

The complaint

Mr Y complains that Aviva Life & Pensions UK Limited (Aviva) has unreasonably declined to pay a proportionate benefit under his employer's group income protection policy. He's also unhappy with the way Aviva handled his claim.

Mr Y no longer works for the employer. For ease, I will refer to the employer as 'employer' rather than 'former employer' throughout this decision.

What happened

Mr Y was a member and beneficiary of a group income protection policy underwritten by Aviva. His employer was the policyholder.

In January 2021, Mr Y started his employment. His contract required him to move from his home country (Country A) to the UK, to work.

Mr Y first became absent from work in March 2021. He suffered from symptoms of dry eye which were extremely uncomfortable and painful. He also subsequently experienced depression resulting from his eye condition.

In April 2021, Mr Y returned to Country A as recommended by his treating psychiatrist in the UK, for his physical and mental well-being.

In May 2021, Mr Y was diagnosed with anxiety and depression resulting from his eye condition. He started receiving intensive treatment for the eye condition and for the anxiety and depression.

In the meantime, Mr Y submitted a claim for income protection benefit. I'll summarise the events that followed, leading up to the complaint I'm considering here:

- Aviva accepted the claim. Following the completion of the 13-week deferred period, Aviva paid the full income protection benefit from 1 June 2021 to 31 October 2021.
- In September 2021, Mr Y's ophthalmologist suspected he had corneal neuropathic pain, a rare eye disease. His psychiatrist and ophthalmologist said Mr Y would be medically fit to work full-time if he did so from Country A.
- During October 2021, Mr Y asked his employer to work from Country A for six months as recommended by his treating doctors. They said he had a better chance of his symptoms improving whilst in Country A.
- Mr Y's employer refused his request. However, in November 2021, he worked the 20 global working days his employer allowed outside of the UK per year. I understand Mr Y was paid his full salary by his employer for this period.
- From 23 November 2021 to 24 April 2022, Mr Y's symptoms continued to improve. He asked his employer again if he could work from Country A, but his request was

again refused. Mr Y still had symptoms related to his eye condition and his mental health condition and he continued with his treatment in Country A. He didn't work during this period, and his treating doctor provided him with sickness notes.

- In early 2022, Mr Y was diagnosed with corneal neuropathic pain. In February 2022, Mr Y provided Aviva with further medical information relating to his condition. Aviva declined to make a further benefit payment. It said the evidence showed Mr Y was capable of working to some extent and the reason he wasn't working was due to his employer not allowing him to work from Country A.
- From 25 April 2022 to 6 May 2022, Mr Y returned to the UK as his symptoms had stabilised. He worked each day without any adjustments, and I understand he received his full salary for this period from his employer.
- On 9 May 2022, Mr Y returned to Country A as his eye pain increased. And from 16 May 2022 to 6 June 2022, he felt unable to work. His medication changed.
- From 7 June 2022 to 27 June 2022, Mr Y worked from Country A for four hours per day using the employer's 20 global working days allowance. I understand he received his full salary from his employer for this period.
- From 28 June 2022 onwards, Mr Y didn't return to work. He felt unable to due to a worsening of both his eye and psychiatric symptoms. Mr Y says his employer refused to engage in providing reasonable adjustments and repeatedly refused his requests to work from Country A. And he says Aviva refused to comment and further declined his income protection claim.
- In October 2022, Mr Y sent all his medical records to Aviva for further review of his claim. Aviva informed Mr Y's employer the claim had been declined on the basis the information didn't support his ongoing absence, but rather, that his return to work depended on whether he could work from outside the UK. The claim decision was shared with Mr Y by Aviva in February 2023.
- In April 2023, Mr Y provided Aviva further supporting medical records received from his treating doctors for the same period up to October 2022. On review, Aviva paid further income protection benefit for the period Mr Y was unable to work between 16 May 2022 and 31 May 2022. Aviva also requested Mr Y undergo an Independent Medical Examination (IME).
- Mr Y complained to Aviva about its decision to not pay any further benefit. Aviva issued a final response on 16 May 2023, and Mr Y brought that complaint to this service. The complaint went on to be considered by one of our investigators who didn't uphold it (the case closed in August 2024).
- The IME was carried out on 6 June 2023, and Mr Y was deemed fit to return to work on a phased basis from the UK. Mr Y was informed in July 20223 of the recommendations made in the IME.
- In August 2023, Mr Y asked his employer if he could return to work from Country A temporarily following the IME recommendation. This was denied. Mr Y emailed his employer a further three times requesting to work from Country A. Those requests were also denied.

- In September 2023, Mr Y said his Occupational Health (OH) doctor advised against starting a phased return to work in the UK from mid-September 2023 as he was due to travel for treatment.
- In November 2023, Mr Y sent Aviva his medical records from October 2022 onwards, for further review of his claim. The records were reviewed by Aviva's Chief Medical Officer (CMO). On 13 December 2023, Aviva issued a second final response declining to pay further benefit under the claim.
- Mr Y made a further complaint to Aviva. Aviva issued a third final response on 7 March 2024 maintaining its decision to decline paying further benefit.
- Mr Y's employment ended with the employer on 6 March 2024.

In August 2024, Mr Y made a new claim to Aviva for proportionate (rather than full) benefit – which is the subject of this complaint. He said he could have worked in *some* capacity with reasonable accommodations. However, this wasn't possible, and Aviva contributed to this. Mr Y therefore claimed proportionate benefit instead of the full benefit.

On 18 September 2024, Aviva issued a fourth final response. It said proportionate benefit could only be paid if an employee returns to work in some capacity and has experienced financial loss. However, Mr Y was paid in full by his employer for those periods that he could work in some capacity. So, no benefit would have been payable. And for the periods he didn't work, no benefit would have been payable as the evidence showed there was some capability for him to have worked. Aviva said, the barrier to Mr Y working – full-time or part-time – was his employer denying his requests to work from Country A.

Unhappy, Mr Y brought this further complaint to this service. Our investigator didn't uphold the complaint as she didn't think Aviva had declined Mr Y's claim for proportionate benefit unfairly. Mr Y disagreed, so his complaint has been passed to me for a 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.

I was sorry to learn of Mr Y's circumstances, and I recognise how difficult things have been. I also thank both parties for their patience whilst this matter has awaited an ombudsman's decision.

I've fully reviewed all the information before me, including the further representations Mr Y has made after our investigator's assessment. In reaching my findings, I've focused on what I consider to be the central issues. I don't intend any discourtesy by doing this, but I don't need to comment on every argument to be able to reach what I think is the right outcome in the circumstances. Our rules allow me to take this approach; it reflects the informal nature of our service, as a free alternative to the courts.

It's also important to make the parameters of this decision clear. I will only be considering the evidence which was made available to Aviva up to the point it issued its final response on 18 September 2024, confirming its decision to decline his claim for proportionate income protection benefit.

I won't be revisiting Aviva's claim decisions relating to the full benefit claim that formed part of the complaint previously brought to our service, or the claim decisions relating to the full

benefit claim that were made after that previous complaint was brought to our service. This complaint, that I'm considering here, solely relates to the proportionate benefit claim.

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). These regulatory rules and industry guidelines say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. ICOBS also says that insurers should act honestly, fairly and professionally in accordance with the best interests of their customers.

Mr Y has highlighted further guidelines under ICOBS that say when a firm communicates information, it must ensure it is clear, fair and not misleading. And a firm must ensure a customer is given appropriate information about a policy in good time and in a comprehensive form so that the customer can make an informed decision about the arrangements proposed.

I would also point out that when considering disputes between consumers and financial businesses, we take what the rules that govern us describe as 'relevant considerations' into account, including the law, codes, and good practice.

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Mr Y's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available evidence provided by the parties alongside the terms and conditions for Mr Y's group scheme to determine whether, in my view, I believe Aviva treated him fairly and reasonably in refusing to pay him a proportionate benefit payment.

Mr Y was diagnosed with corneal neuropathic pain. This issue is not in dispute. It's also not in dispute that Mr Y had multiple medications and treatments from various treating doctors – for physical and mental health conditions. I understand that Mr Y's eye condition was painful, he was sensitive to environmental conditions and using screens was difficult.

That said, having considered everything carefully, I won't be upholding this complaint. I recognise that this won't be the outcome Mr Y had hoped for, but I'll explain my reasons for reaching this overall conclusion below.

The starting place is to look at the relevant terms and conditions of the policy as this forms the basis of the insurance contract.

The policy terms and conditions

Proportionate benefit is defined in the policy as:

'2 Proportionate benefit

We will pay a proportionate benefit after the deferred period:

- *If before incapacity the member was actively at work and following their job role and;*
- *If incapacity has lasted for at least five consecutive working days; and as a*
- *result of illness or injury the member is either;*
 - *following their job role on a part-time basis; or*
 - *following any other occupation**in either case with a reduction in earnings.'*

And incapacity is defined in the policy as:

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

It was for Aviva to apply the policy wording objectively against the medical evidence before it. In doing so, Aviva was required to consider Mr Y's ability to perform the duties of his role on a full time or part time basis as a result of illness or injury.

I'll now set out and address the points Mr Y has raised under the below headings.

Proportionate benefit:

I refer to the relevant policy term for proportionate benefit above.

Mr Y originally made a claim for full benefit payment. The complaint was brought to this service but once our investigator sent Mr Y the policy document, he withdrew the complaint and the complaint was closed.

Mr Y said he had a better understanding of the policy requirements and therefore wanted to make a new claim for proportionate benefit. He also made a complaint to Aviva at the same time.

Mr Y said Aviva didn't provide him with the policy document which restricted him in understanding the policy. He said having this would have allowed him to engage with his employer in making reasonable requests such as long-term part time working or a temporary or long-term move to a different role. And had he been allowed this opportunity, there would potentially have been a salary reduction which would have meant a proportionate benefit payment. This is the basis of Mr Y's claim for proportionate benefit.

Mr Y received full income protection benefit payments for the following periods:

- 1 June 2021 to 31 October 2021.
- 16 May 2022 to 31 May 2022.

On 29 August 2024, Mr Y claimed for proportionate benefit for the following two periods:

- 3 March 2022 to 25 April 2022.
- 28 June 2022 to 6 March 2024 (when his employment ended).

These two periods were separated by periods of Mr Y either receiving full pay from his employer or full benefit from Aviva.

Mr Y has provided his reasons for claiming proportionate benefit for these two periods. He said he emailed both Aviva and his employer on 1 March 2022 about his disagreements with Aviva's assessment. He said Aviva communicated that the issue was 'contractual' rather than because of Mr Y's incapacity to work and it did this in an unclear way. He said Aviva avoided commenting on the issues and avoided citing the policy wording which meant it restricted Mr Y in actively engaging about other potential reasonable adjustments with his employer. Mr Y said had he been able to request different reasonable adjustments, he would have potentially been able to work in some capacity. He said Aviva failed him in providing clear information.

I'm mindful one of our investigators has already considered some of Aviva's claim decisions for these two periods as part of the previous complaint which Mr Y subsequently withdrew from our service. However, that investigation was in relation to the full income protection

benefit claim, rather than the proportionate benefit claim. Therefore, I don't consider it inappropriate for me to reconsider those periods again here, in respect of whether a proportionate benefit claim ought reasonably to succeed.

A claim for proportionate benefit is payable if a member returns to work part-time due to their illness or injury and receives reduced earnings. Mr Y says he could potentially have returned to work part-time had Aviva been clear in providing the correct policy wording.

However, having considered Mr Y's comments carefully, I'm not persuaded I can reasonably decide Aviva is responsible for him not returning to work part-time.

Aviva had already declined Mr Y's claim for full benefit payment in February 2022 as the medical evidence he provided wasn't sufficient to show he met the definition of incapacity at that point. Aviva said the issue preventing Mr Y's return to work was 'contractual' due to his employer not permitting him to work from Country A.

Whilst I understand the point Mr Y makes – that had he known about proportionate benefit he would have explored part-time work with his employer – I can't reasonably decide Aviva is responsible for the arrangements between Mr Y and his employer.

Bearing in mind Mr Y's claim had been declined, it was for him to work with his employer to facilitate his return to work, be that working from the UK, from Country A, or on a part-time basis from either location.

In any event, I can't safely say whether any part-time working arrangements were discussed. Nor can I reasonably decide that such arrangements would have been agreed given Mr Y's preference for remaining in Country A which his employer declined to allow him to work from (beyond the 20 hours per year).

Based on the medical evidence, the IME report and the CMO's opinion, Mr Y was capable of returning to work to some capacity even if it wasn't full time. But he didn't return to work after 28 June 2022 and, from what I've seen, the primary reason for this was that his employer refused to let him work from Country A.

Ultimately, for a proportionate benefit claim to succeed, the policy terms require Mr Y to have worked part-time and received reduced earnings during the period in question. That's not the case here. Therefore, I'm satisfied he's not covered for a proportionate benefit claim.

Policy exclusions

The parties have referred to two policy exclusions during the life of the claim and the various complaints:

- *'Absence caused by workplace matters, such as a relationship breakdown, workplace demands or failure to make reasonable adjustments are not covered.'*
- *'Absence caused by a lifestyle choice or family requirement such as the need to care for a dependent are not covered.'*

However, those exclusions don't apply to the proportionate benefit claim. The proportionate benefit claim simply doesn't succeed because Mr Y hadn't returned to work on a part-time basis and received a reduced income. Whilst those exclusions may have been material to the full benefit claim, I'm not considering the full benefit claim here.

Nonetheless, in my view, both exclusions support the position that Aviva won't provide any benefit if the matter preventing Mr Y's return to work was a) his employer's refusal to allow him to work from Country A (a workplace matter) or b) his preference to work from Country A (a lifestyle choice).

I acknowledge that Mr Y may not view his preference for staying in Country A as a lifestyle choice, given it was based on giving his recovery the best chance of success. However, the IME recommendations said Mr Y was fit to return to work *in the UK* on a phased basis from October 2021, and that staying in Country A would be a personal choice rather than on medical grounds.

Reasonable adjustments

Mr Y has highlighted the following policy requirements of the employer regarding reasonable adjustments:

'You must make whatever reasonable adjustments are necessary to the member's working conditions in order to comply with your obligations under discrimination and equality laws. If you don't, and if your failure to comply with your obligations prevents the relevant member from working then we may not pay some or all of the benefit.'

Mr Y has also pointed to the following information from this service's website:

'Our approach

'[. . .] If a customer doesn't return to work [when you think they're able to do so, in a different role or reduced capacity, then the policy will generally not pay out proportionate or rehabilitation benefit.

However, in some cases, this would be an unreasonable outcome. For example, if a customer's business failed, they couldn't work part-time in their own occupation and their disability might prevent them working in a similar occupation. In these circumstances, we might decide it is reasonable for you to pay part of the benefit.'

And:

'Reasonable adjustments in the workplace:

[...] An insurer might reject a claim (or stop paying benefit) under an income protection policy, saying that the customer could resume work if their employer made reasonable adjustments in the workplace.

An insurer may sometimes insist that a customer pursue their right to demand reasonable adjustments even if the customer isn't sure this is appropriate or is unwilling to. Their employer may have refused to make reasonable adjustments or may have said that it thinks they are unreasonable.

In these circumstances, we'll consider whether the customer has taken steps to ask for assistance in returning to work. If we think they have, we'll then look at whether they have tried to persuade their employer to make reasonable adjustments.

The customer can be left in a difficult position if you and the employer disagree about reasonable adjustments. When the customer has concerns about challenging their employer, we'll look at how you supported them.'

Mr Y said Aviva did not support him in highlighting these requirements to his employer.

Firstly, I note that Aviva sent the employer the results of the IME report, including the recommendations that were made. Aviva also kept the employer updated, as the policyholder, with communications about Mr Y's claim under the policy

I've considered the information Mr Y has provided from this service's website. However, each case is considered on its individual merits. In the circumstances here, I'm not persuaded that it was for Aviva to persuade the employer to allow Mr Y to work from Country A when his employment contract didn't permit him to do that. And, as noted above, the IME recommendations said Mr Y was fit to return to work *in the UK*.

I also haven't seen that the employer refused making reasonable adjustments, only that it refused Mr Y's request to work from Country A. On balance, I think it's likely the employer would have supported the phased return to work had Mr Y worked from the UK.

Medical evidence

- Mr Y said, from 28 June 2022, he was incapacitated and that there were omissions made by Aviva in reviewing the medical records he provided up to October 2022. He said the IME didn't list each of the records he provided.

I can understand why Mr Y is concerned that not all his medical information was considered by the consultant who carried out the IME.

We asked Aviva to confirm that all of Mr Y's medical information was provided to the supplier for the consultant to review. Aviva has confirmed that all medical evidence provided by Mr Y was shared with the supplier and passed onto the consultant for review. Due to the passage of time, however, it can't provide a copy of the email that was sent to the supplier. And the supplier also no longer holds this information. The supplier has explained that not every piece of medical evidence would have been listed and it's the decision of the consultant as to what information to list depending on its relevance.

I've reviewed the IME report. I can see the list of medical evidence on the report spans from January 2021 to November 2022. And Mr Y said he provided medical information up to October 2022 for Aviva to share with the consultant for the IME. I'm satisfied with the supplier's and Aviva's explanation about why each piece of evidence wasn't listed. On balance therefore, I think it's more likely than not, that all the medical evidence was reviewed, even if it wasn't all listed.

- Mr Y said Aviva didn't assess any medical information past June 2023.

The consultant in the IME reviewed Mr Y's medical information up to October 2022. As a result, recommendations were made by the consultant for Mr Y's return to work on a phased basis.

Mr Y accepted the IME report's recommendations at this point. I can see Mr Y tried engaging with his employer to allow him to work from Country A temporarily on a phased basis. I note Mr Y said in his emails to his employer and Aviva that he thought the recommendations were reasonable, and he wanted to return to work. But the employer continued to deny Mr Y the request to work from Country A.

In September 2023, Mr Y informed Aviva that he wanted to submit further medical records for review of his claim. Aviva received this information in November 2023.

Aviva referred the information to its CMO whose opinion was that Mr Y was capable of returning to work to some capacity. The claim was declined again.

I don't agree therefore that Aviva didn't assess any medical information past June 2023. From the information available, Aviva reviewed Mr Y's medical information up until October/November 2023.

Mr Y has commented on the nature of the assessment carried out by the CMO that it was a desktop review. However, I can see the information was fully reviewed by the CMO which I think is fair in the circumstances. Whilst I accept that it was a desktop review, the information was reviewed, and Aviva explained its decision of the CMO's opinion to Mr Y. I'm not persuaded that Mr Y was treated unfairly by Aviva here.

Unclear and inconsistent information

Mr Y said Aviva's communication was unclear, inconsistent and misleading. He said that affected his ability to seek adjustments he was legally entitled to, which he was unaware of given his unfamiliarity with UK work culture. He said key information could have clarified his rights and his duty under the policy such as a detailed explanation of why his claim was denied and the policy wording which wasn't provided.

Aviva confirmed in its final responses the reasons why some periods had been declined and confirmed the benefit payments that had been made to Mr Y. Aviva also specified the definition of incapacity. But I think Mr Y's point though is that Aviva wasn't clear in its explanation when referring to 'workplace matters' and 'contractual'. I agree Aviva should have been clearer in explaining these reasons and referred Mr Y to the policy document.

Mr Y said this affected his ability to request other forms of reasonable adjustments from his employer. I understand Mr Y's comments, but I don't think that of itself would have affected his ability to do so. This is because it wasn't Aviva's responsibility to make Mr Y aware of what he might legally have been entitled to.

I note Mr Y wasn't always a party to all the communication between Aviva and the employer. So, he received communication later. But that's not unusual as the obligation on Aviva was to communicate with the policyholder. And it was up to the policyholder to ensure Mr Y was kept updated. I have nevertheless noted that Aviva responded to Mr Y each time he made a claim and when he sent in further information. I can't see that Aviva avoided communicating with him when it was required to do so. I don't think Aviva treated Mr Y unfairly in its communication with him.

Mr Y said he's unhappy about the way Aviva communicated its claims decisions. He also said Aviva didn't inform him about making a complaint and about the appeals process.

I've considered Mr Y's comments. Aviva wasn't required to communicate its claims decisions to Mr Y, but to his employer as the policyholder. I can see that, in December 2023, the claim decision went to Mr Y's employer who didn't inform him about the decision or forward on the communication to Mr Y. As such, I acknowledge there was a delay in Mr Y receiving this decision. But I can't reasonably decide that was due to Aviva.

It's not up to a business to inform a customer that they can appeal the claims decision or that they can make a complaint about an issue. The onus is on the customer to provide any further information if they think the decision may change as a result. And I can see that Mr Y did appeal Aviva's decisions which Aviva reviewed each time. I can't therefore say Aviva did anything wrong here. I think it followed its processes as it should have done. And in terms of making a formal complaint, when Mr Y made the complaint, Aviva responded within the

timeframes expected and issued final responses with appropriate referral rights to this service.

Policy document

Mr Y said Aviva didn't provide him with the policy document which restricted him in understanding the policy. He said it would have allowed him to engage with his employer in making reasonable requests such as long-term part time working or a temporary or long-term move to a different role.

However, it was the employer's duty to provide the policy document to Mr Y. The insurance contract is between Aviva and the employer, as the policyholder. I can see that Aviva asked the employer for permission to share the policy document with Mr Y, but the employer didn't respond.

Mr Y also asked the employer for the policy document. I note only one page of the document was provided to Mr Y. I'm not persuaded I can make Aviva responsible for Mr Y not being provided the full policy document by his employer.

I can't safely say that had Mr Y received the policy document, he would have engaged with his employer in a different way and asked for different reasonable adjustments. I don't think it necessarily follows. I also can't say that Aviva contributed to this as it wasn't required to send Mr Y the policy document.

Partial benefit for periods when Mr Y returned to work

Mr Y said to this service that he didn't receive full pay from his employer when he returned to work. I note Aviva informed Mr Y in May 2023 that he received full pay from his employer for the periods he worked.

If Mr Y has any evidence that he didn't receive full pay for the periods he worked, he should provide this to Aviva directly. I can't make a finding on this point as this wasn't a complaint point addressed in the final response dated 18 September 2024.

Conclusion

Overall, despite my natural sympathy for Mr Y's position, having carefully considered everything, I'm not persuaded that Aviva declined Mr Y's proportionate benefit claim unfairly or outside the terms and conditions of the policy. I'm sorry to disappoint Mr Y. But it follows that I don't require Aviva to do anything further.

My final decision

For the reasons given above, my final decision is that I don't uphold Mr Y's complaint about Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 11 November 2025.

Nimisha Radia
Ombudsman