

## The complaint

Mrs C complains that Aviva Life & Pensions UK Limited terminated her income protection claim.

## What happened

Mrs C is covered under her employer's group income protection scheme, the aim of which is to provide her with an income in the event she can't work due to illness or injury.

In 2016, Mrs C stopped work in her part-time role because of post-traumatic stress disorder (PTSD) and anxiety. Aviva accepted she had a valid claim and benefit was paid.

Aviva then carried out a review of the claim. It arranged for Mrs C to have an independent medical examination (IME). Based on the IME report, Aviva thought Mrs C could return to work. It paid her benefit up to 30 June 2019 (though her employer continued to pay her in error until December 2019).

Mrs C later disputed Aviva's decision to terminate her claim. Aviva didn't change its decision, though it did pay a further four months benefit at 50% (to recognise an offer it had previously made to pay proportionate benefit). Unhappy with this, Mrs C brought a complaint to this service. Meanwhile, Mrs C returned to work in October 2020.

Our investigator didn't recommend the complaint be upheld. She thought Aviva's decision to terminate the claim had been reasonable.

I issued a provisional decision on 23 March 2022. Here's what I said:

*"The policy defines incapacity as:*

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

*In January 2019, Mrs C had an IME with Dr M (consultant in occupation medicine). In his report of March 2019, Dr M explained he thought Mrs C's perception of her workplace situation was acting as a major demotivating factor. He noted she had previously had five sessions of eye movement desensitisation and reprocessing (EMDR) in 2018 which she had found helpful. Dr M thought she may be helped by more EDMR and believed that a re-referral should take place. Finally, Dr M was of the opinion that Mrs C was fit to perform the material and substantial duties of her occupation on a part-time basis of 16 hours a week, and then increase her hours over approximately four months.*

*I accept that Dr M thought Mrs C could return to work. However, it's not clear why Aviva requested the IME take place with a consultant in occupational medicine. Given that Mrs C was experiencing mental health conditions, I would've expected the IME to take place with a consultant psychiatrist.*

*I understand that Mrs C's EDMR treatment began in September 2019 and ended in*

October 2020.

*Mrs C has provided a report from a consultant psychiatrist (Dr N) from June 2020. He said the most important treatment she was having was the EDMR treatment, as this dealt directly with her PTSD. He said he was hopeful Mrs C could return to work after she'd completed her EDMR treatment.*

*I appreciate that Dr N assessed Mrs C over a year after Dr M, but it's also the case that Dr N is a specialist in mental health, so this does add weight to Mrs C's view that she wasn't ready to go back to work before she'd completed the EDMR treatment.*

*After receiving Dr N's report, Aviva obtained Mrs C's GP records for 2019 and 2020. However, it didn't think these showed that she had ongoing debilitating mental health symptoms. I accept this, but I think Mrs C makes a reasonable point when she says that she was under the care of her therapist for the EDMR treatment, not her GP.*

*Given that Mrs C started her EDMR treatment only three months after Aviva's decision to terminate the claim, I think a reasonable way forward would be for Aviva to contact Mrs C's EDMR therapist for more information. It should ask her about Mrs C's symptoms, and when she thought Mrs C could return to work. If the therapist's evidence also supports that Mrs C couldn't return to work until her EDMR treatment ended, I'd expect Aviva to reconsider its decision to terminate the claim when it did."*

I asked both parties to provide any further comments before I reached a final decision.

Mrs C responded and said she thinks Aviva should prepare the letter to the therapist, and that both me and Mrs C should check and agree the letter before it's sent, to ensure Aviva asks for the correct information.

Aviva responded to say it doesn't agree with my provisional decision, and made the following main points:

- As Mrs C had already been diagnosed with a mental health condition, she didn't require a diagnosis. Therefore, it thought an expert in occupational medicine would be better placed to give an opinion on Mrs C's fitness for work.
- Dr M didn't say that Mrs C needed to have started or completed the EDMR treatment in order to return to work. Despite this, Mrs C didn't return to work until around 18 months later.
- It would like clarification on what it's required to ask Mrs C's therapist.
- It doesn't think it's reasonable to seek a medical opinion from a therapist 18 months after the treatment ended. It also thinks this is a pointless exercise.

### **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 don't require Aviva to send the letter to Mrs C's therapist to me (and Mrs C) to check before it's sent, though I'm happy to look at this if Aviva wishes to send it to me.

To be clear, I'd like Aviva to ask Mrs C's therapist for information about her symptoms whilst she was receiving treatment, and to find out if the therapist thinks Mrs C could have returned to work at that time. Aviva should then reconsider its decision to terminate Mrs C's claim. If Mrs C is unhappy with Aviva's decision, she can bring a new complaint to this service.

Aviva has explained its reasoning for obtaining the opinion of a consultant in occupational medicine. Whilst I appreciate Mrs C didn't need a diagnosis, I remain of the view that a mental health expert would've been better placed to comment on Mrs C's ability to work, given she was experiencing mental health conditions. I accept that Dr M didn't think that Mrs C needed to have started or completed her EDMR treatment before returning to work, though it's also the case that he's not a mental health expert. We have a conflicting opinion on this from Dr N (who is a consultant psychiatrist), but I acknowledge that this was some time later.

I've noted Aviva's comments about the length of time that's now passed since Mrs C had her EDMR treatment, and its view on how meaningful it might be to ask the therapist for their opinion on Mrs C's ability to work at the time. To clarify, we know that Dr N didn't think Mrs C could return to work until her EDMR treatment had finished. However, he didn't assess her until June 2020. Given that Mrs C's EDMR therapist started treating her a few months after Aviva made its decision to terminate the claim, I remain satisfied that the therapist's view on Mrs C's symptoms and ability to work will be relevant.

### **My final decision**

My final decision is that I uphold this complaint in part. I require Aviva Life & Pensions UK Limited to contact Mrs C's EDMR therapist to ask them about Mrs C's symptoms and whether they think she could've returned to work during the period when she was receiving EDMR treatment. Aviva should then reconsider its decision to terminate the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 28 April 2022.

Chantelle Hurn-Ryan  
**Ombudsman**