

The complaint

Ms X is unhappy Aviva Life & Pensions UK Limited (Aviva) declined her claim on her income protection policy.

What happened

Ms X has a group income protection policy through her employer that is underwritten by Aviva.

Unfortunately, in May 2019 she was diagnosed with having a low-grade tumour in her brain and was told that due to the location, it was too high risk to operate on. Ms X says during this time she refused to process and understand the long-term impact of her diagnosis - she told very few people about her diagnosis and continued to work.

In November 2019, it was agreed that the tumour hadn't changed size and her seizures were more controlled, so they wouldn't operate and it would be monitored annually for any changes.

Ms X then went on annual leave for three weeks. When she returned to work in December, she started having breakthrough seizures, continual issues with her throat and her memory function began to decrease. She said she began struggling to cope at work.

In January 2020, she was signed off work by her doctor. She returned to work for two days in February but wasn't able to continue working and her long-term absence started on 11 February 2020.

Ms X submitted a claim on her policy. Aviva said the evidence suggested her absence was due to work place stress, so it wasn't covered by the policy. In addition, they didn't think there was enough medical evidence to show she was unable to perform in her role.

Aviva said there was evidence from July 2020 that there was a deterioration in her symptoms as she reported extreme fatigue, memory impairment and constipation. But it still didn't think her symptoms were severe enough to render her incapacitated under the policy terms and there wasn't a detailed explanation as to how they affected her ability to work.

Aviva also explained, as Ms X had been off work, they wouldn't be able to consider a new claim from July 2020 in any event, because she wouldn't meet the Actively at Work (AAW) criteria under the policy which says the employee must return to work for at least one day undertaking all their normal duties.

This concerned Ms X. She was worried she may require brain surgery in the future and her subsequent absence wouldn't be covered. Aviva said they would be prepared to waive the AAW clause if surgery was needed, and they would cover Ms X's period of recovery until she returned to work. They confirmed the 26 week deferred period would be reapplied from the date of her operation and any benefit payment would be made outside the policy terms.

Ms X remained concerned that if she needed surgery and is unable to return to work at all due to memory impairment (which she's been told is a likely risk following surgery), then she wouldn't be covered by her policy.

In October 2020 Ms X started a phased return to work. Aviva paid a proportionate benefit to support her through her phased return from 26 October 2020 to 6 December 2020. Ms X

questioned why Aviva would do this when they declined cover for her absence. Aviva explained they try and offer support when their customers return to work as much as possible, regardless of the reason for an absence.

Ms X referred a complaint to this service. Our investigator looked at what had happened and said he disagreed that the reason for Ms X's absence was work related stress. But he didn't think there was enough medical evidence to show why Ms X was unable to work, so he felt Aviva had declined the claim fairly.

Ms X remained unhappy. She didn't think Aviva or our service had given sufficient weight to the medical evidence from her GP and the occupational health reports. She reiterated the reason for her absence was anxiety caused by her various health concerns at that time, including the stress caused by processing her life changing diagnosis. She said her anxiety made any previous symptoms worse – the additional stress caused more seizures and further decline in her cognitive abilities, to the point where she couldn't continue working and needed a break to look after her mental health.

Ms X informed us she'd recently suffered from a similar deterioration of cognitive impairments that impacted her concentration, memory, sleep and low mood. She has subsequently been signed off work again and been diagnosed with post traumatic post disorder (PTSD) from when she was told about her brain tumour. Ms X provided a copy of a letter from her consultant psychotherapist confirming her diagnosis. Our investigator advised her that if she is absent due to illness then she should submit a claim and include this evidence for Aviva's consideration.

I issued a provisional decision explaining I was intending to uphold this complaint. In summary I said:

The relevant industry rules say an insurer must handle claims promptly and fairly and shouldn't unreasonably reject a claim.

I can understand why Aviva initially focused their claim decline on Ms X's workplace issue. But reading all the evidence in the round, I don't think the incident at work in February 2020 was the reason for her absence. I think it's evidence of the deterioration in Ms X's mental health and ability to function at work at that time. I'm persuaded the cause of Ms X's absence was the emergence of a mental health illness, brought on from the delayed acceptance of her brain tumour diagnosis.

Aviva argue that this can't be the case because Ms X received her initial diagnosis in May 2019 and she'd been able to continue to work after this. Although Ms X did continue to work following her initial diagnosis, I don't think her mental health condition was present at that stage. Her medical history shows she was suffering from seizures and side effects and problems with sleep in 2019, but it wasn't until her doctor's appointment on 23 January 2020 that she reported anxiety symptoms.

Ms X explained to Aviva that after her initial diagnosis, she refused to process she had a brain tumour and only told a few people. But once time had passed, she begun to accept her diagnosis and understand the long-term impact of her diagnosis. I think it's reasonable that this realisation then caused a delayed anxiety and started to impact her ability to work.

Ms X's medical records show that when she returned to work after three week's annual leave at the end of 2019, her seizures had increased and her memory function was deteriorating. I'm persuaded things came to a head with Ms X's anxiety in January 2020. She visited the doctor on multiple occasions with throat issues, an allergic reaction and anxiety. She was displaying significant worry and the doctor had to provide reassurances and she was signed off work.

After careful consideration of all the evidence, I'm persuaded this was the start of Ms X's illness and associated absence. Although Ms X returned to work in February, this was only

for two days and with what happened with her line manager, I think its further evidence of her inability to work at the time.

Aviva said the evidence doesn't provide enough detail on how Ms X's symptoms were impacting on her ability to work. But I disagree.

It's important to clarify that the location of Ms X's tumour is in the section of the brain responsible for memory, so this has resulted in cognitive impairment because she has trouble with memory and her concentration. It's clear from all the medical professionals, that additional stress and anxiety exaggerate her cognitive impairments.

Ms X's own testimony about her symptoms and how they impact her ability to work is persuasive. From 2020, she consistently reports concerns about her stress and anxiety causing more seizures, memory deterioration, lack of concentration and low mood. This is supported by both her doctor's notes and the occupational health reports which all agree she was unfit to work in 2020 and needed time away to focus on improving her mental health and wellbeing.

I think Ms X's visit to her doctor on 11 February 2020 is crucial. She is officially diagnosed with anxiety and signed off work. The notes say she is very anxious and has booked private therapy sessions. They discuss medication to also help treat anxiety, but understandably Ms X didn't want to go ahead as she was still trying to get her seizures under control with her other medication.

In February 2020 the consultant occupational health physician says Ms X needs to attend therapy to take in and process such a life changing diagnosis. It's recorded that in the previous year, she had pushed herself to continue in a practical mode, but she hadn't had time to emotionally process the diagnosis and the impact that it would have on her life. The report states its of key importance to address Ms X's mental health symptoms and she wouldn't be fit for work for 2-3 moths.

The report from May 2020 confirms Ms X was having seizure episodes twice a week and suffering from poor sleep and motivation, dizziness and fatigue. She reported a decrease in her mood and anxiety levels and that wasn't finding her phone sessions with her therapist as beneficial as the face-to-face ones prior to the covid-19 restrictions. The physician recorded Ms X had a heightened anxiety when thinking about returning to work because she was worried about making mistakes due to her cognitive and memory issues.

The occupation health reports are from two separate consultant physicians, so I've given considerable weight to their consistent opinions regarding Ms X's mental health, associated symptoms and her ability to work at that time. In addition, I'm persuaded by them because they're also in line with the opinion and recommendations from her treating doctor.

Taking everything into account, I'm persuaded that at the time of Ms X's absence in January 2020 her cognitive impairment had deteriorated considerably due to a build up of stress and anxiety. I'm satisfied there is enough medical evidence to show Ms X's symptoms were such that she was unable to carry out the duties and responsibilities of her role which involved high level communication and concentration. I think it's unreasonable for Aviva to conclude Ms X was able to perform such duties when she was suffering from anxiety and these symptoms increased her cognitive impairments. And I don't think the suggestion that working from home or part time was appropriate in the circumstances of this case.

I can see Aviva did discuss Ms X's claim with their CMO before deciding to decline the claim in August 2020. However, the reason for incapacity is recorded as seizures so the opinion only addresses her glioma and gives weight to the fact she still has her driving licence. It also focuses on her workplace issues and that she is able to work home. There is no assessment of her diagnosed anxiety and associated symptoms.

I note Ms X's concerns about how Aviva have reported on her claim after paying a proportionate benefit during her phased return to work. However, it's not unusual for insurers to offer support to their customers during returns to work, regardless of the cause of their absence. Ms X's phased return was for a short duration, so in the circumstances I'm pleased to see Aviva still offered this benefit to help support her through this transition back into the workplace, even though they had declined the claim.

It's clear Ms X is eager for Aviva to provide assurances for what may happen in the future if she requires surgery. I understand why this is important, however I don't think it's unreasonable Aviva have been unable to provide guarantees. At the time she was absent from work, they said they would waive the actively at work criteria if she did require surgery and I think this was fair in the circumstances.

Finally, Ms X has provided a letter from her treating consultant cognitive behavioural psychotherapist. In 2022 she was diagnosed with post-traumatic stress disorder around her glioma diagnosis. Although this isn't a material piece of evidence from the relevant period in question, the later diagnosis does show a progression from anxiety to PTSD. So this further persuades me that Ms X was suffering from debilitating anxiety during her absence.

To summarise, on balance, I'm not persuaded Aviva fairly declined this claim. I've carefully considered all the evidence, and I think it's reasonable to conclude an amalgamation of all the worries and concerns in Ms X's life developed into a mental health condition in January 2020 - she started to suffer from anxiety and is diagnosed with this by her GP. And I'm persuaded there is enough evidence to demonstrate that her symptoms prevented her from being able to work.

I explained I intended to uphold the complaint and ask Aviva Life & Pensions UK Limited to put things right by accepting the claim from 24 January 2020 until Ms X started her return to work in October 2020. 8% simple interest should also be added from the date that the payments should have been made, up to the date that the claim is settled. And pay an additional £750 for the distress and inconvenience caused to Ms X during an already difficult time. And to recognize the detrimental impact this has had on her anxiety.

Aviva accepted my recommendations. Ms X said the recommended offer of compensation wasn't sufficient to compensate for the stress and anxiety Aviva caused. In summary she said the £750 compensation won't cover the additional tax she'll be charged - at the point in time the claim should have been paid, she wasn't working so was paying less tax. And she also wanted me to take into account:

- That she had to return to work when she was unfit to do so – and her role was adjusted
- She was forced to go back to work because of Aviva's actions
- She had to go through this full complaint process whilst dealing with mental health issues

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 into account the further submissions from Ms X and carefully reconsidered all the relevant evidence. However, it's not changed my thoughts about the outcome of this complaint for the reasons I'll go on to explain.

In my provisional decision I set out why I don't think Aviva acted unfairly in relation to the Actively At Work (AAW) criteria. I do understand, why in the circumstances Ms X wanted

Aviva to provide assurances for what may happen in the future if she required surgery. But for the reasons already explained, I think it was fair they made an offer to waive the AAW criteria if Ms X did require surgery. And it was reasonable Aviva said the 26 week deferred period would be reapplied from the date of her operation.

I understand why Aviva said any benefit payment would be made outside the policy terms - because they couldn't provide guarantees about the future. I still think this was fair.

Ms X said that she forced to return to work as a result of what Aviva did during this claim. But I'm not persuaded Aviva can be held accountable for this. I say that because although I understand why she was concerned about the AAW criteria and how it may effect a future claim, ultimately it was Ms X's decision to go back to work. Aviva had no input in this.

Ms X has explained she only returned to work because she was worried she may need brain surgery following her MRI and she wouldn't be covered under her policy. But I've already set out why I don't think it was unreasonable Aviva couldn't provide assurances about what would happen if that was the case. And just because her claim had been declined, it didn't mean that futures claims wouldn't be cover needed mean one in the future

I note Ms X's comments on the "own occupation" cover. I appreciate Ms X has had adjustments to her role. She says this was because she was unable to fulfil her normal duties. This is supported by Occupational Health, but it doesn't automatically mean that Aviva would've paid a claim over this period. I determined that between 24 January 2020 and October 2020 there was enough medical evidence to show Ms X met the definition of incapacity. After this point I'm not persuaded there is enough medical evidence to show the bar for incapacity is still met.

Ms X is concerned that awarding, what she believes to be, a low compensation amount does not reflect fair redress for how Aviva treated her. She is worried it won't have any impact on Aviva's treatment of vulnerable customers in a similar position to her. However, our awards are not to punish financial firms or teach them a lesson.

Finally, Ms X's employer should work out any appropriate tax reductions and then Ms X can go to HMRC if there is anything to rectify.

Putting things right

Aviva Life & Pensions UK Limited need to put things right by:

- Accepting the claim from 24 January 2020 until Ms X started her return to work in October 2020.
- 8% simple interest should also be added from the date that the payments should have been made, up to the date that the claim is settled.
- Pay an additional £750 for the distress and inconvenience caused to Ms X during an already difficult time. And to recognize the detrimental impact this has had on her anxiety.

My final decision

I uphold this complaint against Aviva Life & Pensions UK Limited and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms X to accept or reject my decision before 3 April 2023.

Georgina Gill
Ombudsman