



<u>Decision Ref:</u>	2019-0168
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Income Protection and Permanent Health
<u>Conduct(s) complained of:</u>	Rejection of claim - fit to return to work Claim handling delays or issues Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant, now retired, became a member of a Group Income Protection Scheme on 28 March 2008. The Provider is the Insurer of this Scheme, responsible for underwriting cover and assessing claims.

The Complainant's Case

The Complainant was medically certified as unfit for work by her GP from 5 January 2016 due to "*benign positional vertigo*". She later retired on ill-health grounds, with effect from 21 April 2016. The Complainant was in receipt of income protection benefit from the Provider from 5 January 2016 until 27 November 2017, when it ceased payment of the benefit as it then deemed that the Complainant was no longer totally unable to carry out her normal occupation due to illness.

In this regard, the Complainant sets out her complaint, as follows:

"Whilst working for [my Employer], I took out an income protection policy in approx. 2008, to protect myself in the event of ever being unable to work.

Unfortunately in 2014 my vertigo became problematic causing me to attend occupational health in [Hospital], where it was decided I would need to stop doing night shifts and continue with day shifts.

This arrangement was in place under a year when [Dr L. S.], Consultant and Accredited Specialist in Occupational Medicine decided that my vertigo was so bad she had to retire me on the grounds of ill health from 21/4/16 ...

My income protection was started. My Doctor has written to [the Provider] on numerous occasions informing them that in his opinion I may not ever be able to return to work due to intractable vertigo. [The Provider] sent me to their doctors who have stated "I should be able to return to work" and have stopped my payments since last December 2017.

I would like [the Provider] to honour my policy which states in the event of having to retire under medical grounds, they would pay income protection until the age of 65, however they also stipulate that they have the right to medically assess you at any point. I accept that this is their right. However, with respect my own GP has far better knowledge of my medical condition".

In this regard, the Complainant submits that her treating doctors continue to advise that she is unfit for work and as a result she seeks for the Provider to reinstate payment of her income protection benefit that it ceased payment of on 27 November 2017.

The Complainant's complaint is that the Provider wrongly or unfairly ceased payment of her income protection benefit.

The Provider's Case

Provider records indicate that the Complainant completed an Income Protection Claim Form on 28 January 2016 detailing that she had been off work since 2 January 2016 due to "vertigo". Her GP, Dr G. O'F. completed the GP Claim Form on 1 February 2016 detailing that he had certified the Complainant as unfit to work from 5 January 2016 due to "benign positional vertigo", which he had first diagnosed on 21 September 2015.

In order for an income protection claim to be admitted, the claimant must satisfy the Group Income Protection Scheme definition of period of disability, as follows:

"A period throughout which a Member is totally unable to carry out his Normal Occupation due to a recognised illness or accident and during which the Member is not involved in carrying out any other occupation for profit, reward or remuneration of any kind whatsoever whether sedentary or otherwise and whether or not entirely different from his Normal Occupation.

No Period of Disability shall extend beyond the Expiry Date [i.e., the 65th birthday]".

In this regard, the Provider notes that the Group Income Protection Scheme does not provide cover specifically “*in the event of having to retire under medical grounds*”, as suggested by the Complainant. Instead, it states that the criteria for a valid claim is that the claimant is totally unable to carry out his or her normal occupation due to a recognised illness or accident. In this case, for the Complainant to have a valid income protection claim, she must be totally unable to carry out her normal occupation as [type of work] due to a recognised illness.

As part of its initial claim assessment, the Provider arranged for the Complainant to attend for a medical examination with Dr H. M., Specialist in Occupational Health on 22 February 2016. In his ensuing report dated 29 February 2016, Dr H. M. advised, among other things, as follows:

“Diagnosis:

History, examination and medical reports support a diagnosis of benign positional vertigo. This lady tried Stemetil as required but she does not find it effective. She is awaiting ENT review.

Fitness for work:

In my considered opinion, given this lady’s subjective symptoms she is currently unfit for work mainly due to the possibility for restraint procedures that may be required in her workplace.

I have suggested to her to discuss with her GP a trail of regular Stemetil rather than taking them as required because they could be more effective as a prophylaxis rather than as required treatment. There are also other similar medications that could be tried which might provide better symptom control.

I have also advised this lady to follow up with the ENT referral with her GP making sure that she is on the waiting list. There is also scope for physiotherapy referral as there are specialist physiotherapists that could manage her vertigo symptoms. I would imagine that an MRI of her inner ears would be conducted through the ENT.

Suitability for insurance benefit:

In my opinion, I would support this lady’s claim for income protection for the next three months whilst the above are being considered. In my opinion, this lady is currently totally unable by reason of sickness or accident to fulfil her occupation as [type of work]”.

As a result, the Provider accepted the Complainant’s claim on 12 May 2016 and backdated her income protection benefit to 5 January 2016, when her salary ceased.

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The Provider was subsequently advised in June 2016 that the Complainant had been approved by her Employer for ill health retirement, with effect from 21 April 2016. The Provider adjusted the Complainant's income protection benefit accordingly.

As part of a review of her claim, the Provider wrote to the Complainant's GP, Dr G. O'F. on 23 June 2016 requesting an update and he responded on 11 August 2016 advising, as follows:

"[The Complainant] has vertigo – presumed benign positional vertigo – I say presumed as the more serious Meniere's and indeed vestibular neuroma cannot be ruled out without further tests – for which she waits.

Prognosis is not possible without further tests.

Treatment with stemetil has been trailed – nil other planned.

No vestibular tests yet – waiting list for ENT OPD ...

If Benign Positional vertigo is confirmed I would be cautiously optimistic she will be able to return to work though in a reduced capacity I expect.

No hospital investigations have been performed.

She had been referred to ENT OPD, [Hospital] – not a specific consultant".

In this regard, the Provider wrote to the Complainant's GP on 1 September 2016 advising that as the Complainant was awaiting an ENT appointment that it would be happy to pay for her to attend privately for an MRI and Audiogram to facilitate the diagnosis of and further treatment for her condition. This offer was not taken up. As it was instead advised that the Complainant had obtained an appointment for these investigations for 15 November 2016 at [Hospital], the Provider then wrote to the Complainant's GP on 16 November 2016, 4 January 2017 and 25 January 2017 to obtain the test results, however these results were not forthcoming.

In order to progress the review, the Provider referred the Complainant to Dr H. M., Specialist in Occupational Health on 12 June 2017, for re-examination. At this assessment, Dr H. M. found that the Complainant's history, examination and reports were in keeping with a diagnosis of benign positional vertigo. In addition, Dr H. M. noted that at that time the Complainant had not engaged with a vestibular physiotherapist and was waiting ENT follow-up and MRI. Notwithstanding that she had retired on ill health grounds in April 2016, Dr H. M. was of the opinion that the Complainant was now fit for her normal duties. In addition, Dr H. M. felt that in his opinion the ENT investigations could be conducted in the context of work and that the Complainant no longer fulfilled the policy definition of disability.

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The Provider's Chief Medical Officer, Dr P. H., reviewed the full file on 22 August 2017 and recommended that the Complainant's income protection benefit be ceased as she was fit to return to work and there was no risk from a health and safety perspective. The Provider thus wrote to the Complainant on 29 August 2017 advising that based on the medical information on file its Chief Medical Officer was no longer able to consider that she satisfied the policy definition of disability. The Provider continued to pay the income protection benefit for a further period of 3 months, until 27 November 2017, to allow the Complainant put plans in place to return to work. As a result, the Provider supported the Complainant's income protection claim from 5 January 2016 to 27 November 2017 and a total of €30,658.05 was paid.

The Complainant appealed the Provider's decision to cease payment of her income protection benefit on 12 September 2017 and provided letters from her GPs, Dr G. O'F., dated 23 February 2016, and Dr C. C., dated 26 May 2017. These letters were referred to Dr H. M., Specialist in Occupational Health for his consideration and he reverted to the Provider on 18 September 2017 advising that his opinion remained the same and that the symptoms referred to therein were not incompatible with the Complainant's occupation.

In addition, the Provider's Chief Medical Officer, Dr P. H. reviewed the file on 3 October and again on 5 October 2017 and was of the opinion that the Provider should maintain its decision to cease the claim as the Complainant was no longer totally disabled and thus no longer met the policy definition of disability. In this regard, Dr P. H. advised, *"Maintain decision to decline. No longer totally disabled. Benign Positional Vertigo would not cause continuous disablement, by its nature it is benign, episodes linked to changes in head position & short lived. No underlying disease process"*.

As it had not received any objective testing for the Complainant, the Provider referred her for a medical examination with Mr D. McS., Consultant ENT Surgeon on 23 January 2018. Having completed his examination and audiological testing, Mr D. McS. concluded that with appropriate support and treatment the Complainant was fit to resume work duties on a part time basis and that her ongoing intermittent dizziness were atypical in nature and required further investigation by the ENT services in [Hospital] and treatment with vestibular physiotherapy.

The Provider sent a copy of Mr D. McS.'s report to the Complainant's GP, Dr G. O'F. on 26 February 2018 for his comments. In this regard, Dr G. O'F. replied on 18 April 2018 by way of enclosing a report from Dr J. D., Senior Registrar in ENT, [Hospital] dated 9 September 2016, which advised that there *"is no ENT cause for [the Complainant's] vertigo"*.

The Provider's Chief Medical Officer, Dr P. H. once again reviewed the file on 1 May 2018 and she remained of the opinion that the Complainant no longer satisfied the policy definition of disability, that is, that she was not totally unable to carry out her normal occupation due to a recognised illness.

The Provider was not furnished with reports dated 8 February 2013, 10 April 2013, 28 May 2013, 4 November 2014, 29 January 2015, 16 April 2015, 28 April 2015, 4 August 2015, 30 September 2015, 17 November 2015, 3 March 2016 and 21 April 2016 from Dr L. S., Consultant and Accredited Specialist in Occupational Medicine, as part of the assessment or appeal of the Complainant's claim. Instead, these reports were provided later, on 16 October 2018, via the Office of the Financial Services and Pensions Ombudsman, as part of this complaint process. Whilst these reports were not formally part of the claim assessment or appeal, following receipt of these reports the Provider's Chief Medical Officer, Dr P. H. reviewed the full medical file once again on 23 October 2018 and concluded that the evidence on file does not support total disability. In addition, the Provider does not see any new information within these reports that would impact upon its decision to cease payment of the Complainant's income protection benefit from 27 November 2017.

The Provider notes that the Complainant retired on ill-health grounds, with effect from 21 April 2016. In this regard, an ill health retirement application is determined according to the specific criteria of the Employer's pension/ill health retirement scheme, whilst income protection is assessed according to the specific policy definition of disability. There is often a difference between the two criteria and a person may be eligible for ill health retirement but not income protection, and vice versa. The occupational health provider assessing ill health retirement may take into account the employee's attendance record, motivation and subjective symptoms, in addition to the nature of the illness and the specific work place and role. Income protection insurance decisions are, however, based on objective medical evidence and the job demands of the occupation, to ascertain whether the claimant meets the policy definition of disability for a valid claim. As a result, the fact that the Complainant has retired on ill-health grounds does not impact on an income protection assessment.

It is the view of the Provider's health claims team in conjunction with its Chief Medical Officer that the balance of opinion does not support the Complainant's claim. The Complainant attended specialist medical examiners, on behalf of the Provider, who had first sight of the previous medical reports submitted and who concluded that she does not meet the policy definition of disability. In addition, the Provider notes that its Chief Medical Officer had four reviews of the file when new medical evidence became available. It is also noted that there was a delay in submitting some reports on behalf of the Complainant and/or her GP and as a result the claims assessment, review and appeal were only undertaken at the time of receipt of these reports.

Accordingly, the Provider is satisfied that it ceased payment of the Complainant's income protection benefit in accordance with the terms and conditions of the Group Income Protection Scheme.

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.

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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 on the 26th March 2019, 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. Following the Preliminary Decision:

1. The Complainant submitted an email on 8th April
2. The Provider responded by letter to this Office on 16 April
3. The complainant submitted a further emails to this Office on 23rd and 24th April
4. The Provider responded on 30th April
5. The Complainant sent two emails with attachments on 1st May
6. Complainant submitted an email on 7th May
7. The Provider submitted on the 21st May that it had no further comment to make

All of this correspondence was exchanged between the parties for their consideration in line with our standard procedures.

Following the consideration of the additional evidence and submissions from the parties, together with all the evidence and submissions, my final determination is set out below.

I note the Complainant, in her submissions following the preliminary decision, supplied copies of two published previous decisions of this Office. I must point out that my decision in relation to this complaint is based on the evidence available in respect of it. Each complaint is considered on its own facts and merits.

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The complaint at hand is that the Provider wrongly or unfairly ceased payment of the Complainant's income protection benefit.

The Complainant was medically certified as unfit for work by her GP from 5 January 2016 due to *"benign positional vertigo"*. She later retired on ill-health grounds, with effect from 21 April 2016. The Complainant was in receipt of income protection benefit from the Provider from 5 January 2016 until 27 November 2017, when it ceased payment of her benefit as it deemed the Complainant no longer totally unable to carry out her normal occupation due to illness. The Complainant, however, submits that her treating doctors continue to advise that she is unfit for work and as a result she seeks for the Provider to reinstate payment of her income protection benefit that it ceased payment of on 27 November 2017 and continue payment until she reaches age 65.

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. In this regard, I note the 'Definitions' section of the applicable Group Contributory Income Protection Policy Conditions booklet provides, among other things, at pg. 3, as follows:

"Period of Disability

A period throughout which a Member is totally unable to carry out his Normal Occupation due to a recognised illness or accident and during which the Member is not involved in carrying out any other occupation for profit, reward or remuneration of any kind whatsoever whether sedentary or otherwise and whether or not entirely different from his Normal Occupation.

No Period of Disability shall extend beyond the Expiry Date [i.e., the 65th birthday]."

In addition, section 3.5, 'Identifiable and Recognised Medical Cause', of this Policy Conditions booklet provides at Page. 6, as follows:

"Benefit will not be payable where an identifiable and recognised medical cause does not exist.

A recognised medical cause (other than those relating to stress, anxiety, depression, mental or nervous disorders), will be deemed to exist in circumstances if it can be attributed to the existence of recognised and positive signs of a known illness, sickness, interruption, cessation or disorder of the body functions systems or organs. It must be identifiable on the basis of recognised and identifiable signs and symptoms through medical examination or clinical tests carried out by a medical officer or consultant nominated by [the Provider]."

Section 4.5, 'Other Evidence and Enquiries', of the Policy Conditions booklet provides at Page 8, as follows:

“In addition [the Provider] may, as often as it requires, carry out any enquiries considered necessary to further investigate a Member’s claim for Benefit and/or review an existing claim ...

[The Provider] reserves the right at all times to request any additional evidence as it considers necessary to complete the full assessment and/or review of a Member’s claim.

The payment of benefit is not guaranteed and will at all times be subject to regular review. The claim will at all times be assessed on the Member’s ability to carry out his Normal Occupation. If the Member’s Normal Occupation is no longer available for the Member to return to, it will have no impact on the continued payment of the claim”.

I note that following its initial claims assessment, the Provider accepted the Complainant’s claim on 12 May 2016 and backdated her income protection benefit to 5 January 2016. I am satisfied that in accordance with the policy terms and conditions, this claim was subject to ongoing review to ensure that the Complainant continued to satisfy the policy definition of disability, that is, that she continues to be totally unable to carry out her normal occupation due to her illness.

As part of its review, the Provider wrote to the Complainant’s GP, Dr G. O’F. on 23 June 2016 requesting an update and in his correspondence dated 11 August 2016 he responded, as follows:

“[The Complainant] has vertigo – presumed benign positional vertigo – I say presumed as the more serious Meniere’s and indeed vestibular neuroma cannot be ruled out without further tests – for which she waits.

Prognosis is not possible without further tests.

Treatment with stemetil has been trailed – nil other planned.

No vestibular tests yet – waiting list for ENT OPD

Referred ENT ...

If Benign Positional vertigo is confirmed I would be cautiously optimistic she will be able to return to work though in a reduced capacity I expect.

No hospital investigations have been performed.

She had been referred to ENT OPD, [Hospital] – not a specific consultant”.

I note from the documentary evidence before me that the Provider wrote to the Complainant’s GP on 1 September 2016 advising that as the Complainant was awaiting an

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ENT appointment that it would be happy to pay for her to attend privately for an MRI and Audiogram to facilitate the diagnosis and further treatment for her condition, however this offer was not taken up. In addition, I note that as it was then advised that the Complainant had obtained an appointment for these investigations for 15 November 2016 at [Hospital] that the Provider wrote to the Complainant's GP on 16 November 2016, 4 January 2017 and 25 January 2017 to obtain the test results, however these results were not forthcoming.

As a result, and in order to progress the review, I note the Provider referred the Complainant to Dr H. M., Specialist in Occupational Health on 12 June 2017, for re-examination. In his ensuing report dated 20 June 2016, Dr H. M. advised, among other things, as follows:

"I reviewed [the Complainant] who is a [age] year old [occupation] for a second occasion, having initially reviewed this lady on the 22nd of February 2016. This lady has complaints of vertigo ...

Since our last review, this lady indicated that there has been no improvement in her underlying complaints. Of note, she stated that she forgot to bring a letter from her GP stating she has chronic vertigo and unfit for work. In addition, she has underlying anxiety which probably has been ongoing since her childhood years but has been worse in the last number of months; she has been commenced on Escitalopram 5mg in the last few weeks.

This lady indicated in April 2016 she was reviewed by her occupational health physician who made the recommendation that [she] is suitable for ill health retirement secondary to vertigo. She described two very bad episodes of vertigo two weeks ago, being confined to bed. These serve episodes happen periodically, and not every week; the most recent vertigo was yesterday but at a minor scale.

This lady confirmed that she had an MRI scan booked through the ENT services in [Hospital]. She attended for the scan but was unable to follow through due to feeling anxiety and claustrophobic. She saw her ENT consultant and explained this issue. She was advised that she may require sedation in order to proceed with the MRI. She is currently awaiting further appointments through the ENT.

Secondly, this lady stated that she had a recent audiogram this year; she was advised that her hearing was fine. She has mild tinnitus affecting both sides but not very often ...

This lady indicated ongoing vertigo described as dizziness, being off balance and nausea. She described it as being on a rocking boat. She also described associated fatigue and anxiety. She described it as intermittent; some days she would have no symptoms described as good days but on others she may have the symptoms lasting from a few minutes to throughout the whole day.

This lady indicated that she has been tried on a number of medications which she took for extended periods without relief. She does not take anything for her vertigo

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anymore as she states they do not benefit her. The only benefit would be by lying down to rest.

Of note, this lady has not had any physiotherapy and is not sure whether ENT has referred her for same ...

In addition, this lady indicated the occupational health physician for the employer has recommended retirement on the grounds of ill health due to vertigo in April 2016 ...

[Her GP, Dr G. O'F.] ; 11.08.2016 indicated a diagnosis of presumed benign positional vertigo; if this is confirmed, [Dr G. O'F.] indicated being cautiously optimistic this lady would be able to return to work in a reduced capacity; she is also on a waiting list for ENT outpatients ...

Diagnosis:

History, examination and reports were in keeping with a diagnosis of benign positional vertigo. This lady is awaiting ENT follow-up for MRI scan to rule out a more serious pathology. She indicated having tried a more sustained course of medications to no real benefit. She has not engaged with a vestibular physiotherapist.

Fitness for work:

In my considered opinion, this lady is fit for her normal duties, even taking into account the occupational factor highlighted above. In my opinion the ENT investigations may be conducted within the context of work. It is preferable this lady attends a vestibular physiotherapist as previously mentioned.

Suitability of insurance benefit:

In my considered opinion, this lady no longer fulfils the definition of disability as required under the insurer's policy. Regrettably, I am unable to support [her] claim for further insurance benefit".

I note that the Provider's Chief Medical Officer reviewed the file on 22 August 2017 and recommended that the Provider cease payment of the Complainant's income protection benefit as benign positional vertigo is "*minor vertigo @ changes in head position*".

As a result, the Provider wrote to the Complainant on 29 August 2017 to advise, as follows:

"We received the medical report from [Dr H. M.], whom you attended for an Independent Assessment on 12th June 2017. Our Chief Medical Officer has now considered this report together with all medical evidence received in respect of your claim.

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*I must advise you that based on the information contained within the above reports we are unable to consider that you are **"Totally unable by reason of sickness or accident from following the occupation of Social Worker"** as required by the policy conditions ...*

I regret to advise you that as the definition of disability under the terms of your policy no longer satisfies the above definition we must terminate your benefit".

The Complainant appealed the Provider's decision to cease payment of her income protection benefit on 12 September 2017. In this regard, the Complainant submitted correspondence from her GP, Dr G. O'F., dated 23 February 2016, which advised, as follows:

"[The Complainant] continues to suffer from severe intractable vertigo – no effect with meds. She is on a waiting list for ent r/v. We have had no luck with all manner of meds. This is an ongoing issue and it is unknown if she will ever be fit to return to work".

In addition, the Complainant also submitted correspondence from her GP, Dr C. C., dated 26 May 2017, which advised, as follows:

"This lady attends our surgery with ongoing vertigo: last episode: she sustained 2 episodes last week where quite symptomatic and while has symptoms she cannot drive and has to stay close to home to manage symptoms.

A new diagnosis is anxiety which we have plan in place for today.

Her vertigo is potentially a long term illness.

For this reason we feel she is unable to work due to symptoms".

The Provider referred these letters to Dr H. M., Specialist in Occupational Health for his opinion and he reverted to the Provider on 18 September 2017 advising that *"the symptoms referred to are not incompatible with this lady's stated occupation; my original opinion remains the same"*. In addition, the Provider's Chief Medical Officer, Dr P. H. reviewed the file again on 3 October 2017 and her recommendation was, as follows:

"Maintain decision to decline. No longer totally disabled. Benign Positional Vertigo would not cause continuous disablement, by its nature it is benign, episodes linked to changes in head position & short lived. No underlying disease process".

Nevertheless, I note that the Provider then referred the Complainant for a further medical examination with Mr D. McS., Consultant ENT Surgeon on 23 January 2018. In his ensuing report dated 23 January 2018, Mr D. McS. advised, among other things, as follows:

"On examination [the Complainant's] right tympanic membrane (ear drum) was normal. Her left tympanic membrane was scarred though intact. Tuning fork tests

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were normal. She had no spontaneous nystagmus. Romberg and positional testing were negative.

She had formal audiological testing on the 23rd January 2018. This showed right ear hearing to be completely normal. With regards to left ear hearing, there was a minimal conductive hearing loss at the lower frequencies in this ear in keeping with ear drum thickening. This finding is of no significance. Overall, [the Complainant's] hearing ability is satisfactory.

[The Complainant's] ongoing dizziness is atypical and somewhat unusual. Certainly it is not due to benign positional vertigo which is usually a self limiting condition that can be easily treated. I note that she is presently on medication for anxiety and wonder if this issue is relevant to the ongoing nature and persistence of her dizziness.

In relation to management, in the first instance [the Complainant] requires follow up by the ENT Service in [Hospital] and to have the MRI scan done which they requested for her. Also, it would be worthwhile if [the Complainant] had vestibular testing carried out to see if there is any objective evidence of underlying inner ear dysfunction that would account for her ongoing dizziness. By way of treatment I note that [the Complainant] has never had vestibular physiotherapy to try and alleviate her dizziness. Certainly it would be worthwhile for her to undergo a course of this in an effort to relieve symptoms.

In relation to her suitability to work, it is my opinion that with appropriate support and treatment [the Complainant] is fit to resume work duties. In the first instance, it would be prudent to re-introduce her to the workplace on a part time basis to see how she manages. The situation could be re-assessed in six months time or so after appropriate investigations and treatment have been carried out for her.

In conclusion, [the Complainant] has ongoing intermittent dizziness that is atypical in nature. She requires further investigation by the ENT Service in [Hospital] and treatment with vestibular physiotherapy. In the meanwhile it is my opinion that she is fit to resume work duties on a limited basis. The situation should be re-assessed in six months time to see how she is coping".

In addition, the Provider's Chief Medical Officer reviewed the file again on 1 May 2018 and recommended that the Provider uphold its decision to cease payment of the Complainant's income protection benefit as she no longer satisfied the policy definition of disability, that is, that she was not totally unable to carry out her normal occupation due to a recognised illness.

I accept that it was not unreasonable for the Company to conclude from the medical evidence before it that the Complainant no longer satisfied the policy definition of disability, that is, that she was not totally unable to carry out her normal occupation due to a recognised illness and therefore I accept that in ceasing payment of her income protection benefit on 27 November 2017 that the Provider acted in accordance with the terms and conditions of the Group Contributory Income Protection Policy.

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I note that the Complainant retired on ill-health grounds, with effect from 21 April 2016. In this regard, Section 4.5, 'Other Evidence and Enquiries', of the applicable Group Contributory Income Protection Policy Conditions booklet provides at Page 8, as follows:

*"The payment of benefit is not guaranteed and will at all times be subject to regular review. The claim will at all times be assessed on the Member's ability to carry out his Normal Occupation. **If the Member's Normal Occupation is no longer available for the Member to return to, it will have no impact on the continued payment of the claim**".*

[Emphasis added]

I am mindful in this regard that the criteria for retirement on ill health grounds is different from the policy definition of disability, as provided for income protection claims. As a result, the fact that the Complainant has, in agreement with her Employer, retired on ill-health grounds does not impact on her income protection assessment. The criteria for a valid income protection claim set out in the Group Contributory Income Protection Policy Conditions booklet is that the claimant is totally unable to carry out his or her normal occupation due to a recognised illness or accident. In this case, for the Complainant to have a valid income protection claim, she must be totally unable to carry out her normal occupation due to a recognised illness, and not just her employment with her Employer specifically.

For the reasons set out 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**

6 JUNE 2019

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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.

