complaint

Mr S is unhappy that Royal & Sun Alliance Insurance Plc has rejected a claim he made on his personal accident policy.

background

In 2016 Mr S suffered an injury to his right hip following a fall. He was admitted to hospital and was diagnosed with a longitudinal fracture towards the middle of his existing total hip replacement. The fracture extended down the length of the femur. Following 12 days in hospital Mr S has undergone physiotherapy and attended follow up appointments. Since then he's experienced persistent pain and discomfort which he says has limited what he's able to do. His GP has confirmed that his level of activity has changed and he's in persistent pain.

Mr S claimed on his personal accident policy. His claim was declined as he didn't meet the policy definition of permanent and total disablement. Mr S made a complaint to RSA. In their final response letter RSA explained that in order for Mr S to make a successful claim for 'loss of hip' benefit he'd need to demonstrate that there had been a total and irrecoverable loss of his hip. They said that they couldn't consider a claim for Permanent Total Disablement (PTD) as this was excluded from Mr S's policy from inception. This was because he was retired and no longer in employment when he took out the policy. Mr S made a complaint to our service.

In January 2021 I issued a provisional decision upholding Mr S's complaint in part. I said:

> *The relevant policy terms and conditions*
>
> *The policy schedule shows that there is no benefit payable for PTD from usual occupation as the sum insured is £0. However, Mr S did have cover for loss of shoulder, elbow, hip, knee, ankle or wrist.*
>
> *The policy defines loss as:*
>
> *When used with reference to shoulder, elbow, hip, knee, ankle or wrist shall mean the total and irrecoverable loss of shoulder, elbow, hip, knee, ankle or wrist*
>
> *There is also a section of the policy which provides for 'permanent disability not provided for above'. The policy benefit under that sections is a maximum of 10% of Item 7 on the schedule (which lists a sum of £50, 000). So, the maximum amount which can be claimed under that section of the policy is £5000. 'Permanent disability' isn't defined in the policy although the schedule does say:*
>
> *The degree of disability will be assessed by comparison with the percentages shown in the scale above without taking into account the Insured Person's occupation.*
>
> *Has RSA unfairly declined Mr S's claim?*
>
> *The relevant rules and industry guidelines say that RSA has a responsibility to handle claims promptly and fairly. They are also required to offer a policyholder reasonable guidance during the claims process and shouldn't reject a claim unreasonably.*

I'm sorry to hear that Mr S had an accident – the medical evidence demonstrates that this has had an impact on his daily life and that he can't do all of the activities he used to enjoy. It also explains that Mr S has experienced a lot of pain and discomfort. So, I don't doubt that this accident has had a real impact on Mr S.

However, Mr S still has the use of his hip, albeit that his use of it is more limited than it was before. So, I don't think it was unreasonable for RSA to conclude that this didn't amount to a total and irrecoverable loss of the hip based on the medical evidence provided.

And, as Mr S doesn't have cover for PTD, it also wasn't unreasonable for RSA to decline to consider the claim under that section of the policy.

However, I'm not persuaded that RSA has declined the claim fairly as it hasn't adequately explained why section 1.17 of the policy doesn't offer a potential benefit to Mr S. There is no definition of 'permanent disability' in the policy wording and the policy schedule says that the insured person's occupation shouldn't be taken into account. So, I think the claim should have also been assessed against this section of the policy.

putting things right

I'm intending to uphold Mr S's complaint in part as I think RSA needs to assess the claim under section 1.17 of the policy and explain why it thinks this section of the policy does or doesn't apply to Mr S's injury.

On the basis of the available evidence, I don't have enough evidence to direct RSA to pay a claim under that section of the policy – that's because it hasn't been assessed under that section and so I'm not in a position to determine the submissions and/or medical evidence in favour or against paying a claim under that section. But I do think RSA should have considered it against that section of the policy and the evidence available to me suggests they haven't done so. I don't think that was treating Mr S fairly.

Therefore, I think RSA should assess the claim under section 1.17 of the policy and let Mr S know in writing the outcome of that review. If Mr S remains unhappy with the outcome of that further review, he'll be entitled to bring a separate complaint to our service.

Mr S and RSA accepted my findings.

my findings

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

Mr S and RSA both accepted my findings and so there's no reason for me to reach different conclusions from those which I reached in my provisional decision.

putting things right

RSA should assess the claim under section 1.17 of the policy and let Mr S know in writing the outcome of that review. If Mr S remains unhappy with the outcome of that further review, he'll be entitled to bring a separate complaint to our service.

my final decision

I'm upholding this complaint in part and direct Royal & Sun Alliance Insurance Plc to put things right in the way I've outlined above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2021.

Anna Wilshaw
ombudsman