

The complaint

Mr E complains about the way Aviva Protection UK Limited has handled and paid an incapacity claim he made on a 'YourLife Plan' which provided income protection insurance cover.

Mr E's represented by Ms K. But I've generally referred to Mr E.

Aviva is now responsible for Mr E's policy. So for ease of reading, I've referred to Aviva throughout.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr E took out a 'YourLife Plan— income protection' in 2015, which provides cover if a policyholder becomes incapacitated due to illness or injury.

Unfortunately, in December 2022, Mr E made a claim on the policy because he was unfit for work due to symptoms of anxiety and depression. He said he'd first begun to suffer symptoms in around September 2022.

Aviva asked for information so it could assess Mr E's claim, including medical and financial evidence. This included asking for information from Mr E's accountants. After some delay, Aviva ultimately accepted Mr E's claim. It used November 2022 as the start date of the deferred period, which meant benefit began to be paid to Mr E in February 2023. It paid Mr E around £4850 per month benefit, based on his pre-incapacity income. The pre-incapacity income calculation included an annual amount of £1034 for a benefit-in-kind Mr E received for his car. Aviva also offered to pay Mr E £150 compensation to reflect the delays in accepting his claim.

Mr E was unhappy both with Aviva's handling of the claim and with the settlement it had agreed to pay him. He felt it had unreasonably delayed acceptance of the claim and he thought it should have started the deferred period on the date he'd told it his symptoms had begun. He considered too that Aviva had failed to include other benefits in kind when it worked out his pre-incapacity income, which had resulted in him being paid less than he thought he should have been. He asked us to look into his complaint.

Our investigator didn't think Aviva had unfairly relied on the medical evidence when it started Mr E's deferred period with effect from November 2022. And he thought the evidence that'd been provided showed that only Mr E's car had been a benefit of kind which would be categorised as income under the policy terms. But he didn't think £150 went far enough to recognise the trouble and upset Aviva's claim handling delays had caused Mr E. So he recommended that it should pay Mr E total compensation of £350.

Aviva accepted the investigator's assessment but Mr E did not. So the complaint's been passed to me 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.

Having done so, whilst I'm very sorry to disappoint Mr E, I think the fair outcome to this complaint is for Aviva to pay him £350 compensation and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr E's illness and about the impact this has had on him. I understand this has been a very difficult time for Mr E. I'd also like to reassure him that while I've summarised the background to this complaint, I've carefully considered all Ms K's said and sent us. In this decision though, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the policy terms and the available evidence, to decide whether I think Aviva treated Mr E fairly.

It seems to me that there are three key things for me to decide. First, was it fair for Aviva to start the deferred period from November 2022? Secondly, did it calculate Mr E's pre-incapacity income reasonably? And thirdly, did it handle the claim fairly? I'll deal with each point in turn.

Was it fair for Aviva to start the deferred period from November 2022?

I've carefully considered the policy terms and conditions, as these form the basis of the contract between Mr E and Aviva. In brief, the policy says that Aviva will pay incapacity benefit after a policyholder has been incapacitated for the entire deferred period and beyond. In Mr E's case, the deferred period was 13 weeks.

It's a general principle of insurance that it's a policyholder's responsibility to provide enough evidence to show they have a valid claim on their policy. That means it was for Mr E to provide Aviva with enough evidence to demonstrate that he had been incapacitated in line with the policy terms for at least 13 weeks.

Aviva has provided us with a copy of its claims notes, which includes details about calls Mr E had with its claims team. I can see that Mr E told Aviva that he'd been diagnosed with anxiety and insomnia on 12 December 2022, after seeking medical help a few days earlier, but that he'd been having problems since September 2022 and he'd been absent from work since then. Aviva's claims notes indicate that Mr E was told that if there was no medical evidence that he'd been unfit to work between September and December 2022, the start date of his claim (the start of the deferred period) could be delayed.

Mr E's GP completed a medical certificate on his behalf. This asked what Mr E's initial symptoms had been and when they'd started. The GP stated that Mr E had presented at the surgery on 12 December 2022 with symptoms of anxiety and depression and that he'd had a one month history of low mood. I haven't seen any further medical evidence which shows that Mr E's symptoms started earlier than November 2022.

Based on the information it had available; I don't think it was unreasonable for Aviva to place more weight on the doctor's report when it calculated what the claim start date should be. As the doctor indicated that Mr E's symptoms of low mood had begun in mid-November 2022, I don't find it was unfair for Aviva to use this date as the start date of the deferred period, rather than Mr E's self-reported symptom start date of September 2022. And therefore, I find

that Aviva acted fairly when it worked out Mr E's benefit payment start date. So I'm not persuaded that it needs to backdate either the claim start date or the date it started paying Mr E benefit.

Has Aviva calculated benefit fairly?

Page six of the contract explains the monthly benefit that Aviva will pay if a policyholder is incapacitated from working. The policy says:

'We will pay the lower of:

- the current monthly benefit, or*
- 50% of their pre-tax monthly income before they became incapacitated, less any income they are still receiving from their employer, from self-employment, from other insurance benefits or from pension arrangements other than State Pensions.'*

Aviva has defined what it means by 'income' in the policy terms, as:

'Income before the person covered had to stop work

If the person covered is employed, this means their total pre-tax earnings as applicable for PAYE, ITIS, ETI or ITIP assessment purposes (including the taxable value of benefits in kind that would cease in the event of incapacity) in the 12 months before the claim.

This may include:

- regular bonuses*
- commission*
- overtime, and*
- shift allowances.*

We will also take into account any dividends from a private limited company in which they and no more than 3 other shareholders are employed as full-time working directors.'

I think the policy terms make it clear that the taxable value of a policyholder's benefits in kind will be taken into account when Aviva calculates a policyholder's income.

Mr E believes that Aviva hasn't correctly included benefits in kind he received during the year prior to his incapacity. But I can see that Aviva contacted Mr E's accountants to clarify which benefits in kind he received. In brief, the accountant confirmed that only Mr E's car was a benefit in kind. The accountant stated that the other benefits Mr E had referred to were included in the company profit and loss accounts – and that most weren't taxable benefits in any event. It also seems that relevant tax documentation showed Mr E's only benefit in kind in the year before the claim was £1034 for his car. So I'm satisfied it was reasonable for Aviva to conclude that the car was the only benefit he received which fell within its definition of income. And I therefore think it acted fairly when it only took the taxable value of that benefit into account when it calculated his monthly benefit.

Aviva's calculations show it calculated Mr E's income taking into account his earnings and the £1034 I've outlined above, divided by 50%. I find then that it's calculated Mr E's monthly benefit in line with the method set out in the policy. And I'm satisfied that it's calculated Mr E's monthly benefit fairly, in line with the evidence it was sent by Mr E's accountants.

Overall then, I think Aviva has fairly, reasonably and appropriately paid Mr E's monthly

benefit. So I'm not telling it to backdate the claim payments or to increase the benefit it pays.

Claim handling delays

Aviva acknowledged there were delays in the handling of Mr E's claim. While the claim was made in December 2022, Aviva didn't accept it until July 2023. Some of the delays happened because Aviva had to ask and wait for information before it could fully assess the claim. But some of the delays were avoidable. Aviva accepted its claims turnaround times were slower than usual and it also accepted that it had used the wrong email address to contact Mr E's accountant. It acknowledged too that there were delays in its claims team updating Mr E at times.

Given Mr E's illness and the fact that he wasn't able to work, I'm satisfied that the delays in handling his claim – and in accepting it - would have caused Mr E unnecessary, additional trouble and upset at a difficult time. So I find that Aviva should pay Mr E compensation to reflect what I believe to be the impact of its claims handling on him.

I must make clear though that our awards aren't intended to fine or punish the businesses we cover. In my view, the £350 total compensation our investigator recommended is a fair, reasonable and proportionate award to recognise the avoidable mistakes Aviva made. I was pleased to see that Aviva accepted this recommendation.

My final decision

For the reasons I've given above, my final decision is that I direct Aviva Protection UK Limited to pay Mr E total compensation of £350.

Aviva Protection UK Limited must pay the compensation within 28 days of the date on which we tell it Mr E 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% a year.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 17 October 2025.

Lisa Barham
Ombudsman