DRN-4451844

The complaint

Mr B complains that Aviva Insurance Limited has excluded ongoing cover for a medical condition under a personal private medical insurance policy because it concluded his condition had become chronic.

What happened

Mr B has held a personal private medical insurance policy with Aviva for many years. In March 2023, he made a claim on the policy for Crohn's Disease. He'd been diagnosed with Crohn's Disease several years previously.

Aviva considered that Mr B's Crohn's Disease was a chronic condition. And it said chronic conditions were specifically excluded by the policy terms. However, it recognised that it had incorrectly previously provided cover for Mr B's condition, including covering surgery he'd undergone several years previously. So it agreed to provide cover for claims relating to Mr B's Crohn's Disease for a further six months – until 30 September 2023, to allow him to transition to treatment under the NHS.

Mr B was unhappy with Aviva's decision and he asked us to look into his complaint.

Our investigator didn't think Mr B's complaint should be upheld. She thought it had been fair for Aviva to conclude that Mr B's Crohn's Disease was a chronic condition. And she also felt it had acted fairly and reasonably by providing Mr B with a six month period to transition to NHS care.

Mr B disagreed and I've summarised his responses to our investigator. He felt that the investigator's conclusions had been biased. He said that he'd been diagnosed with Crohn's Disease after the policy was taken out and he questioned whether he'd been covered then. He told us that he'd always been open with Aviva that he had Crohn's Disease. He felt that six months of further cover was an arbitrary date and that in fact, he should have been given a further ten years of cover for Crohn's Disease. He said he'd had little time to find alternative cover. He also mentioned that he would require treatment shortly after the grace period ended. He felt Aviva should cover his costs for the treatment he required. Finally, he was unhappy that Aviva hadn't allowed him to reduce his policy excess or upgrade his hospital list at the 2023 renewal.

The investigator let Mr B know that she felt it had been reasonable for Aviva to decline to reduce his excess or upgrade his hospital list at renewal. That's because she concluded that Aviva had acted in line in with its policy terms and its underwriting criteria.

Mr B didn't think Aviva had made its terms relating to changes at renewal sufficiently clear. He said he'd previously been able to change his excess, but it seemed that Crohn's Disease was the problem. He still felt that given the time he'd held the policy, Aviva should have provided cover for Crohn's Disease beyond 30 September 2023. And he queried whether the policy had been mis-sold to him, given he'd been tied to a policy which wouldn't allow him to amend the excess or hospital list.

The complaint's 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.

Having done so, whilst I'm sorry to disappoint Mr B, I don't think Aviva has treated him unfairly and I'll explain why.

It's important I make it clear that this decision will only be considering whether Aviva treated Mr B fairly when it classified his condition as chronic and when it declined to amend his excess and hospital list at the 2023 renewal. Mr B has now questioned whether the policy was mis-sold to him. However, it doesn't appear that Mr B has previously asked Aviva to consider a complaint about the sale of the policy and so it doesn't appear that it's had a chance to look into this issue. Under our rules, an insurer must be given an opportunity to investigate and respond to a complaint point before we can potentially help with it. So this means I won't be considering the way the policy was sold to Mr B as part of this decision. Mr B would need to raise this particular point with Aviva if he took out the policy directly or, if he took out a policy through a broker, then he'd need to complain to the policy seller.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So I've independently and impartially considered, amongst other things, the terms of Mr B's policy and the circumstances of his claim, to decide whether I think Aviva treated him fairly.

I've first considered the policy terms and conditions, as these form the basis of Mr B's contract with Aviva. It's clear from Mr B's policy certificate that Aviva provided cover on a 'full medical underwriting' basis. This means that it excluded certain pre-existing conditions from cover when it offered Mr B his policy. Crohn's Disease wasn't one of the medical conditions Aviva specifically excluded at the point it underwrote Mr B's policy. This means it didn't consider this condition to be pre-existing.

Page one of Mr B's policy is titled 'Treatment covered by your policy' and it explains that Aviva will cover the treatment of 'acute' conditions and explains how Aviva defines an acute condition. Immediately underneath, Aviva has set out the following term:

'The policy does not cover chronic conditions.'

The contract says:

'*A chronic condition is defined as a disease, illness or injury that has one or more of the following characteristics:*

- *it needs ongoing or long-term monitoring through consultations, examinations, check-ups and/or tests*
- *it needs ongoing or long term control or relief of symptoms*
- *it requires your rehabilitation or for you to be specially trained to cope with it*
- *it continues indefinitely*
- *it has no known cure*
- *it comes back or is likely to come back.'*

In this case, I understand Mr B was diagnosed with Crohn's Disease around 16 years ago. Aviva covered the cost of surgery to treat this condition in 2013/2014 and it appears that Mr B has undergone other treatment and been prescribed medication on the NHS since that

time. As such then, it seems to me that it was fair for Aviva to conclude that Mr B's Crohn's Disease met more than one of the 'limbs' set out in the definition of a chronic condition. I say that because it appears that Mr B has required ongoing monitoring and treatment for Crohn's Disease over a number of years and his symptoms appear to have recurred. As such then, I don't think Aviva acted unfairly when it concluded that Mr B's Crohn's Disease was a chronic condition and therefore, wasn't covered by the policy terms.

I appreciate that Aviva previously paid for treatment of Mr B's Crohn's Disease. It now says that Mr B's previous claims should also have been turned down due to the chronic nature of his illness. I can see from the 2013 terms which applied at the time of Mr B's surgical claim that chronic conditions were defined in the same way and that they were also excluded. So it does appear that Aviva accepted and settled Mr B's 2013/2014 claim in error.

However, just because Aviva wrongly settled Mr B's claim in 2013/2014 and didn't exclude cover at that point, it doesn't mean that Aviva became obliged to provide cover for Mr B's Crohn's Disease indefinitely. Strictly, it was entitled to decline further cover in March 2023. But it decided to provide Mr B with a further six months of cover for Crohn's Disease – up until 30 September 2023. This six month period was to allow Mr B to transition his care to the NHS. In my view, this was a very fair and reasonable response from Aviva, which was outside of the policy terms and conditions. And although it's unfortunate that Mr B has required treatment after 30 September 2023, I don't think there are any reasonable grounds upon which I could direct Aviva to pay treatment costs incurred after the end of the six-month period.

It's clear that Aviva classed Mr B's condition as chronic close to the date of his renewal. I appreciate he says he wasn't left with enough time to look for a policy which would cover Crohn's Disease. In my experience, most, if not all, private medical insurance policies exclude cover for chronic conditions and most policies define chronic conditions in a very similar way. I think it was open though for Mr B to look elsewhere for cover if he'd wished to do so.

Mr B is also unhappy that Aviva declined to allow him to reduce his policy excess or upgrade his hospital list at the 2023 renewal. I've considered this carefully. The contract terms set out a section called 'Renewing Your Contract'. This section includes the following:

'*If you wish to make any changes to your policy, for example adding or removing options, please contact us. We will review the claims that we have paid, the medical history, and the current health for each member when deciding whether you can make these changes.'*

In my view, this term is clear and not misleading. I think the contract makes it clear that Aviva will review a policyholder's claims and medical history when deciding whether or not it's prepared to make any requested changes to the policy. So I'm satisfied that Aviva has sufficiently highlighted that it won't automatically accept a policyholder's request to change their cover at renewal.

Aviva has provided us with evidence of the underwriting guidance it took into account when it considered whether or not to allow Mr B to reduce the policy excess and upgrade his hospital list. I've carefully considered this evidence - which I'm afraid I can't share with Mr B because it's commercially sensitive and therefore, it's confidential. And, having done so, I'm satisfied that based on its underwriting criteria, Aviva has demonstrated that it was reasonably entitled to decline to reduce Mr B's excess or upgrade his hospital list. I'm persuaded too that Aviva has shown that it treated Mr B in same way it would have treated any of its other customers in the same situation and that therefore, it hasn't unfairly singled him out in any way.

Overall, whilst I sympathise with Mr B's position, I don't think that Aviva has treated him unfairly. So it follows that I'm not directing Aviva to provide further cover for Mr B's Crohn's Disease or to pay any costs associated with that condition which were incurred after 30 September 2023. Nor am I directing Aviva to reduce Mr B's policy excess or to upgrade his hospital list.

My final decision

For the reasons I've given above, 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 B to accept or reject my decision before 9 January 2024.

Lisa Barham
Ombudsman