

The complaint

Mr R complains that American International Group UK Limited trading as AIG Direct ('AIG') hasn't accepted his permanent total disablement (PTD) claim under his personal accident policy.

What happened

Mr R holds personal accident cover with AIG. He stopped working after injuring his shoulder in an accident. He made a claim under the policy.

AIG arranged for Mr R to attend an independent medical examination (IME). Following this, AIG accepted that Mr R had a valid claim under loss of limb cover, and offered him £13,750. However, Mr R thought AIG should pay him benefit for PTD. He brought a complaint to the Financial Ombudsman Service.

I issued a provisional decision on 29 February 2024. Here's what I said:

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

The policy says:

'If you have an accident after the effective date and before your insurance finishes, which results in you suffering bodily injury which solely and independently of any other cause and within 24 months of the date of the accident, causes death, permanent disability, full-thickness burns, fractures or specified dislocations, we will pay the amount shown in the table of benefits.'

The policy says that 'permanent disability' means a disability which is permanent, total and irrecoverable, as specifically listed in items two to ten in the table of benefits.

Item four in the table of benefits is for PTD. This is defined in the policy as:

'For an insured person who is in employment for which they receive regular income, the inability of the insured person to continue in any occupation for which they are fitted by way of training, education or experience which in all probability will continue for the rest of their life. For an insured person who is not in employment for which they receive regular income, the inability to work in any gainful employment and which in all probability will continue for the rest of their life.'

Before the accident, Mr R was self-employed as a tree surgeon. He's confirmed that he was working under a company, carrying out contracts for them as and when required.

The IME took place in October 2022. Mr R was in his late fifties at this time. The specialist said Mr R would not be able to return to his previous occupation, and his right shoulder function had deteriorated significantly since the accident (and that this was solely attributable to the accident). They thought Mr R's optimal recovery had been reached, and that he had

permanently lost 25% function of his upper limb. The specialist described how Mr R had constant pain radiating from the right shoulder to the neck and upper back, and his movements were markedly restricted. Finally, the specialist said that Mr R was suitable for sedentary work.

The policy is clear that benefit is payable if Mr R can't carry out an occupation for which he is fitted by way of training, education or experience. Whilst Mr R is apparently medically able to do sedentary work, AIG hasn't suggested any sedentary roles that it thinks Mr R would be fitted to based on his training, education or experience. And the IME makes it clear that he has constant pain from his shoulder to neck and upper back, which would need to be taken into account.

Mr R has only ever had two roles – both of which are manual. He says he's never worked in a sedentary role, and he left school with no qualifications and struggles with administration tasks. It therefore seems to me that Mr R's training, education and experience meant he was only fitted for manual roles.

I therefore agree with our investigator that Mr R meets the policy definition of PTD and so is entitled to PTD benefit.

I understand that once AIG pays for PTD benefit, the cover under the policy will end and so there can't be a separate payment for loss of limb. AIG can therefore deduct the payment it has made for loss of limb from the PTD benefit.

AIG paid Mr R £50 compensation for delays in responding to his emails, and I'm satisfied this was reasonable.'

I asked both parties for any further comments they wanted to make before 14 March 2024.

Mr R responded to say he accepted my provisional decision. However, he said he hadn't received any payment from AIG under the loss of limb cover as he didn't accept its offer. Also, he accepts that £50 compensation was reasonable for the delays in AIG responding to emails, but says that AIG caused further delays after the complaint was referred to us.

AIG didn't provide any further comments.

As the deadline of 14 March 2024 has now passed, I'll issue my final 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.

As AIG hasn't provided any further comments for me to consider, I remain of the opinion that PTD benefit should be paid to Mr R, and for the same reasons as set out in my provisional decision.

As Mr R has confirmed that AIG hasn't made a payment to him under the loss of limb cover, AIG should pay him the full PTD benefit amount.

I've noted Mr R's comments about the delays after his complaint was referred to us, specifically that AIG delayed responding to our investigator's findings. However, I am awarding interest which will be calculated up to the date of settlement (in other words, when AIG pays the claim), and so I'm satisfied this fairly compensates Mr R for being without the money until that time.

My final decision

My final decision is that I uphold this complaint.

I require American International Group UK Limited trading as AIG Direct to pay the PTD claim in line with the policy terms. Interest should then be added at the rate of 8% simple from the date AIG initially offered to pay benefit under the loss of limb cover to the date of settlement*.

AIG should also pay Mr R £50 compensation if it hasn't already done so.**

* If AIG 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.

**AIG must pay the compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 April 2024.

Chantelle Hurn-Ryan
Ombudsman