

complaint

Mr S has made a complaint because he says Aviva Life & Pensions UK Limited have discontinued a claim he made under his income protection insurance policy.

background

Mr S made a claim on his income protection policy because he was suffering from repetitive strain injury (RSI). He stopped working in August 2014 and, after the deferred period had passed, Aviva started paying him a benefit under the policy in February 2015.

In late 2016 Aviva became aware that Mr S had been serving a custodial sentence since late 2015. This related to offences with which he was arrested and charged in 2014. So Aviva suspended payment of future income protection benefit. Mr S said that he made Aviva of this in early 2016 but Aviva has no record of receiving the letter. Aviva had paid Mr S around £28 000 since he'd been in custody.

my provisional decision

In October 2018 I issued a provisional decision in which outlined that the relevant policy terms say:

"If in connection with the happening or purported happening of any event insured by this Policy the Insured makes an untrue statement or omits to disclose a material fact the Policy will immediately become void and no Benefit whatsoever will be payable"

I also explained that under the relevant rules and industry guidance Aviva has a responsibility to handle claims promptly and fairly. They also shouldn't unreasonably reject a claim. My provisional findings were:

I don't think that Aviva has acted unreasonably by declining to pay Mr S any further benefit, or backdate the payments. I say that because:

- Mr S has reported a number of symptoms in relation to RSI. But I note that between 2011 and 2014 he didn't visit his GP about this. However, just a few weeks after being arrested for the offences, of which he was later convicted, he went to his GP and was signed off work because he reported he was suffering with RSI. His MRI scan was normal and there's no physiological evidence to support his claim. So I don't think it's unreasonable that Aviva has concerns about the timing and validity of Mr S's claim given the circumstances of this case;*
- I don't think it's unreasonable for Aviva to decline the claim from the point that Mr S received his custodial sentence. From that point onwards he wasn't able to work in his profession. But I don't think it's unreasonable for Aviva to say that the reason he couldn't work was unrelated to his RSI. He wasn't able to work because he was in custody and, ultimately, his professional registration was removed. So I don't think it's unreasonable for Aviva to conclude that these were the main factors which would prevent Mr S from returning to work;*
- Mr S was sent various correspondences throughout the claim which reminded him to let Aviva know if his circumstances changed. I think that being sentenced to a*

custodial sentence and being removed from the professional register were material facts he ought to have disclosed to Aviva;

- *I'm not persuaded that Mr S did write to Aviva in January 2016 letting them know that he was in prison. So I don't think that he did disclose those material facts. If he had of done so, I'm satisfied Aviva would have taken steps to review his claim at that time;*
- *I also note that Mr S continued to use his home address on correspondence to Aviva. On his claim continuation form, sent in August 2016, he gave his home address. I don't think it's unreasonable for Aviva to conclude that he failed to disclose further material facts on that form. One of the questions asked, "When do you think you will be fit enough to return to full or part time work?". Mr S replied: "Unknown – perhaps never to my own profession". In the section where he was asked if there was anything else that might be useful to us in reviewing his claim he said. "I have ceased trading from 2016 (Jan), so are no longer receiving income from the business. Final accounts awaiting processing (to be forwarded once done). By this point Mr S was already subject to an Interim Suspension Order by his professional body which had been in place since February 2016, pending a full hearing.*

I asked Aviva and Mr S to let me know if they had anything further to add.

Aviva didn't make any further comments. Mr S responded and made a number of further points. In summary Mr S said:

- He was willing to be examined by Aviva's medical examiner but this was never offered
- The policy isn't specific to a single profession and Aviva were happy to allow Mr S to hire other professionals to cover his work
- The policy says that availability of work isn't a factor in determining whether the policyholder can perform their own occupation and the policyholder should be under regular medical care and supervision appropriate to their condition
- Aviva wrote to Mr S in January 2017 saying they'd ask the prison for information – that's inconsistent with Aviva not knowing he was in prison
- The questionnaire he was asked to complete wasn't clear and it was his wish for correspondence about this to his home address and not the prison
- He intends to return to his profession if he's allowed to
- Aviva still owes him money for the period he was claiming up to December 2015.

So I now need to make a decision.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The further comments from Mr S haven't changed my thoughts about the outcome of this complaint. I don't think Aviva has treated Mr S unfairly. I say that because:

- I appreciate that Mr S was willing to be seen by a medical examiner. However, at the point Mr S made his claim Aviva didn't have concerns about the timing or circumstances surrounding it. That only came to light many months later when Aviva realised Mr S was in custody and the claim had coincided with his arrest and charge;
- The information Mr S has referred me to says the policyholder can claim, "*If you are unable to work because of illness or accidental injury resulting in a loss of earning. You should be under regular medical care and supervision appropriate to your condition*". But, as I outlined in my provisional decision, I don't think it's unreasonable for Aviva to conclude that from late 2015 onwards the main reason Mr S couldn't work because he was in prison, rather than because of his illness;
- I think Aviva has assessed the claim fairly. Whilst the policy doesn't mention a specific profession, for the purposes of income protection benefit, employment is defined as, "*each and every remunerative occupation in which the Insured has engaged during the period of 52 weeks immediately prior to the Period of Incapacity*". Mr S had been working in his profession for many years and so I think it was reasonable for Aviva to take into account whether he could return to his profession as that's what he'd been doing in the 52 weeks immediately prior to the claim being made;
- Mr S pointed out that the information about the policy says, "*availability, or otherwise, of work is not a factor in determining whether you are able to perform your occupation*". But I don't think that's the issue in Mr S's case. Mr S is not available to work because he's in prison and has been removed from the professional register. It's not that there's a problem with the availability of work. So this doesn't change my thoughts about the outcome of this complaint;
- Mr S has referred me to a letter from January 2017 and I've looked at it in conjunction with the other available evidence. The letter says Aviva had received information from Mr S's GP and that they would write to the prison to obtain medical notes and correspondence from December 2015 onwards. I think that fits with what Aviva has said about when they became aware Mr S was in prison. They told us they received information from Mr S's GP, which referred to him being in prison, in late 2016 which was the first time they knew he was in custody. So I think this letter supports what Aviva say about the timeline of events;

- I don't think it's unreasonable for Aviva to conclude that Mr S failed to disclose further material facts on the questionnaire he completed whilst in custody. In my provisional decision I explained that one of the questions asked, "*When do you think you will be fit enough to return to full or part time work?*". Mr S replied: "*Unknown – perhaps never to my own profession*". In the section where Mr S was asked if there was anything else that might be useful to Aviva in reviewing his claim he said. "*I have ceased trading from 2016 (Jan), so are no longer receiving income from the business. Final accounts awaiting processing (to be forwarded once done)*". By this point Mr S was already in custody and subject to an Interim Suspension Order by his professional body which had been in place for a few months, pending a full hearing. So I think the questions he was asked ought to have prompted him to talk about these wider circumstances. And, as I noted in my provisional decision, Mr S was reminded on a number of occasions that he'd need to let Aviva know if his circumstances changed;
- Mr S has mentioned that Aviva still owes him money for the period prior to December 2015 and Aviva haven't made a further payment to him since he submitted his final accounts. Aviva did explain that it was using an interim calculation until the relevant financial information was received. In August 2016 Aviva said they would look at the cessation accounts to see if any benefit was due. But at that point in time Aviva weren't aware of Mr S's wider circumstances as he hadn't told them about conviction and imprisonment. So I don't think Aviva would have committed to that if they'd known more about Mr S's circumstances at that time. When Aviva did become aware they wrote to Mr S to say they were suspending the benefit pending a full investigation and that their position in relation to past and future benefits remained fully reserved;
- Aviva continued to pay Mr S for around a year after he was in prison which amounted to over £28 000. I note that Aviva hasn't decided whether it will attempt to recover that money from Mr S. So I don't think it's fair or reasonable for me to direct Aviva to make any further payments to him given the overall circumstances of this case.

my final decision

I'm not upholding Mr S's complaint against Aviva Life & Pensions UK Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 January 2019.

Anna Wilshaw
ombudsman