

The complaint

Mr D complains that Aviva Life & Pensions UK Limited hasn't paid a claim he made on a personal income protection insurance policy.

What happened

Mr D held a personal income protection policy, which was first underwritten by an insurer I'll call S, although Aviva is now responsible for the policy. The policy was due to expire in 2017.

It appears that in 1991, Mr D was able to make a successful claim on the policy for PTSD, and was paid a monthly benefit by S. However, Mr D's circumstances later changed and he was unable to work for other reasons.

Unfortunately, in May 1993, Mr D suffered a heart attack. It appears that some years later, once Aviva had begun to underwrite the policy, he wanted to make a critical illness claim on the policy.

Aviva said that Mr D hadn't paid any premiums for his cover after January 1992 and so the policy had been cancelled with effect from February 1992 – although it said the policy records hadn't been updated to reflect this until 1993.

Mr D was unhappy with Aviva's position and he asked us to look into his complaint. He sent us letters which showed S had been corresponding with his place of residence during 1993. So he felt this was evidence that the policy had remained in force and that Aviva should pay a critical illness claim.

Our investigator didn't think Mr D's complaint should be upheld. In brief, she didn't think there was enough evidence to show that Mr D's policy had been active at the point he'd suffered a heart attack.

Mr D disagreed and so the complaint was passed to me to decide.

I issued a provisional decision on 23 September 2024 which explained the reasons why I didn't think Aviva had treated Mr D unfairly. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. I've taken those rules into account, together with industry principles and guidance, amongst other things, to decide whether I think Aviva treated Mr D fairly.'

Mr D wants to make a critical illness claim on this policy for a heart attack he suffered in 1993. Aviva says that the policy was cancelled because no premiums were paid for the cover after January 1992. It's clear how strongly Mr D believes that the policy remained in force at the time of his heart attack and I've considered this carefully.

The key difficulty in a case of this nature is that the events in question happened over 30 years ago. So neither party can provide me with detailed evidence or records to show me what happened and given the time that's passed, I don't think this is unreasonable. Where's

there's little documentary evidence available to show me exactly what happened, I need to make my decision based on the balance of probabilities – what I think is most likely to have happened, given the available evidence and circumstances.

Aviva has provided me with a copy of S' policy terms, dated 1996, which post-date both Mr D's heart attack and the cancellation of the policy. In the circumstances though, I think this is a reasonable proxy to show me the type of cover that Mr D most likely held. The policy document states that the policy will be cancelled if premiums aren't kept up. It's also provided Mr D with a policy statement which shows the policy was lapsed from 12 February 1992, due to non-payment of premiums. Given Mr D's situation at the time, it seems he may have been unable to easily make premium payments towards the policy. And it appears unlikely that S would have opted to cancel the policy had it continued to receive payment in line with the policy terms.

I note too that Mr D hasn't provided us with any bank statements from around 1992 and 1993 to show that he continued to pay the monthly premium of £31.79 for the cover. Again, in the circumstances, I don't think this is unusual, as it might be difficult for Mr D's bank to now provide him with this information, given the time that's passed.

On the balance of probabilities though, I don't think there's enough evidence to show that Mr D did still have an active policy in May 1993. While it isn't clear that Mr D complained to Aviva about any declined claim (as its final response refers to Mr D's concerns that his policy benefits had been encashed by someone else), I don't think it would have been unreasonable for Aviva to conclude that no policy was in place had Mr D made a claim.

Mr D has provided us with evidence which shows that he was paid benefit in 1991 for PTSD. But even if this was the case, it's an entirely different condition to the heart attack Mr D now seeks to claim for. And the evidence pre-dates the cancellation date of this contract. I accept too that S wrote to Mr D's place of residence about a claim after the date Aviva says the policy was cancelled. However, I don't think this is sufficient evidence to show S accepted a claim for Mr D's heart attack in 1993. That's because Aviva says Mr D's records weren't updated to show the cancellation until 1993 – so there may have been a crossover with the sending of the letter. It's also possible that the letter was simply sent in error. Importantly though, the letter doesn't indicate that any heart attack claim had been accepted.

Even if I'm wrong on these points though, I think there are other good reasons why it wouldn't be fair for me to uphold Mr D's complaint. First, Mr D's policy was an income protection insurance policy. It provided him with cover for his income if an illness or injury prevented him from working. But Mr D appears to be seeking to make a critical illness claim. The 1996 contract terms don't include critical illness cover and, in my experience, most income protection insurance policies don't include critical illness cover. This is generally an entirely separate form of insurance contract. So I don't think Mr D's policy offered him the type of cover he now wants to claim on.

Secondly, even if I were to accept that Mr D was looking to make an income protection insurance claim, as I've set out above, it provided cover for lost income due to illness or injury which prevented a policyholder from working, or if they couldn't perform the duties of a houseperson. In this case, while Mr D's heart attack undoubtedly was very serious, it doesn't seem to have been the reason why he couldn't work. It was Mr D's living situation at the time which prevented him from working. There's no evidence that he was incapacitated from earning an employed or self-employed income through work; or that he met the policy criteria for benefit to be payable during that time.

I'd add too that given the years that have passed, it would be very difficult for Aviva to gather the information it would need to validate a claim of this nature.

For those reasons then, it doesn't seem that Mr D would be in a position to make a valid claim on the policy, although ultimately, that would be a decision for Aviva to make.

Overall, based on what I've seen, I don't currently think Mr D has shown that he did have a valid income protection insurance policy in place in May 1993. And even if he did, I'm not persuaded, on the facts of this case, that it would be fair or reasonable for me to uphold his complaint. So whilst I sympathise with Mr D's position, I don't intend to tell Aviva to take any action.'

I asked both parties to send me any further evidence or comments they wanted me to consider.

Aviva had nothing more to add.

Mr D didn't accept my provisional findings. In summary, he felt there was documentary evidence which showed his policy had remained active in 1993. And he reiterated that S had written to his place of residence after Aviva says the policy had been cancelled. He referred to expert witness evidence from S which stated that his previous claim for PTSD had been in payment. And he referred to the legal weight which was placed on this evidence. He felt that Aviva had stalled matters and that it should have converted the claim into a critical illness claim. He considered its actions were typical of an insurance company, which was trying to avoid paying a valid claim and dragging matters out.

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.

Having done so, whilst I'm very sorry to disappoint Mr D, my final decision is the same as my provisional decision and for the same reasons. I'll now go on to address his further points.

I accept there's expert witness evidence from S which shows that Mr D previously made a successful claim on the income protection policy. This evidence shows that a claim made on Mr D's policy was being paid in November 1991. However, this evidence doesn't indicate when benefit for this claim ended or that any claim was still being paid after the policy had been lapsed.

As I acknowledged in my provisional decision that it did appear that S had continued to write to Mr D's place of residence after he'd suffered a heart attack. I appreciate this must have been confusing for Mr D. But Aviva says that records weren't updated to show that the policy had been cancelled until 1993. So I still think it's possible that any letters after the contract ended were simply sent in error or that there was a crossover between the update and any correspondence being sent.

On balance, I still don't think there's enough available evidence for me to fairly find, on the balance of probabilities, that Mr D had a valid policy in place in May 1993.

And I also explained why I didn't think it would be fair for me to uphold this complaint in any event. I appreciate Mr D feels that the PTSD claim which had been in payment previously should have been converted to a critical illness claim following his heart attack. However, the policy simply doesn't include critical illness cover. If any claim following Mr D's heart attack had been considered, it would likely have been set-up as a new and separate incapacity claim and assessed on the available medical evidence. But, as I set out, the policy is designed to provide cover for lost income if a policyholder is prevented from working or from performing the duties of a houseperson, due to accident or sickness. Based on the evidence

I've seen; it appears that Mr D was prevented from working due to his living situation. And I still think there's no evidence that Mr D was incapacitated from earning an employed or self-employed income through work; or that he met the policy criteria for benefit to be payable during that time.

Moreover, as I've explained, given the years that have passed since 1993, I'm still persuaded that it would be very difficult for Aviva to now obtain the information it would need to validate any potential claim.

I do sympathise with Mr D's position because it's clear he's been very unwell and that he's in a difficult situation. But overall, I still don't think Mr D has shown he had a valid policy in place in 1993. And even if he did, I'm still not persuaded, on the specific facts of this case, that it would be fair or reasonable for me to uphold his complaint. So I'm not telling Aviva to do anything more.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 November 2024.

Lisa Barham
Ombudsman