

## **The complaint**

Ms A has complained that Aviva Life & Pensions UK Limited hasn't met the claims she made under her group income protection policy.

## **What happened**

Ms A has the benefit of a group income protection policy. Benefit is payable if the policy definition of incapacity is met after a waiting period of 26 weeks.

Ms A made two claims under her policy. The first was for the period November 2017 to January 2019, the second from November 2019.

Aviva declined the claims so Ms A brought her complaint here. Our investigator didn't recommend that they be upheld. Ms A appealed. In summary she said:

- There was no reference in the 2015 documents to an exclusion for work related absences
- She was concerned about the investigator's comment regarding work related matters
- There was a four-year delay in raising incapacity as reason to decline the claim
- She didn't know that she had to show her incapacity she needed proof that she was unable to carry out her job
- She is seeking evidence regarding the impact of her illnesses on her ability to carry out the main tasks of her job
- She wasn't sure why her reported symptoms – loss of concentration, poor memory, slower working speed, mistakes and forgetfulness wouldn't cause incapacity

I issued a provisional decision on 22 March 2023. I said as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Firstly, I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. Our investigator set out in detail the medical evidence she had relied on and I'm not going to repeat it here as it isn't in dispute. Neither am I'm not going to respond to every single point made by the parties. No discourtesy is intended by this. Instead, I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I've fully reviewed the complete file. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*I can see that Ms A has been through a very stressful time. Having reviewed everything I agree with the conclusions reached by the investigator regarding the first period of absence, but not the second. I'll explain why:*

- I haven't disregarded the fact that Ms A had been signed off work by her GP and occupational health had reached a similar conclusion. But in the light of all the medical evidence, I don't find it was unfair of Aviva to decline the claim for the first period of absence. The evidence doesn't show that Ms A was incapable of performing the material and substantial duties of her occupation due to illness or injury, rather the evidence suggests it was for employment related reasons.*
- It is understandable why Ms A didn't feel able to work due to the situation there and how this impacted her. Although the earlier policy doesn't specifically exclude work related absences, the policy term does require the absences to be due to illness or injury that is to be medically supported. The parties are aware of the medical evidence - there are more than a dozen references to the situation at Ms A's workplace. Having considered this together with the representations made I can't say that Aviva treated Ms A unfairly in declining the claim Ms A made for the first absence period on the basis that she didn't meet the policy definition of incapacity.*
- Ms A returned to work but after some months, on 4 November 2019, again went off sick and submitted the second claim. Due to a change in the policy wording, for the second period the policy specifically doesn't cover work related absences. The medical evidence shows that Ms A had been diagnosed with depression and anxiety and how this impacted her. Aviva carried out a further medical review in particular because Ms A had advised that other conditions may have been causing her cognitive difficulties. The conclusion of these investigations was, to summarise, that there was no underlying organic cognitive deficit.*
- Nevertheless Ms A's psychiatrist reported on 28 February 2020 that Ms A has a significant anxiety disorder. He found she was unfit to work because of poor concentration, multiple mistakes and forgetfulness. Aviva has not suggested that these symptoms could be addressed with workplace adjustments.*
- An Occupational Health report in November 2019 concluded that Ms A's condition was not caused by work and that she was not fit for work or redeployment at that time. A further report dated 29 April 2020 said that the main issue around Ms A's return to work was her anxiety and associated cognitive difficulties. Commenting on her fitness for work the occupational physician concluded 'It would be important, if possible, to first adequately control her anxiety, such that any residual cognitive issues can be considered, but how realistic or possible this is would be best considered by her psychiatrist'.*
- Aviva felt that there was no evidence of any significant deterioration in Ms A's health prior to her ceasing work in November 2019. But in the light of the medical evidence referred to immediately above I am persuaded that Ms A was suffering from an illness which prevented her from carrying out the material and substantial duties of her role.*
- However as Ms A doesn't meet the policy criteria for linked absences, she would have needed to complete the policy deferred period of 26 weeks for her second claim to be admitted. The deferred period for the second claim ended on 3 May 2020. I'm satisfied the evidence I have referred to above demonstrates that Ms A was incapacitated during the deferred period. It may well be that she continued to meet the policy criteria for benefit to be paid for the whole 26 weeks and beyond, but the*

*evidence I have seen doesn't enable me to determine that as it concludes before the end of the deferred period.*

- *I accept Ms A's comment that she was unaware of the incapacity criteria – but as this is clearly in her policies, I can't say that Aviva is to blame in this regard.*

For the reasons given my provisional decision was that Ms A didn't meet the policy criteria for her first claim to be admitted. It didn't treat her unfairly by declining her first claim. But I wasn't minded to agree with Aviva's reasoning with regard to the second claim. I provisionally decided that Aviva should reassess Ms A's claim for the second period in the light of any further evidence she supplied.

Aviva was happy with the provisional decision. It indicated that with regard to the second period of absence Ms A would have been entitled to appeal at the time and it is willing to consider new evidence now. It said it would await further evidence from Ms A to support her claim for the second period of absence.

Ms A responded with further detailed points with respect to both the first and second absences from work. A representative made submissions on behalf of Ms A, but for simplicity I will just refer to Ms A.

### **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.

As in my provisional decision I would like to stress that all representations have been considered, but I've focused on what are the key issues.

With regard to the first period of absence, Ms A was strongly of the view that the medical evidence did show that Ms A was incapable of performing the material and substantial duties of her occupation due to illness. I do understand her strength of feeling about this and have gone back over the evidence in order to further consider the points she has made. But looking at the evidence considered by Aviva to date as a whole, I'm not persuaded that my provisional conclusion was incorrect. I do accept Ms A was unwell and experiencing great difficulties at work, but I can't say Aviva treated Ms A unfairly in concluding that she didn't meet the policy definition of incapacity at that time.

I acknowledge that Ms A would welcome the opportunity to collect further information regarding her first absence from the medical professionals who treated her. She recognises though that this decision though is looking at Aviva's response to date. Further evidence would need to be considered by Aviva. Ms A should be aware too that this service would not necessarily be able to re-consider the first absence. We *may* be able to do so if material new evidence which the ombudsman considers likely to affect the outcome has subsequently become available to Ms A.

With regard to the second period of absence I remain of the opinion that there is evidence that Ms A *did* meet the incapacity definition, but this doesn't extend beyond the deferred period. Aviva will reassess the second claim in the light of any further evidence or submissions that Ms A makes. Ms A has submitted several reports in support of the second period of absence. She considers it is reasonable to assume that Aviva has seen these reports, but they post-date the final response in respect of this claim. My decision is that Aviva must reassess the claim for the second period in the light of evidence Ms A submits. For clarity it is for her to show she meets the policy definition. She should not assume that

evidence she would like to be considered is already with Aviva. That is not to say Aviva won't request medical evidence in order to reassess the claim, but the onus is on Ms A in the first instance rather than the other way around.

### **My final decision**

My final decision is:

- Aviva Life & Pensions UK Limited didn't treat Ms A unfairly by declining her first claim.
- Aviva Life & Pensions UK Limited must reassess the claim for Ms A's second period of absence in the light of any further medical evidence that she submits.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 14 June 2023.

Lindsey Woloski  
**Ombudsman**