

## **The complaint**

Mrs J is unhappy with the way in which American International Group UK Limited ('AIG') handled a claim made on a personal accident policy ('the policy').

Although Mrs J is being represented, I've referred to her throughout.

## **What happened**

In the summer of 2021, Mrs J had an accident and made a claim on the policy, which she says was resolved promptly and to her satisfaction.

Around a year later, a supplementary claim was made on the policy for the permanent disability benefit.

AIG arranged for an independent medical expert ('the IME') to meet with Mrs J and to prepare a medico-legal report based on certain questions.

The IME's report was sent to AIG at the end of May 2023. AIG subsequently asked an additional question of the IME ('the supplementary question') and received an answer at the end of June 2023.

Based on the IME's report (and supplementary answer), AIG concluded it would pay Mrs J £24,000 ('the settlement amount'). That was based on the IME's opinion that Mrs J had experienced a 10% whole body impairment and Mrs J had the benefit of eight units of cover.

AIG accepted it caused some delays to the claim being assessed. And that it ought to have asked the IME the supplementary question when they were first instructed to prepare the report.

AIG offered to pay Mrs J interest at a rate of 8% on the settlement amount backdated to 16 August 2022 which was the date AIG was first notified of the claim for permanent disability to the date on which the claim is paid. It apologised for the delays caused and offered Mrs J £350 compensation for distress and inconvenience.

Unhappy, Mrs J asked the Financial Ombudsman Service to look into her concerns. Our investigator didn't think AIG had to do anything more. Mrs J disagreed so her complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision in December 2023 explaining in more detail why I thought AIG's offer to put things right was fair. Neither party responded to my provisional 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.

At the outset, I want to make clear that I've only considered what's happened up to the date on the second final response letter dated 30 June 2023.

I'm aware that since then, Mrs J has written to AIG to explain why the IME's conclusion that she has experienced a 10% whole body impairment isn't right and she has put forward alternative percentages which she says are more accurate. AIG says it has arranged for those comments to be forwarded to the IME to consider.

Once the IME has responded, I would expect AIG to promptly consider what's said and whether it changes its conclusion about the amount of permanent disability benefit to be paid under the policy. If Mrs J is unhappy with the decision taken by AIG once it receives the further response from the IME - or the time taken to do that – she's free to raise a further complaint to AIG in the first instance.

### **The relevant terms and how the benefit has been calculated**

AIG has a regulatory obligation to handle insurance claims fairly and promptly.

I'm satisfied AIG has relied on the correct version of the policy terms when assessing the claim and concluding that Mrs J has experienced a 10% whole body impairment, resulting in the settlement amount being offered. Given the date of the accident and the date of the policy terms, I'm satisfied that the policy document entitled '4118 1018 V3' set out the relevant terms.

Section 4 of the policy sets out the table of benefits.

It says (at item 11) that AIG will pay up to £30,000 for permanent disability not otherwise provided for under benefit items 2 to 10. That amount represents one unit and the schedule of insurance show the number of units applicable. Mrs J has 8 units.

Looking at the permanent disabilities listed at items 2 to 10 of the table of benefits, I'm satisfied that the bodily injury experienced by Mrs J isn't listed. So, I think AIG has fairly and reasonably considered the benefit under item 11.

Section 9 of the policy sets out how the benefit is calculated for non-specified injuries, which is relevant to the bodily injury experienced by Mrs J.

It says once AIG is in receipt of a (medical) assessment, it will calculate the disablement as follows:

...If you suffer bodily injury to a part of the body that is not listed in the table of benefits, items 4-10, we will then calculate a percentage disablement of the body as a whole and apply this to the amount show for item 11 to arrive at a claim payment amount....

The policy then provides an example.

Based on the IME's answer to AIG's supplementary question at the end of June 2023, I'm satisfied that AIG has fairly relied on the medical opinion to conclude that Mrs J has lost 30% loss of function in her spine and that equates to a 10% whole body impairment.

I'm also satisfied that it's then calculated 10% of the benefit amount set out at item 11 (£30,000) which amounts to £3,000. And then multiplied that sum by eight, to represent the number of units set out in the schedule of insurance – in line with the policy terms.

## **Delays and not initially asking the IME the supplementary question**

AIG accepts that it didn't promptly action Mrs J's request to proceed with a claim for permanent disability made on 16 August 2022. It wasn't actioned until the end of September 2022 and that was after Mrs J called chasing for an update.

It also accepts that it didn't respond for around three weeks to the requested information Mrs J provided to AIG at the start of October 2022. I accept that this caused a delay to the claim being progressed.

After that, I'm satisfied AIG promptly arranged for a third party to instruct an IME to prepare a report. And although Mrs J didn't meet with the IME until March 2023, and the report wasn't prepared until the end of May 2023, I'm satisfied that those delays were outside of AIG's control. For example, there were issues with the IME's availability, and it took some time for the medical records to be obtained from Mrs J's GP. I don't think it would be fair and reasonable to hold AIG responsible for those delays. Particularly as I can see from its internal system notes that it was trying to progress matters by contacting the third party who'd arranged the IME for updates and updated Mrs J, as appropriate.

However, once the IME report was received at the end of May 2023, AIG realised that it had asked the IME a question relating to a different version of the policy and that resulted in a supplementary question being put to the IME.

Under the different version of the policy, and based on the report prepared by the IME at the end of May 2023, Mrs J would've been entitled to a higher benefit. For reasons set out above, I think the version of the policy AIG ended up assessing the benefit under and making the offer to payment the settlement amount was the correct one. However, by adding an irrelevant question initially for the IME to answer and then having to arrange for the IME to answer the supplementary question, I'm persuaded caused Mrs J unnecessary confusion and upset. And it delayed the offer of the settlement amount being made by a few weeks until AIG received the answer to the supplementary question from the IME at the end of June 2023. I think that would've been distressing for Mrs J.

AIG has apologised and offered Mrs J £350 compensation for distress and inconvenience. I'm satisfied that fairly reflects the impact AIG's service failings had on her. When making this finding, I'm conscious that that it took around ten months from Mrs J asking for the permanent disability claim to be assessed to receiving the offer for the settlement amount.

That's a long time but the majority of the delay was caused by factors outside of AIG's control. So, whilst I accept that Mrs J would've been very worried about the progress of her claim, at an already very difficult time for her and when she says the delays were exacerbating her already fragile mental health, I'm satisfied that some of that worry and upset were due to factors AIG wasn't responsible for.

AIG has also agreed to pay interest at a rate of 8% of the settlement amount from 16 August 2022. I think that's reasonable and reflects that Mrs J was without the benefit amount for longer than she should've been.

I think it would be fair and reasonable for the interest to be paid from 16 August 2022 to 30 June 2023 when the offer of the settlement amount was made. I understand that the settlement amount hasn't been paid yet but I think that's because Mrs J didn't want to accept payment whilst the Financial Ombudsman Service was considering her complaint. That's understandable but because AIG had made the offer then and it was open for acceptance, I don't think it would be fair and reasonable for interest to be paid for after 30 June 2023 in respect of the settlement amount that was offered on that date.

From what I've seen, I'm not persuaded that the IME was 'bullied' into changing their opinion after their initial report. I'm satisfied that AIG didn't ask a relevant question based on the relevant version of the policy when initially looking to arrange the instruction of the IME to prepare a report. So, that's why the supplementary question was asked, which was relevant to the terms relating to the permanent disability benefit, Mrs J had the benefit of.

### **Putting things right**

As it's already agreed to do in its two final response letters dated June 2023 (and if it hasn't already done so), I direct AIG to pay Mrs J:

- the settlement amount in the sum of £24,000. That sum can act as an initial payment if AIG end up offering a higher permanent disability benefit amount in response to the IME's response to Mrs J's comments more recently put to them by AIG.
- simple interest at a rate of 8% per year on the settlement amount of £24,000 from 16 August 2022 to 30 June 2023. If AIG considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs J how much it's taken off. It should also give her a certificate showing this if she asks for one. That way Mrs J can reclaim the tax from HM Revenue & Customs, if appropriate.
- £350 compensation for distress and inconvenience.

### **My final decision**

American International Group UK Limited has already made an offer to settle the complaint, as set out above. I think that's fair in all the circumstances.

My decision is that American International Group UK Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 31 January 2024.

David Curtis-Johnson  
**Ombudsman**