

The complaint

Mr H is unhappy Aviva Insurance Limited stopped paying his claim.

What happened

Mr H had an income protection policy through his employer that was underwritten by Aviva.

Mr H had surgery on his left wrist in December 2017. Following this he had persistent swelling over the area of the operation which restricted his wrist functionality and forearm rotation. This meant he was unable to work in his role as a welder. Mr H said his employment went on to be terminated due to ill health on 28 June 2019.

Mr H made a claim on his income protection policy for ganglion which was accepted by Aviva in February 2018. But in June 2018 Aviva stopped paying the benefit under this because they said they had noted Mr H's sicknotes now mentioned a heart condition aside from the original issue with his wrist. So, it stopped payments and reviewed his medical records. Aviva said Mr H hadn't visited his doctor for the original condition, ganglion for months, so it concluded it remained fair for them to have stopped paying a benefit.

Aviva noted Mr H had suffered a heart attack in 2018 and felt this would be the reason he remained unable to work. Aviva said a heart condition would usually be considered as a new claim. However, the policy had been renewed by Mr H's employer in May 2018 and it excluded cover for anyone over the age of 66. So, Mr H wasn't entitled to make a new claim. Aviva also pointed out Mr H's entitlement under the policy ends at the termination of his employment and it was unclear when this was.

Mr H said Aviva treated him unfairly by stopping his claim as the reason for his absence didn't change - it was his wrist problems that prevented him from working. Mr H said there was a mistake on his sick notes and had this amended.

Our investigator looked into what had happened. He asked Aviva for a copy of the medical records they'd reviewed before stopping the benefit, but due to issues during lockdown they were unable to provide this. Instead, Aviva arranged for an independent medical examination (IME) which took place in August 2021.

The available medical evidence persuaded our investigator that Mr H's wrist issues were ongoing, and it was reasonable to conclude these would've prevented him from working as a welder. So, he felt Aviva was unfair to have stopped paying the claim.

He also said Mr H originally made the claim in February 2018, which was before his 66th birthday, so the age limits wouldn't apply in his case. And he confirmed Mr H said his employment wasn't terminated until 28 June 2019. So he recommended Aviva backdate the benefit payments from when they stopped, up until the 52 week entitlement set out on the schedule had expired. He also clarified Aviva should pay 8% simple interest on that amount, from the date it was owed until the date of settlement.

Aviva didn't agree. In summary they said:

- The reason the claim, for the ganglion and associated sickness, was stopped was because the sickness certificates provided no longer mentioned it.
- Each claim, for individual illnesses, would need appropriate certificates for that condition. Without appropriate certificates Aviva cannot pay a claim.
- They were confused by the 2019 date given for when Mr H's employment was terminated because it was different to the four-year timescale he told the IME in 2021.

So the case has now 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 relevant rules and industry guidelines say Aviva has a responsibility not to avoid claims or terminate them unfairly. Having reviewed everything, I don't think Aviva acted fairly in this case for the reasons I'll go on to explain.

Aviva still hasn't provided us with the doctor's certificates they relied on to decline the claim. But I'm persuaded by the evidence provided in Mr H's doctor letter of June 2019 and IME report from August 2021 - the IME confirms it had sight of Mr H's medical history so I've given this evidence considerable weight in the absence of seeing these reports myself.

The letter from Mr H's doctor says he had surgery on his left wrist in December 2017. Following this he suffered from persistent swelling over the area of the operation. This restricted his wrist flexion and forearm rotation, so he was signed off work. Mr H's doctor says he was regularly reviewed by the orthopaedic clinic and the IME has confirmed the following notes from these sessions:

- *16 February 2018 - his forearm rotators were restricted and an X-ray revealed osteoarthritis of his distal radio-ulnar joint of his wrist.*
- *29 March 2018 he had ongoing pain and an X-ray revealed osteoarthritis of his distal radio-ulnar joint and arthritis in the joint of his wrist.*
- *19 October 2018 – ongoing tenosynovitis of his left wrist and shoulder pain*
- *11 Jan 2019 –osteoarthritis of his distal radio-ulnar joint, arthritis in the joint of his wrist. Recurrent ganglion and left shoulder adhesive capsulitis.*
- *18 February 2019 –tenosynovitis of his left wrist and swelling recurred and ongoing pain of his distal radio-ulnar joint*

The GP has also confirmed further detail within this timeline:

“in August 2018, at another Orthopaedic follow-up clinic, the swelling in his wrist had recurred and again multiloculated cystic swellings in this area. Instead of having further radiosynovectomy, he then returned for drainage of the swellings under aseptic precautions which were carried out in October 2018”.

Taking all the above entries into account, I think it's unreasonable for Aviva to conclude the reason for Mr H's absence was no longer caused by the continued swelling and discomfort in his wrist.

The policy schedule and terms state Aviva will pay the sum insured for sickness which results in the temporary total disablement of the insured.

Temporary Total Disablement is defined as:

"Disablement which entirely prevents the Insured Person from engaging in or attending to their usual occupational duties".

The IME confirms Mr H still has ongoing symptoms with his left wrist and experiences pain throughout the use of it. Given the nature of Mr H's work as a welder, I think it is reasonable to conclude having repeated wrist pain and restricted movement would have an impact on his functional ability to perform his usual occupational duties. So, I don't think the medical evidence showed Mr H no longer met the requirements for cover.

Aviva have questioned the 2019 date given for when Mr H's employment was terminated. This is reasonable given it is different to the four year timescale Mr H reported to the IME in 2021. So, I've carefully reviewed the letters from Mr H's employer and I'm persuaded his employment was terminated on ill health grounds in June 2019, following a meeting on 2 April 2019.

I don't think it was reasonable for Aviva to terminate this claim based on the available medical evidence I've seen. Although Mr H suffered a heart attack during his period of absence, I'm persuaded the issues with his wrist remained the reason he was unable to work. As Mr H was at an eligible age and still in his employment at the time of his initial claim for swelling of his wrist I'm satisfied this claim should be paid for the duration of the 52 weeks set out in the schedule of insurance.

Putting things right

Aviva needs to put things right by:

- Backdating the benefit payments from when they stopped, up until the 52 week entitlement set out on the schedule had expired.
- Pay 8% simple interest on that amount, from the date it was owed until the date of settlement.

My final decision

I'm upholding this complaint against Aviva Insurance Limited and direct them 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 H to accept or reject my decision before 30 March 2022.

Georgina Gill
Ombudsman