

The complaint

Mr R complains about the settlement paid to him by AXA France IARD under his personal accident claim.

What happened

Mr R has held personal accident cover since 2002. He made a claim in 2021 after experiencing a significant injury in an accident. The claim was for total loss of use of two limbs, as well as hospitalisation benefit.

AXA accepted the claim and paid Mr R £346,500. It said this was the maximum cover available under the policy. Unhappy with this, Mr R brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought AXA had been correct to say the maximum benefit available was £346,500, so she didn't ask it to make a further payment to Mr R.

I issued a provisional decision on 3 November 2022. Here's what I said:

"Maximum benefit

The policy terms include a benefits table which sets out the individual benefit payments available, depending on what is being claimed. It also says:

"The maximum benefits payable for all claims is: -

...

The permanent total disability benefit and the maximum hospitalisation benefit."

When Mr R took out the policy in 2002, the permanent total disability (PTD) benefit for his level of cover was £140,000. The hospitalisation benefit had two aspects, a daily amount and a lump sum. The daily amount was £175 x maximum 120 days (£21,000). The lump sum was £1,750.

The policy also says:

"The benefits set out in the Benefits Table and your premium will go up by 5% of their starting amounts for each complete year you are covered under this policy."

In 2015, AXA made changes to the policy and confirmed there would be a 50% increase on the original policy benefit levels from the 2015 renewal.

I calculate the 2015 benefit levels to be as follows:

PTD

£140,000 starting benefit plus 50% uplift = £210,000

Daily hospitalisation amount

£175 starting amount plus 50% uplift = £262.50

Hospitalisation lump sum

£1,750 starting benefit plus 50% uplift = £2,625

At Mr R's October 2020 renewal (which is relevant for the claim), AXA told him that his maximum benefit under the policy was £346,500. This was worked out as follows:

PTD new benefit of £210,000 from 2015.

Plus 5% annual escalation on £210,000 benefit between 2015 and 2020, which equals £52,500.

Plus £84,000 previous increases on £140,000 benefit due to 5% escalation between 2002 and 2015.

Total amount £346,500

I agree with AXA that this was the correct way to calculate the PTD cover. However, this doesn't take into account the hospitalisation benefit.

*AXA has provided the policy schedule, and this says the benefit cover is £346,500. But this is in contrast with the policy terms which makes it clear the maximum benefit for all claims is the PTD cover **and** (my emphasis) the maximum hospitalisation cover. The policy terms and schedule should be read as one document, though it's apparent that the maximum benefit cover is contradictory.*

Where there is ambiguity in an insurance contract, the contra proferentem rule should apply – in other words, the contract should be interpreted in favour of the consumer. The maximum benefit should therefore be calculated based on the PTD benefit and the maximum hospitalisation benefit.

Claim

Mr R made a claim for total loss of use of two limbs, and hospitalisation benefit.

The benefit under total loss of use of two limbs was the same as the PTD benefit. So £140,000 starting benefit in 2002, which increased to £210,000 in 2015.

AXA calculated Mr R's settlement for total loss of use of two limbs to be £399,000. This was based on the following calculation:

£210,000 benefit from 2015

Plus 5% increases due to escalation over 18 years, which equals £189,000

Total amount £399,000.

AXA has caused confusion here as it has calculated the PTD benefit and the total loss of use of two limbs benefit differently, despite the benefit levels being the same.

I think the 5% increases prior to 2015 should be based on the starting benefit of £140,000

that was in place at the time. This is the way that AXA calculated the PTD benefit, which I think was correct.

That means the settlement under the loss of use of two limbs benefit was £346,500. Coincidentally, this is the amount AXA has already paid to Mr R. So I don't require AXA to make any further payment under this section of cover.

Turning now to the hospitalisation benefit. I understand Mr R was in hospital for 96 days. AXA should work out the hospitalisation benefit due to Mr R, and pay this to him. This, together with the £346,500 already paid, will be within the total maximum benefit of the policy as Mr R isn't claiming for the maximum hospitalisation benefit.

I think the conflicting information AXA provided Mr R about his level of cover and the calculation of his settlement has caused him unnecessary worry and confusion. I intend to require it to pay him £350 compensation to recognise this."

I asked both parties for any further comments they wished to make before I made a final decision.

Mr R's representative responded on his behalf to confirm he accepted my provisional findings.

AXA didn't respond with any further comments before the deadline given.

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.

As neither party has provided any further comments for me to consider, I'm satisfied my provisional findings were appropriate. Due to the ambiguity between the policy terms and policy schedule, it is fair and reasonable to say the maximum benefit should be based on the higher figure which is the PTD benefit and the maximum hospitalisation benefit.

My final decision

My final decision is that I uphold this complaint.

I require AXA France IARD to pay Mr R hospitalisation benefit. Interest should be added to this amount at 8% simple per annum from the date of claim to the date of settlement*.

I also require AXA France IARD to pay Mr R £350 compensation.

* If AXA considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr R how much it's taken off. It should also give Mr R a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 December 2022.

Chantelle Hurn-Ryan
Ombudsman