA must deal with a claim promptly, fairly and shouldn't unreasonably reject a claim.

The policy definition of PTD is:

“Permanent total disability means a total and permanent disability which medical evidence confirms will last for the rest of your life and which stops you doing any paid job which your experience, education or training reasonably qualifies you to do.”

AXA accepts X's disability is permanent but doesn't accept it is 'total'. Which means AXA doesn't think X's disability is stopping her from doing any paid job which her experience, education and training reasonably qualifies her to do, based on the above definition.

So the key consideration for me is whether the evidence suggests X can work and whether AXA fairly declined the claim.

I've reviewed and considered all of the medical evidence provided by both sides and have summarised the key medical evidence relevant to this complaint.

The key medical evidence:

October 2018 – X was reviewed by a Consultant Otolaryngologist – she confirmed X suffered from dizziness, positional vertigo and diplopia and referred her on to a Neurologist.

September 2019 – X saw another Consultant Otolaryngologist who found X's symptoms were compatible with the head trauma she had suffered.

October 2019 – AXA arranged for an independent medical examination (IME) which took place with a Consultant Otolaryngologist. He said he would reserve his opinion about whether X had sustained a permanent and total disability as a result of the accident until X had been seen by an expert Neurologist.

December 2019 – X saw a Consultant Otolaryngologist again who said she struggled to walk, her diplopia was severe and she was disabled by all her symptoms. She said her disability was likely to be permanent.

May 2020 – X was seen by a Consultant Neurologist who confirmed she suffered with vertigo due to the incident. The Consultant said X's case had been studied in great detail along with reports from the other specialists and concluded 100% of X's symptoms arose from the incident. The Consultant said X's physical signs all related to the brain stem and its connections.

June 2020 – the Consultant Otolaryngologist who had carried out the IME, provided an updated report and said X was more likely that not to have a permanent disability but he wouldn't describe this as 'total'.

And so AXA maintained its decline.

X obtained further medical evidence from her GP and Consultant Neurologist who both concluded that X was getting progressively worse and there would be no improvement in her condition.

The Consultant commented that X wouldn't be able to work at the high level of her previous employment (as an educational consultant and education inspector) and menial administrative tasks would be difficult as X would need to fix her vision and not move her head. The Consultant said:

“...your concentration is significantly impaired by the sensation of dizziness as well as the disturbance of vision. Any head movements give rise to symptoms and that gives rise to disturbed vision and symptoms of disequilibrium. These on-going symptoms give rise to anxiety and depression. Regretfully therefore I don't think you will be able to work...Disappointingly therefore I don't think that employment in any role would be feasible for you.”

Our investigator sent this further evidence to AXA but it continued to maintain its decline.

AXA seem to be suggesting that X may meet the definition of permanent partial disability but that this cover wasn't available until after the incident. PPD is defined as follows:

“Permanent Partial Disability (PPD) provides cover for partial disability that you suffer within 24 months of an accident and which medical evidence confirms will last the rest of your life. Cover includes Partial loss of use.

Example: If you suffer an accident which results in 20% permanent partial loss of your ability to undertake any work or occupation which you are reasonable(sic) qualified to do then we will pay you 20% of your Permanent Total Disability.”

Based on the above, I would expect to see some evidence and an explanation of why AXA thought X was able to work, in a reduced capacity. But I haven't seen any evidence which suggests that X would be able to work in any capacity at all.

Based on the totality of the above medical evidence including the additional evidence X has provided, I'm satisfied that X's disability is permanent and total. Her GP and treating Consultant have confirmed she will be unable to work again. And she is in receipt of ESA benefit after being assessed by a doctor as being unable to work.

I've taken everything into account including the IME Consultant's report. But his report doesn't comment on X's ability to work and doesn't explain in any detail why he doesn't think X's disability is 'total'. The IME consultant's updated report was brief and not as detailed as the other specialists' comments involved in X's care. So I find the evidence of the treating Consultant more persuasive based on the ongoing care of X and because the IME is silent on X's ability to work.

In conclusion, I consider X meets the definition of PTD under the terms of the policy and consequently, is entitled to the PTD benefit.

The claims handling

Our investigator has provided a detailed timeline which demonstrates that AXA handled the claim poorly. I won't repeat it in full here but will summarise the key points:

- AXA wrote to X to say it hadn't received information it required and so it would close her claim. But it had already received the information it had requested.
- Duplicate information requests were sent.
- The IME wasn't arranged until October 2019 and X herself had to call to arrange this.
- X made several calls to ensure the claim wasn't closed when AXA wrongly informed her that it hadn't received information it had requested.

Having considered the above, I agree that AXA's handling of the claim caused X some distress and inconvenience. Although it can take time for these claims to be assessed, I wouldn't expect repeat mistakes. And so I think a payment of £250 compensation is appropriate to recognise the impact of the poor handling.

My final decision

For the reasons set out above, I uphold this complaint and direct AXA France IARD to:

- accept X's claim for PTD benefit and pay it in line with the terms and conditions. Interest should be added at the rate of 8% simple per year from the date the claim was submitted to the date of settlement.
- pay £250 compensation for the poor handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 17 May 2022.

Shamaila Hussain
Ombudsman