

The complaint

Mr M is unhappy that Aviva Life & Pensions UK Limited declined a claim made under his critical illness policy.

Although Mr M is being represented in this complaint, I've referred to him throughout.

What happened

Mr M made a claim under the policy which wasn't accepted by Aviva.

Aviva concluded that the policy definition of total permanent disability ('TPD') hadn't been met. Mr M says Aviva used the wrong definition of TPD to assess the claim. It should've been assessed on whether he was able to do his own occupation.

Mr M complained to Aviva and after it maintained its position, he brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold his complaint. Mr M disagreed and raised several points in reply. These didn't change our investigator's opinion so this complaint has been passed to me to consider everything afresh 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.

Aviva has an obligation to handle insurance claims fairly and promptly, and it mustn't unreasonably decline a claim.

I know Mr M will be very disappointed but for the reasons set out below, I'm satisfied Aviva has acted fairly and reasonably by using the activities of daily living definition when considering the claim for TPD.

- Mr M's policy schedule reflects the definition applicable to TPD is "Activities Daily Living" and it says condition 2(c)(ii) applies. I'm satisfied this refers to the policy terms and conditions.
- The parties have provided two different versions of the policy terms.
- The policy terms provided by Aviva reflects at section 2(c)(ii) that cover is provided for TPD if the Life Assured is unable to independently perform three or more Activities of Daily Living as a result of sickness or accident and will, in the reasonable opinion of the Company's medical adviser, permanently continue to be unable to perform three or more Activities of Daily Living. The Activities of Daily Living are set out later in section 2. The normal occupation definition relating to a claim for TPD is set out at section 2(c)(i) of the policy terms, not section 2(c)(ii).
- The policy terms provided by Mr M doesn't contain a section 2(c)(ii). Section 2(c) of

these policy terms say: “Payment of Critical Illness Benefit” in respect of Total Permanent Disablement is subject to notice of disablement being given to the Company within thirteen weeks of the commencement of Total Permanent Disablement”. So, if these are the correct terms, I’m satisfied the reference in the policy schedule to section 2(c)(ii) of the policy terms is incorrect.

- The definition of TPD is instead set out at sections 2(e)(i) and 2(e)(ii) of the policy terms Mr M has provided. Section 2(e) says:

(e) Total Permanent Disablement can be defined in either of the following ways:

- (i) The life assured is unable to follow his/her normal occupation as a result of sickness or accident and will, in the reasonable opinion of the Company’s Medical Adviser, permanently continue to be unable to follow his/her normal occupation, taking into account current medical knowledge and technology.
- (ii) The life assured is unable to independently perform three or more Activities of Daily Living as a result of sickness or accident and will, in the reasonable opinion of the Company’s Medical Adviser, permanently continue to be unable to independently perform three or more Activities of Daily Living, taking into account current medical knowledge and technology.

Section 2(f) then sets out the activities of daily living.

- I don’t think I need to make a finding as to what are the applicable policy terms. That’s because if the policy terms provided (and relied on) by Aviva are the relevant terms, I’m satisfied its fairly and reasonably relied on section 2(c)(ii) to assess the TPD claim.
- And if the terms provided by Mr M are the relevant terms, I’m satisfied that Aviva has fairly and reasonably concluded that the applicable definition of TPD relevant to a claim made by Mr M under the policy is the activities of daily living clause, rather than the own occupation clause.
- I’m satisfied that the policy schedule makes it reasonably clear that it’s the activities of daily living definition which is relevant to a claim for TPD. I’m satisfied that a reasonable person with all background knowledge reasonably available to Aviva and Mr M would’ve understood it to mean this, particularly as there’s no mention of the own/normal occupation definition in the policy schedule. So, although the policy schedule may go on to refer to the wrong section of the policy terms where this can be found (either because the reference to section 2(c)(ii) wasn’t changed to section 2(e)(ii) when the policy terms were updated or because there was a typo in that part of the policy schedule), I don’t think it would be fair and reasonable to find that because of this, Aviva should’ve considered the claim for TPD under the own occupation definition. Or that the two definitions of TPD under the policy terms are both operable and so the claim can be considered under both definitions.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 23 October 2024.

David Curtis-Johnson
Ombudsman