

The complaint

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

What happened

Ms S has 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 S is too ill to work after the deferred period.

In September 2023, Ms S stopped working due to back pain and a claim was made on the policy during the deferred period of 26 weeks.

Aviva declined the claim because it said the medical evidence didn't support that Ms S was unable to complete the material and substantial duties of her role for the duration of the deferred period.

Unhappy, Ms S appealed that decision and after Aviva maintained its decision to decline the claim, she brought a complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold Ms S's complaint. Ms S disagreed so her 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.

Subject to the remaining terms of the policy, Aviva will pay the monthly benefit in the following circumstances:

The member's inability to perform on a full or part time basis the duties of their job role as a result of their illness or injury.

Duties are defined as:

The material and substantial duties that:

- are normally required to perform the job role for the policyholder; and
- perform a significant and integral part of the performance of the job role for the policyholder; and
- cannot reasonably be omitted or modified by the member of the policyholder.

Job role means:

A member's job role within the policyholder at the time incapacity starts.

Has Aviva fairly and reasonably declined the claim?

The Insurance Conduct of Business Sourcebook ('ICOBS') says insurers must act fairly and promptly when handling claims made under the policy. And it mustn't unreasonably decline a claim.

When making a claim, it's for Ms S to establish her claim.

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 S will be very disappointed, but I'm satisfied Aviva has fairly and reasonably declined the claim on the basis that the claim hasn't been established. I'll explain why.

- It isn't disputed that Ms S had been diagnosed with broad disc protrusion contacting nerve roots and mild bilateral foraminal stenosis. Nor is it disputed that that she was signed off work by her GP for periods of time during the deferred period with lumbago with sciatica / low back pain. Whilst that's relevant, there's a specific definition that needs to be met under the terms of the policy for the benefit to be paid.
- During the first half of the deferred period, there's reference in Ms S's medical records to her reporting that she was unable to sit or stand to do her role (which was desk-based) and that she was in pain sitting at her desk. However, the last entry is from December 2023 (around three months before the end of the deferred period) and the GP confirmed to Aviva that there were no other entries during the second half of the deferred period.
- A GP entry from November 2023 reflects that Ms S said she avoided prolonged sitting / standing so "off work until pain has gone".
- There's nothing to suggest that Ms S was prescribed with pain relief medication during the deferred period.
- A letter from the trauma and orthopaedic spine unit, also dated November 2023, reflects that Ms S's symptoms were "much better" and she'd been managing her symptoms with core muscle strengthening exercises. After discussion, it's reflected that Ms S was discharged from their care.
- I've taken into account Ms S's point that the reason why her symptoms were improving was due to her avoiding sitting for long periods and she wasn't working. However, I think what's reflected in the letter dated November 2023 is relevant along with the physical examination that was carried out at the time, which was overall positive.
- An occupational health report from December 2023 reflects that Ms S reported that her pain had "improved significantly since she was last working" and was doing regular exercise including low impact weightlifting. And whilst "she reports the pain is present when she is sitting or standing for prolong periods...when she is mobilising it resolves mostly, and she is able to undertake all her activities of daily living".
- The occupational health advisor advised a gradual/phased return to work with suitable rest / movement breaks.
- Ms S was able to do eight hours of consultancy work (in an unconnected profession) during the earlier part of the deferred period and did return to work for the

policyholder on a phased return during the second half of the deferred period, working a few hours a day with a long break, for a number of weeks before being signed off work again by her GP with lower back pain at the end of the deferred period.

My final decision

I don't uphold Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 26 December 2024.

David Curtis-Johnson
Ombudsman