DRN-4699638

The complaint

Mr K has complained that Aviva Insurance Limited declined a claim for treatment under his medical insurance policy.

What happened

Mr K had a private medical insurance policy with Aviva that started in December 2021. The policy was underwritten on a moratorium basis, which meant that any pre-existing conditions from the previous five years wouldn't be covered. But Aviva would cover the condition if after the policy start date the policyholder had no medication for, diagnostic tests for, treatment for or advice about that condition during a continuous two year period.

Around August 2023, Mr K contacted Aviva to claim for the repair of an inguinal hernia. Aviva contacted Mr K for some further information about his symptoms and after reviewing this information it declined the claim. Aviva concluded Mr K's claim was for a condition for which Mr K had experienced symptoms in the five years before the policy started and was therefore excluded.

Mr K complained – he said that the problem was identified in 2014 when the right side was operated on and he'd had no further treatment since. Therefore, as it was identified more than five years prior to taking out the policy it should be covered.

Aviva didn't change its position so Mr K referred his complaint to our service. Our investigator recommended it be upheld. They said that Aviva should have admitted the claim and recommended it paid for the initial consultation and £400 in compensation. But they didn't recommend that Aviva meet the claim for surgery as Mr K had taken out a new policy.

In response to the investigator's assessment Mr K pointed out that he had paid for the operation himself and that it had been carried out whilst he was still with Aviva and not with his new provider.

Aviva didn't accept the recommendation. It said that Mr K advised he had symptoms in May 2020 which was 17 months before the policy start date. It said that even if it allowed Mr K's estimate of his symptoms to be incorrect by 12 months either side of that date, his symptoms would still fall within the five years of the policy start date making his claim ineligible.

As no agreement was been reached the matter was been passed to me to decide. I issued a provisional decision explaining why I wasn't minded to uphold Mr K's complaint. I said as follows:

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, and although I'm very sorry to disappoint Mr K, I'm not minded to uphold his complaint. I'll explain why.

The Financial Conduct Authority's Insurance: Conduct of Business Sourcebook (ICOBS)

provide that Aviva shouldn't unreasonably reject a claim. So, among other things, I've carefully considered the evidence here as well as Mr K's policy terms to see if Aviva has treated him fairly.

The relevant policy wording is not disputed but for completeness I will repeat it here.

A pre-existing medical condition is described as:

Any disease, illness or injury for which:

• you have received medication, advice or treatment, or

• you have experienced symptoms whether the condition has been diagnosed or not before you joined the policy.

The policy has a moratorium clause which provides:

We do not cover treatment of any pre-existing condition, or any related condition, if you had:

symptoms of, medication for, diagnostic tests for, treatment for, or advice about that condition in the five years before you joined the policy.

However, we will cover that condition if you do not have:

medication for, diagnostic tests for, treatment for, or advice about that condition during a continuous two-year period after you join the policy.

The medical evidence shows that Mr K's left inguinal hernia had been present since 2014, but that he didn't require treatment until 2023. However, Mr K completed a claim form and said that he first had symptoms in May 2020. Mr K recognised symptoms and recorded them on the form – a medical diagnosis of symptoms is not required. I understand that he had not had treatment, medication or tests but as he had symptoms of the condition in the five years before he joined the policy in December 2021 Aviva was entitled to rely on the above moratorium clause to decline his claim. It advised that the earliest date it would consider covering his hernia was September 2025.

I do understand why Mr K went ahead with the surgery, paying himself, but in all the circumstances I don't find that Aviva has treated him unfairly or unreasonably by declining his claim when it did. This being so there is no basis for me to require Aviva to make any payment to Mr K.

I said that I would look at any more comments or evidence I received but unless that changed my mind, my final decision was likely to be along the lines of my provisional decision.

Aviva accepted my provisional findings. Mr K didn't agree with my provisional decision and asked to see the claim form, which the investigator sent to him. Having seen the form he said that he didn't know why there was a date of May 2020 listed as when symptoms first started, as they were first identified back in 2014.

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.

I've considered Mr K's submission but I'm not persuaded to change my provisional findings,

which I adopt here.

It's not in dispute that Mr K's left inguinal hernia was first identified in 2014. It seems it was asymptomatic at that time as no action was taken. But what is important here is that Mr K had symptoms in May 2020. That was within five years of the policy start date. He may not now recall, but I'm satisfied that this was recorded on the claim form he completed. This being so his hernia was excluded from cover under the policy.

It follows that I don't find Aviva did anything wrong and I don't require it to take any further action.

My final decision

For the reasons 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 K to accept or reject my decision before 26 April 2024.

Lindsey Woloski
Ombudsman