



<b><u>Decision Ref:</u></b>	2019-0302
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Income Protection and Permanent Health
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - did not meet policy definition of disability
<b><u>Outcome:</u></b>	Rejected

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

The Complainant became a member of a Group Income Protection Scheme in September 2014. The policyholder is his Employer, the individual employees of which are automatically covered as part of a benefit of their employment. The Provider was the insurer of this Scheme from 1 January 2012 to 31 December 2016, responsible for the underwriting of applications for cover and assessing the claims.

**The Complainant's Case**

The Complainant, a Sales/Account Manager, has been absent from work since 14 June 2016. In his employee income protection claim form dated 7 March 2017, he detailed his illness, as follows:

*“Anxiety – Depression – Insomnia and fatigue – Poor concentration – Memory loss – Suicidal thoughts ...*

*My condition prevents me from doing my job because of the following: Being depressed and suffering from anxiety. I suffer from chronic fatigue. I have poor concentration, memory loss, blackouts and forgetfulness. Also blurred vision ...*

*Work related stress neurasthenia which led to chronic depression and anxiety. Insomnia ...*

*Since leaving work my condition had deteriorated significantly. However with pharmaceutical intervention and counselling my condition is now stable”.*

Following its claim assessment, the Provider concluded from the medical evidence received that the Complainant did not satisfy the policy terms and conditions for a valid claim and it declined his income protection claim on 28 July 2017, a decision it later upheld upon appeal on 15 December 2017.

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

*“I am suffering from severe depression. I have been on certified sick leave since June 2016. I applied for income protection payments in April last, 2017 and [the Provider] refused, then I appealed the decision and got refused again in December 2017.*

*To support my claim I had letters from my GP, my Psychiatrist [Dr J. G.] and [my Employer’s] Company Doctor [Dr P. G.] and also a report from Consultant Psychiatrist [Dr G. M.]. I have been in the care of [a Centre providing service to people in suicide distress] since 2016. I am on a large amount of medication.*

*It is my opinion, and of those listed above, that I am not fit for work. I have, as a result applied for income protection through [the Provider]. I have been refused, appealed the decision and provided additional reports to support, and [the Provider’s] decision again [was to decline my income protection claim] in December 2017”.*

In this regard, the Complainant attended Dr G. M., Consultant Psychiatrist on 3 May 2017, who advised, among other things, in his ensuing Report dated 29 May 2017, as follows:

*“It is my opinion that [the Complainant] developed a Moderate Depressive Disorder as a reaction to the difficulties he encountered in his workplace. However he has been on treatment now for approximately ten months and has had extensive counselling, and this, the passage of time, and the fact that he has not had to be in work because he is on sick-leave have all lead to an improvement ...*

*Regarding his prognosis, it is of some concern that despite being off sick since June 2016, [the Complainant] still has not fully recovered. I would recommend that he continues attending his General Practitioner for treatment of his depression and attends a counsellor. However if over the next three months there isn’t a continual improvement then I would recommend that his GP refer him to a consultant psychiatrist for further specialist treatment. Overall though, I believe that because of his premorbid high functioning and underlying confidence that once he can move on from this case and from his employment with [his Employer], that his depression will ease with treatment and that he will be able to resume employment or training as required”.*

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In addition, Dr P. G., Specialist in Occupational Medicine assessed the Complainant on 29 August 2017 at the request of his Employer and in his ensuing Report dated 19 September 2017 advised, as follows:

*“As you know, I have seen [the Complainant] in the past, and I last saw him in December [2016]. [He] was last at work in June 2016 having a dispute with the company concerning issues regarding money and work targets.*

*Since I last saw him, he has undergone an income continuance assessment with a psychiatrist [Dr D. M.] ... A diagnosis of an adjustment disorder was made and it was felt he was primarily out sick because of the dispute with the company, rather than due to a medical illness. Since that time, he has also seen another psychiatrist, [Dr G. M.], who felt that he is apparently genuinely disabled and unfit for work due to a depressive illness. He has been referred to another psychiatrist next week ...*

*Overall, in my opinion, his condition has deteriorated somewhat. He has been quite unwell in recent months, is currently on an increased dose of medication and is attending counselling on a regular basis.*

*In my opinion, [the Complainant] is not fit to be at work at present. I see little realistic possibility of him returning to work with [his Employer] ever in the future”.*

Furthermore, the Complainant also attended Dr J. G., Consultant Psychiatrist on 7 September 2017 and in her letter dated 7 September 2017 she advised, as follows:

*“Just a note to say I saw [the Complainant] today. I agree with the diagnosis of depression & anxiety which is work related. In my opinion, he’s not fit to resume work in [his Employer] & will not be fit indefinitely”.*

In addition, in her correspondence to the Complainant’s GP, Dr J. C. dated 2 October 2017, Dr J. G., Consultant Psychiatrist advised:

*“I have had a series of reports....but the most recent one is dated 19<sup>th</sup> September 2017. It is from [Dr P. G.]. [Dr P. G.]’s conclusion is that [the Complainant] is not fit for work at present. He sees little realistic possibility of him returning [to] work with [his Employer] ever in the future.*

*Following my consultation with [the Complainant], I have no doubt at all he does indeed suffer from a depressive anxiety syndrome and indeed he told me about thoughts of self-harm which were quite serious at the time. I would agree with [Dr P. G.]’s assessment that he is not fit at present but I have offered to see him again for re-assessment”.*

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In a later letter dated 7 November 2017, Dr J. G., Consultant Psychiatrist, advised, as follows:

*"[The Complainant] is under my care & in my opinion is unfit for work. He is unable to perform the material & substantial duties of his occupation due to an ongoing depressive / anxiety syndrome".*

The Complainant notes that he is now in receipt of an invalidity pension from the Department of Employment Affairs and Social Protection since June 2018.

As a result, the Complainant seeks for the Provider to admit his income protection claim.

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

### **The Provider's Case**

Provider records indicate that the Complainant completed an employee income protection claim form on 7 March 2017, wherein he advised that he had been absent from work since 14 June 2016 due to *"Anxiety – Depression – Insomnia and fatigue – Poor concentration – Memory loss – Suicidal thoughts"*. In addition, his Employer completed a claim form on 10 April 2017 wherein it advised, *"We have been receiving regular medical certs stating that [the Complainant] is absent due to depression"* and enclosed a detailed role profile of his job.

A member of the Group Income Protection Scheme can claim income protection benefit during a period of disability, which is defined in the policy terms and conditions, as follows:

*"The member's inability to perform the Material and Substantial Duties of their normal insured occupation as a result of their illness or injury; upon occurrence of which the benefit under the policy becomes payable, after the Deferred Period.*

*The member must not be engaged in any other occupation".*

As part of its claim assessment, the Provider requested and received a practitioner report from the Complainant's GP, Dr J. C., dated 8 June 2017, wherein he detailed the exact nature and cause of the Complainant's disability as *"Neurasthenia – work-related stress – Depression & Anxiety"* and advised, among other things, as follows:

*"If the condition is not improving, please confirm why this is. Due to ongoing legal issues.*

*What is your prognosis for the claimant? Patient should recover when this issue is finished ...*

***Have you discussed returning to work with the claimant? YES ... he says can't work until issues resolved".***

The Provider considers that these answers strongly indicate that the Complainant's GP was of the opinion that once the then ongoing legal issues that the Complainant had with his Employer were resolved, that he would then be in a position to return to work. In this regard, the Provider considers that it was these outstanding legal issues that were the Complainant's primary reason of absence.

Nevertheless, the Provider arranged for the Complainant to attend for a medical examination on 11 July 2017 with Dr D. M., Consultant Psychiatrist and a specialist in the field of the Complainant's stated reason of absence from work. In his ensuing Report dated 11 July 2017, Dr D. M. advised, among other things, as follows:

*"[The Complainant] was having some difficulties regarding his conditions and remuneration from [the Employer] ... He went back to his doctor a week later and told him more about the issues he was having with [the Employer] ...*

*He said that six weeks ago he was feeling fine, however, on his last payday he got zero and this affected him badly again ... When he can forget about [his Employer] and work he feels OK ...*

*He said when these issues are resolved he will be able to retrain and go back to work but he will never he said, work for [his Employer] again. He said he has had too many grievances with HR, management and operations and the issues are still not resolved, even though they have been with a solicitor since September 2016 ...*

*[The Complainant] was not objectively depressed or anxious ...*

*The prognosis is that of his dispute with [the Employer] rather than that of an independent psychiatric disorder ...*

*It is my opinion that [the Complainant] is currently distressed due to his dispute with [the Employer]. He is not in work because of this dispute, rather than due to a mental illness. He is currently fit to carry out his normal occupation".*

Following a review of all medical evidence received, the Provider wrote to the Complainant's Employer, the policyholder, on 28 July 2017 to advise that it had concluded that the Complainant did not meet the policy definition of disability and thus it was unable to admit his income protection claim.

The Complainant appealed this decision and submitted a Report from Dr P. G., Specialist in Occupational Medicine dated 19 September 2017, as well as a two paragraph letter from Dr J. G., Consultant Psychiatrist dated 2 October 2017.

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The Provider forwarded this letter from Dr J. G. to Dr D. M., Consultant Psychiatrist for review and he advised by way of email dated 17 October 2017, *"I have reviewed my own report and file. There is no new information in [Dr J. G.]'s report therefore I do not alter the conclusion of my own report"*.

In addition, the Provider also arranged for the Complainant to attend for a further independent medical examination with Dr F. K., Consultant Psychiatrist on 9 November 2017, who in his ensuing Report dated 9 November 2017 advised, among other things, as follows:

*"When asked what has to change in order for him to return to work [the Complainant] said that the court case should give him closure ... He said, "When I get closure I can rebuild and go forward"*.

As part of his assessment, the Complainant completed a number of tests. The findings of the Montgomery-Åsberg depression rating scale (MADRS) were in the range of mild severity, as was the Hamilton Anxiety Rating Scale (HAM-A) score. In addition, his total score of 15 on the SIMS questionnaire was elevated just above the recommended cut-off score (14) for the identification of possible symptom overstatement. Dr F. K. concluded his Report, as follows:

*"In my opinion [the Complainant] is currently fit to carry out his normal occupation. Whilst he is emotionally distressed because of the issues that have led to a breakdown in his relationship with his employers, there is no objective evidence of disabling psychiatric illness that would prevent him from performing the material and substantial duties of his normal occupation.*

*There are significant problems of an industrial relations/human resources nature in this case and these are the primary reason that [the Complainant] is now unable to work with [his Employer].*

*The outcome of this case will depend on resolution of the industrial relations/human resources issues".*

The Provider notes that in his correspondence dated 7 September 2017, the Complainant's Consultant Psychiatrist, Dr J. G. advised that the Complainant has a *"diagnosis of depression & anxiety which is work related"*. In addition, the Provider notes that following the two independent medical examinations that it had arranged for the Complainant, both Dr D. M., Consultant Psychiatrist, in his Report dated 11 July 2017 and Dr F. K., Consultant Psychiatrist, in his Report dated 9 November 2017 advise when asked if the Complainant has a psychiatric diagnosis that the *"diagnosis is an adjustment disorder"*. The Provider is not disputing the opinion of Dr J. G. that the Complainant has a defined medical condition, rather it is of the opinion that the severity of this condition is in the range of mild severity and is not impeding his ability to perform the material and substantial duties of his occupation.

Following a review of all the medical evidence received, the Provider remained of the opinion that the Complainant did not meet the policy definition of disability and it affirmed its original decision to decline his income protection claim by way of correspondence dated 15 December 2017.

The Complainant later furnished the Provider with a number of medical reports that predate its decision and it has considered these reports. In this regard, the Provider notes that Dr P. G., Specialist in Occupational Medicine assessed the Complainant on 7 July 2016 at the request of his Employer and in his ensuing Report dated 11 July 2016 advised, as follows:

*"I had a long chat with [the Complainant] over issues that gave rise to his current illness. [He] advised me that he has had difficulties at work relating to his remuneration package and payment of bonuses. This has been going on since late last year".*

In addition, in his report dated 29 May 2017, Dr G. M., Consultant Psychiatrist, advised, among other things, as follows:

*"It is my opinion that [the Complainant] developed a Moderate Depressive Disorder as a reaction to the difficulties he encountered in his workplace. However he has been on treatment now for approximately ten months and has had extensive counselling, and this, the passage of time, and the fact that he has not had to be in work because he is on sick-leave leave have all led to an improvement ...*

*... once he can move on from this case and from his employment with [his Employer], that his depression will ease with treatment and that he will be able to resume employment or training as required".*

The Provider notes that Dr G. M. was of the opinion that the Complainant had improved since his date of first absence, which would be in line with Dr F. K.'s finding of his condition being that of mild severity. It is the Provider's opinion that a mental illness of mild severity does not indicate an inability to perform the material and substantial duties of the Complainant's normal insured occupation. The Provider acknowledges that the Complainant may have residual symptoms, however the Provider appointed examiners have advised that these residual symptoms are not disabling in nature and that he is fit for his normal occupation.

The Provider notes that it would appear that the Complainant has been harshly treated by and has significant issues with his Employer, however this does not constitute the grounds for a valid income protection claim. The Provider is of the opinion that the primary reason for the Complainant's absence from work is due to a human resources / industrial relations matter and not a disabling psychiatric illness that would prevent him from performing the material and substantial duties of his normal occupation, as required by the policy definition of disability. The Provider states that it can only consider a claim against the policy definition of disability and the weight of independent objective medical evidence indicates that the Complainant is fit to resume his occupation.

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The Complainant advises that he is now in receipt of an invalidity pension from the Department of Employment Affairs and Social Protection since June 2018. In this regard, the Provider notes that the assessment of an income protection claim is not interlinked with the assessment of an invalidity pension application. In any event, the Complainant must satisfy the policy definition of disability in order to have a valid income protection claim and the Provider states that it is entitled to form its own opinion on fitness for work, in accordance with the relevant policy terms and conditions.

Accordingly, the Provider states that it is satisfied that it declined the Complainant's income protection claim 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. 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 21 August 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.

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

The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's income protection claim. In this regard, the Complainant was a member of a Group Income Protection Scheme and the Provider was the underwriter of this Scheme.

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The Complainant, a Sales/Account Manager, has been certified as unfit to work since 14 June 2016 due to *"Anxiety – Depression – Insomnia and fatigue – Poor concentration – Memory loss – Suicidal thoughts"*. He submitted an income protection claim but following its assessment, the Provider concluded from the medical evidence received that the Complainant did not satisfy the policy terms and conditions for a valid claim and it declined his income protection claim on 28 July 2017, a decision it later upheld upon appeal on 15 December 2017.

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.

I note that Section 3.1, 'Payment of Benefit', of the applicable Group Income Protection Policy Conditions provides, among other things, at pg. 7, as follows:

*"The policy will pay a regular income if, after the specified Deferred Period, a member meets the definition of Disability".*

In this regard, the 'Appendix: Glossary of Terms' section of these Policy Conditions provides, among other things, at pg. 19:

***"Disability***

*"The member's inability to perform the Material and Substantial Duties of their normal insured occupation as a result of their illness or injury; upon occurrence of which the benefit under the policy becomes payable, after the Deferred Period.*

*The member must not be engaged in any other occupation".*

As a result, the Complainant must satisfy this policy definition of disability in order to have a valid income protection claim.

I have been supplied with a number of medical reports in evidence.

In this regard, the Complainant, at the request of his Employer, attended Dr P. G., Specialist in Occupational Medicine on 7 July 2016, who in his ensuing Report dated 11 July 2016 advised, as follows:

*"[The Complainant] was last at work on 13 June 2016. He advised me that he had a meltdown at work on that day and left work.*

*Since that time, he has been attending his medical advisor and has been diagnosed as being unwell and having a medical complaint. He is having appropriate treatment, but overall, it would be fair to say that his condition has only improved marginally since he has been out sick.*

*I had a long chat with [the Complainant] over issues that gave rise to his current illness. [He] advised me that he has had difficulties at work relating to his remuneration package and payment of bonuses. This has been going on since late last year and several episodes have caused him to become increasingly unwell and frustrated. Things came to a head on the day he had a meltdown and he has been out sick and unwell since. He is having appropriate intervention under the care of his GP, but it would be fair to say this condition is not improving.*

*In my opinion, [the Complainant] is likely to be out sick for the next 4 to 6 weeks. I see little point in reviewing him before that.*

*At present, I do not believe he is fit to engage with [the Employer] in the issue that gave rise to his complaint, but all going well, I would suggest making contact with him in about 2 weeks' time when hopefully he should be fit to engage and discuss these issues. Once they are sorted, I am hopeful that the long term prognosis should be good. Following the assessment it was clear that the only issues surrounding his absence were related to his remuneration/targets and how they are calculated".*

I note that the Complainant attended Dr G. M., Consultant Psychiatrist, on 3 May 2017, who in his ensuing Report dated 29 May 2017 advised, among other things, as follows:

*"This Psychiatric Medico Legal report has been prepared at the request of [a firm of named Solicitors], on behalf of their client [the Complainant] in connection with alleged psychological injuries arising in connection with his workplace ...*

*I met with [the Complainant] by appointment on 3<sup>rd</sup> May 2017 ... [He] informed me that he had started working in the Sales Dept at [his Employer] in September 2014. He told me that he had received little training and that the training he received was poor. He told me that he was set a high sales target. He described in great detail how that it appeared to him that despite reaching his agreed targets his commission was different to that which he believed he had been promised, and how that target kept on increasing. He told me that he received no 'credit' despite hitting and often surpassing the targets. He told me that he had achieved a five million euro sale, but got no commission for it and then achieved another multi-million sale where they applied an incorrect commission rate. He was very disappointed as he had heard [his Employer] was a good company to work for. He told me that he had been offered and had accepted an internal promotion with greater responsibilities but that despite repeated requests he never received the job specification; it later transpired that his peers got a similar salary increase without any extra responsibilities. He told me that he had complained about his treatment to H.R. and that very shortly afterwards the seating arrangements in the office were changed so that the people he was complaining about were now sitting right beside him. He felt underpaid, undervalued and unhappy throughout 2015. He felt that his ability was generally recognised but that he was manipulated and disrespected. He described that his confidence and his mood deteriorated. He wanted to leave but was advised not to by his recruitment agency.*

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Eventually, in June 2016 he reached a crisis point and felt so stressed at work that he went home. He attended his G. P. who commenced him on antidepressant therapy and sleeping pills and referred him to counselling. He told me that the stress did not end there because his pay packets were lower than they should have been and commission was not awarded when it should have been. He had to involve his union to get paid. During the summer of 2016 he felt suicidal. His mood was low. He found it very hard to go to sleep, stay asleep and he was waking-up early in the morning. He felt tired all the time and had low energy and poor concentration. His libido ceased and his motivation to attend the gym decreased. His appetite fluctuated and he gained weight as he wasn't exercising.

He found that because his concentration was poor, his memory wasn't good either and his self-esteem was very low. His G.P. treated him with the antidepressant Lexapro (20 mgs daily - maximum dose) and two Zimovane (50 mgs nocte a sleeping tablet). He also attended [a Centre providing services for people in suicide distress] for intensive and prolonged psychotherapy. The notes from [the Centre] outline his low mood and suicidality secondary to stress at work (and in the context of some bereavements) that responded well to a course of 14 attended sessions.

[The Complainant] has begun to feel a little better and is attending the gym again. He still feels very shaken by the experience and his self-esteem is low. He is still on sick leave from work and the idea of going back to work there fills him with dread ...

[The Complainant] is a [mid forties] gentleman who describes repeated and serious difficulties with his employer which negatively impacted on his mental health. The difficulties he described were that despite being promised rewards (commission) for reaching targets, as soon as he hit those targets the rewards were decreased, but the difficulty of the targets increased. In addition he describes not being given a written job description following his promotion which made him feel undervalued and uncertain. It also seemed to him that he was dealt with differently to his colleagues and therefore he felt isolated. [The Complainant] was in a situation where despite his best efforts and hardest work he perceived that in fact he was being humiliated, manipulated and disrespected, his confidence decreased and his stress levels increased. However he had always been an assertive, ambitious and confident person, so he persevered hoping he could sort the problem out. Eventually the stress levels led him to develop a depressive illness, this was characterised by low mood, suicidal thoughts, a decreased sense of enjoyment, fatigue, decreased motivation, decreased confidence, poor concentration and memory, decreased libido and increased anxiety.

He had to take sick leave in June 2016 and his G.P. started treating him with antidepressants and sleeping tablets. He then attended a counsellor and then went on to longer-term intense counselling at [a Centre providing services for people in suicide distress] He continues to be on sick-leave since.

[The Complainant] *is gradually improving and has managed to go back to the gym. However he still hasn't gone back to work and indeed the idea of going back to [his Employer] fills him with dread. He is now contemplating that he must get retrained in an alternative career. It is my opinion that [the Complainant] developed a Moderate Depressive Disorder as a reaction to the difficulties he encountered in his workplace. However he has been on treatment now for approximately ten months and has had extensive counselling, and this, the passage of time, and the fact that he has not had to be in work because he is on sick-leave have all lead to an improvement ... The relationship between the onset of his depressive illness and the stress at work is clear.*

*Regarding his prognosis, it is of some concern that despite being off sick since June 2016, [the Complainant] still has not fully recovered. I would recommend that he continues attending his General Practitioner for treatment of his depression and attends a counsellor.*

*However if over the next three months there isn't a continual improvement then I would recommend that his GP refer him to a consultant psychiatrist for further specialist treatment. Overall though, I believe that because of his premorbid high functioning and underlying confidence that once he can move on from this case and from his employment with [his Employer], that his depression will ease with treatment and that he will be able to resume employment or training as required".*

I note that the Complainant's GP, Dr J. C. completed a practitioner report for the Provider on 8 June 2017, wherein he detailed the exact nature and cause of the Complainant's disability as "*Neurasthenia – work-related stress – Depression & Anxiety*" and advised, among other things, as follows:

***"If the condition is not improving, please confirm why this is. Due to ongoing legal issues.***

***What is your prognosis for the claimant? Patient should recover when this issue is finished ...***

***Have you discussed returning to work with the claimant? YES ... he says can't work until issues resolved".***

I note that the Provider arranged for the Complainant to attend for a medical examination with Dr D. M., Consultant Psychiatrist on 11 July 2017, who in his ensuing Report dated 11 July 2017 advised, among other things, as follows:

**"History Leading to Absence:**

*His first date of absence was 14<sup>th</sup> June 2016, due to anxiety, depression, insomnia and fatigue, poor concentration, memory loss and suicidal thoughts.*

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*His Claim Form states his condition prevents him from working due to being depressed and suffering from anxiety. 'I suffer from chronic fatigue. I have poor concentration, memory loss, blackouts and forgetfulness. Also blurred vision'.*

*[The Complainant] was having some difficulties regarding his conditions and remuneration from [his Employer]. He put in some big business in March/April but did not get the commission, which was apparently applied, either in the UK or to some other former member of the team. In April his sales target was €1.2 million. He brought in a sale worth €5 million in May and would have been due a large commission. However, he received a letter on 1<sup>st</sup> June saying that his target had been increased to €6.5 million and he would not be getting his commission. He was very distressed and upset by this and over the next two weeks he gradually felt worse. On 14<sup>th</sup> June he was in a meeting and felt ill and dizzy. He went to the toilet and got sick. He then went home and had a rest. When he woke up he realised he had not locked the car or the house. He went to his doctor who diagnosed chronic fatigue and told him to take a week off work.*

*He went back to his doctor a week later and told him more about the issues he was having with [the Employer]. He took more time off. He was owed more than €40,000 in commission. He said it was like they were stealing the money from him. He felt so down and upset that he felt suicidal and contacted [a Centre providing services for people in suicide distress]. He also engaged a solicitor to deal with [his Employer] with regard to his issues. They had stopped some other payments that he was due on commission, which they refused to pay until he got the union involved. Once the union were involved they paid some of the money. He said that his targets were 'moving targets'. When he made the deal in April his target was €1.5 million but when they wrote to him about his target after he brought in the deal they had moved his target up to €6.5 million, which adversely affected his commission and bonus.*

**Psychiatric Symptoms:**

*He said that six weeks ago he was feeling fine, however, on his last payday he got zero and this affected him badly again. He had thought that this insurance policy would be paying by now. He felt extremely low as his finances were so bad that his house and everything is at risk, even his marriage. His sleep was poor last night and for the last month it has been 'up and down'. His appetite is also variable. When he can forget about [his Employer] and work he feels OK. When he is thinking about it he feels upset. He feels upset when he thinks about it as he feels they are treating him as a fool. He says his energy is not great. He has no obsessional checking, no obsessional thoughts and no phobias. He said his memory is poor. For example he forgot a conversation he had with his brother until he was reminded about it the next day. When asked what was the percentage of good and bad days in the last month he said it was not really typical as before the last month he was getting back to normal but now since he has not been paid again he is down again.*

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*He said in the last month he has had thoughts of suicide again and he has contacted [a Centre providing services for people in suicide distress] again and he is going to be seen there for further assessment and therapy ...*

*The diagnosis is adjustment disorder. He is experiencing distress with feelings of depression and suicidal thoughts because of his problems with [his Employer] and how he has been treated there and the lack of progress in resolving the dispute ...*

*There are no restrictions or limitations on his daily activities ...*

*The prognosis is that of his dispute with [his Employer] rather than that of an independent psychiatric disorder ...*

*He does not intend to go back to work with [his Employer] as there has been a break down in his relationship with the company ...*

*It is my opinion that [the Complainant] is currently distressed due to his dispute with [the Employer]. He is not in work because of this dispute, rather than due to a mental illness. He is currently fit to carry out his normal occupation”.*

The Complainant attended with Dr J. G., Consultant Psychiatrist on 7 September 2017, who in her letter dated 7 September 2017 advised, as follows:

*“Just a note to say I saw [the Complainant] today. I agree with the diagnosis of depression & anxiety which is work related. In my opinion, he’s not fit to resume work in [his Employer] & will not be fit indefinitely”.*

I note that the Complainant, at the request of his Employer, again attended Dr P. G., Specialist in Occupational Medicine on 29 August 2017, who in his ensuing Report dated 19 September 2017 advised, as follows:

*“As you know, I have seen [the Complainant] in the past, and I last saw him in December [2016]. [He] was last at work in June 2016 having a dispute with the company concerning issues regarding money and work targets.*

*Since I last saw him, he has undergone an income continuance assessment with a psychiatrist [Dr D. M.] ... A diagnosis of an adjustment disorder was made and it was felt he was primarily out sick because of the dispute with the company, rather than due to a medical illness. Since that time, he has also seen another psychiatrist, [Dr G. M.], who felt that he is apparently genuinely disabled and unfit for work due to a depressive illness. He has been referred to another psychiatrist next week.*

*Overall, in my opinion, his condition has deteriorated somewhat. He has been quite unwell in recent months, is currently on an increased dose of medication and is attending counselling on a regular basis.*

/Cont’d...

*In my opinion, [the Complainant] is not fit to be at work at present. I see little realistic possibility of him returning to work with [his Employer] ever in the future”.*

In this regard, I note that Dr J. G., Consultant Psychiatrist in her correspondence to the Complainant’s GP, dated 2 October 2017, advised:

*“I have had a series of reports...but the most recent one is dated 19<sup>th</sup> September 2017. It is from [Dr P. G.]. [Dr P. G.]’s conclusion is that [the Complainant] is not fit for work at present. He sees little realistic possibility of him returning [to] work with [his Employer] ever in the future.*

*Following my consultation with [the Complainant], I have no doubt at all he does indeed suffer from a depressive anxiety syndrome and indeed he told me about thoughts of self-harm which were quite serious at the time. I would agree with [Dr P. G.]’s assessment that he is not fit at present but I have offered to see him again for re-assessment”.*

In addition, I note that in her letter dated 7 November 2017, Dr J. G. also advised:

*“[The Complainant] is under my care & in my opinion is unfit for work. He is unable to perform the material & substantial duties of his occupation due to an ongoing depressive / anxiety syndrome”.*

I note that the Provider then arranged for the Complainant to attend for a further independent medical examination with Dr F. K., Consultant Psychiatrist on 9 November 2017, who in his Report dated 9 November 2017 advised, among other things, as follows:

**“History of illness**

*[The Complainant] told me that there had been problems in work in the year leading up to him going on sick leave in June 2016. He said that he had been incredibly stressed. He feels that his management in [his Employer] bullied him. He said, “They messed me around with money, targets...They put me into isolation”. He said he was shouted at. He said that his sales targets were regularly moved to unrealistic levels. When he came close to reaching his target, the target was moved. He said that at the end of March 2016, the end of their business year, his target was sales of €1.2 million. In June 2016 he received a letter informing him that his target had been changed to more than €5 million. He said this would have been impossible to reach. He would get a maximum bonus if he reached 250% of the €5 million target. He said he was good at his job but felt that his management were completely against him. He said that targets for others in his team were around €1 million whereas his target was more than €5 million. He said, “I felt I was being pushed around”. He Googled bullying and he found that unrealistic targets were a form of bullying, and realised that this was what was happening to him ...*

/Cont’d...

### **Work / occupational issues**

*There are significant work-related issues in this case ...*

*[The Complainant] told me he does not envisage returning to work with [his Employer]. Initially he thought he would but as time has gone on he has realised this is unlikely.*

*He told me about the problems he has had in getting payments from [his Employer]. He reckons that he is owed a significant amount of money. When asked what has to change in order for him to return to work [the Complainant] said that the court case should give him closure. He said, "They owe me €45,000 - €50,000 and it's like as if they stole it from me". He said, "When I get closure I can rebuild and go forward". He cannot see himself working in sales again. He said he would be able to do a job which was less target driven and involved relationship building ...*

### **Mental state examination on 09/11/2017 ...**

*[The Complainant] related in detail the problems which had occurred in the workplace.*

*He was spontaneous and normally interactive, Mood was not significantly depressed. There was no restriction of affect. Affect was normally reactive. Other than at the outset of the interview when he appeared mildly anxious, there was no persistent signs of anxiety, tension or agitation.*

*Thought content was preoccupied with the problems that had occurred in the workplace. There was a clear sense of grievance towards his employers and their behaviour towards him.*

*There was no abnormality of the form or stream of thoughts. There was no evidence of psychosis.*

*There was no evidence of memory or concentration difficulties in the assessment.*

### **Conclusions / Opinion**

*Diagnosis:*

*The diagnosis is an adjustment disorder, the stressor necessary for this diagnosis being the workplace problems which [the Complainant] experienced ...*

*[The Complainant] developed depressive and anxiety symptoms in response to significant stresses and problems in the workplace ...*

/Cont'd...



*There is little evidence that [the Complainant]'s normal daily activities are negatively impacted by symptoms of psychiatric illness ...*

*There is no objective evidence of depression or anxiety of significance ...*

*[The Complainant] has not set any goals towards return to work. He told me that he does not envisage returning to work with [his Employer] ...*

*[The Complainant] has completely lost faith with his employer and he is now unable to envisage returning to work with [his Employer] ...*

*In my opinion [the Complainant] is currently fit to carry out his normal occupation. Whilst he is emotionally distressed because of the issues that have led to a breakdown in his relationship with his employers, there is no objective evidence of disabling psychiatric illness that would prevent him from performing the material and substantial duties of his normal occupation.*

*There are significant problems of an industrial relations/human resources nature in this case and these are the primary reason that [the Complainant] is now unable to work with [his Employer].*

*The outcome of this case will depend on resolution of the industrial relations/human resources issues".*

I note that in his email dated 2 April 2019, the Complainant submits, as follows:

*"Just in regard to the report from [Dr P. G.]...dated 11<sup>th</sup> of July 2016, please notice that this was during the very early stage of my illness, and at that time I was very hopeful of making a full recovery in the mentioned time frame, but as my condition deteriorated this changed. Please see the follow up reports from [Dr P. G.] ...*

*Again, I would like to raise a similar point to the quoted line from [Dr G. M.], he states that I had an "overall improvement" due to not [having] to be in work. This does not state that I was/am anywhere close to a full recovery.*

*I have followed [Dr G. M.]'s advice in his report, and I have reached out for further help, he was unable to help me, my GP referred me to [Dr J. G.].*

*Whilst I do respect the opinion of...[Dr D. M.] and [Dr F. K.], I feel I have to follow advice [from] [the Centre providing services for people in suicide distress], my GP [Dr J. C.] and [my psychiatrist Dr J. G.], which is to await a full recovery and return to work only when doing so does not put myself at risk".*

/Cont'd...

A claimant must satisfy the policy conditions in order to have a valid income protection claim. In this regard, the 'Appendix: Glossary of Terms' section of the applicable Group Income Protection Policy Conditions provides, among other things, at pg. 19:

***"Disability***

*"The member's inability to perform the Material and Substantial Duties of their normal insured occupation as a result of their illness or injury; upon occurrence of which the benefit under the policy becomes payable, after the Deferred Period.*

*The member must not be engaged in any other occupation".*

Income protection insurance decisions are based on objective medical evidence and the job demands of the occupation, to ascertain whether the claimant meets the policy definitions for a valid claim.

Having considered the weight of the objective evidence before it, and which I have cited from at length, I accept that it was not unreasonable for the Provider to conclude from the medical evidence that the primary reason for the Complainant's absence from work was due to a human resources / industrial relations matter and not due to a disabling psychiatric illness that would prevent him from performing the material and substantial duties of his normal occupation, as required by the policy definition of disability.

As a result, I accept that it was not unreasonable for the Provider to conclude that the Complainant did not satisfy the policy terms and conditions for a valid income protection claim and that in declining his claim, the Provider acted in accordance with the terms and conditions of the Group Income Protection Scheme.

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**

23 September 2019

/Cont'd...

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.