

The complaint

Mr T complains that Aviva Insurance Limited declined a personal accident claim under his travel insurance policy.

What happened

Mr T held a travel insurance policy through his bank account, provided by Aviva. The policy included personal accident cover.

Mr T unfortunately suffered an accident in October 2018. He made a claim for permanent total disablement under his policy with Aviva. It declined the claim because it said the policy had a special condition which said the disability must happen within a year from the date of the accident. So, as Mr T had been able to work for over three years after the accident, Aviva said his claim didn't meet this policy requirement.

Mr T wasn't happy with Aviva's position, and he made a complaint. Aviva responded to this and said that the policy terms said that for a valid claim, there must be accidental bodily injury which results in permanent total disablement after 104 weeks from the date of the injury, and the policyholder must be unable to do any kind of job. Aviva said there was no evidence to show that Mr T met this policy condition.

Mr T then brought a complaint to our service and one of our investigators reviewed it. Having done so, she didn't think Aviva had acted fairly or reasonably when it declined the claim. So, she thought Aviva should pay the claim along with interest.

Aviva didn't agree with our investigator's findings. As no agreement was reached, the complaint was passed to me to decide. I issued my provisional decision on 12 June 2025. Here's what I said:

"Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. Insurers must also handle claims promptly and should provide reasonable information about the progress of a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr T's complaint."

The relevant policy terms define permanent total disablement ("PTD") as follows:

"A permanent and total disability that means you cannot do any kind of job."

Aviva says that to meet the definition, Mr T needs to be unable to do any kind of job, and not just any job he's suited for. I think the wording "any kind of job" is ambiguous. It's not clear if this means any kind of job which the insured would normally be able to do (in other words suited to them by way of education or experience), or any kind of job at all. It seems to me that if Aviva intended for it to mean the latter, this would be a very high bar for anyone to overcome.

In any event, as I find the wording to be ambiguous, I think it should be interpreted in Mr T's favour. So, I think it would be fair and reasonable to interpret it to mean "any relevant or suited job".

The policy section which provides cover for PTD says the following:

"We will cover you if you suffer a serious accidental bodily injury during your trip which requires urgent and immediate medical attention and leads solely, directly and independently of any other cause to your:

- 1. death; or*
- 2. loss of one or more limbs and/or the total loss of sight in one or both eyes; or*
- 3. permanent total disablement after 104 weeks from the date you incurred the injury, (except where compensation is paid under item 2 above).*

Special conditions

- 1. The death or disability must happen within one year of the accident."*

Aviva says that Mr T didn't meet the special condition 1. because he was able to continue working between 2019 and 2022. It appears that Aviva is interpreting that the PTD must happen within one year of the accident. However, the special condition only says that the disability must happen within one year of the accident. So here, that would be Mr T's brain injury.

I think it's clear that Mr T's brain injury happened within one year of the accident as it was caused by the accident. Whilst Mr T didn't receive a formal diagnosis until later, the medical reports refer to the brain injury stemming from the accident in October 2018. So, I'm satisfied that Mr T's disability happened within one year of the accident, and his claim meets this condition.

This means that Mr T has a valid claim if he meets the definition of PTD at any point after 104 weeks from the date he incurred the injury. So, I've considered if he met this when he made his claim.

It's my understanding that Mr T's job included activities relating to running a business (including accounting and administration), designing and planning, interacting with customers and physical labour. So, I think it's likely that any other relevant or suited job would include similar activities, requiring similar skills.

Mr T's doctor, a consultant clinical neuropsychologist and rehabilitation specialist, says that Mr T has too many specific neuro-cognitive impairments to be able to carry out work in his own occupation. And this has been the case since his accident, he hasn't been employable on the open market, and this is the case now and for the future. The consultant says Mr T's neuro-cognitive deficits are permanent.

The consultant listed multiple symptoms which affect Mr T's life and ability to work, and which were not present prior to the accident. These include:

- physical and sensory changes such as migraine, epilepsy, vertigo and noise sensitivity,*
- cognitive changes such as significant memory problems, poorer problem-solving and reduction in overall intellect, unable to visualise numbers, designs and spatial plans, and difficulty multitasking and a general reduction in his cognitive capacity,*
- emotional and psychological changes such as depression and panic attacks, and*
- Mr T was diagnosed with a personality disorder in March 2023 as a consequence of the accident.*

Mr T's consultant noted that he had tried to return to work in 2019 following the accident, but he made numerous uncharacteristic errors and found that his abilities had markedly changed. His family had to help and supervise his work as Mr T made costly mistakes. The consultant noted that Mr T would need to drive to be able to work, which he's unable to do. The consultant also said that they don't think there will be a substantial change in Mr T's neuropsychological status, problem-solving skills, attention or memory. The consultant noted that simple handyman jobs that give Mr T a sense of purpose may be feasible, but this would likely be on a therapeutic or voluntary basis only.

Aviva's Chief Medical Officer ("CMO") reviewed one of the consultant's reports and said Mr T suffered severe accident with trauma, and he suffered permanent brain damage with relevant impairment of his executive functions. The CMO said this should be considered as a severe disability and it meets the policy terms. Aviva said the CMO hadn't considered the special condition that the disability must happen within one year of the accident when giving their opinion. But as I've already set out, I think Mr T met this condition.

Having considered everything, I think the evidence supports that Mr T meets the policy definition of PTD and he's unable to carry out any kind of job that he's reasonably suited for. I think those jobs would require sufficient cognitive and executive function, which Mr T's consultant's reports support that he lacks. Aviva's CMO agreed. So, I think Aviva should accept and pay the claim.

I think Aviva caused Mr T unnecessary distress and inconvenience when it declined the claim. And the impact on Mr T was greater considering his brain injury and mental health at the time. I've taken this into account when considering the level of compensation Aviva should pay him.

There were also delays in handling the claim. Mr T first got in touch with Aviva about the claim in July 2020, and Aviva let him know what evidence it needed. Mr T was still waiting for medical reports, and Aviva assured him in April 2021 that there was no time limit to provide the information. I can see that Aviva kept in touch with Mr T to check if he had the required information. Mr T then contacted Aviva in February 2023 to say that he wanted to pursue the claim, and Aviva said it needed relevant medical reports.

Mr T sent Aviva a list of consultants who it could request the reports from in October 2023. Aviva didn't respond to this until after Mr T chased in November 2023. It asked him to provide a consent form to request his medical records. Aviva received this in January 2024, but it didn't request the medical records until over a month later. Mr T told Aviva again in March 2023 the names of his consultants who it should request reports from, rather than his GP. Mr T then sent a report from his consultant on 15 April 2024, which was dated 11 March 2024. Aviva declined the claim in June 2024.

I think there were delays in how Aviva handled the claim. Mr T already got in touch with Aviva in October 2023 to say he wanted to pursue the claim, but it wasn't until June 2024 that Aviva declined it. That said, I appreciate Aviva needed medical reports to assess the claim, and Mr T's consultant's letter wasn't provided until 15 April 2024. So, I think Aviva needs to pay Mr T some compensation for the distress and inconvenience caused due to the delay. It also needs to pay interest on the claim from 15 May 2024 – which is a month after it received the medical report – until it settles the claim.

Overall, I think Aviva should pay Mr T £600 for the distress and inconvenience caused in all the circumstances of his complaint."

Mr T accepted the outcome. His representative wanted to note that Aviva's CMO accepted the claim, but Aviva still rejected it as the disability had to have happened within one year of the accident. The representative said that it's important to note that due to global events at the time, it was difficult to get appointments.

Aviva didn't accept my provisional decision. In short, Aviva made the following points:

- The policy term "any kind of job" is not ambiguous.
- This is a travel insurance policy, and not a specialist personal accident policy. This means the benefits are limited and intended to cover catastrophic injuries and not temporary impairments. This was in response to my referring to a "high bar" of the above policy term.
- Mr T continued working until 2022. So, this indicates his injury didn't result in PTD within one year of the accident, as required by the policy.

As both parties have now had the opportunity to review and respond to my provisional findings, I'm issuing my final decision.

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 considered the further points, I'm not persuaded to change my decision. I'll briefly explain why.

If Aviva intended the term "any kind of job" to mean any kind of job at all, then I think this term should be clearer, especially considering how high bar it sets. I still think the term is ambiguous; for example, it doesn't say "any kind of job whatsoever". So, I still think it would be fair and reasonable to interpret it to mean "any relevant or suited job". And I don't think the fact that this cover is part of a travel insurance policy means the term should be any less clear of the cover it provides.

As I set out in my provisional findings, Aviva still appears to be interpreting that the PTD must happen within one year of the accident. This is not what the terms set out. The special condition only says that the *disability* must happen within one year of the accident. For the reasons I set out in my provisional decision, I'm satisfied Mr T met this condition.

I accept Mr T attempted to return to work following his disability. But for the reasons I explained in my provisional decision, I'm satisfied he met the definition of PTD after 104 weeks from the date he incurred the injury, as required by the policy terms.

So, having considered everything again, I've reached the same conclusions as I did in my provisional decision, and for the same reasons.

My final decision

My final decision is that I uphold Mr T's complaint, and direct Aviva Insurance Limited to take the following action:

- pay Mr T's claim for permanent total disablement in line with the remaining terms and conditions of the policy,
- add interest at 8% simple per annum from 15 May 2024 until settlement*, and
- pay Mr T £600 for the distress and inconvenience caused**.

*If Aviva considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr T how much it's taken off. It should also give Mr T a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**Aviva must pay the compensation within 28 days of the date on which we tell it Mr T accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 25 July 2025.

Renja Anderson
Ombudsman