DRN-2539880

The complaint

Mr D complains that Aviva Health UK Limited has unfairly classified his condition as chronic.

What happened

Both parties are aware of the background to this complaint, so I have only provided a brief summary of what happened below.

Mr D had access to group private medical insurance through his former employer. He made a successful claim on that policy in relation to his mental health, and went on to have psychologist and psychiatric appointments approved by Aviva. However, in 2019, Aviva said it wouldn't authorise any further appointments because it considered Mr D's mental health condition had become chronic.

Mr D complained. He said his condition wasn't chronic, that available medical evidence supported his position, and Aviva had provided a poor service during its handling of his claim. But Aviva maintained its position, so Mr D referred his complaint to this service.

Our investigator didn't think Aviva had acted fairly. He said the available medical evidence didn't suggest that Mr D's condition was currently chronic. Instead, he said it suggested that Mr D had a history of adverse reactions to medication, and had needed more time to stabilise on the medication he'd recently been prescribed before his condition could be considered to have left the acute phase.

Our investigator also said that Aviva had made a number of mistakes during its involvement with Mr D's claim. And that it had caused him some distress during what was already a difficult time. So, he recommended Aviva reimburse Mr D for the psychiatric appointment he'd gone on to self-fund after Aviva had refused further cover. And he also recommended it paid £500 compensation, to reflect the impact its mistakes had on Mr D.

Neither side agreed. Aviva said it had classified Mr D's condition as chronic in line with the terms of the policy. Mr D said his lack of treatment in late 2019 and early 2020 had directly affected his subsequent situation at work, which had ended in redundancy. He also said Aviva should still be paying for further appointments, and the compensation recommended did not go far enough to reflect the impact of Aviva's actions.

So, as no agreement was reached, the matter was 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.

Both sides have set out their positions at length and I would like to thank them for taking the time to do so. I acknowledge the strength of feeling about what has happened, but I do want to highlight that my findings will only focus on those matters I consider central to the outcome of this complaint. That means I will not address every single argument that has been raised, and I trust that won't be taken as a matter of discourtesy.

The policy terms define a chronic condition as follows:

"*A disease, illness or injury which 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.*"

And in relation to the metal health cover provided, the terms set out:

"*…We provide benefit for acute mental health conditions. This means we will pay for treatment which aims to lead to your full recovery.*

But:

We do not cover

- *treatment that is given solely to alleviate symptoms, or*
- *chronic psychiatric conditions.*

We consider a psychiatric condition to be chronic if:

- *it meets the definition of a chronic condition, or*
- *we have paid for your treatment for that condition or a related psychiatric condition during three separate one-year periods of cover. This will apply to acute flare-ups of a chronic condition, it will also apply if the treatment was not in consecutive one-year periods of cover.*

Aviva says Mr D's mental health condition had become chronic because it required ongoing or long-term monitoring, and needed ongoing or long-term control of symptoms.

Looking at the available evidence in this case, at the time Aviva reached this decision Mr D's condition had fluctuated, he'd attempted returns to work, and he'd been prescribed a number of different medications to try – most of which he had reacted badly to.

This negative reaction to previous medication is referred to in a psychiatric report of May 2019. The report sets out that Mr D had unsuccessfully tried a number of medications which had caused him to experience "*adverse side effects"* and which he "*could not tolerate*". The report also sets out that "*sensitivity to medication may be a problem*" for Mr D.

This is also referred to in another psychiatric report of October 2019, which reiterates Mr D was "*clearly sensitive to SSRI medication.*" The report sets out that there had been in improvement in Mr D's mental health and a phased return to work had been agreed. But also explains the psychiatrist wanted to see Mr D three to four times over the coming six to nine months, because they "*remained concerned about his mental state and his response to medication…*".

As I think our investigator rightly explained, the available evidence in this complaint does suggest that the treatment proposed for Mr D's mental health condition was done so in view of it needing time to stabilise on recently prescribed medication. The treatment proposed also related to a set period of time, given the new medication Mr K had recently started. And

it suggested that the main thing halting Mr D's improvement had been his previous reactions to medication.

So, I can't fairly conclude that the available medical evidence at the point Aviva categorised Mr D's condition as chronic did demonstrate that his condition met the chronic definition cited above. I don't think the evidence implied that Mr D's treatment was long-term or ongoing monitoring. Nor do I think it implied that Mr D would require ongoing or long-term control or relief of his symptoms either. And so, in the circumstances of this complaint, I'm not persuaded that it was fair or reasonable of Aviva to conclude that Mr D's condition was chronic when it did.

I acknowledge the arguments that have been presented in relation to whether or not Mr D's treatment could have been considered an acute episode of a chronic condition. But given that I have already found it was not fair of Aviva to categorise Mr D's condition as chronic when it did, I will not address this point any further here.

Mr D has told this service that he had his last approved psychiatric and psychologist appointments in November 2019. And in the six to nine month window that the psychiatrist had recommend Mr D been seen again (so up until July 2020), Mr D appears to have self-funded one appointment; with his psychiatrist in January 2020 at a personal cost to him of £190.

Given the findings reached above, I also think it right that Aviva reimburse Mr D for that expense. I am however aware that Mr D has said the lack of treatment that followed Aviva's decision directly impacted the situation he ended up finding himself in at work; where he was initially furloughed and then made redundant.

I am sorry to hear about the difficult circumstances Mr D found himself in and understand why he may perceive the lack of funded treatment to have had a direct impact on his work. But there is no contemporaneous medical evidence in this complaint to corroborate that Aviva's lack of cover directly led to Mr K's subsequent unemployment. And I must keep in mind that Aviva was not responsible for the actual mental health illness that Mr D had. Nor was it responsible for the decisions that Mr D's former employer made around his role.

Aviva's responsibility in this case related to the handling of Mr D's claim, and the authorisation of any eligible treatment under the group policy. I have already set out why I don't think Aviva should have categorised Mr D's condition as chronic when it did, and that it should reimburse the cost of the appointment he self-funded in the six to nine months that followed the October 2019 report. However, I do accept that Mr D did not have the full benefit of the additional treatment that his psychiatrist had recommended. And I can see that had cause Mr D both concern, upset, frustration and disappointment.

So I too think that Aviva need to compensate Mr D for the impact this had.

Mr D has set out in detail the concerns he has about the service Aviva provided. I won't recite each incident of concern here, but I agree that there were times when Aviva didn't provide the level of service that Mr D should have reasonably expected.

For example, Aviva provided Mr D with incorrect information. It also provided him with inconsistent information. And it didn't relay information to him when it could have done so.

The above instances caused Mr D both frustration, and further upset. And Aviva should compensate Mr D for the impact this had.

However, I can't agree that Aviva consistently provided a poor level of service. For example

it wasn't unreasonable of it to seek medical evidence to support Mr D's ongoing claim; the psychiatric reports it wanted to see. And it wasn't unreasonable of it to think that sending Mr D a gift was appropriate given the concerns he'd previously relayed to it. Like our investigator, I too accept Aviva likely misjudged just how strongly Mr D felt about matters when it sent that gift. But I don't think the gesture of a gift was in itself inappropriate.

Putting things right

I have already explained that I think Aviva should reimburse Mr D for the appointment he self-funded and compensate him for the impact its actions had on him. This compensation is not designed to be a punitive measure. It is designed to be a fair and proportionate reflection of the impact Aviva's mistakes had on Mr K. So any award I make will need to fairly reflect that.

Whilst I acknowledge the wider implications Mr D says Aviva's actions had on him, I have already explained why I cannot fairly attribute his loss of work directly to Aviva's actions. I do however accept that Mr D didn't have the benefit of further approved treatment. And that he didn't always receive the level of service that he should have reasonably expected from Aviva either. So, for these reasons, and the findings I have set out above, I think £500 is a fair and proportionate way of reflecting the impact that Aviva's actions had on Mr D.

To put things right, Aviva should:

- Reimburse Mr D for the psychiatric appointment he self-funded in January 2020.
- Pay Mr D £500 compensation.

My final decision

My final decision is that I uphold this complaint. Aviva Health UK Limited should put things right in the way I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 June 2021.

Jade Alexander
Ombudsman