

The complaint

Mrs S is unhappy that Covea Insurance plc declined a claim for Permanent Total Disablement (PTD) under a personal accident policy.

What happened

In 2019, Mrs S made a claim for PTD under a personal accident policy she benefitted from.

She sustained injuries as a result of being hit by a vehicle whilst abroad in September 2018. The claim was initially declined by Covea in 2020 on the basis that the policy definition of PTD hadn't been met.

Unhappy, Mrs S complained to the Financial Ombudsman Service. In April 2022 our investigator upheld the complaint on the basis that the policy terms and conditions said the benefit would only be paid for PTD when disablement had lasted for 104 consecutive weeks and had been certified as permanent by a specialist.

As the claim was assessed within 104 weeks of the accident, our investigator recommended the claim now be reassessed in line with the terms and conditions of the policy. Both parties accepted the recommendation.

Covea reassessed the claim and by way of a final response dated September 2022, it concluded:

Having reviewed the claim again after the 104-week period as requested by the Financial Ombudsman Service, it is our decision that the claim remains declined. You were permanent totally disabled as defined in the policy prior to the accident in September 2018 and therefore no further claim benefit is due.

Unhappy, Mrs S raised a further complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold the complaint. Mrs S disagreed so this complaint was passed to me to decide.

I issued my provisional decision explaining why I was intending to uphold this complaint. Covea didn't respond. Mrs S replied that she was happy with 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.

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

The relevant policy terms

The policy defines PTD as:

Disablement...which will entirely prevent you from engaging in any occupation of any and every type and description, for the remainder of your life without hope of recovery.

And the PTD benefit will be paid if:

You suffer accidental injury during the period of insurance which within 12 months of occurring directly results in...PTD

Has Covea acted fairly and reasonably?

Based on the available medical evidence, I'm not persuaded that Covea has fairly and reasonably concluded that Mrs S already met the policy definition of PTD at the time of the accident. So I uphold this complaint and direct Covea to reassess the claim.

I've seen an occupational health specialist report dated November 2019. The report concludes:

- Mrs S has had very severe osteoarthritis with very restricted upper limb movements. She had difficulties with activities of daily living and required support with these.
- Although the GP states that Mrs S may have been able to work, in an administrative role prior to the accident, there's little evidence of this and indeed the evidence we have suggests quite the opposite. There were very significant shoulder and elbow problems with very limited movements, severe pain and the need for strong pain killers as a result of rheumatoid arthritis. There is no evidence that Mrs S was indeed potentially able to work in an administrative role.
- Upper limb problems, elbow and shoulder pain and deformity were all present in the months prior to the accident.

I'm satisfied, based on what I've seen, that the occupational report doesn't provide any opinion on whether Mrs S was prevented from working for the remainder of her life without hope of recovery, as required by the policy terms. The focus is on whether, in the author's opinion, Mrs S was able to work before the accident.

There's mention in medical records of Mrs S not working for 15 years prior to the accident. And I'm satisfied from what I've read that she did have many health issues including shortness of breath, joint degeneration, and longstanding rheumatoid arthritis in several joints.

However, in July 2018, Mrs S's consultant orthopaedic surgeon writes that Mrs S had opted for a total elbow replacement and had recently started new medication – an immunosuppressive drug.

And in September 2018, her consultant physician and rheumatologist reported that Mrs S had responded both clinically and biochemically to the new medication. And she didn't have any tender joints except one of her elbows and four swollen joints which were chronic. Her visual analog pain scale had reduced to 2 out of ten.

These two medical records are dated from shortly before the accident and suggest an improvement in her condition. She was also having surgery on her elbow to try and alleviate the pain and increase flexibility. And the conclusions of both reports haven't been referenced in the occupational health report referred to above.

So, I don't think Covea's position that Mrs S already met the definition of PTD at the time of the accident is medically supported based on the evidence provided to date. And I don't think Covea has fairly relied on this reason to decline the claim.

Putting things right

I direct Covea Insurance plc to reassess the PTD claim in line with the remaining terms of the policy on the basis that there's currently insufficient medical evidence to support that Mrs S already met the definition of PTD at the time of the accident in September 2018.

My final decision

I uphold this complaint and direct Covea Insurance plc to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 20 December 2023.

David Curtis-Johnson
Ombudsman