DRN-5828967

The complaint

Mr A is unhappy that MetLife Europe d.a.c has declined claims made under his personal accident policy ('the policy') for:

- (Permanent) loss of use of a shoulder; and
- Total and Permanent Disability (TPD).

He's also unhappy with the way in which the claims have been handled.

What happened

Mr A had an accident at work in 2019. He injured his shoulder and ultimately underwent surgery.

Since the operation, Mr A continued to have pain and couldn't move his shoulder through a full range of movements. He made a claim to MetLife in 2021 which included a claim for permanent loss of use of his shoulder.

After arranging an independent medical report, MetLife concluded that there wasn't enough evidence to show Mr A's ongoing problems met the policy definition of permanent loss of use of his shoulder.

Mr A complained about this, but MetLife maintained its position. So, Mr A brought a complaint to the Financial Ombudsman Service. In January 2023, another ombudsman issued a final decision not upholding the complaint. She concluded that at that time MetLife had acted fairly by not covering the claim.

Mr A then provided more medical evidence in support of the claim but MetLife didn't cover the claim. A further complaint was brought to the Financial Ombudsman Service. Our investigator concluded in October 2023 that having considered two further pieces of medical evidence, MetLife had fairly concluded that Mr A hadn't established a permanent loss of use of his shoulder within 12 months of the accident. So, MetLife had fairly maintained its decision to decline the claim.

In November 2022, Mr A had also made a claim under the policy for the TPD benefit. Initially MetLife concluded that the evidence provided in support of that claim related to the loss of use of shoulder claim and didn't carry out a formal assessment of a claim for the TPD benefit.

Mr A subsequently raised concerns about that and, in May 2024, provided more medical evidence in support of his claim for TPD. This was considered and his claim for this benefit was ultimately declined by MetLife in September 2024. MetLife also repeated its position that based on the most recent medical evidence, it wouldn't accept a claim for permanent loss of use of his shoulder.

Mr A then raised further concerns with the Financial Ombudsman Service. Our investigator

looked into what happened and didn't uphold them. Mr A didn't agree so this complaint was passed to me to decide.

I issued a provisional decision explaining why I intended to direct MetLife to pay Mr A £300 compensation for distress and inconvenience. I said:

……

At the outset, and so everyone is clear, I'm not reconsidering the complaints that have already been concluded by the Financial Ombudsman Service by way of an ombudsman's decision dated January 2023 and an investigator's opinion dated October 2023 (as Mr A didn't contest the investigator's opinion at the time).

I've only considered whether MetLife has:

- fairly maintained its position to decline the claim for permanent loss of use of his shoulder based on more recent medical evidence that wasn't considered by MetLife or the Financial Ombudsman Service when providing the outcomes dated January 2023 and October 2023.

- acted fairly and reasonably by declining a claim for the TPD benefit.

- acted fairly and reasonably by the way it handled the claim for the TPD benefit.

I have a lot of empathy for what Mr A has gone through. He's clearly been through a very difficult time since the incident which occurred in work and my decision is in no way meant to minimise the impact of his injuries. However, I'm not persuaded that MetLife has unfairly declined the claims made on the policy. I'll explain why.

MetLife has a regulatory obligation to handle insurance claims fairly and promptly. And it mustn't unreasonably decline a claim.

It's also for Mr A to establish his claims under the policy.

Relevant to this complaint, the policy can pay out a lump sum for the following insured events:

- Accidental permanent injuries – which includes loss of use of a shoulder so long as it occurs within 12 months of the accident (permanent means expected to last throughout the insured person's life); and

- Accidental TPD which occurs within 24 months of the accident.

TPD is defined as:

> Loss of the physical ability caused by bodily injury to do at least 3 of the 6 tasks listed below ever again. The relevant treating specialists must reasonably expect that the disability will last throughout life with no prospect of improvement.
>
> You must need the help or supervision of another person and be unable to perform the task on your own, even with the use of special equipment routinely available to help and having taken any appropriate prescribed medication.

The tasks are:

- Washing - the ability to wash in the bath or shower (including getting into and out of the bath or shower) or wash satisfactorily by other means.
- Getting dressed and undressed - the ability to put on, take off, secure and unfasten all garments and, if needed, any braces, artificial limbs or other surgical appliances.
- Feeding yourself - the ability to feed yourself when food has been prepared and made available.
- Maintain personal hygiene – the ability to maintain a satisfactory level of personal hygiene by using the toilet or otherwise managing bowel and bladder function.
- Getting between rooms – the ability to get from room to room on a level floor.
- Getting in and out of bed – the ability to get out of bed into an upright chair or wheelchair and back again.

Accidental permanent injuries benefit

I've considered the more recent medical evidence provided to MetLife (and which wasn't considered by our investigator when issuing her view dated October 2023).

That includes a medical report dated May 2024 which reflects Mr A's:

> …current health condition has deteriorated significantly. AII consultations with specialists and rehabilitation did not result in any improvement in health. Nothing has changed regarding the shoulder, so Mr A lost the ability to use it forever.

However, this report is dated around five years after the accident and the policy terms are clear that for the benefit to be payable, the permanent loss of use of the shoulder must occur within 12 months of the accident.

I'm satisfied that MetLife has reasonably concluded that the medical evidence – including the report above – doesn't change its decision about whether the claim should be declined.

There's nothing in the more recent medical evidence I've seen which explains the extent to which Mr A lost use of his shoulder within 12 months of the accident or that there had been a permanent loss of use of his shoulder within that period.

Further, the more recent medical evidence doesn't comment on the earlier medical evidence which another ombudsman had already considered when deciding in January 2023 that MetLife had acted fairly when initially deciding to decline the claim based on the available medical evidence then.

In particular, evidence from April 2021 which says Mr A had lost some degree of movement in his shoulder, but this could well improve with treatment. And an independent medical review carried out in early 2022 which said that although Mr A was experiencing unexpected loss of movement and pain, without further investigation into the cause of Mr A's ongoing problems, they'd expect someone of his age to make a full recovery given the shoulder surgery he'd had.

Further, the May 2024 medical report doesn't comment on inconsistencies in Mr A's medical records from February 2023 around the use of the shoulder, which our investigator mentioned in her opinion dated October 2023.

TPD benefit

Having considered the medical evidence – including evidence about Mr A's shoulder and

back issues - I'm satisfied that MetLife has fairly and reasonably concluded that Mr A hasn't established the conditions of the TPD benefit have been met. In particular, that TPD occurred within 24 months of the accident.

When making his claim for TPD in November 2022 (so over three years after the accident), Mr A did provide a medical letter reflecting:

> Currently, the right shoulder is lowered by about 5 cm in compare [sic] to the left shoulder. According to the physiotherapist, the return to the patient's condition from the period before the accident is questionable. The condition of the right shoulder severely affects the patient's daily life and his ability to return to work. It also impairs the performance of daily care activities. The changes in this shoulder joint are permanent and irreversible loss of use of shoulder.

So, although clearly impacted, this doesn't explain how and to what extent Mr A couldn't carry out at least three of six tasks ever again for TPD to be established under the policy terms. Or that he was prevented from doing so within 24 months of the accident.

Further a consultant neurologist's letter dated April 2023 (almost four years after the accident) also says:

> Mr A…has chronic rotator cuff injury, with symptoms of brachial plexus injury. The prognosis is very poor and recovery very unlikely.
>
> The patient has severe disability as he presents with total permanent and irrecoverable shoulder ¡injury in Iine with loss of use of the right upper limb. Therefore, he is totally dependent on his partner in all activities of daily living: he cannot dress on his own, he is unable to prepare meals or eat them, he cannot use the toilet and wash himself, he cannot make his bed alone. He is forced to use a portable toilet as he cannot use the normal one. He needs someone to clean for him and help him use the toilet at all. He cannot write and therefore he needs assistance in arranging formal issues.
>
> His disability is permanent and In my opinion he will not recover…

Although this may have been the case in early 2023, it doesn't say – and to what extent – Mr A was prevented from carrying out three of the six tasks ever again within 24 months of the accident for TPD to be established under the policy terms.

Further, a letter dated May 2024 says:

> Since November 2022 a lot has changed for Mr A. His current health condition has deteriorated significantly…
>
> Nothing has changed regarding the shoulder, so Mr A lost the ability to use it forever. After spine surgery in 2023, Mr A felt slight improvement in pain…Mr A's health condition is currently worse and there are no prospects for improvement.

The letter goes on to say that Mr A can't do five of six tasks listed in the policy establish TPD. But, again, that's based on what Mr A couldn't do in 2024 and not between May 2019 and May 2021 – which is the relevant period under the policy terms. And the author of the report doesn't say that their conclusions about the six listed tasks are based on independent, objective evaluations of Mr A's functionality and capabilities.

How the TPD claim was handled

Mr A provided further medical evidence in support of his claim for the TPD benefit in May 2024 and MetLife accepts this wasn't promptly considered. It offered to reimburse him three months' premiums (£117) to reflect the impact of the delay on him.

Mr A is also unhappy that MetLife decided to combine the TPD claim with the accidental permanent injuries benefit claim. Whilst I can understand why MetLife sought to do so, I don't think it clearly and reasonably explained why it was doing this. As a result, I'm satisfied that Mr A was left confused by its approach and why MetLife wasn't considering a separate claim for TPD under the policy.

His claim form dated November 2022 clearly set out that he was now also claiming for the TPD benefit as well as for the accidental permanent injuries benefit. He'd also provided a medical letter referred to above when making the claim which referred to Mr A's daily care activities being impacted. So, I think in the circumstance of this case, MetLife should've carried out an assessment of the TPD claim promptly after receiving the claim form in late 2022.

From reading the correspondence provided by the parties, I'm satisfied that its failure to do so caused Mr A unnecessary worry and confusion at a time when he was already struggling with his health. It also unnecessarily put him to the trouble of having to correspond with MetLife about this issue repeatedly.

I'm currently satisfied that MetLife should pay Mr A further compensation in the sum of £300 to reflect the impact of this. That's in addition to the sum of £117 it's already reimbursed.

……..

I invited both parties to provide any further information in response to my provisional decision to consider.

MetLife replied, accepting my provisional decision.

Mr A replied explaining why he disagreed with my provisional decision. In summary he said I should've considered whether MetLife was right to accept an opinion of a medical professional, who Mr A maintains wasn't qualified to give an opinion on his condition.

Mr A says it's unfair for MetLife to selectively pick extracts of medical evidence which support its case and that all of the medical evidence supports that he is totally and permanently disabled. He also explained why combining the two claims made under the policy was confusing for him, and has unnecessarily delayed matters. He doesn't think £300 is sufficient.

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.

That includes Mr A's response to my provisional decision.

Having done so, I'm satisfied that there's no compelling reason to depart from my provisional findings.

I know Mr A will be disappointed but many of the points he makes, I'd already considered when provisionally deciding his complaint.

For reasons set out in my provisional decision (an extract of which is set out above and forms part of this final decision), I don't think MetLife has unfairly declined his claims based on the further medical evidence provided.

I also made clear why I wasn't considering matters which had already been decided by the Financial Ombudsman Service, which included MetLife's decision to rely on a medical report (by a professional who Mr A is unhappy about), when originally assessing the claim.

I do agree that MetLife confused matters by combining the two claims and I've explained in my provisional decision why I think £300 compensation fairly compensates Mr A for the impact of that. I remain satisfied that £300 compensation is fair overall.

My final decision

I partially uphold this complaint to the extent set out above. I direct MetLife Europe d.a.c to pay Mr A further compensation in the sum of £300 for distress and inconvenience in addition to the £117 it's already agreed to pay.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 October 2025.

David Curtis-Johnson
Ombudsman