

complaint

Mr M is unhappy with Aviva Life & Pensions UK Limited's decision to stop paying his claim.

Mr M brings his complaint through a third party, but for simplicity, I'll refer to all submissions as being made by him.

background

Mr M had a group income protection policy through his employer. He brings his complaint as a beneficiary under this policy.

Mr M suffers with anxiety and depression. He became unwell in 2010 following a number of stress factors which impeded his ability to undertake his usual occupation – a senior role within his family run hospitality group. Mr M is unhappy because Aviva stopped paying his claim following a review it completed on 1 May 2018. He said he's still too unwell to return to work and this has caused him further problems with his mental health.

Aviva said it terminated Mr M's claim because he'd been untruthful about his engagement with work activity. In particular, he'd set up new businesses during the life of the claim and failed to disclose it. Aviva also said when it asked Mr M about this, he attempted to conceal it, along with a second business he was involved with. Aviva said this was the reason it decided to terminate Mr M's claim.

Our investigator thought Aviva had acted fairly in doing this. She said Mr M had an obligation to tell it about any gainful employment he'd been involved in since he'd been in receipt of benefit. She also dismissed Mr M's claim that Aviva had acted unreasonably during its investigation because she said it's entitled to conduct claims reviews and interviews as part of that process. She also found no evidence to suggest it had treated him unfairly during the interviews.

Mr M did not agree. He gave many reasons why, some of which, I've summarised below;

- He attended mental health support appointments and was encouraged to try and engage in some form of activity as part of his treatment;
- The activity he was involved with was a hobby and was not intended to be a business which made a profit or to give any income;
- He was selling items via an online platform and it was the online platform's suggestion that he should set up the business;
- He completed everything online and did not realise he was the director of the company, rather, he thought he was *an authorised person* and;
- It was his illness that made him answer the questions incorrectly. He's a vulnerable person and was not treated accordingly.

And so it's for me to make a final decision.

my findings

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, I'm not persuaded that Aviva has made an error and so I won't be asking it to do anything in respect of Mr M's complaint. I'll explain why.

Aviva, like all insurers, are bound by rules set out by the Insurance Code of Business Sourcebook (ICOBS) which says insurers must handle claims promptly and fairly and must not reject a claim unreasonably. And so I've considered whether it has unfairly rejected Mr M's claim, but given the evidence available, I do not think it has. Aviva's terms say;

"Eligibility for Total Benefit arises if immediately prior to Incapacity the Insured Person was following a Gainful Occupation and after the onset of Incapacity the Insured Person is not following any other Gainful Occupation"

The reason I've highlighted this term is because it essentially says that Mr M will not be eligible for benefit should he be involved in any other gainful occupation after the onset of his incapacity. The policy further defines *other gainful occupation* as *"any occupation performed for profit or reward"*

Mr M has suggested Aviva's decision to stop his claim is unfair because he is still incapacitated and unable to return to his usual occupation. I would like to make clear that it's not in dispute Mr M has suffered with his mental health, or that he's still finding it too difficult to work because of this. However, the reason Aviva stopped paying his claim was because it discovered he had been involved in gainful occupation since he'd been in receipt of benefit. And this is at odds with its terms, so Mr M is no longer eligible to claim under its policy.

Mr M has argued that he never intended to partake in a profitable business venture and that he was simply trying to mitigate his health issues by taking up a hobby, as recommended by his family and his mental health support group. I understand the point he is making, but I'm not persuaded that is the case here. I say that because the particular circumstances surrounding this are very different to someone simply trying to keep themselves busy.

In 2016 Mr M took steps that formalised his hobby into a business. What may have begun as a hobby, selling items online, became much more formal when he registered this as a limited company with Companies House. As part of the business registration, Mr M described his business' interest as retail, further indicating this was more than a simple hobby. In addition, he set up a business bank account for purchasing stock and to receive payments for his goods.

I know Mr M has challenged Aviva on the way it's described his business using these terms because he feels they have a formal connotation more commonly associated with business. But I do not think it's unreasonable for Aviva to reach the conclusion that this was a legitimate business given the information available.

Mr M failed to disclose this to Aviva which is why it decided to further investigate his claim. Mr M was given the opportunity to explain his involvement in the business but became evasive and vague. He was unsure whether he was the director of the business when asked by Aviva so I can understand why they wanted to make further enquiries. Aviva has shown that Mr M was the sole director of that business and that he'd undertaken its day to day running, highlighting that he'd even submitted a confirmation statement to Companies House in December 2017.

For the purposes of this complaint, I'm satisfied Aviva has based its decision to terminate Mr M's claim on evidence that he was running a business online. By Mr M's own admission the business had turned over around £25,000 annually which I consider to be a significant amount of money. Further, I consider it to be enough money to have prompted him to

disclose this to Aviva when asked a clear question as part of an income statement in March 2018. But Mr M chose not to, saying he did not think it mattered because he had not made any profit from the business.

When presented with the findings of Aviva's investigation, Mr M initially explained he had intended to set up the business so he could reduce the benefit amount he was receiving, that is to say claim a partial benefit, less the revenue generated from his business. This further suggests Mr M was aware he should have shared this information with Aviva and that he simply chose not to. It also persuades me that he was aware this was a legitimate business that he was trying to earn money from. Mr M later retracted that statement and said this venture was solely for the purposes of his recovery, allowing him the chance to re-equate himself with the familiarities of business, but I'm less persuaded by this given what I've just explained.

It's for these reasons, I think Aviva has fairly applied its terms to stop Mr M's claim. Under the circumstances, Aviva is entitled to pursue Mr M further to recover some of the benefit he received. But I note it has decided not to.

Mr M has made other arguments about Aviva's investigation and the tactics it employed to gain further information about him, in particular, he was subject to two lengthy interviews and he didn't agree with the findings. I should say that Aviva, like all insurers, is entitled to validate a claim. Especially one that has gone on for as long as Mr H's. To do this, insurers use a variety of different methods, including desktop investigations and interviews with their customers. There's nothing here that's given me any cause for concern about the way Aviva conducted its investigation.

Mr H has suffered with depression and anxiety for a number of years, for which he's taking medication. There's no evidence to suggest he would have been unfit for an interview about his claim, nor that the interviewer behaved in any way other than professionally. I was not present at the time and so it's difficult for me to know exactly what was said or how it was said. But from the evidence submitted by Aviva, I'm satisfied the questions asked were relevant and proportionate to the claim it was investigating.

There's also evidence that Mr M was offered the chance to have a break – which I note he did. He was also accompanied by his wife and they regularly talked between themselves to confirm their answers were correct. I also note Mr M terminated the interview. All of which suggests Mr M was not treated unfairly here either.

my final decision

For the reasons, I've explained, I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2019.

Scott Slade
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