

The complaint

Mr H complains that Aviva Life & Pensions UK Limited aren't fairly calculating the policy benefit following a claim he's made on an income protection policy.

What happened

Mr H has claimed on his income protection policy. He says that Aviva won't take his full income from the 12 months before his incapacity into account and they've restricted it to 50% of his company profits.

Aviva said they weren't contractually required to take into account Mr H's dividends but did so to treat him fairly. They explained that the dividend Mr H paid in the relevant tax year was made up of retained profits and reflected income from previous years, not the profits generated during the pre-incapacity period. Aviva maintained their position was fair.

Our investigator looked into what had happened. She didn't think Aviva had treated Mr H unfairly. She didn't think Aviva was required to include the dividends based on the policy terms but had chosen to do so. She thought they'd fairly calculated the benefit based on the available evidence.

Mr H didn't agree. He set out the policy definition of earnings and said that it didn't preclude dividends. He said that Aviva wasn't using the right figures. So, the complaint was passed to me to make a decision.

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.

The relevant rules and industry guidelines say that Aviva has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

The policy terms and conditions has a definition of 'normal earnings'. For self-employed earnings this is defined as:

Your gross personal income from your business during the period of twelve months immediately preceding the onset of incapacity, less any amount allowable against income tax as expenses, before deduction for income tax.

I'm not upholding Mr H's complaint because:

- There's no contractual requirement for Aviva to include the dividends in their calculation but I think it's fair they've agreed to take this into account in the circumstances of this case.
- Aviva says that a material proportion of the relevant dividend was made up from the prior years retained profits. Therefore, it reflects earnings earned in previous years

and not profits generated during the pre-incapacity period. I think that's a reasonable approach which fairly reflects the policy terms.

- The policy doesn't specifically exclude dividends and does refer to 'income from your business'. But I don't think that detracts from the overall term which refers to 'gross personal income from your business during the period of twelve months immediately preceding the onset of incapacity'. I think Aviva has fairly limited the benefit to reflect profit earned in the pre-incapacity year.
- I've considered Mr H's reference to an internal review of his claim which says that it is proposed that the 'full tax return amount' was used. But that was a proposal and I think it reflects that Aviva was reviewing and considering the options available. So, I don't think that means Aviva has to maintain one proposed position made during its handling of the claim.
- I appreciate that there have been ongoing developments since Mr H complained. However, my decision focuses on what happened up until Mr H made his complaint and Aviva responded to it. And, having considered the available evidence, I think Aviva have acted fairly.

My final decision

I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 January 2024.

Anna Wilshaw
Ombudsman