DRN-3712324

The complaint

Mr W complains because Aviva Insurance Limited hasn't paid a claim for permanent disability under his travel insurance policy.

What happened

Mr W held a travel insurance policy, provided by Aviva. Unfortunately, while on holiday abroad, Mr W had an accident and was injured. On his return to the UK, Mr W was hospitalised and continued to suffer physical effects from the accident. Aviva told Mr W that he could make a claim under the 'permanent disability' section of his policy if he was still experiencing difficulties after one year from the date of his accident.

Mr W sent a claim form to Aviva in late July 2019, explaining that he was retired. In October 2019 Aviva said it would need Mr W's GP's records and also asked Mr W to provide medical evidence that he would be prevented from all work if he was of working age, solely and directly as a result of his accident and subsequent injuries. In December 2019, Aviva received Mr W's GP's records as well as a letter from Mr W's GP setting out some information about his condition.

In June 2020, Aviva contacted the consultant that Mr W had seen most recently to ask for a report on Mr W's condition. The consultant said he couldn't answer the queries as he wasn't Mr W's treating clinician when he was undergoing rehabilitation following his injury. In September 2020, Aviva wrote to a different consultant asking the same question. That consultant replied to say he would need to meet with Mr W again before submitting a report.

In November 2020, Aviva wrote to Mr W to say that he didn't meet the policy definition of disablement which meant that he was *'permanently and entirely prevented from following any occupation'*. Mr W disputed this so Aviva reviewed the claim again and, in January 2021, Aviva said it would need Mr W to have an independent medical examination ('IME'). Mr W again disputed this.

In April 2021, Aviva sent Mr W a final response saying his claim was declined because he had a history of ankylosing spondylitis ('AS') which was likely to be a significant factor in the presentation of his condition. Aviva reiterated its offer for Mr W to have an IME.

Unhappy, Mr W brought his complaint to our service.

One of our investigators looked into what had happened. She said she didn't think Mr W was eligible to claim for permanent disability, as he wasn't working at the time of his accident. However, she recommended that Aviva should pay Mr W £600 compensation for the distress and inconvenience he'd experienced. Our investigator said this was because it should have been apparent to Aviva from the outset that Mr W wasn't eligible to claim.

Mr W didn't agree with our investigator's findings. Aviva didn't either. Aviva said the scope of cover under the permanent disability section of Mr W's policy wasn't limited to those who worked and, if a person was retired – as Mr W was at the time of his accident – the test would be whether that person was able to undertake any job. Aviva said if the correct

medical evidence in support of the policy criteria was provided it would accept the claim. In relation to our investigator's compensation recommendation, Aviva said it didn't agree that it had falsely raised Mr W's expectations, as it wouldn't have declined the claim because he was retired.

As a resolution couldn't be reached, Mr W's complaint was referred to me. I made my provisional decision in August 2022. In it, I said:

'Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims promptly and fairly and shouldn't unreasonably reject a claim. The rules also say an insurer must provide reasonable guidance to help a policyholder make a claim and provide appropriate information on its progress. I've taken these rules into account when making my provisional decision about Mr W's complaint.

Mr W's claim

The terms and conditions of Mr W's policy, under the heading 'Accidental death or permanent disability', say Aviva will:

> *'cover you if you suffer a serious accidental bodily injury during your trip which requires immediate and urgent medical attention and leads solely, directly and independently of any other cause to:*
>
> *…*
>
> - *disablement which means that you are permanently and entirely prevented from following any occupation suited to your education, experience and capability and this disablement has lasted for at least one year from the date you sustained the injury, or has been confirmed as permanent with no prospect of improvement by the treating doctor.'*

Aviva has never sought to decline Mr W's claim on the basis that he was retired at the time of the accident and Aviva has said this doesn't make Mr W ineligible to claim. As Mr W's eligibility to claim on this basis isn't in dispute, it's not necessary for me to make a finding on this point.

Instead, Aviva has said Mr W hasn't provided medical evidence to show that he is:

- *permanently and entirely prevented from following any occupation (either lasting for at least one year from the date of his accident or permanently, with no prospect of improvement); and*
- *that this has resulted solely and directly from the accident, and independently of any other cause (i.e. Mr W's AS).*

It's not part of my role to reach my own medical conclusions about Mr W's medical condition or to substitute expert medical opinion with my own. When making my provisional decision, I've considered whether I think Aviva's current position is fair and reasonable based on the available medical evidence in this case.

Mr W's GP, in a report dated 16 December 2019, said:

> *'…Prior to this accident he was well and mobile in spite of the pre-existing ankylosing spondylitis… I referred him to a rheumatologist to review his ankylosing spondylitis in case this was the cause of his symptoms. It was subsequently discovered that the*

> *symptoms were due to the injury…This is the stage he is at now some 18 months following the original accident and although he has made a small amount of progress it is extremely unlikely that he will get significantly better in the future. He would therefore be completely unable to carry out the activities that he was previously engaged in. This would include work were he to be in that role'.*

I appreciate this medical evidence states that Mr W's AS was discovered not to be the cause of his symptoms and that Mr W would be unable to work. But, when considering claims of this type, an insurer would generally expect to see evidence from a treating consultant setting out their expert medical opinion about the policyholder's abilities and/or the impact of any pre-existing medical conditions on these abilities. I don't think this is unreasonable and I wouldn't generally expect an insurer to accept a claim of this nature based on a GP statement alone. A consultant is a specialist in their field, so their expert medical opinion therefore carries significant persuasive weight.

Aviva did seek reports from two of Mr W's consultants (albeit after what I think was a significant delay, which I've addressed in more detail later in this provisional decision), but these weren't forthcoming. So, Aviva instead asked Mr W to have an IME.

I think Aviva is reasonably entitled to request an IME. The terms and conditions of Mr W's policy say:

> *'When there is a claim for injury or illness, we may ask for, and will pay for, any insured person to be medically examined on our behalf.'*

It's for Mr W to demonstrate that he has a valid claim under his policy and that he meets the criteria for a permanent disability benefit to be paid to him. I understand Mr W feels the letter from his GP, together with his medical records (including previous consultants' letters) demonstrates that he was unable to work and that his AS was dormant. But, based on the medical information I've seen, I'm afraid I don't agree. Although Mr W's AS is described as 'quiescent' in one report, in other records Mr W's AS was noted as 'moderate', giving 'brittle, poor quality bone, which are likely to break', and a post-accident report noted 'classic features of longstanding ankylosing spondylitis'. A post-accident X-ray also recorded 'Appearances are consistent with Ankylosing Spondylitis. No definite bone injury is seen'.

Overall, based on the medical evidence I've seen, I don't think it's unfair or unreasonable in the circumstances for Aviva to require a further medical opinion in the form of an IME commenting on Mr W's ability to follow any occupation, as well as confirmation of whether Mr W's AS contributed to his condition or whether this was solely and directly as a result of his accident.

I appreciate Mr W has concerns about the accuracy of an IME now, given the length of time that has passed. I think Aviva should have considered requesting an IME much sooner – which I've elaborated on in more detail below. And, I understand Mr W was initially unable to attend an IME as he was shielding due to Covid-19. However, I don't see any reason why an IME wouldn't involve consideration of Mr W's medical records and result in an expert medical opinion about Mr W's condition following (and progress since) his accident. I understand Mr W's condition may have improved somewhat since this claim was first made in 2019, but an IME can take this into account. Overall, I don't currently think it would be fair or reasonable to ask Aviva to pay Mr W's claim based on the available medical evidence and I think Mr W's attendance at an IME is the means through which this claim can reasonably be progressed.

If Mr W decides to proceed with the IME, he'll need to correspond directly with Aviva about this going forward. And, if Mr W is unhappy with any eventual claims decision made by Aviva

following any IME, he would be entitled to make a new complaint about the matter.

This means I don't currently intend to direct Aviva to do anything further in respect of Mr W's claim.

Aviva's handling of Mr W's claim

Aviva didn't deal with this claim as I'd have expected it to. I don't think it progressed the claim promptly, and I don't think it kept Mr W updated as it should have.

Mr W first made his claim in July 2019. When Mr W contacted Aviva for an update in October 2019, Aviva's records show the claim had 'slipped through the crack'. Aviva's records show Mr W had to chase Aviva numerous times for updates throughout the course of the claim. In particular, during the period December 2019 to June 2020, Aviva seems to have made no significant progress in dealing with the matter.

When Mr W's medical records were first reviewed by Aviva's medical officer in December 2019, his AS was noted as:

> *'…to likely be a significant factor in his presentation, in the way that he has sustained an unstable spinal fracture after a fall … , that we may consider not to have been expected to have caused such significant injury in a patient without AS.'*

However, no further action appears to have been taken by Aviva in terms of making specific enquiries about this issue. The first time Mr W was clearly informed of his AS potentially impacting the claim wasn't until well over a year later, on 8 April 2021.

Mr W's GP's letter dated 16 December 2019 was received by Aviva on 18 December 2019 but doesn't appear to have been reviewed until March 2020. In both March 2020 and May 2020 Aviva's medical officer recommended contacting Mr W's consultants for a medical report but this wasn't actioned until June 2020. When Aviva eventually contacted the first consultant, it didn't notify Mr W of this in advance and Mr W subsequently told Aviva he wasn't surprised that this consultant couldn't answer Aviva's queries, as that consultant was never involved in Mr W's treatment following his accident.

A letter from the second consultant relating to Mr W's claim was received by Aviva in July 2020 but wasn't actioned and reviewed until September 2020. It then took Aviva until January 2021 to request that Mr W attend an IME. In my opinion, Aviva's notes indicate quite clearly that the IME request was only made based on the potential involvement of our service in Mr W's complaint.

Overall, I think Aviva's delays in progressing this claim were undue and excessive, and I think Aviva could reasonably have explored the possibility of requesting an IME and/or specifically investigating the potential impact of Mr W's AS on his claim much sooner than it did. I also think Aviva failed to provide Mr W with appropriate information on the progress of his claim at reasonable intervals, which meant Mr W had to repeatedly chase Aviva for updates. And, when Aviva did communicate with Mr W, I think it could have been clearer about what medical information it needed, and why.
I'm satisfied that Aviva's handling of this claim caused Mr W significant distress and inconvenience. I think Aviva should pay Mr W compensation to reflect the impact of its actions on him, and I currently think a payment of £500 compensation would be fair and reasonable in the circumstances.'

Aviva accepted my provisional decision. Mr W responded in some detail.

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've taken everything Mr W has said into account. I understand Mr W says he was told by one consultant that he had good bone density, and that another consultant didn't support the findings of the x-ray which I quoted. I also understand that Mr W says his GP's letter dated 16 December 2019 was passing on the comments of a consultant. But, based on the medical evidence which I've seen, I remain persuaded that an IME is necessary for Aviva to fairly assess the claim.

Mr W says he has never refused or disputed IME involvement and is happy to undertake an independent assessment. I understand the process of arranging an IME has now begun.

As I mentioned in my provisional decision, any potential dispute about any eventual claims decision following an IME would need to be the subject of a new complaint.

I agree with many of the points which Mr W has reiterated about Aviva's handling of his claim. I understand Mr W provided the information he was asked for and that Aviva said it would get in contact with other parties if required. I also understand that Aviva failed to contact who Mr W says are two key consultants for reports, didn't tell Mr W that it hadn't received a report from one consultant and didn't follow up with a different consultant who had offered to see Mr W and produce a report. I note that Mr W says Aviva changed both its reasons for declining his claim and its interpretation of the policy.

I took Aviva's overall handling of this claim into account when making my provisional award of £500 compensation. An award at this level falls into the category of compensation which we'd consider is warranted for the impact of mistakes which have caused significant inconvenience and considerable distress.

I'm satisfied that an award of £500 compensation is fair and reasonable in the circumstances for the overall impact of Aviva's actions on Mr W.

Putting things right

Aviva Insurance Limited needs to put things right by paying Mr W £500 compensation for the distress and inconvenience he experienced.

Aviva Insurance Limited must pay the compensation within 28 days of the date on which we tell it that Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

My final decision is that I uphold Mr W's complaint in part. I direct Aviva Insurance 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 W to accept or reject my decision before 21 October 2022.

Leah Nagle
Ombudsman