

## **The complaint**

Mr B is unhappy Aviva Life & Pensions UK Limited (Aviva) declined a claim on an income protection policy.

## **What happened**

Mr B was a partner in a Law firm and had an income protection policy through his partnership. The policy was underwritten by Aviva.

He has a history of suffering from chronic depression. He was referred to the mental health team in 2016. And the psychiatry team in 2017 where his medication was changed, and he attended psychotherapy sessions. In May 2019 Mr B consulted his doctor again and his medication was increased.

In June 2020 Mr B began to feel too unwell to work and his doctor made an urgent referral to the mental health team. He was advised by the doctor to significantly increase his dose of medication and attend counselling.

Due to the deterioration in M B's mental health, he agreed with the other partner in his firm, that he needed to permanently step away from the partnership due to serious ill health. But he couldn't exit the business until 31 October 2020 because he was required to give the firm notice before leaving – and this was non negotiable. So Mr B felt he was unable to stop work immediately, so he stayed at work on reduced responsibilities from June until October, when his notice period ended.

In January 2021 Mr B made a claim on his policy for his absence from 1 November 2020. Aviva said it needed to be made by the partnership as they were the policy holder, so the remaining partner spoke to Aviva in support of Mr B's claim. He confirmed Mr B's last day as partner was 31 October 2020, and that he'd had to step away due to serious ill health.

The policy was due for renewal on 1 February 2021 so the remaining partner also confirmed to Aviva he didn't intend to renew the policy at that stage, but he didn't think this would affect Mr B's claim. He asked Aviva to tell him if this wasn't the case.

Aviva went on to decline the claim. They said cover is only available for an insured person while they were still employed in providing their services to the business and Mr B ceased to be an insured person from the date he left the business on 31 October 2020. They also said, even if there was cover in place, they didn't think there was enough medical evidence to support he was unable to work.

Mr B disagreed. He said the policy was still in force at the time of his claim and there is no provision within the terms of the policy which requires him to still be a partner at the time of the claim - the policy only requires the sickness to be contracted during the period for which the premium has been paid. He explained there was a severe deterioration in his symptoms which is what caused the urgent referral to the Mental Health Unit, and he referred to the significant increase in his medication.

The matter was referred to this service. Our investigator looked into what had happened and didn't think Aviva had acted unfairly. Mr B didn't agree and requested an ombudsman review the matter, so the case was passed to me to decide. I asked the investigator to obtain some further information and Aviva confirmed:

- The policy wording shown in the 1975 policy document here has never been updated.
- 'Insured Person' isn't defined— there isn't a definitions section in the policy
- Mr B's premiums were paid in full up to 31 January 2021. The scheme cancelled from this date because the firm didn't renew.

I issued a provisional decision explaining I was intending to uphold this complaint. In summary I said:

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

#### Is Mr B an insured person?

*Aviva has said this is an employee benefit, so the insured person leaving the firm means there's no cover from the time they left. I've thought carefully about this, but taking everything into account, I'm not persuaded this is a fair and reasonable way to approach the circumstances of this specific claim.*

*The policy says:*

*"The Insurer provides insurance in respect of sickness of Insured Persons contracted and declaring itself during the period for which the Insured has paid the insurer the premium."*

*Mr B's premiums were paid up until 31 January 2021, so I'm satisfied the insured had paid the insurer the premium at the time of Mr B's claim in November 2020.*

*I don't think the policy term here is clear that a customer isn't eligible to claim if they leave the partnership. As an "Insured Person" isn't defined and there is a lack of clarity in this policy term, I think it's fair and reasonable in the circumstances of this case for it to be interpreted in the consumer's favour.*

*I say that because I'm persuaded the lack of clarity has caused a detriment to Mr B - if he'd realised that he couldn't claim if he stopped being a partner due to his ill health, then I think it's most likely he would've acted differently and not ended his partnership. I think Mr B would've gone off work due to ill health which would mean he'd have got the benefit of cover until 31 January 2021 when Aviva has confirmed his premiums were paid up until. Mr B wouldn't have a valid claim beyond that date as the policy wasn't renewed.*

*So I don't think it was fair for Aviva to say Mr B wasn't eligible to claim in November 2020.*

#### The medical evidence

*This policy provides cover for "total disablement of any of the Insured Persons from carrying out the duties pertaining to normal Occupation".*

*Aviva says this means, for a claim to be accepted they would need to receive evidence which supports Mr B as being unfit to carry out the duties of his normal occupation throughout the deferred period and beyond.*

*I think it's important to note Mr B has a history of suffering from severe depression. Although*

*his condition has been managed over the years and he hasn't needed to make a previous claim, it's clear he has suffered from repeated ups and downs over the years. I'm persuaded by the available medical evidence, and Mr B's overall mental health journey, that in 2020 his condition peaked to the point where he was no longer able to continue working due to his serious ill health.*

*Looking closely at the relevant period around the claim, it seems Mr B's condition started to deteriorate from May 2019 when he consulted his doctor about his mental health and his medication was increased. By June 2020 his health had deteriorated so much that it was agreed with the other partner that he needed to permanently step away from the partnership because of his health.*

*This is supported by the medical evidence which shows on 10 June Mr B's doctor made an urgent referral to the mental health team following a lengthy telephone where Mr B said he was having thoughts of life not being worth living. He has days that he can't function and he experiences chronic fatigue.*

*I can see Mr B was also advised in June to significantly increase his dose of medication and attend further counselling. And in September 2020, Mr B's work partner contacted his doctor again to raise further concerns about Mr B's mental health. So I'm satisfied Mr B's health continued to deteriorate during this time.*

*I note that Mr B did carry out reduced duties between June and October 2020, but this was during a non-negotiable notice period, and it's been confirmed he wasn't carrying out the normal duties of his occupation during this time.*

*Taking the above as a whole, especially Mr B's history of suffering severe depression, and the mental health services available during this period of the Covid-19 pandemic, I'm persuaded Mr B provided enough evidence to show from June 2020 he was unfit to carry out the duties of his stressful profession as a partner in a law firm.*

*As such, I think Aviva unfairly declined Mr B's claim. And based on the evidence set out above, it would be fair and reasonable for the deferred period to run from Mr B's visit to his GP on 10 June.*

#### Section 8 of the policy

*Aviva has made several references to the section 8 of the policy which states:*

*"Leaving service of insured*

*In the event of an Insured Person leaving the Insured's service for any reason other than dismissal for fraud or misconduct the Company undertakes to issue to the Insured Person a policy providing the same benefits as hereunder subject to*

*(a) the new occupation not being of a different character from that in which he was previously engaged*

*(b) payment of the premium required*

*(c) the new policy being effected within thirty days of leaving the Insured's service"*

*I agree with Mr B that it's unreasonable for Aviva to rely on this part of the policy for the circumstances of his claim. Arguably, in my mind, this section of the policy suggests cover can continue even after you leave employment, if premiums continue to be paid. But in any event, this clause isn't relevant as Mr B isn't continuing to work for a different company. And given the lack of clarity on cover ending when the insured leaves the company, I don't think it was fair for Aviva to rely on this clause to decline Mr B's claim.*

*In summary, I didn't think the policy made it clear that customers aren't eligible to claim if they leave the partnership. And as Mr B's premiums had been paid until January 2021, I thought his claim in November 2020 was valid. I was also persuaded Mr B provided enough evidence to show from June 2020 he was too unwell to carry out the duties of his stressful profession as a partner in a law firm.*

*So I explained I intended to uphold the complaint and ask Aviva to put things right by running the deferred period from 10 June 2020 and paying the benefit owed up until cover ends on 31 January 2021. 8% simple interest should be added per annum from the date that the payments should have been made, up to the date that the claim is settled.*

#### Responses to my provisional decision

Aviva didn't agree with my provisional decision and made a number of further points. In summary they said:

- Mr B raised his claim from 1 November 2020, so they don't agree Mr B was eligible for cover under the policy as he left the company on 31 October 2020.
- In any event, even if they were to accept cover was in place on 1 November, the 26-week deferred period means benefit wouldn't be due until 2 May 2021, which is after the policy lapsed, so there would be no claim payable.
- They had concerns that I'd considered an earlier date of incapacity when Mr B hadn't raised this, and they hadn't had the chance to consider it. They said they would need to be given the opportunity to assess this earlier period themselves, and make a decision based on the evidence.

Mr B said:

- He was unhappy I'd said he was only entitled to payment under the policy up until 31st January 2021. He said the policy terms don't place any limit on the period of payment of benefit other than turning 65 years old or retirement age.
- His former partner didn't renew the policy on the basis it wouldn't impact his claim - and they asked Aviva to advise if that wasn't the case. He said if he'd have thought that benefit under the policy might cease without renewal, he would've asked for the policy to continue and pay privately.
- I've agreed that there is no requirement under the policy for continuing partnership in the firm for there to be cover. He made a valid claim on the policy whilst it was in place so he can see no justification for payment of benefit being limited to the period for which a premium was paid.
- There was another former partner in the firm who was forced to retire due to physical ill health quite a number of years ago and they've not had an issue with receiving benefit as a result of them ceasing to be an insured person on the policy.

#### **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.

I've taken into account the further detailed submissions from both parties and carefully reconsidered all the relevant evidence. However, they've not changed my thoughts about the outcome of this complaint for the reasons I'll go on to explain.

- I think it's important to note that the policy in question is from 1975 and the terms and conditions haven't been updated, so they don't include the detail and clarity one would expect over 40 years later. Mr B's complaint turns on the interpretation of the following definition of cover:

*"The Insurer provides insurance in respect of sickness of Insured Persons contracted and declaring itself during the period for which the Insured has paid the insurer the premium."*

The crucial point here is that 'Insured Person' isn't defined and there is no eligibility criteria set out in the policy. So I don't think the policy is clear that benefit will end if someone leaves the partnership. If it was, I think it's most likely Mr B would've acted differently and gone off with ill health rather than ending his partnership. On that basis, I'm persuaded the lack of clarity has caused a detriment to Mr B and my position remains that it's fair for the lack of clarity in the policy to be interpreted in the consumer's favour.

As Mr B's premiums had been paid until Jan 2021, I think it was unreasonable Aviva said he wasn't eligible to submit a claim in November 2020.

- Aviva raised concerns that I'd considered an earlier date of incapacity when Mr B hadn't raised this, and they hadn't had the chance to consider it. However, my inquisitorial remit allows me to consider all the evidence in the round. And having done so I was persuaded Aviva should've concluded Mr B was unfit to carry out the duties of his occupation as a partner from June 2020.

My provisional decision explained that I think it would be fair and reasonable for the 26 week deferred period to run from Mr B's visit to his GP on 10 June 2020 because the medical notes show his GP made an urgent referral to the mental health team following concerns around suicidal thoughts. Mr B was advised to significantly increase his medication and attend further therapy. And his health had deteriorated so much by this point, it was agreed that he needed to permanently step away from the partnership because of his serious ill health.

- Aviva said they would need to be given the opportunity to assess this earlier period themselves, and make a decision based on the evidence. But I'm satisfied they've already had the opportunity to review the evidence I relied upon as it was included in the medical notes they had during the claim
- I understand Mr B is disappointed I think he's only entitled to payment under the policy up until 31st January 2021. But I don't think it's unreasonable for Aviva to only provide cover for the period premiums had been paid.
- Mr B argues that his former partner didn't renew the policy on the basis it wouldn't impact his claim - and they asked Aviva to advise if that wasn't the case. But even if Aviva should have done more here, the evidence shows the partner decided not to renew the policy due to his age and because they were unable to add a new partner onto the policy. So I'm not persuaded the policy would have been renewed even if they'd known Mr B wouldn't be able to claim. Mr B also said if he'd known benefit under the policy might cease without renewal, he would've asked for the policy to continue and pay privately. But I haven't seen anything to show this was an option

under the policy because he wasn't going on to follow any other occupation.

- Mr B said I've agreed that there is no requirement under the policy for continuing partnership in the firm for there to be cover. For clarity, my decision is that I don't think the policy is clear that you aren't eligible to claim if you leave a partnership. And as Mr B's premiums had been paid until January 2021, I think his claim in November 2020 was valid. Mr B's premiums weren't paid past 31 January 2021, so my position remains that he doesn't have a valid claim from this point.
- I note Mr B has made reference to the continuation of a colleagues claim. But I can't comment or take into account someone else's claim. My role is to decide if Aviva treated Mr B fairly based on his individual circumstances. And for the reasons set out above, I don't think they fairly applied the policy terms here.

### **Putting things right**

Aviva Life & Pensions UK Limited need to put things right by:

- Accepting Mr B's claim. The deferred period should run from 10 June 2020 and then benefit paid up until cover ended on 31 January 2021.
- 8% simple interest should be added per annum from the date payments should have been made, up to the date the claim is settled.

### **My final decision**

For the reasons set out above I uphold this complaint against Aviva Life & Pensions UK 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 B to accept or reject my decision before 15 March 2023.

Georgina Gill  
**Ombudsman**