

The complaint

Mr T complains about the settlement offered by Aviva Insurance Limited under a personal accident claim.

What happened

Mr T holds personal accident cover with Aviva through his employer. He made a claim after injuring his arm. Aviva arranged for Mr T to have an independent medical examination ('IME'). It then offered him £2,500 in settlement of his claim, based on the IME doctor's findings. It also offered him £200 compensation for the claim delay. Unhappy with this, Mr T brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. He thought it had been reasonable for Aviva to rely on the IME doctor's findings and settle the claim for £2,500. He also thought the compensation offered by Aviva for the delay was fair.

Mr T didn't accept our investigator's findings and so the matter has been passed to me for 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 policy explains that Aviva will pay the sum insured shown in the schedule for accidental bodily injury to an insured person.

The policy schedule sets out the sum insured for various permanent disabilities. Aviva assessed the claim under '*permanent partial disablement*' and the sum insured for that was '*up to £100,000*'.

The policy says the following about permanent partial disablement:

'Permanent Partial Disablement

In the event of an Insured Person suffering permanent disablement as a direct result of Bodily Injury, We will pay a percentage of the benefit shown in the Schedule depending on the degree of permanent disablement.

Benefit for specific disabilities are: Permanent severance or permanent and total loss of use of

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| • A thumb | 30% |
| • A forefinger | 20% |
| • Any finger other than a forefinger | 10% |
| • A big toe | 15% |
| • Any toe other than a big toe | 5% |
| • A shoulder or elbow | 25% |
| • A wrist, hip, knee or ankle | 20% |

- *The lower jaw by surgical* 30%
- *Any permanent disability which is not covered by Capital Benefits or any of the benefits above up to a maximum 100% of the benefit shown in the Schedule. Any permanent disability under this item will be assessed by considering the severity of the disablement in conjunction with the stated percentages for specific types of permanent disablement stated above. The occupation of the Insured Person will not be taken into consideration during this assessment.'*

'Capital Benefits' are stated in the policy to include loss of hearing, loss of limb, loss of sight, loss of speech, and permanent total disablement.

Mr T's injury is to his upper arm (which is not a Capital Benefit and is not a specific type of disablement listed), and so the final bullet point above would apply.

That means, in order to reach a percentage of the sum insured, Aviva would need to consider the severity of the disablement, together with the stated percentages for the specific types of disablement that are listed. As I understand it, Aviva has concluded that Mr T's injury is comparable to a shoulder or elbow injury (which has a percentage payable of 25%). That seems reasonable to me, given where Mr T's injury is.

So, if there were permanent severance, or complete loss of use to Mr T's upper arm, the maximum he would be able to claim would be £25,000 (as this is 25% of the £100,000 maximum sum insured in the schedule). However, Mr T hasn't suffered the total loss of use of his upper arm. So the actual percentage that Aviva needs to pay depends on the degree of Mr T's permanent disablement.

I've therefore considered the available medical evidence to decide if Aviva's settlement offer was fair.

Aviva arranged for an IME to take place with Mr M (consultant trauma and orthopaedic surgeon). Mr M said that Mr T's upper arm symptoms were now a permanent feature. He concluded by saying *"I would equate this gentleman's left upper limb disability, in percentage terms, to be no more than 10%."*

Mr T has provided a report from the Department for Work and Pensions (DWP). This says he was assessed for Industrial Injuries Disablement Benefit, and concluded that the accident caused him a loss of faculty. It said he had been assessed as 25% disabled.

Whilst I appreciate the DWP assessment concluded that Mr T was 25% disabled, it doesn't say what was meant by that or how this was worked out. I also don't know if a specialist did the assessment, or if Mr T was examined in person.

In contrast to this, Mr M's report is very detailed. He carried out a physical examination of Mr T, and reviewed and took into account 41 pages of Mr T's medical records. Mr M is an appropriately qualified specialist, and explained the outcome measures he had used to assess the functional impairment in Mr T's arm.

Overall, I find Mr M's report to be more persuasive, for the reasons I've said. So I think it was reasonable for Aviva to place greater weight on this than the DWP assessment. I don't think it's necessary for Aviva to arrange for Mr T to have a further examination.

I'm therefore satisfied that Aviva's £2,500 settlement offer (10% of the £25,000 available) was reasonable.

Mr T is also unhappy about the time taken for the IME report to be written. I see the IME was carried out in February, but the report wasn't completed until April. I don't think Aviva was responsible for this delay, but Aviva has recognised that this caused Mr T some upset and so it offered him £200 compensation. Mr T should contact Aviva directly if he wishes to accept this (if he hasn't already done so).

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 December 2023.

Chantelle Hurn-Ryan
Ombudsman