

## **The complaint**

Mr M is unhappy that Aviva Life & Pensions UK Limited have declined a claim he made on his former employer's group income protection policy.

## **What happened**

Mr M was a member of his former employer's group income protection scheme. He was absent from work in April 2021 and claimed on the policy. Mr M experienced anxiety and concentration issues. He's since been diagnosed with ADHD and autism which he says was responsible for the symptoms. His employment was terminated in May 2024.

Aviva declined the claim in November 2022 because they didn't think that the medical evidence supported that Mr M was incapacitated throughout the 52 week deferred period set out in the policy terms. Aviva said that work stress and exam stress were the reasons Mr M was first absent and that a return to work could have been supported before the end of the deferred period.

Mr M complained because he didn't think Aviva had fairly declined the claim. He was also unhappy with the service he received from Aviva, including inaccuracies in the phone call notes and the lack of support with what medical information was required to prove he had a valid claim under the policy.

In February 2024 Aviva issued a Final Response Letter. They said their decision to decline the claim was fair, but they did offer a total of £300 compensation to Mr M. This was to apologise for errors made when communicating the outcome of the claim to Mr M.

Mr M complained to the Financial Ombudsman Service. In summary he said Aviva were unsupportive in helping him to get the medical evidence needed, they refused to accept any additional evidence regarding his disabilities and there were no 'workplace issues' or a breakdown of a relationship with his employer as Aviva had suggested.

Our investigator reviewed what happened and partly upheld Mr M's complaint. He didn't think Aviva had fairly declined the claim. So, he recommended the claim was reassessed. However, he thought the compensation Aviva had offered was fair and reasonable.

Mr M didn't think the compensation offered was enough. He explained that Aviva didn't take into consideration the verbal accounts he'd given them and attempted to get the case closed without all the medical evidence. He also highlighted that he'd tried to provide all the relevant medical information and had been provided with the wrong policy terms by Aviva. Mr M also provided more medical evidence in support of his position.

Aviva also didn't agree with the investigator's conclusions. They said that even without considering the workplace issues there wasn't evidence of a continued inability to work for the duration of the deferred period. So, the complaint was referred to me to make a decision.

In April 2025 I issued a provisional decision explaining that I was intending to uphold Mr M's complaint. I said:

The relevant rules and industry guidelines say that Aviva has a responsibility to deal with claims promptly and fairly. And they shouldn't reject a claim unreasonably.

### **The policy terms and conditions**

To claim on the policy Mr M needs to prove that he matches the policy definition of incapacity. There is a 52 week 'deferred period' before benefit is payable.

The relevant definition of incapacity is 'own occupation'. The terms say that means:

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

The terms also say:

'Absence caused by workplace matters, such as a relationship breakdown, workplace demands or failure to make reasonable adjustments are not covered'.

### **Did Aviva fairly decline the claim?**

I don't think it was fair and reasonable for Aviva to decline Mr M's claim. I say that because:

- I don't think it was reasonable to conclude, in the specific circumstances of Mr M's case that workplace matters were the main barrier to Mr M returning to work. As Aviva relies on the exclusion in the policy it's for them to prove, based on the available evidence, it is more likely than not, that it applies. I'm not persuaded they've done so in this case.
- Whilst Mr M was struggling with the demands of work, I'm not persuaded that he could have done his own occupation, including with another employer. I think it's likely he'd have had the same challenges with another employer because of his anxiety and low mood. I'm not persuaded Aviva proved there was a relationship breakdown, issues with workplace demands or a failure by the employer to make reasonable adjustments.
- The available evidence makes me think it is more likely Mr M was having ongoing issues with a lot of anxiety and low mood throughout the deferred period. During the relevant time Mr M was having symptoms associated with undiagnosed autism and ADHD. I'm persuaded, it's more likely, that this affected and/or exacerbated the mental health symptoms he was having.
- By the end of the deferred period Mr M was receiving care from a psychiatrist and had been prescribed anti-psychotic medication and medication for his ADHD. There was some improvement in his mental health symptoms, but he was still working with his psychiatrist to get the medication right. And the improvement was only very recent. So, I don't think this persuasively proves that Mr M was ready to return to work on a full or part time basis.
- I don't think it was reasonable for Aviva to conclude that Mr M's symptoms had improved to an extent where he could return to work. The complexity of Mr M's case, the evidence from the treating psychiatrist at the time and his recent diagnosis of ADHD make me think it would have been reasonable for Aviva to consider Mr M's ability to do his job in more detail before declining the claim. For

example, an independent medical examination or a functional capability assessment would have given a better understanding of Mr M's mental health and how it impacted his ability to do his job.

- Based on the evidence that's available to me I'm satisfied Mr M was actively involved with his treatment and was trying to get better. If Aviva thought that the employer or Mr M could do more to support his return to work, Aviva should have helped to start those conversations between them. In making that decision I've considered what the available medical evidence has said about Mr M's functionality at the relevant time, that he was receiving care from a psychiatrist and that he was on a new treatment regime.
- I've thought about whether it would be fair and reasonable to tell Aviva to instruct an independent expert to review Mr M's case and the medical evidence to reassess the claim. But, I don't think that's fair and reasonable in the circumstances of this case. Nearly three years has now passed since the end of the deferred period and four years since Mr M was first absent from work. So, I don't think it's fair and reasonable for the claim to be reassessed at this stage.
- For the reasons I've explained I think, it's more likely, Mr M proved that he was most likely incapacitated when the deferred period ended. And I'm not satisfied that Aviva have proved the exclusion applied. Mr M's employment ended in 2024 and it therefore seems unlikely to me that there would be any benefit from another review or that they could get more useful medical evidence now. So, when I consider everything, I think it's fairer for Aviva to pay the claim from the end of the deferred period until Mr M's employment ended.

### **Customer Service issues**

I'm partly upholding Mr M's complaint about the customer service issues he had. At this time I think Aviva should increase the compensation award to a total of £750. But, I'm not upholding all of Mr M's complaint points.

This is because:

- I wouldn't expect Aviva to explain to Mr M exactly what medical evidence he needed to give them to prove he has a valid claim. Mr M needed to provide the medical evidence he had and then Aviva needed to assess it. I appreciate that this might have been upsetting and frustrating for Mr M. But that isn't something an insurer is required to do. So, Aviva didn't do something wrong when they didn't tell Mr M specifically what medical evidence was needed.
- I've not seen evidence that proves Aviva wouldn't accept medical evidence or tried to close the case. So, it seems more likely Aviva had decided they were able to give Mr M an outcome about his claim, based on the evidence that was available. For the reasons I've given above, I'm not persuaded that the decision they made was fair and reasonable.
- From the evidence it's unclear when Mr M was sent the wrong policy terms. But this doesn't affect the outcome of this complaint. I'm satisfied that the claim was assessed using the relevant policy terms and conditions.
- Aviva accept that they could have given Mr M the outcome of the claim in a better, easier to understand way. I agree.

- Considering everything, I think a total of £750 compensation would more fairly reflect the distress and inconvenience caused to Mr M. I've considered the customer service issues Aviva has accepted should have been dealt with better. But, this increased compensation is for the impact of his claim being incorrectly declined. Mr M was already having a lot of worry and distress. But, the impact of the claim being declined would have caused more distress, upset and worry which has exacerbated his mental health symptoms. It's caused Mr M a lot of distress and inconvenience over many months. So, at this time I think Aviva should increase the total compensation to £750.

### **Putting things right**

At this time, if I need to give a final decision, I'm likely to ask Aviva to put things right by:

- Settling Mr M's claim in line with the remaining policy terms. Mr M should be aware that, as his former employer is the policyholder, Aviva may make the payment of the benefit to his former employer directly.
- Paying 8% simple interest per annum on the value of each payment from the date that it was due. This should be paid to Mr M directly. If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one so he can reclaim the tax from HM Revenue & Customs if appropriate.
- Paying Mr M a total of £750 compensation for the distress and inconvenience caused.

### **Responses to my provisional decision**

Mr M and Aviva both made further points in response to my provisional decision.

Mr M highlighted the significant financial, professional and health implications that Aviva's decision to decline the claim had on him. In summary the main points he made were:

- He's lost a lucrative, competitive position with his employer and had been unemployed for approximately a year
- He would lose a year's income
- He lost out on around five years of experience (a significant period of which was due to Aviva's actions)
- As a result of Aviva's actions, he lost his job
- Since leaving employment he had received legal advice about the circumstances of his employment being ended
- His health had seriously affected his efforts to administer this complaint, and he was on benefits
- The DWP had recently determined that he was not fit for employment support

activities at least until his complaint with the Financial Ombudsman Service was concluded

- He had recently been signposted to apply for Adult Disability Payment due to the impact of stress from dealing with the claim
- The distress and inconvenience caused to him spanned a period of 2 years and 7 months rather than several months
- He had spent hours contesting the outcome of the claim, which is difficult to quantify.

Aviva also made further points in response to my provisional decision. They said:

- They wanted to clarify with the policyholder whether backdated salary was paid and that any interest related to the benefit paid would be paid to the policyholder.
- It was reasonable for them to rely on the medical expert opinion of their Chief Medical Officer when assessing a claim
- Mr M had worked reduced hours and, on his own admittance, could have resumed work.
- The policyholder was aware of their obligations to Mr M, including continuing to accommodate the adjustments within the workplace. Additional support is not part of the policy cover.
- They were confused by the statement that Mr M couldn't work on a full or part time basis when he had returned to work.

So, I need to make a decision following the further information from Mr M and Aviva.

### **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 want to make it clear that whilst I won't respond to every single point made. I have carefully considered them all. I've focussed on what I think are the main issues here.

The rules that govern our service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to fulfil my statutory remit.

The further points from Mr M and Aviva haven't changed my overall thoughts about the outcome of the complaint. This is because:

- I explained in my provisional decision why I thought the medical evidence demonstrated that Mr M was too unwell to work. Aviva are entitled to rely on evidence from their Chief Medical Officer. However, as I explained in my provisional decision, I think there was other persuasive evidence which demonstrated Mr M wasn't able to return to work at the end of the deferred period. Therefore, it would have been fair and reasonable for Aviva to place more weight on that evidence.

- Aviva's representations don't show me that Mr M's return to work, in a limited capacity, indicates that the claim should not have been accepted. I think the overall evidence demonstrates that it was most likely Mr M wasn't able to work in his job and carry out the main duties. That included studying for professional qualifications which, in my opinion, he would have needed to do to carry on with his job for his current employer. It's also very likely he would have needed to carry out the same, or similar, qualifications to work elsewhere in the same job.
- The information provided by Aviva also doesn't show me that Mr M would have been able to carry out his job with a different employer. I don't think the evidence persuasively demonstrates that this was the main barrier to Mr M returning to work. On balance, I think Mr M was likely to have encountered the same difficulties when working for a different employer. That's because I think it's most likely that it was his mental health symptoms that were preventing him from working.
- I appreciate that Mr M has lost out on experience and income associated with his career progression. However, I also need to consider that Mr M was unwell and that he was absent from work because of it. This impacted his progression and career. So, I think it's unfair to conclude that the failure to pay the claim is fully responsible for Mr M's lack of progression and experience.
- I don't think it's fair and reasonable to direct Aviva to pay the benefit after Mr M's employment was terminated. Mr M's employer is the policyholder and the cover available ended when Mr M's employment did. Therefore, it's unfair to direct Aviva to pay a benefit when the contract of insurance had ended.
- The decision to terminate Mr M's employment was taken by his employer. Even if I accept the decline of the claim was a factor in the decision it doesn't change my thoughts about the overall outcome of this complaint. There were other factors which were relevant to that decision which were outside of Aviva's control. So, if Mr M has concerns about the circumstances of his termination of employment, that's something he needs to address with his employer.
- I have considered the length of time Mr M experienced distress and inconvenience when reaching my decision and that he had to contest the claim. The process of making a claim can take a long time – for example it's usually necessary to obtain medical information and the claim needs to be assessed. When making my decision I have considered that Mr M would have needed to wait for the deferred period to end and that the process of making a claim takes time. As I explained in my provisional decision, I think £750 compensation is fair and reasonable in all the circumstances.

## **Putting things right**

Aviva needs to resolve things by:

- Settling Mr M's claim according to the remaining policy terms. Mr M should be aware that, as his former employer is the policyholder, Aviva may make the payment of the benefit to his former employer directly.
- Paying 8% simple interest per annum on the value of each payment from the date that it was due. This should be paid to Mr M directly. If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one so he can reclaim the tax from HM

Revenue & Customers if appropriate.

- Paying Mr M a total of £750 compensation for the distress and inconvenience caused.

### **My final decision**

I'm upholding Mr M's complaint and direct Aviva Life & Pensions UK Limited to resolve things in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 August 2025.

Anna Wilshaw  
**Ombudsman**