

## The complaint

Miss B complains that Aviva Life & Pensions UK Limited hasn't paid her income protection claim.

## What happened

Miss B was insured under her employer's group income protection policy with Aviva. The policy paid a benefit in the event Miss B couldn't work in her own occupation due to illness or injury, and it had a deferred period of 26 weeks.

Miss B was signed off from work between 21 January 2022 and 31 January 2023. Miss B's employer made an income protection claim to Aviva on her behalf, but it declined the claim. Aviva said the medical evidence showed that Miss B's absence was due to work related stress which wasn't covered by the policy. Aviva also didn't think the medical evidence was supportive of Miss B's total inability to work throughout the deferred period.

Unhappy with Aviva's decision, Miss B brought a complaint to our service. Our investigator didn't recommend the complaint be upheld. He thought Aviva had acted fairly and reasonably in declining Miss B's claim based on the medical evidence it had.

Miss B didn't agree with our investigator's findings. In short, she said that during the time of the claim, she was in a vulnerable position, she didn't have the policy terms and conditions, and she didn't know what information was needed to support her claim. As no agreement was reached, the complaint was passed to me to decide.

I issued my provisional decision in April 2024. 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. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Miss B's complaint.*

*Firstly, it's important to note that the income protection policy was taken out by Miss B's employer who is the policyholder. So, it would have been for her employer to provide Miss B with the terms and conditions of the policy. It was also Miss B's employer who made the claim on her behalf, and it's ultimately for a policyholder to show they have a valid claim. I don't think I can fairly say that Aviva should have done more to help Miss B in the circumstances as she wasn't the policyholder.*

*My role is to look at the medical evidence available and decide if Aviva acted fairly and reasonably when it declined the claim based on that evidence. Having carefully considered everything, I currently think it did. I'll explain why.*

The policy defines incapacity as “The Member’s inability to perform on a full and part time basis the duties of their job role as a result of their illness or injury”. This section also says that “Absence caused by workplace matters, such as a relationship breakdown, workplace demands or failure to make reasonable adjustments are not covered”. So, for the claim to succeed, Miss B needed to show that she met the definition of incapacity for the duration of the deferred period – between 21 January and 21 July 2022.

I’ll first set out the evidence available, and I’ll then outline my findings taking into account all the evidence.

#### Fit notes by Miss B’s GP

Miss B’s GPs issued fit notes between 21 January 2022 and 31 January 2023, all saying she wasn’t fit for work. The first fit note on 21 January 2022 said “RTA and work related stress”. Miss B had been in a car accident a few days earlier but she only had minor injuries. The GP notes said that “feels biggest prob is work related stress and anxiety. Worse since Nov when took on an additional role at work. Big launch coming next month and doesn’t feel coping. Feels like doing 2 jobs at once.”

The following fit notes were on 15 February 2022 (stress at work), 8 March 2022 (stress) and 12 April 2022 (work related stress/Covid). The GP notes on 12 April 2022 also said Miss B had had counselling and the GP noted “poor sleep tearful low mood[,] exhausted headaches and brain fog Covid cough[,] recognises was stress due to work”. The GP prescribed Miss B antidepressant medication.

The GP also wrote a referral for further counselling on 7 April 2022. This said that “Miss B has found great benefit in the counselling sessions offered to her so far and is keen to continue these to better manage her moods.”

The next fit note was on 26 April 2022 (work related stress) and the notes say the following: “has improved mentally[,] has sorted out counselling[,] sleeping better[,] is going to sort out phased return”.

The following fit notes were on 28 May 2022 (anxiety/stress) and 1 July 2022 (work related stress). The GP notes on 18 July 2022 say that “more likely to be undertreated depression – to trial increasing fluoxetine” and it looks like Miss B’s antidepressant medication dose was increased shortly after. The GP commented that Miss B needed to “think about phased return or possibly changing job if work stress still causing big problem”.

The deferred period ended on 21 July 2022.

The fit notes following this were on 29 July 2022 (stress and anxiety) and on 2 September 2022 (depression and anxiety). The GP note on 2 September 2022 says “also struggling to get out of bed / motivation. Almost had a panic attack when in the supermarket”. From this point onwards, the fit notes were for depression and anxiety.

### Occupational Health Reports

*There are two occupational health reports available. The first was made close to the start of the deferred period on 8 February 2022 by an occupational health advisor. This said that Miss B was temporarily unfit to continue in her current role, and that she “has recently had more perceived work stressors and has found the job increasingly more difficult to handle due to her stress levels”. The report also referred to the car accident Miss B had that “this triggered her anxiety [...] She functions to a reasonable level from day to day, however continues to struggle with sleep disturbance, motivation and concentration”. The report said Miss B’s return to work depended on “improvements to her psychological resilience and mental wellbeing”. Additionally, a 4-week phased return was recommended as well as a completion of a stress risk assessment to help identify the sources of stress.*

*The second occupational health report was dated 9 September 2022, which was after the deferred period had ended. The report first outlined what Miss B told the advisor, including the following:*

*“Miss [B] reports that she believes the car accident either triggered her anxiety and depression or brought it to the forefront. Miss [B] advised me that she initially thought work was a main contributing factor as she was finding her client-facing role overwhelming in main due to some clients being confrontational and her always trying to prove she was adding value. Work, however, may have aggravated her symptoms rather than causing them. Miss [B] advised me that some of her symptoms may have been triggered by going through the menopause.”*

*The advisor said that Miss B “remains unfit to work as she still struggles to get up, her ability to concentrate, focus and memory have all been impacted”. The report said it was hoped that Miss B could return to work “within 8-12 weeks during which time her medicative regime will be effective and she will have commenced any counselling course”. Additionally, a phased return over 6 weeks was recommended and for Miss B’s employer to consider returning her to an alternate non-client facing role.*

*However, Miss B didn’t continue with further counselling after this. She says this was because it was a lengthy administrative process to navigate through, by which time she had decided to pursue the menopause specialist referral instead.*

*Miss B returned to work in February 2023.*

### Counselling sessions and a letter from the counsellor

*Miss B first had six counselling sessions between 2 March and 6 April 2022. The counsellor said these covered issues outside of work, a car accident and a breakdown of a relationship. He said Miss B’s “confidence levels and general mood was low and we discussed consulting with a GP. As a result of that consultation she started a course of antidepressants.”*

*The counsellor said that in the second set of four sessions between 11 May and 8 June 2022 “we looked at getting back into a routine and issues around getting back to her demanding and responsible work role; aspects of rebuilding her confidence and managing her low mood.”*

*Aviva said the counsellor’s letter doesn’t provide any new clinic detail that it wasn’t already aware of, as it knew Miss B had counselling sessions. Aviva said the letter doesn’t address the work matter or confirm that the trigger for absence wasn’t related to work.*

### Other evidence by Miss B's GP

Miss B's GP wrote a letter on 2 September 2022 saying she was suffering from anxiety and depression, which were complicated by menopause. The GP said the following:

*"Of course work stress is a factor here, but it is not the sole contributing factor. This patient has managed the stress of her work for many years without issue – only recently has this become a problem. The work has not changed; it is the patient who has changed. Therefore, we cannot logically say this is a purely work related matter.*

*I cannot contribute my patient's mental health struggles to work alone. Certainly not. Although work is of course, one facet here, but the problem itself is certainly multi-faceted and the patient would likely have suffered from this illness regardless of what work she does / has done."*

On the same day, the same GP wrote a referral to a menopause specialist and said Miss B had really struggled with menopause symptoms throughout 2022. The GP said the following:

*"It has been so bad that the patient has been off work for many months. She has been suffering from symptoms of anxiety and depression, and more recently sweating and hot flushes. It is difficult to say to what proportion of the symptoms we can attribute to menopause."*

The GP letter referred to the medication Miss B had started. These were hormone replacement therapy in March 2022, and antidepressant medication in April 2022.

### My findings

Having looked at all the evidence during the deferred period, I don't think Aviva acted unfairly or unreasonably by saying the evidence supported that the main reason for Miss B's absence was due to stress at work. All the fit notes up until 2 September 2022 refer to stress or work related stress. The GP notes at the time also refer to stress at work, as does the occupational health report that was made during the deferred period. Stress isn't an illness (but it can be a symptom), and the policy excludes absence caused by workplace matters.

Miss B has explained that she didn't understand the extent and source of her condition in the beginning – she thought it was work stress related. But she now understands her condition was more severe than that. But overall, I think Aviva was entitled to rely on contemporaneous medical evidence about Miss B during the deferred period.

I note that Miss B's counsellor has highlighted other events in Miss B's life, but the letter doesn't include a diagnosis of an illness. So, even if the stress Miss B was signed off for wasn't solely for work related matters, as I explained above, stress isn't an illness. And for the claim to succeed, Miss B needs to show she was unable to work due to an illness or injury for the duration of the deferred period.

I have thought carefully about the fact that on 18 July 2022 that the GP noted "more likely to be undertreated depression". But Miss B wasn't signed off due to depression until 2 September 2022. I note that Miss B's antidepressant medication was increased in July 2022, but she also didn't continue with further counselling at this point, or at any point before returning to work in February 2023. She says she decided to pursue the referral to a menopause specialist instead.

*The GP said on 2 September 2022 that Miss B was suffering from depression and anxiety. But he also wrote another letter at the same time saying it was difficult to say what proportion of the symptoms could be attributed to menopause.*

*Aviva also said the medical evidence didn't support Miss B's inability to work throughout the deferred period. The only evidence that comments on this for the deferred period is the occupational health report on 8 February 2022 which says Miss B was temporarily unfit to continue in her current role. This said that Miss B struggled with sleep disturbance, motivation and concentration. I don't think Aviva acted unfairly or unreasonably when it said there wasn't enough evidence to support how Miss B's condition and/or symptoms were impacting her ability to work throughout the deferred period.*

*Overall, I'm sorry to disappoint Miss B but I don't think the medical evidence supports that her mental health symptoms were of such severity that these prevented her from working for the duration of the deferred period. That means that I don't currently think Aviva acted unfairly or unreasonably when it declined her claim."*

Both Miss B and Aviva responded to my provisional decision and neither had anything further to add. So, I'm now 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.

As neither party gave me anything new to think about, I see no reason to depart from the findings I reached in my provisional decision. So, I've reached the same decision, for the same reasons. Overall, I don't think Aviva acted unfairly or unreasonably when it declined Miss B's claim, for the reasons it did.

### **My final decision**

My final decision is that I don't uphold Miss B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 30 May 2024.

Renja Anderson  
**Ombudsman**