DRN-3465726

The complaint

Mr B is unhappy that Aviva Life & Pensions UK Limited declined a claim under a group income protection insurance policy he had the benefit of, and the time taken to consider his claim.

What happened

Towards the end of 2018 Mr B became absent from work and was signed off by his GP with depression.

Mr B had the benefit of a group income protection policy ('the policy') through his employer, which can pay out a percentage of his salary after he'd been off work for 52 weeks ('the deferred period'), monthly in arrears.

As Mr B hadn't returned to work, a claim was made on the policy around a year after the start of the deferred period. Aviva declined the claim. Based on the medical records it had obtained, Aviva concluded that the trigger for Mr B's absence (and his extended leave) was primarily due to workplace issues, so not covered under the policy.

Mr B didn't think that was fair, so he requested Aviva review its decision. He was also unhappy that Aviva had taken the decision without considering his occupational reports. After reviewing Mr B's appeal and further medical evidence, Aviva maintained its decision to decline the claim.

Further correspondence passed between the parties thereafter and in January 2019 Aviva issued a final response letter. It concluded that Aviva had fairly declined the claim but offered Mr B £250 in compensation for the length of time taken to consider his claim, before taking the decision to decline it in July 2020.

Unhappy, Mr B complained to our service. Our investigator didn't uphold his complaint. Mr B didn't agree with our investigator's findings and raised several points in reply. Our investigator considered these and ultimately concluded that they didn't change the outcome she'd reached.

Mr B asked for an Ombudsman's decision. So, this complaint is now with me to consider everything afresh 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.

Aviva has an obligation to handle claims fairly and promptly. And it mustn't unreasonably decline a claim.

In this case, subject to the remaining terms of the policy, the financial benefit under the policy will be paid each month if a member is incapacitated throughout the deferred period.

And, importantly, when making a claim, it's for Mr B to demonstrate that he met the definition of incapacity as defined by the policy terms.

Under the policy (in conjunction with the policy schedule):

- *Incapacity means 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*

- *Job role means a member's job role with the policyholder at the time incapacity starts.*

Taking into account the above definitions, I'm satisfied that the focus is on whether Mr B was unable to perform the role he was doing because of illness (or injury) and this must have continued throughout the entirety of the deferred period.

I'm not a medical expert. So, I've relied on all the evidence available to me when considering this issue.

It isn't disputed that Mr B was signed off by his GP as being unable to work due to depression during the deferred period (and subsequently). That's, of course, a relevant consideration here but the fact that Mr B was signed off by his GP (and his employer was advised by occupational health that he wasn't fit to work) isn't determinative.

I've also taken into account what Mr B says about the policyholder accepting that he meets the definition of a disabled person as defined by section 6 of the Equality Act 2010. But it doesn't automatically follow that Mr B was incapable of performing his job role throughout the entirety of the deferred period as a result of illness.

Was Mr B unable to work due to illness?

Having considered the medical evidence, Aviva has concluded that the main trigger for Mr B's absence from work in October 2018 was most likely perceived workplace issues. I don't think it's unreasonably reached that conclusion.

It's clear from the medical evidence that Mr B had been living with depression for a considerably long time prior to his sick leave, for which he'd been taking medication for.

Mr B says it's due to his mental health issues – compounded by the death of a close family member – which caused him to be unable to work in October 2018.

Around a month before Mr B's absence, his GP wrote that he'd had a particularly traumatic experience over the last year surrounding the death – and circumstances – of a close family member. But he was still able to work then.

I've also seen an occupational health report dated the end of October 2018 – so shortly after the start of the deferred period. It reflects:

- From the information provided by Mr B, his symptoms are due to his perception of a combination of both personal and work-related issues. These can feasibly cause stress and negatively impact on health from a psychological / physical perspective.

- A recommendation was made to hold a meeting to address Mr B's perception of work -place issues with the expectation that a pragmatic resolution is found suitable to both parties.

There's also a mental health assessment report dated July 2019 (so during the deferred period) which reflects that:

- In 2017, Mr B took a few weeks off work following a close family member dying and he was disciplined for taking this time off work. He fought his case - appealing in the months that followed which he found stressful. In the meantime, his role changed, and he was given different duties. He felt unsupported in his new task which compounded feelings of injustice and frustration. The first anniversary of the close family member's death passed, and his mental health deteriorated at that point.

- He was appealing the decision not to receive any sick pay from his employer whilst off work.

- The trauma of losing a close family member had no doubt impacted his current presentation. But "*problems with dispute with his employers can certainly not be helping matters*".

- His thoughts were "*dominated by work issues, wanting to resolve matters and feel settled enough to return to employment*."

It's further noted by occupational health in September 2019 that:

- Mr B "*continued to perceive stress in relation to work issues. This issue may act as an obstacle for a successful return to work, and therefore, I would suggest management to hold an open discussion with the employee, and resolve workplace issues".*

- "*with regard to work, he expressed the view that there are some ongoing issues. He explained that he has raised concerns which are currently being dealt with by [a workplace conciliation service]…"*

- *"given that it is his perception that there are some ongoing work issues, I recommend that these are resolved as swiftly as possible as these are likely to act as a barrier to successful return to work in the future. I consider him fit to engage with any necessary meetings to make progress with this*."

There's also an entry in his GP notes dated March 2019 reflecting that he had "*ongoing low mood, slight improvement. Main issues stress from work not being supportive and poor sleep…"*

So, although Mr B had been signed off work by his GP and not capable of attending his specific workplace for his employer – and occupational health advised that he wasn't fit to work during the deferred period - I'm not persuaded that he was unable to perform the role he was doing more generally for the deferred period because of illness.

All in all, I'm satisfied that the evidence supports Aviva's position that workplace issues were the main trigger for him initially being off work sick. And it's unlikely those underlying issues would've have existed if he was doing his job role at a different employer. Although, this coincided with the anniversary of the death of a close family member, I don't think Aviva has unreasonably concluded on a balance of probabilities that it was the workplace issues leading up to him being off sick, which were the main trigger.

I'm therefore satisfied Aviva has reasonably concluded that Mr B wasn't 'incapacitated' as defined by the policy.

When making this finding I've taken into account what Mr B says about Aviva discriminating against him by ignoring his mental health condition. Our service doesn't have the power to determine whether Aviva breached the Equality Act 2010 ('the Act'). Only a court can do that. However, when considering whether Aviva acted fairly and reasonably in this case, I am required to take the Act into account if it's relevant law.

Mr B says that he's disabled as defined the Act. Even if that's the case, I don't think Aviva has failed to take into account his mental health issues when considering the definition of incapacity under the policy. I think it's considered the medical evidence and concluded that he doesn't meet that definition. For the reasons set out above, I think it's fairly and reasonably reached that conclusion in this particular case.

When making this finding, I 've taken into account what Mr B says about still being unable to work, two years after his employment was terminated by the policyholder. Mr B says this supports his case that his absence was unrelated to work-related matters. However, I don't think Mr B being unable to work since his employment ended is determinative. I've placed more weight on the medical evidence from the deferred period, which I've summarised above.

In the final response letter dated January 2021, Aviva has also said that the medical evidence doesn't show that Mr B was experiencing symptoms at a level that would impact his ability to do his job role for an extended period. I don't think Aviva has acted unfairly or unreasonably by reaching this conclusion. Looking at the medical evidence from the deferred period, there isn't consistent and ongoing reference about how Mr B's medical condition was impacting him - and his ability to carry out his job role. Further, Mr B's symptoms – as reflected in the GP notes and other medical records from around the time of the deferred period - are largely self-reported. Mr B's GP records during the deferred period also reflect that his symptoms fluctuated during this time; sometimes feeling better – other times feeling worse.

Delays

Aviva accept that its service ought to have been better at times. It's said it should've chased up non-receipt of its employee questionnaire towards the start of Mr B's claim and had it done so, the process would've started sooner. And so, it's likely Mr B would've received its decision about the claim earlier. It's offered Mr B £250 compensation to acknowledge this. However, Aviva has also said that there were other delays caused by third parties outside of its control.

Looking at what happened here, I'm satisfied that there were delays which Aviva wasn't responsible for. I think the £250 offered fairly reflects the distress and inconvenience experienced by Mr B as a result of what Aviva got wrong here. I can understand why Mr B was unhappy with this but I don't think the delay would've resulted in a different outcome to his claim; although as Aviva said, it's likely a claims decision would've been made earlier if this initial delay hadn't happened.

I understand the compensation payment of £250 hasn't yet been made to Mr B as Aviva doesn't have his bank account details.

I know Mr B will be very disappointed with my decision. And I don't doubt that he has been through a very difficult time over many years. I hope it helps him to know that someone impartial and independent of the parties has looked into his concerns.

Putting things right

Aviva Life & Pensions UK Limited should pay Mr B £250 within 21 days from the date on which Mr B provides it with his bank account details to reflect the distress and inconvenience experienced by him**.**

My final decision

I uphold Mr B's complaint to the extent that Aviva Life & Pensions UK Limited ought to have reasonably provided him with a better service when assessing his claim. And direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 October 2022.

David Curtis-Johnson
Ombudsman