

The complaint

Mr S has complained about Vitality Life Limited's decision to terminate his claim under his income protection insurance policy.

What happened

Mr S was a self-employed financial adviser. He held an income protection insurance policy with Vitality. The policy, after a deferred period of a month, would pay a monthly benefit of £675 for a period of up to 24 months if Mr S were unable to perform his occupation due to illness or injury.

In October 2018, Mr S stopped working after experiencing certain neurological symptoms. He was later diagnosed as having suffered a lacunar stroke.

Mr S made a claim under his policy.

After obtaining further information, Vitality initially declined the claim. Mr S appealed against that decision and in June 2019 Vitality therefore arranged for him to undergo an independent medical examination by a consultant clinical psychologist (who I'll call "Dr C").

Dr C concluded that Mr S was capable of returning to work as a financial adviser provided it was in a less pressurised environment than that he had been working in immediately before he suffered his stroke.

In August 2019, having considered Dr C's report, and having learned that Mr S had recently had to attend hospital after experiencing symptoms which might be indicative of another stroke, Vitality agreed to accept the claim from the end of the deferred period until the end of August 2019. However, it said that benefit payments beyond this date would be subject to the outcome of an assessment by its rehabilitation consultant.

In October 2019, Vitality's rehabilitation consultant spoke to Mr S who reported that there was no opportunity to perform his role in a less pressurised environment and he therefore didn't feel able to attempt any return to work.

Later in October 2019, Vitality told Mr S it was terminating his claim with effect from the end of that month. This was because it felt the evidence indicated he was capable of making a gradual return to work.

Mr S was unhappy at Vitality's decision. He referred his complaint to us.

Our investigator recommended that the complaint should not be upheld. She was satisfied Vitality had acted fairly.

Mr S didn't accept the investigator's findings. He considered that he no longer had the cognitive ability or energy to do the job of a financial adviser. He provided a letter from his GP to this effect.

In view of the continued disagreement, the matter has been passed to me for 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 policy states that benefit will be paid to Mr S if illness or injury makes him unable to perform the material and substantial duties of his occupation. The policy explains that these are the duties that are normally needed to do his occupation and that cannot reasonably be omitted or modified by him or his employer.

Mr S has explained that he is self-employed but within a network and he thus had challenging targets which he was expected to meet.

Mr S stopped working because of fatigue and difficulty in concentrating. He was concerned that this would affect his ability to give accurate and reliable advice to customers.

Dr C met Mr S in June 2019. Dr C acknowledged that Mr S had been affected by his stroke. He said:

“The indications are that his memory is diminished and that a proneness to mental fatigue is affecting his capacity to think clearly and precisely enough at the right speed.”

Dr C also acknowledged that Mr S was worried about his capacity to be a sufficiently competent financial adviser, not only in terms of being reliable enough for his clients but also in terms of being able to tolerate the pressure of meeting his targets.

However, Dr C held a more positive view than Mr S about Mr S's work capability. He said:

“He has a good intellect and there are all sorts of methods for overcoming non-catastrophic diminution in memory functioning (e.g. reminder systems, lots of writing down, etc).”

Dr C therefore considered that Mr S was capable of returning to work as a financial adviser. However, he considered it unlikely that Mr S would be able to return to exactly the same work environment he was in previously because there appeared to be too much pressure for him to cope with in that role. Instead, he recommended that Mr S seek a gentler and more self-determining way of working, perhaps as a standalone self-employed financial adviser. He considered that Mr S would benefit from having a rehabilitation consultant to help give him the confidence that a return to his profession was achievable and to assist him in planning this.

The rehabilitation consultant spoke to Mr S in October 2019. She reported that Mr S maintained that he was unfit to return to the environment in which he'd previously been working and that he considered he was therefore entitled to continued payment of benefit. She said he considered his previous job environment was typical of those for a financial adviser and he therefore disputed that there were any less pressurised roles in which he could work as had been suggested by Dr C. He further pointed out that, even if such a role did exist, he would now need to regain his professional registration which would involve attending a five day training course and passing a series of exams. He didn't believe he had the cognitive ability to do this. The consultant concluded it was not possible to offer rehabilitation recommendations for Mr S because he was unlikely to engage in the process.

It was following this that Vitality terminated the claim. It considered that Mr S was not medically prevented from returning to work.

At the time Vitality terminated the claim, his GP considered that Mr S was still unfit to work. He continued to hold that opinion and during the course of our investigation he wrote to Vitality stating:

"[Mr S] continues to suffer from difficulty in processing information and concentrating. He is unable to cope with stressful situations and is unable to work with time pressures. I feel his residual cognitive issues mean that he is not fit return to work as a financial adviser given the complexity of the job."

Having considered all the evidence, I think it was fair for Vitality to terminate the claim. I recognise Mr S has been affected by his stroke and he is very worried about the prospect of attempting a return to work. I also acknowledge his GP's comments. However, Dr C carried out testing on Mr S and concluded that he was not impaired from doing the job of a financial adviser. The main obstacle to returning to work appeared to be the very pressurised environment he had been working in previously and Mr S's own reservations.

I sympathise with Mr S who clearly has genuine concerns, both on his own behalf and on behalf of his clients, if he were to go back to work. But his own lack of belief in his cognitive ability and concentration levels does not outweigh the opinion of the medical professional who assessed him and who had confidence in his capacity to perform his occupation. And I don't consider that Mr S has shown his symptoms following the stroke mean he is incapable of passing the necessary exams to resume his career.

The main concern of Dr C was the particular working environment of Mr S in which he faced difficult targets and which placed him under undue stress. Dr C considered that Mr S should seek a less stressful position to practice his profession. The test for incapacity under the policy is whether Mr S is capable of performing the material and substantial duties of his occupation so if Mr S was capable of performing his occupation in a different environment, he would not be entitled to continued benefit.

Mr S says that Dr C's suggestion is unrealistic and no such positions exist. However, while I understand this is Mr S's view, I don't think it was a reasonable position for him to take. While there will be a certain level of pressure in any financial adviser role, I would generally expect that some working environments will be more stressful than others. I don't consider that Mr S has shown that meeting difficult targets was an integral part of a financial adviser's role. Vitality had tried to help him by offering rehabilitation support. When Mr S didn't engage with that support, I consider it was reasonable for Vitality to terminate his claim.

In summary, while Mr S has a lack of confidence in his capability of ever again giving reliable financial advice, the medical evidence indicates he can do this. And while I understand his reluctance to return to the workplace, I don't think this means Vitality is obliged to continue paying him benefit. I consider it was fair for Vitality to terminate his claim when it did.

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 S to accept or reject my decision before 9 April 2021.

David Poley
Ombudsman