

The complaint

Mr D is unhappy that Aviva Life & Pensions UK Limited (Aviva) has stopped his benefit payments under his income protection policy.

What happened

Mr D has a group income protection policy with his employer. The policy provides a benefit in certain circumstances after a deferred period of 52 weeks on an own occupation basis. Aviva is the underwriter.

Mr D's been absent from work since 26 May 2021 with depression and Bipolar Affective Disorder (BAD). He was signed off work initially from 26 May 2021 to 25 August 2021 because of stress and anxiety and then for bipolar, depression and anxiety. He's been under the care of a private psychiatrist since then and has Cognitive Behavioural Therapy (CBT). He's been prescribed medicine by his GP for his condition. More recently, Mr D was referred for a chronic fatigue assessment.

Mr D received income protection benefits from Aviva which started in May 2022. Aviva reviewed his claim along with the medical information and decided to terminate it from 30 June 2024. It said all of the evidence, including an independent medical examination (IME) carried out, was reviewed and Mr D no longer met the definition of incapacity set out in the terms and conditions of the policy.

Mr D provided Aviva with further information from his psychiatrist and therapist which was reviewed. But Aviva confirmed its position to terminate the claim didn't change. Mr D brought his complaint to this service. Our investigator upheld it. He thought Aviva should reinstate and backdate the benefit to June 2024 and recommended Aviva to pay £1,000 for the distress and inconvenience caused to Mr D. He explained Aviva hadn't asked the opinion of Mr D's treating psychiatrist on his ability to work or the safety of him doing so, and his psychiatrist supported his continued absence from work. Our investigator said that Mr D had a relapse in 2024: his medication was increased, and he was advised to consider medical retirement. He said the IME was conducted for one hour only and he thought their opinion was less persuasive when considering the remaining evidence. And the decision to terminate the claim has caused Mr D to relapse and his medical condition to worsen.

Aviva disagreed with the investigator's findings. It asked for the complaint to be referred to an ombudsman. So, it was passed to me.

In summary, Aviva said:

- It won't be changing its decision to stop the claim payments. It's assessment of the medical information resulted in a decision that Mr D no longer met the definition of incapacity as per the policy terms.
- The evidence suggests that Mr D could commence a return to work on a gradual phased basis. A proportionate benefit payment would be considered, and a number of recommendations were made as to the flexibility of the plan and taking into

account Mr D's circumstances.

- The IME was carried out by an independent consultant in occupational medicine, and he was the only clinician who had sight of all the available clinical evidence. He was provided with the treating psychiatrist's opinion. But this didn't change his opinion regarding Mr D's fitness for work.

I issued a provisional decision to both parties on 25 November 2024. I said the following:

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

At the outset, I wanted to acknowledge that the whole situation has been very difficult for Mr D. So, whilst I understand that Mr D has experienced low mood and things have been difficult for him mentally, my role is to reach an independent and impartial outcome that's fair and reasonable, based on the information available to me. I don't doubt that Mr D is unwell, but this doesn't automatically mean that Aviva must continue to pay his claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this income protection policy and the circumstances of Mr D's claim, to decide whether I think Aviva treated him fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr D. Rather it reflects the informal nature of our service, its remit and my role in it.

I've first considered the terms and conditions of this policy, as it forms the basis of the contract between Mr D's employer and Aviva.

The policy states for a claim to be paid the definition of incapacity must be met. Incapacity is defined as:

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

In a situation like this, where an insurer has accepted a claim and subsequently terminates that claim, it's for the insurer to show that the claimant no longer meets the definition of incapacity.

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Mr D's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available medical evidence to decide whether I think Aviva acted fairly and reasonably in terminating Mr D's claim.

I've been provided with detailed medical evidence relating to Mr D's diagnoses and symptoms from 2018 onwards. It's not in dispute that Mr D met the policy definition of incapacity from 2021 – 2024. Aviva was paying the claim during this time. The issue for me to determine is whether I think the medical evidence supports Aviva's decision that Mr D no longer meets the policy definition of incapacity as of June 2024.

Mr D's historic medical information was passed to a Consultant in Occupational Medicine for an IME. This included medical records from 2019 – 2023.

The IME report dated 24 January 2024 set out a detailed summary of Mr D's current status, ultimately concluding that Mr D 'is medically fit to perform the material and substantial duties of his usual occupation on either a full or part time basis.' He recommended a gradual return to work with a list of employer adjustments to facilitate this.

A further IME report dated 23 March 2024 considered supplemental information provided by Mr D and concluded that the initial opinion set out in the report of 24 January 2024 stood (that Mr D was medically fit for work with adjustments).

I've also considered a report provided by Mr D from a Doctor of Occupational Medicine who I'll call 'Dr S' dated 3 May 2024 which says that Mr D is 'not currently fit for work'. And I've taken into account a report from Mr D's therapist dated 22 February 2024, as well as reports from his Consultant Psychiatrist dated 18 March 2024 and 19 April 2024. In particular, I note that the Consultant Psychiatrist's report of 18 March 2024 says that Mr D should 'consider medical retirement'.

Having taken into account the level of detail and specific conclusions contained in the IME reports and the reports from Dr S and Mr D's Consultant Psychiatrist, I'm satisfied that, on balance, the evidence shows that it's likely that Mr D no longer met the policy definition of incapacity when Aviva terminated the claim in June 2024.

Our investigator said there was no evidence that Aviva had asked Mr D's treating psychiatrist about his ability to work, but I don't think there was any obligation on Aviva to do so. It's open to Mr D to provide further evidence from his psychiatrist if he wishes, and I'd expect Aviva to consider this, but it's not Aviva's role to obtain evidence in support of Mr D's claim on his behalf. And it's not up to Aviva to give any thought to the practical requirements of a graduated return to work plan – that's a matter which is between Mr D and his employer.

The test here is whether Mr D continues to meet the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely he does. There isn't sufficient evidence to say that Mr D is currently incapable to carry out the material and substantial duties of his own occupation.

Mr D says his psychiatrist, therapist and the occupational health assessments state that he's unfit for work. I've thought carefully about this and appreciate the information he's provided for us to consider. However, I have to look at the medical evidence in its totality. The letters he's provided predominantly relate to self-reported symptoms and Mr D is seeing these professionals with a view to help with the support of managing his condition. A recommendation that Mr D should consider retirement due to his symptoms doesn't automatically mean that Mr D continues to meet the policy definition of incapacity.

In contrast, the IME is objective and independent, and the consultant has reviewed Mr D's medical history and his medical records. The consultant is a specialist in occupational medicine, so I think the report does, on balance, carry more persuasive weight.

Mr D sent us further medical information after Aviva's final response was issued and since the complaint was passed for a final decision. This consisted of a report and communication related to a sleep study carried out on Mr D regarding the chronic fatigue dated September 2024, a letter from his GP regarding the medication referred to in the sleep study and a letter from his psychiatrist dated October 2024. Aviva has considered this information. It said the claim was stopped from 1 July 2024 and the new information doesn't relate to the period of the claim. The doctors/consultants who wrote these reports have not had sight of all of Mr D's medical information as the IME did. Therefore, Aviva's opinion remains unchanged that Mr D was fit to resume a return to work following the IME report dated January 2024.

I've also considered the information. The sleep consultant recommended antidepressant medication to help Mr D with his sleep, but no concerns were raised; Mr D was going to be seen again in two months. And the psychiatrist letter stated, 'there was no evidence of poor self-care, he was polite and cooperative as usual with good eye contact'. Whilst the GP refers to potential concerns raised by Mr D about the antidepressant medication, there isn't anything to persuade me that Mr D isn't unable to carry out the material and substantial duties of his own occupation. The evidence is insufficient to persuade me the claim has been terminated unfairly as of 30 June 2024. And as I've said above, I think the IME report carries, on balance, more persuasive weight.

Based on all the available evidence, I don't think Aviva has stopped Mr D's claim unfairly. I don't find that there are any reasonable grounds upon which I could direct Aviva to reinstate Mr D's claim. I'm sorry to disappoint Mr D but I'm not intending to uphold his complaint.

I now invite both parties to give me any additional information they would like me to consider before 9 December 2024.

Aviva responded to my provisional decision on 28 November 2024 and said it had nothing further to add.

Mr D responded on 6 December 2024 and provided further comments. He said he didn't agree with the outcome of the provisional decision. In summary he provided the following points for me to consider:

- Gathering the necessary information has been extremely mentally challenging for him and he's registered disabled.
- Due to his medical conditions, he is completely unable to work.
- There's no evidence to say that he can perform his own job role.
- Aviva's statement that the medical evidence doesn't cover the period of the claim isn't correct.
- Fatigue was a significant symptom which has contributed to him not being able to carry out the material and substantial duties of his own job role.
- He requests that greater weight be given to the opinions of his treating professionals.

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.

Having done so, I'm not persuaded that Mr D's further comments are sufficient to change the outcome of my provisional decision.

I've considered Mr D's further comments and there isn't anything within those that I haven't already considered. But for completeness, I will cover off the relevant points Mr D has raised.

I note Mr D has provided further supporting documentation, but I am unable to consider these as they do not form part of this complaint. As a reminder, Mr D's claim was stopped from 30 June 2024. So, any further information Mr D has, he will have to direct this to Aviva. And I confirm that the sleep study results have already been considered.

Ultimately, the test is, based on the evidence made available to me, whether Mr D continues to meet the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely he does. There isn't sufficient evidence to say that Mr D is currently incapable to carry out the material and substantial duties of his own occupation.

I appreciate that Mr D had a further sleep study but as I've already said, concerns weren't raised by the consultant who suggested a review after two months and recommended Mr D's GP to review his medication.

The IME was an independent report carried out against the policy definition of incapacity and I can't agree that this evidence isn't more persuasive on balance. It recommended a workplace adjustment which was detailed and took into account Mr D's condition with a view to his capacity to returning to work. Whilst Mr D's treating doctors have provided their own opinions as to Mr D's capacity to work, these are predominantly self-reported, and their role is to support Mr D in managing his condition. In contrast, the IME was carried out with a full review of Mr D's medical records and is objective so I can't dismiss this over the opinions of the treating doctors' opinions.

I understand that Mr D says he's registered disabled. But my role is to consider whether Aviva has treated him unfairly. And I don't think it has. It's decision to stop Mr D's income protection benefits is in line with the policy terms and conditions. The recommendations included in the IME have taken into account Mr D's condition and includes workplace adjustments in line with this. So, I can't say that Aviva has disregarded Mr D's condition.

I appreciate that Mr D is unwell and I'm sorry for this. But based on the available evidence, I don't think there are any reasonable grounds upon which I could direct Aviva to reinstate Mr D's claim.

My final decision

For the reasons given above, I don't uphold Mr D's complaint about Aviva Life & Pensions Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 6 January 2025.

Nimisha Radia
Ombudsman