

The complaint

Ms M is unhappy that Aviva Life & Pensions UK Limited didn't pay her claim in full.

What happened

Ms M has been successfully claiming on her income protection policy following a serious illness. The claim continued to be paid until the policy ended in November 2022. Ms M submitted her tax year for the final year and Aviva determined there had been an overpayment.

Ms M didn't think Aviva had acted fairly as they didn't consider losses she'd incurred when setting up a holiday rental property. She thought the policy terms indicated that this would be covered under the policy. Ms M complained to Aviva but they maintained their decision was fair. Unhappy, Ms M complained to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold the complaint. He thought the claim had been fairly declined and he explained that the Financial Ombudsman Service's remit when considering complaints about complaint handling.

Ms M didn't agree and asked an ombudsman to review the complaint. In summary, she said that she felt uncomfortable about the lack of consideration of the finances involved in the holiday let property and felt that Aviva should approach this in the same way that the His Majesty's Revenue & Customs (HMRC) do. So, the complaint was referred to me to make 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.

Ms M is unhappy with the service she received when she made a complaint to Aviva. However, that's not something the Financial Ombudsman Service can consider in the circumstances of this case as complaint handling isn't a regulated activity.

The key issue in this complaint is therefore whether Aviva acted fairly by not considering the losses Ms M experienced as she set up her holiday let property. The relevant rules and industry guidelines say that Aviva should handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions say:

“Earnings shall mean:

a) all salaries, fees, wages, retirement pensions, commissions and, at the discretion of the Company, any other items of a remunerative nature, arising in respect of an office or employment, and

b) all profits or gains (including any fees and commissions of a remunerative nature)

arising or occurring in respect of a trade, business, profession or vocation.”

I’m not upholding Ms M’s complaint because:

- Aviva concluded that the losses didn’t form part of Ms M’s income as it was declared under the UK property section of the tax return and not declared as self-employed income. I don’t think that was an unreasonable approach, based on the policy terms which specifically refer to earnings as profits or gains arising or occurring in respect of a trade.
- Ms M feels that Aviva’s approach isn’t consistent with how HMRC considers letting out a furnished holiday let. She’s said that it is treated as a trade for tax purposes and the income or losses from it are treated as trading income or losses. Even if that’s correct that doesn’t mean that Aviva is bound to follow the same approach as HMRC. In the circumstances of this case, I’m satisfied they’ve reasonably explained why they don’t consider the losses to form part of Ms M’s income.
- The terms don’t specifically exclude income from a rental property. But I think that the terms are sufficiently clear as to what ‘earnings’ means for the purposes of the policy. So, this point hasn’t changed my thoughts about the overall outcome of the complaint.
- In any event, I think there are other reasons to not uphold this complaint. I’ve also taken into account what’s fair and reasonable. Even if I accepted that Ms M’s furnished holiday let was a ‘trade’ I don’t think it’s fair and reasonable to direct Aviva to pay for the costs and losses involved in setting up a furnished holiday let property. That’s a financial decision Ms M made as she wanted to supplement her retirement income. That’s completely understandable. However, the policy covers profits and gains. And, I don’t think it’s fair and reasonable to direct them to pay losses incurred in setting up a new venture of this nature shortly before the policy expired.

My final decision

I’m not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 8 January 2025.

Anna Wilshaw
Ombudsman