

The complaint

Mr I complains that Aviva Life & Pensions UK Limited declined a claim he made on his employer's group income protection policy.

What happened

In January 2020 Mr I became absent from work with symptoms of anxiety and depression. He started a phased return to work in April 2020 but was signed off by his GP again in June 2020. The deferred period under the policy ended in July 2020.

Aviva told us that Mr I returned to work, with the support of their rehabilitation team. Mr I confirmed that he'd returned to work in December 2020. He also told us he'd stopped working for his employer in April 2021.

Mr I claimed on his employer's group income protection policy. The claim was declined on the basis that Mr I hadn't demonstrated that he had significant symptoms which prevented him from working. Aviva said the available information didn't support that Mr I was totally incapacitated and was unable to perform his insured occupation. They also noted that workplace matters were identified as one of the main triggers for Mr I's absence. Mr I complained but Aviva maintained their decision to decline the claim. Unhappy, Mr I complained to our service.

Our investigator looked into what happened and upheld Mr I's complaint. She thought that Aviva should pay the claim from the end of the deferred period together with 8% simple interest and £250 compensation. In summary, she didn't think Aviva had fairly declined the claim on the basis that the medical evidence didn't support that Mr I's absence was caused by issues at work, as opposed to illness.

Mr I accepted the investigator's opinion but Aviva asked an ombudsman to review the complaint. They said that Mr I had suffered from the relevant medical conditions for some time and had been able to attend interviews and get a new job in 2019 which wasn't that long before his absence started. Aviva said that the medical evidence didn't support the payment of the benefit and that Mr I was not being treated for non-work related events or depression. As Aviva didn't agree I need 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. It's for Mr I to show that he has a valid claim on the policy – not for Aviva to show that he doesn't.

The policy terms and conditions

In order to make a valid claim Mr I needs to demonstrate that he met the policy definition of

incapacity. That means that he needs to show that he meets the 'own occupation' definition in the policy which is:

The member's inability to perform on a full and part time basis the duties of his or her job role as a result of their illness or injury.

'Duties' are defined as:

'The material and substantial duties that:

- Are normally required to perform the job role for the policyholder, and
- Cannot reasonably be omitted or modified by the member or the policyholder

Duties do not include the journey to and from work.'

'Job role' is defined as:

'A member's job role with the policyholder at the time the incapacity starts'.

The policy does not cover:

'Absence caused by workplace matters, such as a relationship breakdown, workplace demands or failure to make reasonable adjustments are not covered'.

Was Mr I's claim unfairly declined?

It's not in dispute that Mr I suffered from diagnosed Obsessive Compulsive Disorder (OCD) and anxiety. The crux of this complaint is whether Aviva fairly concluded that, during the relevant period, he didn't meet the policy definition of incapacity.

I'm upholding Mr I's complaint because I'm satisfied that the medical evidence did demonstrate that he met the policy definition of incapacity during the relevant time. I'll explain why.

Mr I had been prescribed medication throughout 2019. Between September 2019 and January 2020 he was being prescribed increasing doses of medication. This was in line with his consultant's recommendation.

An occupational health report from around the time that Mr I became absent in January 2020 says that Mr I was fit to work. But, the report noted that he was finding it difficult to commute to work and undertake his duties, as well as some activities of daily living.

A further report from June 2020 said that Mr I wasn't fit to work. This was shortly after Mr I had attempted a phased return to work. The report noted that Mr I was unable to cope with work due to his levels of anxiety and lack of concentration and focus. It identified some shortfalls in the return to work process which were likely to have impacted on Mr I's return to work. The report also said Mr I was having counselling and continuing to take medication.

I've also taken into account the wider medical evidence, including the evidence of Mr I's consultant psychiatrist. Although this pre-dates the deferred period I think it adds helpful context as to the impact of Mr I's medical condition. For example, the reports explain that he has obsessional thinking both inside and outside of work. The psychiatrist recommended therapy with a specialist in OCD.

I've also taken into account a report from Mr I's psychologist, dated July 2020 which is shortly before the deferred period ended. The letter explains that Mr I had attended a total of 11 sessions since November 2019 and that Mr I was currently having fortnightly sessions. The report says:

'His OCD is characterised by obsessions in the form of thoughts about him losing knowledge of certain things and compulsions in the form of mental actions aimed at verifying whether this has happened. His OCD is primarily triggered at work and his main therapy goal is to improve his symptoms and functioning so that he is able to work again and excel in his career. He also has a chronic history of depression, which he partly attributes to the distress and inconvenience caused in his life by OCD...

It seems that his OCD is maintained in part by a tendency to catastrophically misinterpret a sense of "blankness" that he experiences when triggered and treats as evidence that he has indeed lost his knowledge. This in turn results in a state of hypervigilance which serves to increase his preoccupation and obsessions and makes them seem more out of control and threatening.

I believe [redacted] would benefit from an additional 10 sessions of therapy to focus more on this aspect of this presentation and increase his chances of successfully returning to work'.

Based on the evidence I've been provided with Mr I was suffering with symptoms of a recognised medical condition, was receiving medication and treatment from a psychologist during the deferred period based on the recommendation of his psychiatrist. So, although Mr I wasn't in regular contact with his GP, other than for fitness to work certificates, I don't think it follows that he didn't meet the definition of incapacity.

I also bear in mind that Mr I wasn't seeing his psychiatrist – but he was following the recommendations made, including increasing his medication and seeing a specialist therapist. So, although Mr I wasn't in contact with his psychiatrist I don't think that is highly significant to the outcome of this particular case.

The psychologist had worked with Mr I for a significant period of time and throughout the deferred period. And although she explained that work was the primary trigger I don't think that there's any suggestion of specific workplace issues which were impacting him, such as a breakdown in the working relationship. I also don't think that the overall evidence suggests that the primary issue for Mr I was workplace demands or a lack of reasonable adjustments. The evidence from the psychologist, which is from the deferred period, together with the wider supporting evidence from the psychiatrist suggests that Mr I's condition impacted him to such an extent that his condition caused obsessive thoughts and consequently increased his levels of hypervigilance, depression and preoccupation. Bearing in mind how this fitted together with Mr I's increasing levels of medication and therapy I don't think Aviva fairly concluded Mr I didn't meet the policy definition of incapacity.

I think Mr I had adequately demonstrated that he met the policy definition of incapacity on the basis of the medical evidence he'd provided. If Aviva had underlying concerns about the impact of the condition on his overall ability to do his job, or the strength of the medical evidence presented, it was open to them to refer Mr I for an independent medical examination once the claim had been accepted for a more in-depth report. But, on the basis of the evidence provided, I think Mr I had adequately demonstrated he had a valid claim.

I appreciate that Mr I feels that Aviva's decision to terminate his claim led to his employment coming to an end in April 2021. However, I've not seen sufficient evidence to persuade me that Aviva's decision to end the claim directly impacted on Mr I's decision to end his employment. Mr I told us that since leaving he continues to have had symptoms of OCD which have impacted his ability to work. I'm really sorry to hear that and I have a great deal of empathy for his position. However, once Mr I left the policyholder's employment, he was no longer covered by the group income protection scheme. So, I think the fairest way for Aviva to put things right is to pay the benefit for the time that Mr I was off work.

Mr I has raised concerns about the tax implications of receiving the policy benefit at this point in time. I understand that he's worked for a different company since leaving his employer and is not working at the moment. Based on the evidence I have available to me I've not seen evidence that there would be a detriment to Mr I in relation to the tax implications. And Mr I would need to address any further issues in relation to his taxable income with HMRC.

Putting things right

I think Aviva needs to put things right by paying:

- The policyholder the policy benefit from the date that the deferred period ended to the date that Mr I returned to work
- Mr I 8% simple interest per annum backdated to the dates each payment should have been made. If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr I how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate
- Mr I £250 compensation for the distress and inconvenience caused by his claim being unfairly declined. This has caused him considerable emotional upset and also financial hardship as he wasn't receiving the policy benefit when he should have been.

My final decision

I'm upholding Mr I's complaint and direct Aviva Life & Pensions UK Limited to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 19 May 2022.

Anna Wilshaw
Ombudsman