

The complaint

The estate of Mrs A is unhappy with the settlement American International Group UK Limited made when she claimed on her Disabling Injuries Protection Plan.

The estate is represented by Mr S.

What happened

Mrs A had an accident and claimed on her Disabling Injuries Protection Plan. She sadly died in 2016. Mrs A's estate have continued the claim following her death.

AIG accepted there was a valid claim under the policy and made a settlement on the basis that Mrs A had lost the use of both legs but that only 20% of the loss of use was caused by the accident. Mr S didn't think that was a fair settlement. He complained to AIG but they maintained the settlement was fair.

Our investigator looked into what had happened and upheld the complaint. He thought AIG should settle the claim and pay the claim on the basis that Mrs A had lost 50% of the use of both legs and pay 8% simple interest.

AIG didn't agree and asked an ombudsman to review the complaint. They said the medical evidence showed the accident had caused 50% of Mrs A's overall disability and that there was 20% total loss of overall bodily function due to the physical injuries sustained in the accident. Mr S accepted the investigator's findings. So, I need to make a decision.

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.

The relevant rules and industry guidelines say that AIG has a responsibility to handle claims promptly and fairly.

Item 5 on the policy schedule sets out a benefit for loss of use of both legs. During the lifetime of the policy it was amended. The information Mrs A was provided with said:

We have also included a proportional benefit, which means that if you suffer an injury which results in partial permanent disability, a proportional payment will be calculated depending upon the amount of loss you have suffered. Previously benefits were only paid for total loss.

It's accepted there is a valid claim under the policy. The policy pays a benefit for loss of use of both legs. The settlement calculation included an additional amount which was a 'no claims bonus' and a reduction in benefit due to Mrs A's age. Those points aren't in dispute.

The issue for me to decide is whether AIG settled the claim fairly by concluding Mrs A had 20% loss of use due to the accident. I don't think that was a fair settlement in the circumstances of this case for the reasons I'll explain.

There are two relevant medical reports which were used to determine the proportion of loss. The author of the medical report was a consultant trauma and orthopaedic surgeon. In his first report he said:

'I fully accept that her ability to mobilise is multifactorial but there is no test or literature to guide me but in my opinion the injury has caused a decrease in her mobility. In my opinion I would estimate that 50% of her overall disability was due to the accident...There is no doubt that eventually she would have reached the same level of post-accident disability but it is again very difficult to estimate when this would be. I would estimate this to be between 2 and 3 years'.

In his second report, which dealt with questions from AIG, he acknowledged that the questions posed to him were difficult to decide with any degree of certainty. The report was obtained several years after Mrs A's death. The report says:

'As per my recent letter in my opinion I would estimate that 50% of her overall disability was due to the accident. Obviously, the loss of overall bodily function due to the physical injuries would have been significantly less as she maintained her mental capacity, her upper limb function as well as her bladder and bowel function. In my opinion I would estimate the total loss of overall bodily function due to physical injuries sustained in the accident was 20%.

Mrs A sustained a fracture of both her pubic rami and this would cause pain on weight bearing in both of her legs. This in my opinion has resulted in the loss of function in both her legs'.

The consultant acknowledged the difficulties in giving a certain answer. And, whilst he referred to 20% loss of overall bodily function, he also stated that Mrs A had lost function in both her legs. I also think those comments need to be read alongside the information in the first report and the other evidence available.

AIG also had a letter from Mrs A's care home which commented on her mobility. It confirmed she was unable to walk more than a few steps unaided and used a wheelchair. The letter said Mrs A's mobility didn't improve from the date that she moved into the home, which was shortly after her accident, but did deteriorate further in the last few weeks of her life.

Bearing in mind the overall medical evidence I think a settlement of 50% more fairly reflects the proportion of loss described. I don't think a settlement of 20% reflects the wider medical information that was available to AIG at the time.

The percentage of 20% related to Mrs A's overall bodily function and took into account her mental health as well as her upper limb, bladder and bowel function. AIG settled the claim on the basis of that there was loss of use of both legs. So, I think it would have been fairer, in the circumstances of this case, to apply the higher percentage.

I think that 50% would have more fairly reflected the medical evidence that was available, and acknowledged the difficulties highlighted in reaching a conclusion about Mrs A's functionality several years after the claim and her death. There was a specific benefit for loss of use of legs and that was the basis of AIG's settlement. I think it's unreasonable to base the calculation on 20% total loss of overall bodily function where the expert evidence has been able to attribute 50% of her overall disability to the accident and bearing in mind the evidence about Mrs A's mobility.

Putting things right

AIG needs to put things right by settling the claim by paying the estate of Mrs A a total of 50% of the benefit. They also need to pay the estate of Mrs A 8% simple interest per annum from the date the claim was originally settled.

If AIG considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell the estate of Mrs A how much it's taken off. It should also give them a tax deduction certificate if they ask for one so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding the complaint and direct American International Group UK Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs A to accept or reject my decision before 25 August 2023.

Anna Wilshaw
Ombudsman