

The complaint

Mr C complains Aviva Insurance Limited unfairly settled his income protection claim.

What happened

Mr C has held an income protection policy for many years, and more recently it has been underwritten by Aviva. The policy is designed to pay a benefit in the event of incapacity due to illness or injury, after a four week deferred period.

Mr C works as a Director of a company which I will refer to as 'Company A'. He suffered an injury to his shoulder following an accident at the end of September 2023, and he was unable to work. He submitted his claim to Aviva for assessment in January 2024.

The terms of Mr C's policy state the following about the benefit limit.

"If at the end of the Deferred Period the claimant's Gross Income [...] exceeds 75% of Average Weekly Earned Income, the amount payable under this policy will be the Disability Benefit reduced by the amount of the excess."

"Average Weekly Earned Income means the insured's gross earned income from Employment in respect of the period of one year immediately preceding the Period of Disability less any amount allowable against income tax as expenses, divided by 52."

The claim was initially declined by Aviva in March 2024. However after receiving further evidence of Mr C's income, Aviva accepted the claim and paid benefits from the end of the deferred period up until July 2024. The Insurer said it had been unable to pay up to the full benefit limit under the policy, due to the level of Mr C's income in the year prior to his injury. Because of this, it said it was paying some of the benefits in advance; for the period from April to July 2024. And it said it Mr C could submit his 2024 tax return once available, and it would review the calculation again.

Mr C complained to Aviva. He disagreed with the insurer's assessment of his income, and thought the benefit should not be limited to 75% as this was not stated in the policy schedule. He said he thought the policy had become unsuitable when his circumstances changed, and thought Aviva should have conducted reviews. And he disagreed with Aviva's assessment of the medical evidence in relation to his expected recovery from his injury.

Aviva responded to the complaint in May 2024. It said it didn't think it had done anything wrong, and said it had made exceptions in Mr C's case, in order to pay his claim.

Unhappy with the response, Mr C brought his complaint to this service. An investigator here looked into what had happened and said they didn't think Aviva had acted unfairly.

Aviva made no comment on the investigator's view. However Mr C disagreed and asked for a decision from an Ombudsman. In summary he said:

- Aviva declined the claim unfairly prior to accepting it and has since said the claim was accepted as a goodwill gesture;
- his policy had been in place for more than 30 years and Aviva should have conducted reviews; and
- the earnings calculation should also have included the trading profits of Company A, as he is the only Director.

So, the case has been passed to me to decide.

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.

And I've looked at the relevant rules and industry guidelines, which say Aviva has a responsibility to handle claims promptly and fairly and should not reject a claim unreasonably.

Having reviewed all of the evidence, I'm in agreement with the investigator that this complaint should not be upheld. And for broadly the same reasons, which I will go on to explain.

Mr C has made detailed submissions to us about his complaint. And I appreciate he would probably like me to deal with every point he's raised. But, we're an informal alternative to the courts and this means I've focused on the issues that I think are material in determining a fair and reasonable outcome to this complaint. I don't mean any discourtesy by this; it simply reflects the informal nature of this Service and our key function – which is to resolve disputes quickly, and with minimum formality, on the basis of what I believe is fair and reasonable in the overall circumstances of the complaint.

I should also clarify the scope of my review; I won't be looking at events that have taken place after Aviva issued its final response to Mr C's complaint on 8 May 2024. Mr C can make a new complaint to Aviva if he's unhappy with actions it has taken in relation to the claim since that time.

Claim assessment and calculation of benefits

Aviva initially declined the claim in March 2024, as it said the tax return evidence supplied didn't show any salary or dividend payments had been received by Mr C. Mr C has said Aviva should have asked him about this before declining the claim, as he was able to provide more information. Whilst it was an option for Aviva to ask for more information, I don't think it was an unreasonable course of action for Aviva to decline the claim. I say this because the tax return it received didn't indicate any earnings in Mr C's role as a Director of Company A, which would mean no benefit could be paid under the policy. Once Mr C provided further evidence, Aviva reviewed this and recommenced its assessment of the claim, which is what I would have expected it to do.

Mr C is unhappy with the figures Aviva has taken into account when assessing his earnings and believes the calculation should include trading profits. Whilst I appreciate Mr C is the only director, Company A is its own entity separate from Mr C. So I don't think it unfair that the insurer didn't include Company A's trading profits in its calculation. I'm satisfied it was reasonable for Aviva to take into account the personal income Mr C had received, and this was the dividend payments that were evidenced as having been paid to him.

The year prior to the accident is from September 2023 until September 2024. Aviva has said it will review its calculations of Mr C's earnings again if he provides his 2024 tax return when it's available. And it has said it will correct any over or under-payments identified as a result. And I think this is reasonable.

Mr C disputes that he should receive only 75% of his calculated earnings under the policy and has said this was not stated in the policy schedule. Generally income protection policies do not cover the full pre-disability income and it's common for policies to provide cover for up to 75% of this. The policy schedule is a summary of Mr C's cover; the full details of the contract are set out within the policy terms and conditions. And I'm satisfied that in this case the terms clearly state that any amount exceeding 75% of the 'average weekly earned income' will not be paid. So it follows that I don't think Aviva has acted unfairly in applying this limit to its benefit calculation.

Mr C has said he's unhappy Aviva referred to making a goodwill gesture when it agreed to pay his claim. Aviva accepted Mr C's claim and paid it, so there is no dispute about that. I've noted Aviva stated it had decided not to apply certain policy conditions to Mr C's claim in his particular case. And it said it had chosen not to request further medical evidence directly from Mr C's treating doctors. Also it said as it was unable to pay the full benefit limit stated in the policy, based on Mr C's earnings, it would pay the benefits due between April and July 2024 in advance. These actions by the insurer are in Mr C's favour, and I'm satisfied they demonstrate Aviva was acting fairly.

I've noted the points Mr C has made about Aviva's Chief Medical Officer's (CMO) opinion on his expected recovery period. Aviva relied on the date its CMO expected Mr C to recover, to pay benefits in advance between April and July 2024. Whilst I appreciate Mr C thought this date was incorrect, I don't think Aviva acted unfairly. I say this because Aviva advised Mr C that if there were complications or delays in his recovery by July 2024, it would review this again. And I'm aware that this has since happened.

Administration of the policy

Mr C has said Aviva failed to carry out any reviews in the time he held the policy since 1991. And he's said the policy may have become unsuitable in 2002 when the structure of his business changed.

Mr C's income protection cover is a long-term policy which is due to run until Mr C reaches 65 and the benefit limit is fixed. I've reviewed the policy terms and conditions, and there is no provision for reviews to be carried out during the life of the policy. So I'm satisfied Aviva wasn't obliged to review Mr C's cover.

I note Mr C has reviewed the terms of other policies currently offered by Aviva and has made several points about these. However, in this decision I'm required to review the individual circumstances of Mr C's case, and so the relevant policy terms are those issued for this policy in 1991.

If Mr C's circumstances had changed, I think it's reasonable to expect that he could have contacted Aviva, if he thought the cover no longer met his needs. But as it seems Mr C didn't get in touch with Aviva prior to needing to make a claim, I'm satisfied the insurer would have been unaware of any changes in Mr C's circumstances. So I don't think it has acted unfairly in continuing with the policy as it was originally taken out. And it follows that I don't find there is any reason for me to direct Aviva to refund any of the policy premiums, as Mr C has requested.

Whilst I appreciate my decision is likely to be disappointing to Mr C, I've not found that Aviva has treated him unfairly. And so I'm not directing it to take any action.

My final decision

For the reasons I've given, it's my final decision that I do not uphold this complaint and I make no award against Aviva Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 April 2025.

Gemma Warner
Ombudsman