

The complaint

Mr B has complained that Aviva Life & Pensions UK Limited has not admitted a critical illness claim.

What happened

Mr B had a protection policy from 2010, originally underwritten by another insurer but taken over by Aviva. I will just refer to Aviva for simplicity. The protection policy included critical illness cover. Mr B cancelled the policy in May 2015. On 8 June 2016 he was diagnosed with a brain tumour. He submitted a claim on the basis that the tumour was in existence before the policy was cancelled. Aviva declined the claim as there was no policy in force at the date of diagnosis.

Mr B referred his complaint here. Our investigator didn't recommend that it be upheld. Mr B appealed.

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'm aware I've summarised the background and some sensitive medical details - no discourtesy is intended by this. Instead, I've focused on what I find is the key issue here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I've reviewed the complete file and considered all the representations and documentation. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

For the following reasons I agree with the conclusion reached by our investigator. I'll explain my reasons below:

- The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr B's policy and the available evidence, to decide whether I think Aviva treated him fairly.
- There is no dispute that the Mr B cancelled his policy in May 2015. He didn't ask for it to be reinstated within 13 months of the last premium paid. So it is accepted that there was no policy in force when Mr B received his diagnosis. Mr B believes that Aviva should meet his claim as it is likely that he did have the tumour, which is slow growing, before the policy was cancelled. The policy benefit would have been paid on diagnosis of: *Cancer – excluding less advanced cases. Any malignant tumour positively diagnosed with histological confirmation and characterised by the uncontrolled growth of malignant cells and invasion of tissue.* The difficulty for Mr B here is that there was no diagnosis until June 2016. This was over a year after the policy had been cancelled. It may be that the cancer was in existence before this time, and I've seen the medical evidence Mr B has submitted in support of this

theory. However the policy requires a diagnosis for a claim to be met. This isn't an unreasonable or unusual term.

- In case there was doubt about when a 'claim event' occurs, this is also confirmed in the policy. For critical illness claims the policy provides: *the date of diagnosis or date of surgery (if applicable) or date of inclusion on an official UK waiting list (if applicable)*. The policy terms are clear, and I don't find Aviva treated Mr B unreasonably by relying on them.
- I haven't disregarded Mr B's articulate submissions with regard to failings on the part of health professionals to diagnose his condition sooner. But ultimately this brings me back to the same issue of no diagnosis during the policy term. And of course, Aviva isn't responsible for any complaints Mr B may have regarding his primary health carers. To this end Mr B has submitted a recent letter from a GP surgery. I won't comment further as Aviva hasn't seen this letter; Mr B is going to share it with Aviva. I understand too that he is awaiting further evidence from the medical team that treated him in hospital. This evidence will also need to be shared with Aviva and doesn't impact my decision, which is based on the evidence to hand of which Aviva has had sight.
- I recognise that Mr B will be very disappointed by my decision and I'm very sorry it doesn't bring him more welcome news. But in all the circumstances I don't find that Aviva has treated him unfairly, unreasonably, or contrary to his policy terms by declining his claim.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2024.

Lindsey Woloski
Ombudsman