

The complaint

Mr and Mrs B are unhappy because American International Group UK Limited trading as AIG UK has partially settled a claim they made on a personal accident policy.

What happened

Mr B claimed on a personal accident policy after sustaining injuries to his left arm in a fall in 2020. He'd previously successfully claimed on the policy for an injury to his right wrist in October 2004.

AIG obtained an independent medical examination report ('IME') which was carried out by a consultant orthopaedic surgeon who I'll refer to as Mr D. Mr B complained as he didn't think the conclusions reached by Mr D were fair. An addendum report was obtained to address Mr B's concerns which was considered before a settlement offer was made to Mr B.

Following further correspondence between the parties Mr D confirmed that he'd focused on the accident of 2020 rather than the 2004 injury. AIG remained of the view that the settlement they'd offered Mr B was fair. Mr B complained to the Financial Ombudsman Service.

Our investigator looked into what happened. He explained that he was considering the issues raised in AIG's latest final response letter. He concluded that AIG's offer to settle the claim was fair, based on the medical evidence. He also noted they'd considered Mr B's concerns and obtained further input from a suitably qualified expert. Furthermore, he thought the communication with Mr B had been reasonable. So, the investigator didn't think AIG had treated Mr B unfairly in all the circumstances.

Mr B asked an ombudsman to review his complaint. He said that it had been proved that Mr D's findings were incorrect. He questioned the basis upon which Mr D had reached the conclusions about co-morbidities and degeneration. Mr D reiterated that the contact with AIG had led to a serious deterioration in his mental health. So, the complaint was referred to me to make a decision.

In January 2025 I issued a provisional decision saying that I was intending to partly uphold Mr and Mrs B's complaint. I said:

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

I'm very sorry to hear of the circumstances surrounding Mr B's complaint, in particular the impact that the claims process has had on his mental health. I have a lot of empathy with the circumstances he's described.

I'm focusing on the issues raised in Mr B's second complaint to AIG, for which a final response letter was issued in April 2024. That's Mr B's complaint about the proposed settlement of his claim. However, I'll need to consider all the relevant medical evidence which has been gathered during the course of the claim which was

considered when AIG reached that final settlement figure.

The relevant medical evidence

The conclusions in Mr D's original report were that Mr B had co-morbidities which accounted for 30% of the loss of function. This, in Mr D's opinion, accounted for half of the overall lack of function in Mr B's upper left extremities.

The original report said:

Mr B is registered disabled. He has significant co-morbidities: neuropathic pain following a crush injury to his leg, a left total knee replacement, neuropathic pain in his wrist, a previous scaphoid fracture, ulnar nerve decompression on the right side, a right wrist fusion, a right thumb interphalangeal joint fusion, on-going neuropathic pain.

When asked about any degeneration or wear and tear Mr D said:

Mr B has generalised degeneration and wear which could have made him more susceptible to the injury

In response to a further question Mr D said:

The cause of his disability, i.e. 60% functional disability in the whole of the left upper extremity is 30% due to injuries sustained in the index accident and 30% due to co-morbidities i.e. 50% of his loss of function in the left upper extremity is attributable to injuries sustained in the index accident.

Based on the evidence that's available to me Mr D provided further comments to AIG in January 2023. In this letter Mr D said he'd reviewed Mr B's comments. In response Mr D said:

... he suffered from significant generalised co-morbidities. I agree, the left upper extremity was asymptomatic before the index accident, however, after the index accident, investigations have confirmed pre-existing degenerative changes, for example, Orthopaedic Clinic letter, [redacted] Hospital dated 2 September 2021,

"Mr B has ruptured the left proximal biceps tendon which is degenerate anyway, as found intra-operatively". As Mr B had previously lost significant function in the right upper extremity, which is the dominant upper extremity. He had symptomatic degenerative changes from which he underwent a right wrist fusion and had undergone an ulnar nerve decompression on the right side. Symptomatic degenerate changes on the balance of probabilities, would have been present on the left side. They manifest later, as it is the nondominant upper extremity.

Mr D provided further information in May 2023 following further queries. In this letter Mr D clarified that he'd considered the accident of 2020 and that the accident of 2004 was not covered in his report.

Was AIG's proposed settlement of the claim fair?

The relevant rules and industry guidelines say that AIG has a responsibility to handle a claim promptly and fairly. And they shouldn't reject a claim unreasonably.

AIG accepted there was a valid claim under the policy following Mr B's accident. The policy terms and conditions explain that AIG may, in some circumstances, instruct a specialist to complete an IME. I don't think it was unreasonable for AIG to instruct an IME in the circumstances of this case given the nature of Mr B's injuries and the medical information he disclosed on his claim form.

However, having considered the available evidence, I'm intending to direct AIG to obtain a further report from a different IME to provide a second opinion on Mr B's functionality for the reasons I'll go on to explain.

AIG is entitled to rely on evidence provided by a suitably qualified practitioner. , I'm not persuaded, on balance, that the available medical evidence indicates that it was fair and reasonable to settle the claim on the basis that the 2020 accident was responsible for half of the loss of functionality Mr B was experiencing. I think the medical evidence that's been provided lacks sufficient detail on some key points which are central to the settlement of the claim.

For example, the original report doesn't address why the generalised co-morbidities are considered to have contributed to the injury Mr B experienced or the of the consequences of it. And, although the report concluded Mr B had generalised degeneration and wear which could have made him more susceptible to injury, the report doesn't reference what medical evidence supported this conclusion.

Furthermore, the addendum reports don't clearly explain, with reference to medical evidence, why Mr D was able to conclude on the balance of probabilities that degeneration had contributed to Mr B's loss of functionality to the extent set out in the original report. There's a brief reference to some medical evidence from 2021 but the addendum report doesn't clearly explain how the original percentage given in the first report was reached. The most recent report simply confirms that Mr D was only considering the 2020 accident. So, I don't think that this adds much to the other available medical evidence.

It's not my role to assess the medical evidence and reach a settlement figure. However, in the circumstances of this case, I'm not currently persuaded the medical evidence provided by the IME adequately supports the percentage of loss that AIG has used when proposing settlement of the claim. I don't think the IME reports and addendums persuasively explain what degeneration there was in the relevant areas, on what basis that conclusion was reached and how that was factored into the percentage loss of functionality attributed to the accident.

I think it would be fair and reasonable for AIG to obtain a further report and reassess the claim once that report has been received. I think AIG should instruct a new expert to consider the case afresh. I've considered whether it would be fair and reasonable to ask Mr D to provide further comments. But, in the circumstances of this case, I think that it's fair and reasonable for AIG to obtain a second opinion. In reaching that conclusion I bear in mind that a new expert will have access to the notes of the physical examination completed by Mr D and that Mr B is said to have reached optimal recovery. So, in the interests of fairness to all parties, I think obtaining a second opinion would be the fairest way to resolve the dispute between the parties.

Was it unreasonable for AIG to continue to contact Mr B by telephone?

Mr B says that following a deterioration in his mental health Mrs B contacted AIG to say that he shouldn't be contacted by phone. However, despite this he received a call from AIG and a letter which caused him to make a further attempt to commit suicide.

I've reviewed the contact notes which are available. Throughout the claim Mr B and AIG were in contact by phone. That included outbound calls to AIG made by Mr B. The first record of Mr B indicating that he didn't want to have contact by telephone with AIG is in March 2024. This letter also gave authority for Mrs B and a representative to deal with the claim on Mr B's behalf. I appreciate that Mr B also says he received a letter referencing attempts to contact him by phone, but I don't think that's necessarily unreasonable as, based on the available evidence, at that point in time Mr B hadn't appointed representatives to act on his behalf.

Based on the evidence that's available I've not been able to identify any previous correspondence or telephone calls where Mr or Mrs B asked AIG not to contact Mr B by phone. Therefore, I've not seen evidence to persuade me that AIG has acted unreasonably in their communications with Mr B. I fully appreciate the impact these communications had on Mr B, but I don't think there's evidence AIG were aware he didn't want to discuss the claim over the phone anymore until March 2024.

Putting things right

I'm intending to direct AIG to put things right by instructing a different IME to be instructed to review Mr B's medical history together with Mr D's report and addendums. Once they receive this report AIG should reassess the claim taking into account that second opinion.

Once this process is completed, if Mr B is unhappy with the suggested settlement, he may be entitled to make a further complaint to the Financial Ombudsman Service.

Mr and Mrs B said they accepted the provisional decision. They said that Mr B had nominated representatives from the beginning and AIG were fully aware of his deteriorating mental health. AIG asked if it would be acceptable to ask Mr D to comment on the additional information that was currently lack as instructing a new expert could be a lengthy process. They also said a second opinion could reduce the settlement offer. In response our investigator confirmed to AIG that my thoughts were that the case would benefit from a fresh review of the evidence and that I would now proceed to make my final 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.

For the reasons I explained in my provisional decision I'm not persuaded the available medical evidence adequately supports AIG's proposed settlement of the claim. I think it would be beneficial for all of the medical evidence to be reviewed by a new medical expert. I did consider whether it would be appropriate for Mr D to carry out a further review, but I think it is fairer for a new expert to review all of the available medical evidence and provide a further opinion on the settlement. Mr D had a number of opportunities to explain the percentage loss and hasn't persuasively explained his findings. So I think it would be fair and reasonable to obtain a second opinion.

If Mr B is unhappy with any further proposed settlement, including if the percentage loss

changes, he may be entitled to make a further complaint to the Financial Ombudsman Service.

Mr and Mrs B's comments about the phone calls haven't changed my thoughts about the overall outcome of this complaint. Even if Mr B was represented from the outset, I don't think it was clear that he didn't want to receive phone calls until March 2024. So, on balance, I'm not persuaded AIG's communication with Mr B was unreasonable.

Putting things right

AIG needs to put things right by instructing a different IME to review Mr B's medical history together with Mr D's report and addendums. Once they receive this report AIG should reassess the claim taking into account that second opinion.

Once this process is completed, if Mr B is unhappy with the suggested settlement, he may be entitled to make a further complaint to the Financial Ombudsman Service.

My final decision

I'm upholding Mr and Mrs B's complaint and direct AMERICAN INTERNATIONAL GROUP UK LIMITED trading as AIG UK 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 B and Mrs B to accept or reject my decision before 28 March 2025.

Anna Wilshaw
Ombudsman