

The complaint

Ms U is unhappy that Aviva Life & Pensions UK Limited declined a claim made on a group income protection insurance policy.

What happened

Ms U had the benefit of a group income protection insurance policy through her employer ('the policy').

Subject to the remaining terms, the policy can pay out a monthly benefit if Ms U was too ill to work after the deferred period of 52 weeks.

Ms U underwent an arthroscopic subacromial decompression operation at the end of October 2022 and was signed off work by her GP. Ms U continued to be signed off work (except for a couple of months in 2023 when she returned to work on a phased basis but subsequently was advised that she wasn't fit to work by occupational health).

A claim was made on the policy, which was declined by Aviva. It concluded that Ms U hadn't established that she was unable to perform the duties of her job role (on a full or part time basis) because of injury or illness for the deferred period and beyond.

Unhappy, Ms U appealed that decision. After Aviva maintained its decision to decline the claim, and issued its final response, she brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold Ms U's complaint. Ms U disagreed and raised further points in reply. These didn't change our investigator's opinion, so Ms U's complaint has been passed to 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.

The relevant terms and conditions of the policy

Subject to the remaining terms of the policy, Aviva will pay the monthly benefit if:

immediately before the start of incapacity the member was actively at work and following their job role and, after the start of incapacity they are not following any other occupation, and the deferred period has finished.

Relevant to this complaint, incapacity is defined as:

The member's or former employee's inability to perform on a full and 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.

Has Aviva fairly and reasonably declined the claim?

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

When making a claim, it's for Ms U to establish her claim. It's not for Aviva to show that she doesn't.

I'm not a medical expert. So, I've relied on the evidence available to me when considering whether Aviva has acted fairly and reasonably the circumstances of this case.

I know Ms U has been through a very difficult time. I have every empathy for the situation she finds herself in and my decision is in no way intended to dismiss her symptoms.

However, for reasons I'll go onto explain, I'm satisfied Aviva has acted fairly and reasonably by declining the claim made on the policy.

- I'm satisfied that Aviva has carried out a fair and reasonable review of the medical evidence and other evidence provided when taking the decision to decline the claim. That includes referring Ms U's medical evidence to its' chief medical officer, who concluded that the medical evidence supported that Ms U was able to work in a part time capacity (with adjustments) in her sedentary desk-based role, before the end of the deferred period.
- I'm satisfied that Aviva has fairly concluded that the available medical evidence doesn't support that Ms U's functionality was restricted to such an extent that she was unable to carry out the job role (at least on a part time basis) by the end of the deferred period.
- I accept that Ms U's GP certified that Ms U was unable to work due to the surgery she had on her shoulder at the end of October 2022. I've taken this into account as it's relevant evidence. However, there's a specific incapacity definition that needs to be met in the policy terms for the benefit to be paid.
- The medical evidence supports that Ms U didn't recover quickly from the October 2022 operation. She ended up having restriction in movement, continued discomfort / pain and developed a frozen shoulder. During the deferred period, the medical evidence reflects that she was prescribed pain medication (which is said made no difference) and injections were administered.
- Ms U ended up having a further operation towards the end of the deferred period. And the medical evidence from just before the end of the deferred period reflects that this second operation had been successful to the extent that she had more movement.
- Ms U says that the operations didn't ultimately relieve the underlying reason for the first shoulder operation at the end of October 2022; symptoms including burning, heavy and painful sensations in her arms which affected her ability to do everyday tasks. These symptoms are referred to in her medical records before October 2022 – for example a letter from her consultant rheumatologist dated July 2022, who reported at the time that they could find no significant cause for this.
- I understand the point Ms U makes, and the medical evidence does support that Ms

U reported still having these symptoms even after the second operation. However, before the operation in October 2022, Ms U hadn't been signed off work because of those underlying symptoms and was seemingly able to work. She was signed off work because of the first operation and recovery.

- Further, there's evidence from Ms U's pain management consultant and consultant clinical neurophysiologist dated November 2023 – so within a few weeks of the end of the deferred period – which concludes that “there is no evidence of peripheral nerve lesion in either upper limb” and “sensory and motor nerve conduction studies in both upper limbs are normal”. Further, “examination showed that you have good muscle power, no muscle wasting, normal neurology in the upper limbs...I have told you I am at a loss like everyone else on why you have this pain...you are getting symptoms which are suggestive of a nerve pain, but they are not marrying up with the signs as you have normal neurological findings”.
- I've also taken into account the occupational health reports during the deferred period and before the second operation which conclude that Ms U wasn't fit to work. However, these reports were based on Ms U's self-reported symptoms and at a time when she still had limited range of motion in her shoulder which was largely corrected by the second operation towards the end of the deferred period. Further, the occupational health report dated January 2024 which is after the end of the deferred period also says that Ms U is unfit to work. However, again, this is based on her self-reported symptoms. It reflects that Ms U “describes having symptoms in both arms since 2021 of burning, heaviness and pain”. However, the report doesn't provide any persuasive insight into why Ms U was able to work with those symptoms up to October 2022 but was unable to do so during the deferred period (with adjustments) and / or after the second operation.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms U to accept or reject my decision before 21 February 2025.

David Curtis-Johnson
Ombudsman