



<u>Decision Ref:</u>	2018-0154
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Income Protection and Permanent Health
<u>Conduct(s) complained of:</u>	Rejection of claim - did not meet policy definition of disability
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant, a hairdressing and beautician teacher, was a member of a Group Income Continuance Plan. The Grantees of this Plan are a named Trade Union, the individual members of which can organise cover through the Grantees' Broker, which administers the policy. The Respondent Company is the Insurer of this Plan since 1 September 2013, responsible for underwriting the applications of cover and assessing claims. The Complainant joined the Plan in early 2010 and ceased to be a member in May 2015, when premiums ceased being paid.

The Complainant's Case

The Complainant sets out her complaint, as follows:

"In October 2014 I was put on sick leave by my doctor from my job...with generalised anxiety disorder and secondary depression. I am still under the care of my doctor and a consultant psychiatrist.

I applied to [the Company] under my Income Continuance Plan for income. They requested that I attend their Medical Officer who claimed I was fit for work. I appealed this decision with [the Company] and they paid me under the policy "on an ex-gratia" basis from March 2015 to June 2015 and set up a further appointment with [Dr R. B., Consultant Psychiatrist]. In July 2015 they wrote to me through [the Broker] to advise me that they would cease payments as [Dr R. B.] advised that my

“condition does not totally prevent you from carrying out your pre-disability occupation”. I appealed this decision and I was sent for yet another appointment to [Dr S. B., Consultant Psychiatrist].

She reported that I was fit for work. However, both my GP and my Consultant Psychiatrist have advised me...not to work at present and not to go back to [my Employer].

Each time I have to go under examination on the behest of [the Company] I have been put under severe strain and my anxiety gets worse, I feel that I have to prove to them that I am not well. As I have stated previously both my GP and Psychiatrist have advised me not to return to work with [my employer] and at the moment I am still been treated for anxiety and depression.

It appears to me that [the Company] have reneged on the policy and they are trying to prove that I am being dishonest – this is putting a severe strain on me both financially and mentally & physically”.

In addition, in her correspondence to this Office dated 16 June 2017, the Complainant advises, as follows:

“I am now out of work since October 2014 after seventeen years working for [my Employer] with an impeccable record. Due to bullying, and an enormous work load I had a nervous breakdown. I was very proud of my work record and I loved my job, teaching hairdressing is all I know. In 2010 when a new Principal came on board my life at the school became unbearable. I felt bullied, marginalised and I had no support from the management. I stuck it out until the situation became so bad when I returned for the academic year in September 2014, I couldn’t continue and in the end I felt totally isolated and was put on sick leave by [my GP, Dr M. T.]”.

In this regard, in her correspondence dated 13 March 2018, the Complainant’s GP, Dr M. T. advises, as follows:

“This is to certify that [the Complainant] continues to suffer from mixed anxiety/ depression for which she takes Cymbalta 60mg anti-depressant. This can be severe at times and stops her from going out. It also leads to severe fatigue which affects her activities of daily living. She has attended [Dr A. M.], psychiatrist, for same in the past. She has also had cognitive behavioural therapy to aid same. She has ongoing symptoms to date and I recommend ongoing treatment of same. I don’t recommend that she returns to her previous job due to the stress and anxiety she experienced due to same ...

In summary, [the Complainant] continues to suffer from ongoing anxiety and depression which stems from her previous employment so I don’t recommend that [she] returns to this job on medical grounds”.

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More recently, in her correspondence to this Office dated 9 April 2018, the Complainant submits, as follows:

"I have complied with all the requests made by the insurance company. I have attended several medical appointments, each of which was very stressful and left me totally depleted of energy for days after ...

Although I truly understand that it is necessary for the insurance provider to investigate each claim, I feel that my case has been delayed beyond reasonable timelines. This has affected not only my living situation, but also my health, which my doctor, [Dr M. T.], has addressed on numerous occasions ...

I also attend counselling with [Dr A. M.] ...

To date I have approx. €8,000 in medical expenses.

I have exhausted all my savings and at present I am living on money borrowed from my sister. I am very distressed to be left in this position, as I have always worked and provided for myself.

I took out this insurance policy in good faith that should I fall ill I would have still been able to provide for myself until I am fit to work again.

Instead, not only am I not receiving the support that the policy was supposed to provide, but I am left with additional stress-related health issues and expenses that I have no means to cover".

As a result, the Complainant seeks for the Company to admit her income protection claim into payment.

The Complainant's complaint is that the Company wrongly or unfairly declined her income protection claim.

The Provider's Case

The Complainant was a member of a Group Income Continuance Plan. The Grantees of this Plan are a named Trade Union, the individual members of which can organise cover through the Grantees' Broker, which administers the policy. The Company is the Insurer of this Plan since 1 September 2013, responsible for underwriting the applications for cover and assessing claims. The Complainant joined the Plan in early 2010 and ceased to be a member in May 2015, when premiums ceased being paid.

Company records indicate that the Company received an income protection claim from the Broker on 7 January 2015, which the Complainant, a hairdressing and beautician teacher, had completed on 5 January 2015. The Complainant advised therein that she had been unable to work since 10 October 2014 due to her being *"physically, emotionally, mentally unable to attend environment to perform duties"*. The Complainant also provided the

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following additional information on the claim form to assist the Company in its assessment of the claim:

“Unbearable workload. Unrealistic time frame to complete work. Split between 2 schools with no travel time and extra subjects added to timetable in the last 2 years. Attend night class to up skill outside work hours, was not consulted appropriate for any change. Extremely damaging to my personal & financial social life and my mental and physical health has suffered immensely”.

The Company notes that all income protection claims are assessed against the Group Income Continuance Plan definition of disability, as follows:

“A Insured Person is suffering from a Disability if he is, in the opinion of our Chief Medical Officer,

- (i) totally unable, due to illness or injury, to carry out the duties of his/her Normal Occupation by reason of disablement arising from bodily injury sustained or sickness or illness contracted; and*
- (ii) is not engaging in any other occupation or activity whether part-time or fulltime, in any capacity, for payment, profit or reward whatsoever.*

Disabled shall have a corresponding meaning”.

In order to meet this definition, the Company notes that it is necessary that a claimant is totally unable to perform the duties of their normal occupation or a similar occupation.

As part of its initial assessment of the Complainant’s income protection claim, the Company wrote to the Complainant’s GP, Dr M. T. on 12 January 2015 to obtain a Private Medical Attendants Report, which it subsequently received on 21 January 2015. The Company notes that while the Complainant’s GP advised that the Complainant became anxious on considering work and that there were ongoing symptoms of stress which were affecting her concentration, Dr M. T. also outlined that the Complainant’s symptoms were improving and that she hoped the Complainant would return to work in the months that followed.

The Company also wrote to the Broker on 12 January 2015 to request additional information and to the Health Claims Bureau to request a Health Claims Visitor, who would call to the Complainant’s home. In addition, the Company wrote to the Complainant on 12 January 2015 to advise her that a home visit was being arranged. This correspondence outlined that the Health Claims Bureau is an independent consultancy and that home visits are intended to offer supportive advice and assistance to claimants and to allow the Company develop a better understanding of a claimant’s particular circumstances. The Health Claims Visitor called to the Complainant’s home on 19 January 2015 and her ensuing Report, dated 21 January 2015, advised that the Complainant was suffering from work-related stress and hoped to return to work in a less stressful role.

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With a view to fully and fairly assessing her claim and in order to determine whether or not she met this policy definition of disability, the Company arranged for the Complainant to attend an independent medical examination with Dr P. D., Consultant Psychiatrist, on 4 March 2015. The ensuing report from Dr P. D., dated 4 March 2015, advised that the Complainant had a number of grievances against her employer that had not at that time been resolved. In his opinion, the Complainant's symptoms were relatively mild and not disabling and he outlined that whilst she did suffer some mild anticipatory anxiety symptoms with respect to a return to work, confronting those symptoms would not cause her undue discomfort. In this regard, Dr P. D. concluded that the Complainant *"is not totally unable due to illness of injury to carry out the duties of her normal occupation ... she is mentally fit to carry out all the normal full-time duties of her normal occupation ... her prognosis is excellent"*.

As a result, the Company declined the Complainant's income continuance claim by correspondence dated 16 March 2015, advising therein that, *"During our Chief Medical Officer's assessment of the claim, it was noted that workplace issues are the main cause of your current absence from work, and unfortunately this falls outside the scope of the policy"*. The Complainant appealed this decision by way of correspondence dated 27 March 2015, wherein she advised that she was unfit to fulfil her duties and was under the care of Dr M. T., her GP and that she had attended Dr A. M., Consultant Psychiatrist, who was treating her for severe anxiety and depression.

The Company then wrote to Dr A. M. on 31 March 2015 requesting a report on the Complainant's state of health. The Company followed up this request by telephone on 24 April 2015 and a further telephone call was placed and reminder letter sent on 5 May 2015. The Company received a Report from Dr A. M., dated 28 April 2015, on 13 May 2015, in which she noted that the Complainant had presented to her with possible generalised anxiety disorder with secondary depression and that the trigger appeared to be work-related. In this regard, Dr A. M. stated *"I advised given her overall improvement in symptoms that [the Complainant] would likely reach a point where she would be medically fit to return to work within a possible 6-8 week timeframe. I advised that she should make a decision in relation to her current employment and in particular in relation to possible alternative employed ... I noted that her anxiety had diminished and her mood was improving. I noted that she had an increased sense of hope for the future"*.

The Complainant had submitted her claim to the Company in January 2015. In May 2015, when the premiums ceased being paid and cover ceased, the Company decided to make some payments to the Complainant as it was not possible to conclude its assessment of her appeal at that time and it was conscious that she had been absent from work since October 2014. By correspondence dated 20 May 2015, the Company confirmed that it was making a gross payment of €7,664.77 to her nominated bank account to cover the period from 6 January 2015 to 30 June 2015 but that it was doing so without admission of liability. In this regard, had the Complainant's claim been admitted for payment, the Company notes that it would have been paid with effect from 6 January 2015, this being the date from which her salary was reduced by her employer by 50%, in accordance with the deferred period terms and conditions in her policy and taking into account the sick days she had taken in the preceding four years.

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The Company correspondence of 20 May 2015 also advised the Complainant that in order to facilitate the final assessment of her appeal it had arranged for her to attend an independent medical examination with Dr R. B., Consultant Psychiatrist on 18 June 2015, for the purposes of having a report prepared on her fitness to return to work. The Company provided Dr R. B. with a copy of the reports of Dr P. D. and Dr A. M., as well as the supporting letters written by the Complainant's GP, Dr M. T. on 4 June 2015.

The ensuing report from Dr R. B. dated 19 June 2015 outlined that the Complainant had informed him that she did not feel fit to resume work as a teacher. Dr R. B. advised that he did not find the Complainant to be motivated to resume work. While he accepted that she felt anxious about the prospect of returning to work, Dr R. B. felt the Complainant was doing well in treatment and may benefit from cognitive therapy to help manage symptoms of anxiety. Dr R. B. concluded *"I do not consider that [the Complainant] is totally unable, due to illness, to carry out the duties of her normal occupation. I accept that she needs continued treatment ... [the Complainant] no longer considers that she will return to work and indicated that she is considering legal action.*

Unfortunately, noting this, I am pessimistic that there will be any progress until the conclusion of same. However, again, whilst accepting that [the Complainant] developed anxiety symptoms as a response to stress, which she reported in relation to her work place, I do not consider that her presentation at that time is such that she could not consider a return to work and continue with appropriate treatment to address any residual symptoms of anxiety".

As a result, the Company wrote to the Complainant on 6 July 2015 advising that it upheld its decision to decline her income protection claim and that there would be no further payments to her. In this regard, the Company states that it has not sought and is not seeking to recover the benefit paid to the Complainant for the period 6 January 2015 to 30 June 2015.

Company records indicate that it did not then hear from the Complainant for nine months, until a further appeal was received, via the Broker, on 13 April 2016. This was followed by a letter of support from the Complainant's GP. In addition, the Company was also provided with a further report from Dr A. M., dated 11 November 2015, wherein it was outlined that the Complainant had engaged consistently in outpatient based care and had undergone trials of different antidepressants with limited response. Dr A. M. advised that the Complainant *"continued to exhibit residual anxiety symptoms precipitated primarily by ongoing contact with her previous work place ... [the Complainant] while motivated to return to work has repeatedly expressed that she does not wish to return to her previous employment".*

The Company notes that this Report from Dr A. M. was, by April 2016, almost six months old. In addition, Dr A. M. had not expressed an opinion as to the Complainant's fitness to return to her normal occupation. In light of this, and notwithstanding that the Complainant's cover under the Group Income Continuation Plan had ceased in May 2015, the Company's

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Chief Medical Officer recommended that a further independent medical examination be arranged to assess the Complainant's fitness to return to work.

As a result, Dr S. B., Consultant Psychiatrist, met with the Complainant on 7 June 2016. The Company provided Dr S. B. with a copy of the reports compiled by Dr P. D., Dr R. B. and Dr A. M., as well as the supporting letters written by the Complainant's GP, Dr M. T. in advance of this examination. Dr S. B. outlined that the Complainant expressed a desire to return to work but had not made any plans to do so. Dr S. B. concluded in her Report dated 7 June 2016 that the Complainant *"developed anxiety and depressive symptoms related to issues at work. She has made some improvements as evidenced by the report of her consultant psychiatrist [Dr A. M.] and also self-report. Her current experience of symptoms is related to thoughts and issues about returning to work for her employer. Her issues with her employer have not been resolved and there appears little motivation to return to her current job ... In my opinion her symptoms are mild and have been perpetuated by the lack of resolution with her employer. In my opinion she is fit to return to her current occupation and is likely to benefit from such a return in terms of occupational rehabilitation"*.

Based on the contents of this Report, it being the third independent psychiatric report obtained indicating that the Complainant was not totally unable to perform the duties of her normal occupation, the Company states that it had no alternative but to decline the Complainant's second appeal and wrote to her on 23 June 2016 to advise of same.

The Company notes that the Complainant then referred the matter to the then Financial Services Ombudsman Bureau. When this complaint later moved to investigation and the Company was reviewing the documentation the Complainant had submitted to the then Financial Services Ombudsman Bureau in support of her complaint, it became aware for the first time of additional correspondence from the Complainant's GP, Dr M. T., dated 16 June 2017. In light of the contents of this letter, which advised that the Complainant was now also suffering from back pain and joint pains/swelling, and notwithstanding that her cover under the Group Income Continuation Plan had ceased in May 2015, the Company offered the Complainant an opportunity to attend for a consultation with an Occupational Health Physician who would be in a position to provide a comprehensive report on her physical state of health and assess her fitness to return to work on that basis.

The Complainant accepted this offer and attended for an occupational health assessment with Dr D. G., a Specialist in Occupational Health, on 19 February 2018. The Company provided Dr D. G. with a copy all previous medical reports obtained in respect of the Complainant's claim. The ensuing Report, dated 5 March 2018, advised, as follows:

"[The Complainant] appears to have been very unwell three years ago with generalised anxiety disorder and depressive illness. [She] appears to have had a reasonable response to treatment. I believe that her mental health has improved since she first went on sick leave. She reports residual symptoms, but objectively appears to be well. [She] outlines significant workplace issues. She reports excessive work demands, lack of support from her employer, lack of control, poor management of change and interpersonal relationships issues between students and staff. These are known risk factors for perceived work stress. However, I am not in a position to

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validate her concerns and I note that she has not been exposed to the workplace for over 3 years ...

I believe it is time for [the Complainant] to move forward with her life. I believe the treating doctors should encourage her to return to work and other normal social activities for the benefit of her health and wellbeing ...

Remaining on long term sick leave is not good for her mental or physical health ...

When assessing fitness for work, the issues to consider are safety, capacity and tolerance. There is no objective medical evidence to indicate that [the Complainant] lacks the physical or mental capacity to return to work and perform her role reliably, safely and effectively. The only basis to her claim that she is unfit for work is her own subjective reports of intolerance of work activity. However she has not even attempted to return to work in the last three and a half years. She functions normally in her daily life, including her ability to take holidays and I find it difficult to accept her subjective symptoms as sufficient grounds to support ongoing sick leave from work.

I believe she is medically fit for work and also medically fit to engage with her employer and resolve any workplace issues.

In my opinion, [the Complainant] does not meet the definition of disability as defined under this policy. I am unable to categorise her as disabled or unable by reason of illness to follow the duties of her normal occupation”.

Based on the contents of this Report, and taking into account the previous reports it received from Dr P. D., Consultant Psychiatrist, dated 4 March 2015; Dr R. B., Consultant Psychiatrist dated 19 June 2015 and Dr S. B., Consultant Psychiatrist, dated 7 June 2016, and the reports from the Complainant’s own treating Consultant Psychiatrist, Dr A. M. and correspondence from her GP, Dr M. T., the Company decision to decline the Complainant’s claim remains unchanged.

The Company notes that the Complainant has repeatedly stated that she has had a difficult relationship with her Employer. The Company respectfully submits that that is not by itself sufficient to meet the definition of disability under the Group Income Continuance Plan. The Company submits that the medical evidence obtained from the three independent consultant psychiatrists and an independent occupational health physician all confirm that the Complainant is not totally unable to carry out the duties of her normal occupation as a hairdressing and beautician teacher and that she is fit to return to work. In addition, these reports each indicate that a return to work would be in the Complainant’s best interest. The Company states that it is thus satisfied from the medical evidence obtained that the Complainant did not and does not meet the policy definition of disability.

Accordingly, the Company is satisfied that it declined the Complainant’s income protection claim in accordance with the terms and conditions of the Group Income Continuance Plan.

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties 19 November 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, I set out below my final determination.

The complaint at hand is, in essence, that the Company wrongly or unfairly declined the Complainant's income protection claim. In this regard, the Complainant, a hairdressing and beautician teacher, was a member of a Group Income Continuance Plan. The Company is the Insurer of this Plan since 1 September 2013, responsible for underwriting the applications for cover and assessing claims. The Complainant joined the Plan in early 2010 and ceased to be a member in May 2015, when premiums ceased being paid.

The Complainant advises that, *"In October 2014 I was put on sick leave by my doctor from my job...with generalised anxiety disorder and secondary depression. I am still under the care of my doctor and a consultant psychiatrist"*. As a result, the Complainant submitted an income protection claim to the Company on 5 January 2015, wherein she advised that she had been unable to work since 10 October 2014 due to her being *"physically, emotionally, mentally unable to attend environment to perform duties"*. The Complainant also provided the following additional information on the claim form:

"Unbearable workload. Unrealistic time frame to complete work. Split between 2 schools with no travel time and extra subjects added to timetable in the last 2 years. Attend night class to up skill outside work hours, was not consulted appropriate for

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any change. Extremely damaging to my personal & financial social life and my mental and physical health has suffered immensely”.

Following its assessment, the Company declined the Complainant’s income protection claim in the first instance by way of correspondence dated 16 March 2015, advising therein that *“During our Chief Medical Officer’s assessment of the claim, it was noted that workplace issues are the main cause of your current absence from work, and unfortunately this falls outside the scope of the policy”*. The Complainant has appealed this decision on a number of occasions, but following further assessments, the Company upheld its decision to decline the Complainant’s income protection claim by way of correspondence dated 6 July 2015, 23 June 2016 and, more recently, 14 May 2018.

In this regard, the Company notes that the Complainant has repeatedly stated that she has had a difficult relationship with her Employer and it submits that that is not by itself sufficient to meet the definition of disability under the Group Income Continuance Plan. The Company submits that the medical evidence obtained from the three independent consultant psychiatrists and an independent occupational health physician all indicate that the Complainant is not totally unable to carry out the duties of her normal occupation as a hairdressing and beautician teacher and that she is fit to return to work. In addition, these reports each indicate that a return to work would be in the Complainant’s best interest.

The Complainant, however, in her correspondence to this Office dated 16 June 2017, submits, as follows:

“I am now out of work since October 2014 after seventeen years working for [my Employer] with an impeccable record. Due to bullying, and an enormous work load I had a nervous breakdown. I was very proud of my work record and I loved my job, teaching hairdressing is all I know.

In 2010 when a new Principal came on board my life at the school became unbearable. I felt bullied, marginalised and I had no support from the management. I stuck it out until the situation became so bad when I returned for the academic year in September 2014, I couldn’t continue and in the end I felt totally isolated and was put on sick leave by [my GP, Dr M. T.]”.

In addition, in her correspondence to this Office dated 9 April 2018, the Complainant also submits, as follows:

“I have complied with all the requests made by the insurance company. I have attended several medical appointments, each of which was very stressful and left me totally depleted of energy for days after ...

I took out this insurance policy in good faith that should I fall ill I would have still been able to provide for myself until I am fit to work again.

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Instead, not only am I not receiving the support that the policy was supposed to provide, but I am left with additional stress-related health issues and expenses that I have no means to cover”.

Income protection policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. As a result, the Complainant must satisfy the policy definition of disability in order to have a valid income protection claim. In this regard, Section 1, ‘Definitions’, of the applicable Group Income Continuance Policy Conditions provides at pg. 5, as follows:

“A Insured Person is suffering from a Disability if he is, in the opinion of our Chief Medical Officer,

- (iii) totally unable, due to illness or injury, to carry out the duties of his/her Normal Occupation by reason of disablement arising from bodily injury sustained or sickness or illness contracted; and*
- (iv) is not engaging in any other occupation or activity whether part-time or fulltime, in any capacity, for payment, profit or reward whatsoever.*

Disabled shall have a corresponding meaning”.

In this regard, ‘Normal Occupation’ is defined at pg. 6 of the Policy Conditions as, *“In respect of an Insured Person his occupation as a teacher or lecturer as proposed to and accepted by the Company”.* In order to meet this definition of disability, it is necessary for the Company’s Chief Medical Officer to conclude from the evidence before him or her that a claimant is totally unable to perform the duties of their normal occupation as a teacher or lecturer.

As part of its claim assessment, I note that the Company arranged for a Health Claims Visitor from the Health Claims Bureau, an independent consultancy, to visit the Complainant at her home on 19 January 2015 and her ensuing Report, dated 21 January 2015, advised, among other things, as follows:

“[The Complainant] says her working conditions were altered without any discussion or debate with her. She says the principal...who was her primary manager did not support her or treat her fairly with regards to this change ...

[The Complainant] displayed moments of distress during the visit, consistent with her description of her feelings and mental/physical health.

She is awaiting an appointment with a Private Psychiatrist, which hopefully will be of benefit to her. From what she told me during the visit and her presentation of her personality, it would seem that [the Complainant] is thinking of possibly reducing her working hours when she feels able to return to work”.

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I note that the Company then arranged for the Complainant to attend for an independent medical examination with Dr P. D., Consultant Psychiatrist, on 4 March 2015 and his ensuing report, dated 4 March 2015, advises, among other things, as follows:

“Conclusions/Opinion:

1. [The Complainant] *developed anxiety symptoms over a period of more than a year in the context of the following:*
 - *Increase in her workload;*
 - *A perception that she was being isolated;*
 - *Her transfer (for half of her hours) to another location;*
 - *Her perception that she was no longer required at her original location;*
 - *Complainants about her work;*
 - *A difficult relationship with her Principal*
2. *The “final straw” for her was when, on 10/10/2014, students were defiant of her and she perceived they were laughing at her.*
3. *She experienced acute anxiety and went off work.*
4. [The Complainant] *has a number of significant grievances against her employer and her Principal.*
5. *These have not yet been resolved.*
6. *Her activities of daily living are satisfactory. She is able to continue her studies in her profession, meet with friends, drive, use the internet and engage in other activities.*
7. *Her symptoms are relatively mild and not disabling.*
8. *The treatment she has received for her symptoms is quite non-intensive and not that expected of a condition which is claimed to be disabling.*
9. *While she does suffer some mild anticipatory anxiety symptoms with respect to return to work, confronting these symptoms would not cause her undue discomfort. In any case, these symptoms could be mitigated by simple treatment.*
10. [The Complainant] *is not totally unable due to illness or injury to carry out the duties of her normal occupation.*
11. *She is mentally fit to carry out all the normal full-time duties of her normal occupation.*

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12. *It would appear it is [the Complainant's] preference to reduce her working week to half-time or to job share and to spend the remainder of her time in private practice.*

13. *Her prognosis is excellent".*

As a result, I note that the Company wrote to the Complainant on 16 March 2015 to advise her that it was declining her income protection claim as *"During our Chief Medical Officer's assessment of the claim, it was noted that workplace issues are the main cause of your current absence from work, and unfortunately this falls outside the scope of the policy"*.

I note from the documentary evidence before me that the Complainant appealed this decision by way of correspondence dated 27 March 2015 and enclosed correspondence from her GP, Dr M. T., dated 25 March 2015, which advised, as follows:

"[The Complainant] has been attending [Dr A. M.], consultant psychiatrist, who has diagnosed her with generalised anxiety disorder with secondary depression... [The Complainant] attends me regularly for review of her condition.

She has ongoing symptoms of anxiety and depression and I don't feel she is medically fit to return to work at present. I feel returning to work at present would exacerbate these symptoms".

As a result, I note that the Company wrote to Dr A. M., Consultant General Adult Psychiatrist, on 31 March 2015 and the ensuing Report, dated 28 April 2015, provides, among other things, as follows:

"[The Complainant] initially attended 11.02.2015 at my rooms...She had been referred by her GP. I have now reviewed her for follow up appointments on 11.03.2015 and 15.04.2015 inclusive.

At the time of her initial consultation I noted that her issues were work related. She explained to me that she has worked as a hairdressing teacher in a secondary school over the past 17 years...She explained that she has had a number of difficult students...

She described how in the last two years she had experienced increasing demands and had been asked to teach an increased number of subjects that she is not qualified to teach.

She stated that she left the school on [date] as she was not able to cope...She has felt bullied as she described it "to get out of the job". She described increasing stress over the past two years ...

In my opinion at the time of initial new patient assessment I advised [the Complainant's] GP that she was presenting in the context of a possible generalized anxiety disorder with secondary depression. I also noted that she may meet criteria

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for a mixed anxiety and depression. I noted that she appeared obsessional in her personality style but there was no evidence of personality disorder. I advised that she should have full updated bloods and I requested a copy of her bloods including thyroid function tests and a copy of her most recent ECG. I noted that the current trigger and perpetuating factor appeared to be work related stress ...

On review today 15.04.2015 [the Complainant] described feeling improved. Currently her anxiety has diminished to a point that she only experiences anxiety in relation to contact with her workplace or cues relating to her previous employment ...

I noted that [the Complainant] has improved during the course of her attendance and that I was anticipating that she would improve further. I noted that currently based on her description of her current symptoms and ability to work that she was currently not medically fit to return to work. She stated that she "doesn't feel mentally strong enough to deal with students". She noted that in particular she experienced significant sweating of her palms when she considered her workplace which in her opinion would impact adversely in terms of her duties as a hair and beauty demonstrator.

I advised that given her overall improvement in symptoms that she would likely reach a point where she would be medically fit to work within a possible 6-8 week timeframe. I advised that she should make a decision in relation to her current employment and in particular in relation to possible alternative employment".

In order to assess the Complainant's appeal further, I note from the documentation before me that the Company then arranged for the Complainant to attend an independent medical examination with Dr R. B., Consultant Psychiatrist on 18 June 2015, for the purposes of having a report prepared on her fitness to return to work. In this regard, I note that the ensuing Report from Dr R. B. dated 19 June 2015 advises, among other things, as follows:

"Opinion:

- 1. [The Complainant's] account, supported by the documentation available suggested that she developed predominately an anxiety disorder in late 2014 which appeared to be related to work related stress. She received appropriate treatment by her General practitioner and from [Dr A. M.], Consultant Psychiatrist. At interview with me she did not appear to be acutely unwell whilst reporting feelings of anxiety in respect of the prospect of returning to work.*

Her sleep pattern has settled and she appears to be coping well [with] activities of daily living. It did not appear to be the case that the current symptoms of anxiety reported are resulting in significant restrictions in her day to day life or unduly interfering with her ability to take part in social activities.

- 2. She is on the antidepressant Venlafaxine 150mg once daily alongside a hypnotic which appears to be helpful to her situation.*

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3. [The Complainant] indicated that she does not consider that she is fit to resume work at this time nor in the future, emphasising a perception that she has “broken down” and will no longer be able to deal with the responsibilities of teaching and believes that as a consequence of her work she is now experiencing significant physical disability. In respect of resuming work I drew [the Complainant’s] attention to the fact that she was 49 and that it was very young to be thinking that she would never return to work. [The Complainant] again emphasised how she considered her health had been affected and that she wouldn’t be well enough to cope with students.

I did not find that [the Complainant] is motivated to resume work. I accept that she does feel anxious about the prospect of same, however, she has been doing well with treatment with [Dr A. M.] and additional benefit may be gained by participation in Cognitive Therapy to further help her manage symptoms of anxiety.

In conclusion I do not consider that [the Complainant] is totally unable, due to illness, to carry out the duties of her normal occupation. I accept that she needs continued treatment which is being provided at an appropriate level by [Dr A. M.] and also that the addition of Cognitive Therapy may result in additional benefit in respect of managing anxiety and in regard to her general self confidence. [Dr A. M.] in her report of April 2015 was hopeful that [the Complainant] would be medically fit to make a return to work within a possible 6-8 week time frame. However, as noted, [the Complainant] no longer considers that she will return to work and indicated that she is considering legal action. Unfortunately, noting this, I am pessimistic that there will be any progress until the conclusion of same. However, again, whilst accepting that [the Complainant] developed anxiety symptoms as a response to stress, which she reported in relation to her work place, I do not consider that her presentation at this time is such that she could not consider a return to work and continue with appropriate treatments to address any residual symptoms of anxiety”.

As a result, I note that the Company wrote to the Complainant on 6 July 2015 to advise that “[Dr R. B.] has advised that your current condition does not totally prevent you from carrying out your pre-disability occupation on a full-time basis and as a result you are not considered “disabled” within the meaning of the policy”.

I note that in April 2016 the Complainant submitted to the Company a Report from Dr A. M., Consultant General Adult Psychiatrist, dated 11 November 2015, which provides, as follows:

“Opinion:

1. *Based on the information available to me at the time of her initial presentation [the Complainant] presented with anxiety and depressive symptoms arising in the context of self reported difficulties at work.*
2. *Diagnostically I was of the opinion that she was presenting with a possible generalized anxiety disorder with a secondary depression on a mixed anxiety and*

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depressive episode. My current working diagnosis is of mixed anxiety and depression diagnosis ...

3. *[The Complainant] has engaged consistently in outpatient based care and has had trials of different antidepressants to date with limited response.*
4. *At the time of her last review she continued to exhibit residual anxiety symptoms precipitated primarily by ongoing contact with her previous work place.*
5. *[The Complainant] whilst motivated to return to work has repeatedly expressed that she does not wish to return to her previous employment.*
6. *I have advised her GP that she has not made the progress in treatment that I had anticipated. I have advised that she engage with psychotherapy to help address her residual anxiety symptoms.*
7. *I have noted that [the Complainant]'s self reported difficulties in her work place have resonances for her in terms of her past experiences in the school system. For this reason it is my opinion that a formal psychotherapy at this time may be helpful to her".*

As a result, and in order to assess the Complainant's appeal further, I note that the Company then arranged for the Complainant to attend for an independent medical examination with Dr S. B., Consultant Psychiatrist, on 7 June 2016, for the purposes of having a further report prepared on her fitness to return to work. In this regard, I note that the ensuing Report from Dr S. B. dated 7 June 2016 advises, among other things, as follows:

"[The Complainant] developed anxiety and depressive symptoms related to issues at work. She has made some improvements as evidenced by the report of her consultant psychiatrist [Dr A. M.] and also self-report. Her current experience of symptoms is related to thoughts and issues about returning to work for her employer. Her issues with her employer have not been resolved and there appears little motivation to return to her current job.

Currently [the Complainant] is under the care of her GP. She is not in active psychotherapy. She has not seen her consultant psychiatrist for some time because of financial constraints. She recently rejected an offer of an increase in her medication.

In my opinion her symptoms are mild and have been perpetuated by the lack of resolution with her employer. In my opinion she is fit to return to her current occupation and is likely to benefit from such a return in terms of occupational rehabilitation".

I note that the Company has advised that based on the contents of this Report, it being the third independent psychiatric report it had obtained indicating that the Complainant was not totally unable to perform the duties of her normal occupation, that it had no alternative

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but to decline the Complainant's second appeal and wrote to her on 23 June 2016 to advise of same.

I note from the documentation before me further correspondence from the Complainant's GP, Dr M. T., dated 16 June 2017, which provides, as follows:

"This is to certify that [the Complainant] has been attending me on almost monthly basis from the 10th October 2014 with symptoms of anxiety and depression secondary to work related stress.

She has attended [Dr A. M.], consultant psychiatrist with the above. She has been commenced on Duloxetine 60mg and was advised to get cognitive behavioural therapy. [The Complainant] is not in a good place mentally at present and I am concerned about her mental health.

She has attended cognitive behavioural therapy for multiple sessions and she also attended a different counsellor for counselling. I feel she needs ongoing counselling/CBT but she is unable to afford same due to financial difficulties. She has not received any payments since the 14th October 2016.

[The Complainant] also suffers from back pain and joint pains/swelling all over. She has been referred to Tallaght Hospital for same and takes anti-inflammatories for this pain.

She also suffers from headaches which are aggravated by stress.

She has a history of hypothyroidism and her Eltroxin has been increased recently.

She has also found attending all the different consultants for different assessments very stressful and it stresses her for a week or so.

In summary, [the Complainant] continues to suffer from anxiety/depression which in turn is aggravating her musculo-skeletal pains/headaches. Financial pressures are now aggravating the whole situation. I therefore do not think she is fit for work at present".

When this letter advising that the Complainant now *"also suffers from back pain and joint pains/swelling all over"* came to the attention of the Company, I note that it then arranged for the Complainant to attend a further independent medical examination with Dr D. G., a Specialist in Occupational Health, on 19 February 2018 and her ensuing Report, dated 5 March 2018, advised, as follows:

"[The Complainant] appears to have been very unwell three years ago with generalised anxiety disorder and depressive illness. [She] appears to have had a reasonable response to treatment. I believe that her mental health has improved since she first went on sick leave. She reports residual symptoms, but objectively appears to be well. [She] outlines significant workplace issues. She reports excessive

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work demands, lack of support from her employer, lack of control, poor management of change and interpersonal relationships issues between students and staff. These are known risk factors for perceived work stress. However, I am not in a position to validate her concerns and I note that she has not been exposed to the workplace for over 3 years ...

I believe it is time for [the Complainant] to move forward with her life. I believe the treating doctors should encourage her to return to work and other normal social activities for the benefit of her health and wellbeing.

In my opinion, the time has come for [the Complainant] to return to the workforce. Remaining on long term sick leave is not good for her mental or physical health ...

When assessing fitness for work, the issues to consider are safety, capacity and tolerance. There is no objective medical evidence to indicate that [the Complainant] lacks the physical or mental capacity to return to work and perform her role reliably, safely and effectively. The only basis to her claim that she is unfit for work is her own subjective reports of intolerance of work activity.

However she has not even attempted to return to work in the last three and a half years. She functions normally in her daily life, including her ability to take holidays and I find it difficult to accept her subjective symptoms as sufficient grounds to support ongoing sick leave from work.

I believe she is medically fit for work and also medically fit to engage with her employer and resolve any workplace issues.

In my opinion, [the Complainant] does not meet the definition of disability as defined under this policy. I am unable to categorise her as disabled or unable by reason of illness to follow the duties of her normal occupation”.

I note that in her correspondence dated 13 March 2018, the Complainant’s GP, Dr M. T. advises, as follows:

“This is to certify that [the Complainant] continues to suffer from mixed anxiety/depression for which she takes Cymbalta 60mg anti-depressant.

This can be severe at times and stops her from going out. It also leads to severe fatigue which affects her activities of daily living.

She has attended [Dr A. M.], psychiatrist, for same in the past. She has also had cognitive behavioural therapy to aid same. She has ongoing symptoms to date and I recommend ongoing treatment of same. I don’t recommend that she returns to her previous job due to the stress and anxiety she experienced sue to same.

She has ongoing severe shoulder/back pain for which she is awaiting orthopaedic review. She had a recent shoulder x-ray which recommended specialist review of her shoulder. She takes anti-inflammatories for same.

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She has a background history of hypothyroidism for which she takes Eltroxin daily.

[The Complainant] also suffers from headaches and stress aggravate same.

In summary, [the Complainant] continues to suffer from ongoing anxiety and depression which stems from her previous employment so I don't recommend that [she] returns to this job on medical grounds".

In this regard, additional correspondence from Dr D. G., a Specialist in Occupational Health, dated 24 April 2018 advises, among other things, as follows:

"I note the x-ray of the shoulder from September 2017 and x-ray of the chest from February 2018. [The Complainant] did not complain of any shoulder pain and examination of the muscular-skeletal system was normal".

In addition, further correspondence from Dr D. G., a Specialist in Occupational Health, dated 2 May 2018 advises, among other things, as follows:

"[The Complainant] did not complain of shoulder pain when I asked her to list her current symptoms.

Later in the consultation I conducted an examination which included assessment of the musculoskeletal system. At this point [the Complainant] reported pain when I palpated her shoulder. However, she had full range of movement, power and function of both shoulder joints.

Therefore, I did not conclude that there was any significant disability affected her shoulder".

I note that the Company arranged for the Complainant to attend four independent medical examinations with four different consultants, taking place on 4 March 2015, 18 June 2015, 7 June 2016 and 19 February 2018. Having examined all of the documentation before me, I accept that it was reasonable for the Company to conclude from the medical reports before it that the Complainant did not meet the policy definition of disability.

In this regard, I note that the Company submits that the medical evidence obtained from the three independent consultant psychiatrists and an independent occupational health physician all confirm that the Complainant is not totally unable to carry out the duties of her normal occupation as a hairdressing and beautician teacher and that she is fit to return to work.

In addition, I note that these reports indicate that a return to work would be in the Complainant's best interest.

I also note from the documentation before me that the Complainant has repeatedly stated that she has had a difficult relationship with her Employer and I accept and understand that

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this is a cause of concern for the Complainant. However, I accept that work related issues are not by themselves sufficient to meet the definition of disability under the Group Income Continuance Plan.

As a result, I accept that the Company declined the Complainant's income protection claim in accordance with the terms and conditions of the Group Income Continuance Plan

In addition, I note that in her letter to this Office dated 9 April 2018, the Complainant submits, as follows:

"I have complied with all the requests made by the insurance company. I have attended several medical appointments, each of which was very stressful and left me totally depleted of energy for days after ...

Although I truly understand that it is necessary for the insurance provider to investigate each claim, I feel that my case has been delayed beyond reasonable timelines. This has affected not only my living situation, but also my health, which my doctor, [Dr M. T.], has addressed on numerous occasions ...

I also attend counselling with [Dr A. M.] ...

To date I have approx. €8,000 in medical expenses.

I have exhausted all my savings and at present I am living on money borrowed from my sister. I am very distressed to be left in this position, as I have always worked and provided for myself.

I took out this insurance policy in good faith that should I fall ill I would have still been able to provide for myself until I am fit to work again.

Instead, not only am I not receiving the support that the policy was supposed to provide, but I am left with additional stress-related health issues and expenses that I have no means to cover".

In this regard, I note that the Company advises in its correspondence to this Office dated 14 May 2018, as follows:

"[The Complainant] has also outlined that she has incurred medical expenses to date of approximately €8,000 and that this has caused an increased level of stress.

We trust our present submission and file of papers demonstrate that it is been in [the Complainant's] interest that all of the medical reports have been requested and that they were requested with a view to fully and fairly assessing the claim, notwithstanding that [her] cover under the Plan ceased in May 2015...

The Company confirms that it has met the cost of all medical consultations [the Complainant] has attended at the Company's request. The Company has paid

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€3,734.30 in this regard and...the Company made a payment to [the Complainant] in the gross amount of €7,664.77 in June 2015, before a final decision had been reached on [her] first appeal. The Company has not sought to recover this amount from [the Complainant]. We regret, but any additional medical expenses incurred by [the Complainant] were not at the behest of the Company...if [the Complainant] incurred expenses while attending for a consultation arranged for her by the Company, we would be happy to reimburse her reasonable expenses (to a maximum of €50 in respect of each consultation) on receipt of vouching documentation”.

With regard to income protection policies in general, I accept that as part of its initial claims assessment and in order for it to determine whether a claimant meets the policy definition of disability, it is typically necessary for the insurer to arrange for the claimant to attend for an independent medical examination, like the one the Complainant attended on 4 March 2015.

I accept that each examination that the Company then requested the Complainant to attend thereafter, that is, on 18 June 2015, 7 June 2016 and 19 February 2018, was a direct response to an appeal from the Complainant herself to the Company’s original decision to decline her income protection claim. In this regard, I consider that it was appropriate, reasonable and necessary for the Company to request that the Complainant attend for further independent medical examinations in each instance in order for it to be fair and thorough in its assessment of her appeals. I also note that the Company paid for any assessments that it asked the Complainant to attend.

For the reasons outlined above, I do not uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

11 December 2018

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

- (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,
- and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

