Decision Ref:	2019-0342
Sector:	Insurance
Product / Service:	Income Protection and Permanent Health
Conduct(s) complained of:	Rejection of claim - fit to return to work
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a member of a Group Income Protection Scheme. His Employer is the policyholder and the Provider is the insurer, responsible for the underwriting of applications for cover and assessing claims.

The Complainant's Case

The Complainant, an accounts payable assistant, has been absent from work since **18 October 2016**. He completed an income protection claim form to the Provider on 13 March 2017 wherein he listed his illness and condition and how it affects him in the work place, as follows:

> *"I am suffering from depression, anxiety attacks and stress, and this affects me as follows:*
>
> *Very low energy, constantly feeling tired as some nights I might only get an hour's sleep.*
>
> *Concentration / focus / motivation / mood and confidence are very low and in the [accounts payable] position focus and concentration on work needs to be 100%.*

> *Communication I find difficult with colleagues and clients.*
>
> *The crowded noisy office atmosphere I find very difficult and brings on panic attacks.*
>
> *I was finding it very difficult to stay on focus my concentration for more than a few seconds. I was constantly having to restart work as I just kept losing track of where and what I was doing. As a result, work was building up and a backlog was occurring – particularly with starting on the new accounts package which was causing additional pressure from Manager and caused me a lot of frustration.*
>
> *All work in this position requires good concentration and focus. Accuracy is a priority in all areas, particularly in preparing payments, and processing invoices. Month end reports are long and time consuming and requires accuracy, otherwise job needs to be done over again. Communication at a low with colleagues and clients because of this condition".*

The Complainant sets out his complaint, as follows:

> *"I have been on sick leave since 16/10/16 and once my sick job pay ceased in April 2017, 3 claims have been made for payment of Income Protection insurance which have been refused* [by the Provider]*".*

In this regard, the Provider declined the Complainant's income protection claim in the first instance by way of correspondence dated **19 June 2017** and on appeal by correspondence dated **16 November 2017**, as it concluded from its claim assessment and review that the Complainant did not satisfy the Group Income Protection Scheme definition of disability.

The Complainant seeks from the Provider the *"payment of the income protection and arrears owed since April 2017"*.

<u>The Provider's Case</u>

Provider records indicate that the Complainant, an accounts payable assistant, completed an income protection claim form on 13 March 2017 wherein he noted his first date of absence as 18 October 2016 and listed his illness as *"suffering from depression, anxiety attacks and stress"*.

The Provider also received a Practitioner Report completed by the Complainant's GP, Dr T. on 30 March 2017, wherein he advised the nature and cause of the Complainant's disability as *"depression"*.

In order for an income protection claim to be payable, a member of the Group Income Protection Scheme must satisfy the policy definition of disability, as follows:

/Cont'd…

"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".

In order to determine whether he satisfied this policy definition of disability, the Provider arranged for the Complainant to attend for an independent medical examination with Dr F. Consultant Psychiatrist on 25 May 2017. In his ensuing report dated 25 May 2017, Dr F. advised, *inter alia*, as follows:

"The diagnosis is an adjustment disorder, the stressor necessary for this disorder being the problems that [the Complainant] *had in the workplace …*

Current symptoms are mild in severity. His symptoms are reactive to the adverse working situation, and are within the normal parameters of mood as a reaction to adverse situations …

He felt unsupported by his management and feels he was bullied. The dissatisfaction with the new office environment is also likely to have been a significant issue in developing his symptoms …

His activities of daily living are satisfactory and symptoms are having only minimal effects on his ability to carry out normal activities …

[The Complainant] *told me that he has not been fully compliant with antidepressant therapy. He has just started counselling. Treatment to date has been relatively minimal and less than might be expected for an illness of such severity as to cause total disablement from working …*

He told me that he feels he cannot return to the same position. He is willing to consider returning to a less pressured situation …

In my opinion [the Complainant] *is currently fit to carry out his normal occupation, There are significant industrial relations issues in this case and these appear to be the primary factors that are preventing* [the Complainant] *from working at this time. There is no doubt that he had psychological symptoms as part of an emotional reaction to these problems. However, it is the workplace problems rather than the psychological symptoms that prevent him from doing his job at this time"*.

Based on the findings of this independent medical examination, the Provider was of the opinion that the Complainant was fit to return to his normal occupation as he did not satisfy the policy definition of disability. In this regard, for example, the symptoms the Complainant had described of poor energy levels, poor motivation and poor sleep were not borne out by the examinations conducted. When asked about his daily routine, the Complainant described a busy day in which he is awoken by the alarm at 8 am when he helps to get the children ready for school and he describes helping with domestic chores and sometimes

/Cont'd…

using an exercise bike and also mentions watching television and using the internet. The Provider considers that this would indicate someone who has a relatively active life outside of work.

As a result, the Provider wrote to the Complainant's Employer on 19 June 2017 to advise that it was declining the Complainant's income protection claim, as follows:

> *"Based on the evidence received I regret to advise we are unable to consider* [the Complainant's] *claim. IME* [independent medical examination] *findings suggest that:*
>
> > "[The Complainant] *is currently fit to carry out his normal occupation"."*.

The Complainant appealed this decision by way of submitting correspondence from his treating Consultant Psychiatrist, Dr J. dated 21 August 2017 which advised that the Complainant was *"currently attending [Name of service provider redacted] mental health services.* [He] *was reviewed for the first time on 09/08/17"*. The Provider notes that his letter did not advise that the Complainant was unfit for work on any specific medical grounds.

In order to fully assess his appeal, the Provider arranged for the Complainant to attend Dr D. Consultant Psychiatrist on 11 October 2017 for a further independent medical examination. In his ensuing report dated 11 October 2017, Dr D. advised, *inter alia*, as follows:

> "[The Complainant's] *symptoms are at the mild end of the spectrum and are not of a nature of severity to render him disabled from work …*
>
> *There are no major restrictions or limitations on his routine due to psychiatric issues …*
>
> *It is my opinion that* [the Complainant] *is currently fit from a psychiatric perspective to carry out his normal occupation. He could take certain measures to improve his quality of life, such as abstaining from alcohol and might benefit from some support in adapting to the changes at work and dealing with the backlog when he is absent due to cellulitis"*.

Following a thorough review of his claim, the Provider remained of the opinion that the Complainant did not satisfy the policy definition of disability. As a result, the Provider wrote to the Complainant's Employer on 16 November 2017 to advise as follows:

> *"As you know* [the Complainant's] *claim was declined on the 19 June 2017 following a review of the findings received from the independent medical examination that the member attended on the 25 May 2017 which stated that* [the Complainant] *was fit to carry out his normal occupation.*
>
> [The Complainant] *appealed this decision. As part of the appeal, we arranged a further independent medical examination for the 11 October 2017. We have now received the findings following the most recent medical assessment.*

/Cont'd…

> *Based on the findings of both independent medical examination and a review of all medical records on file including the appeal documents submitted, it is our opinion that* [the Complainant] *does not meet the definition of disability as set out in the policy. I must advise therefore that we are unable to admit this claim.*
>
> [The Complainant] *has been deemed medically fit to return to work to full-time duties, in arriving at our decision, we must be guided by the weight of the objective evidence obtained which, in our opinion, clearly indicates that* [the Complainant] *does not meet the definition of disablement under the policy and is medically fit to resume his normal occupation"*.

The Provider notes that the Complainant submitted further documentation a number of months later, namely, a report from Clinical Psychologist, Dr M. dated 8 February 2018 and an occupational health assessment from Dr R. dated 19 February 2018, both of which the Provider notes are strongly suggestive of a workplace issue. Notwithstanding that he had already exhausted its internal appeals process, the Provider fully reviewed the contents of both of these reports and it concluded that neither report provided any objective evidence of a disabling psychiatric illness which might prevent the Complainant from working. Indeed, in her occupational health assessment dated 19 February 2018, the Provider notes that Dr R. states, *inter alia*, as follows:

> *"In the future* [the Complainant] *says he wishes to return to work to a less demanding role as he finds his role demanding and he does not cope well with change. You may wish to engage with him to consider his concerns and address them as deem appropriate. I can confirm* [the Complainant] *is fit to engage in such a meeting"*.

The Provider does not consider it "*implausible that* [the Complainant] *could work and simultaneously conduct such a meeting with his employer*". It states that if he had such a severe disabling psychiatric illness as he suggests, the Complainant would not be fit to attend such a meeting, let alone perform his work duties.

In addition, in his report dated 8 February 2018, Clinical Psychologist, Dr M. advises that the Complainant *"described a number of subsequent interactions with management that led to him feeling upset, unsupported, rejected and devalued.* [He] *subsequently went on illness leave"*. The Provider considers that this demonstrates that the Complainant's decision to go on illness leave is directly a result of unresolved work place issues and not a disabling psychiatric illness.

In order for an income protection claim to be payable, a claimant must satisfy the policy definition of disability. The purpose of income protection is to support employees who demonstrate work disability supported by the objective medical evidence. In this regard, the results of the independent medical examinations carried out by Consultant Psychiatrists Dr F. on 25 May 2017 and by Dr D. on 11 October 2017 advise that the Complainant's symptoms were mild in nature and clearly indicate that he does not have a disabling psychiatric illness and is fit for work. During the course of his assessment with Dr F. the Complainant also advised that he was not fully compliant with his medication, taking it intermittently. Whilst this is not suggestive of someone with a disabling psychiatric illness, noncompliance of

/Cont'd…

medication cannot be a matter for the Provider in determining whether a claimant satisfies the policy definition of disability. In addition, it is generally accepted that a disabling psychiatric complaint not just impedes an individual from working but also adversely impacts their ability to perform normal every-day tasks and activities. However, the Provider considers that the level of activity that the Complainant has demonstrated in terms of undertaking household chores, childcare responsibilities, exercise and the use of social media are not commensurate with a disabling psychiatric illness.

The purpose of the Group Income Protection Scheme of which the Complainant is a member of is to support employees who demonstrate work disability supported by the objective medical evidence. In this regard, non-medical and work-related issues do not constitute the basis for a valid claim. The Provider is thus unable to admit the Complainant's income protection claim as it does not consider that he has a disabling illness and it believes that the cause of his work absence is as a direct result of issues with his employer. Accordingly, the Provider is satisfied that the Complainant does not meet the policy terms and conditions for a valid claim and thus that it correctly declined his income protection claim, in accordance with the terms and conditions of the Group Income Protection Scheme.

The Complaint for Adjudication

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

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.

/Cont'd…

A Preliminary Decision was issued to the parties 10 September 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, the final determination of this office is set out below.

The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's income protection claim. In this regard, the Complainant is a member of a Group Income Protection Scheme. His Employer is the policyholder and the Provider is the insurer, responsible for the underwriting of applications for cover and assessing claims.

The Complainant, an accounts payable assistant, has been absent from work since 18 October 2016. He completed an income protection claim form for the Provider on 13 March 2017 wherein he listed his illness and condition and how it affects him in the work place, as outlined above at Pages 1 – 2 of this decision.

In addition, the Complainant's GP, Dr T. completed a Practitioner Report form for the Provider on 30 March 2017, wherein he detailed the nature and cause of the Complainant's disability as *"Depression … low mood, low energy, panic attacks, feelings of anxiety, poor concentration, tiredness … suffering from moderate to severe depression"*.

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, Section 5, 'Claims', of the applicable Group Income Protection Policy Conditions provides, *inter alia*, at pg. 12:

> *"The benefit shall be payable to the policyholder at the end of the deferred period once we are satisfied that the member meets the definition of disability"*.

As a result, in order for an income protection claim to be payable, a claimant must satisfy the policy definition of disability. In this regard, the 'Interpretation' section of these Policy Conditions provides, *inter alia*, at pg. 4:

> ***"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"*.

/Cont'd…

In order to assess whether the Complainant satisfied this policy definition of disability, the Provider arranged for him to attend for an independent medical examination with Consultant Psychiatrist, Dr F. on 25 May 2017. I note from the documentary evidence before me that in his ensuing report dated 25 May 2017, Dr F. advised, *inter alia*, as follows:

> *"The condition preventing him from working is reported as "depression, anxiety attacks and stress" in the claim form.*
>
> ***History of illness***
>
> [The Complainant] *told me that for several months before he went on sick leave in October 2016 he was unhappy at work. He said, "I wasn't happy… Pressure was on me". He said he was not sleeping. He was having dizzy spells. He was becoming anxious and had panic attacks in the office. He said that there was an increasing pressure of work.*
>
> *He told me that he could not relax on social occasions, such as a colleague's birthday night out. He said colleagues had asked him if he was depressed. He was going out less.*
>
> [The Complainant] *told me that he has suffered from cellulitis in his right leg since he had an operation in xxxx to repair its length, which had been shortened following a fractured tibia in a road traffic accident when he was aged xx. He said that cellulitis occurs every three to four months and this usually necessitates him going into hospital for a week for antibiotic treatment followed by two weeks of recuperation at home Returning to work after three weeks of sick leave he always found that there was a backlog of work. He said his desk would be piled with work that had built up when he was off. He said this was getting on top of him. He was under pressure because of monthly deadlines.*
>
> *The last time this happened was in April 2016. He said a colleague…told him that he needed to ask for help when he was on sick leave. He therefore met his manager…and she asked for him to do a report on his workload. He compiled a report based on a month of work. His manager then did not accept that he needed help.* [The Complainant] *said she did not take into account his sick leave.* [The Complainant] *said that everyone who wanted something in the office got it but he did not.*
>
> *He went on to relate how there was a computerised system being introduced and he felt he was put under pressure with regard to this system also.*
>
> [The Complainant] *told me that he asked for a shorter working week because he felt that this would help him cope with his work. A four day week was refused and eventually a three-day week was agreed. He said that he felt he could recuperate on the days off. However, he found that the person who replaced him on the two days he was not working needed briefing before he took his days off and sessions of feedback when he came back from those days.*

/Cont'd…

[The Complainant] *told me that he applied for a receptionist vacancy at work because he realised it would be a less pressured environment. It would have meant a salary decrease but he was willing to accept this. He said he did a good interview. When he got feedback from human resources he was told that he had done a good interview but had gone down on one question. He said that in discussions with the human resources officer she said to him, "You're not happy here are you?"* [The Complainant] *felt that this signified that she had no empathy with his situation. He feels that the person who got the receptionist job did so because of the people she was connected with.*

He told me that he then had a meeting with his manager's manager who also asked him if he was happy in his job. He alleges that this man said to him that if he is not happy in the organisation he was better off leaving. [The Complainant] *said, "I'm a disabled person…xx years of age… Who's going to give me a job?" He told me that he was offered a redundancy package which was 50% less than had been given to a woman who had recently left the organisation. He said he knows these financial details because of the job he was doing. He said, "xxxx years in the job and he is only offering me a pittance".*

[The Complainant] *told me that at this point he went to his GP and was signed off on sick leave. He said, "I couldn't get up… I was knocked out".*

[The Complainant] *told me that he feels that he had been bullied. He said, "I was experiencing major harassment". He said he was not strong enough to take any kind of action about this. He felt he could not talk to human resources about it because the HR officer had previously not shown any empathy or understanding when they had discussed the outcome of the interview for the receptionist position.*

In the background there was also a significant physical change in the offices which may have a bearing. [The Complainant] *told me that for about xx years he had his own office until there was a move in to a new office space in January 20xx, to an open plan office area. This office meant that he was working in a corral. He described it as, "A bit like a chicken coop… I was wedged into a corner". He said that it was "a very unhealthy atmosphere". He said that he felt left out of everything in the office. He said he could not cope in that office environment.*

Current symptoms

[The Complainant] *described his mood as up-and-down. He said he suffers more from anxiety than low mood. He said he becomes low in mood late in the evening. He did not describe diurnal mood variation. He said he worries about his future. There has been some increase in irritability.*

He told me that he had thought about suicide. He said this is less now than when he was working. From his depression, this seems to be more in the nature of a passive death wish than active suicide ideation.

/Cont'd…

He said his sleep is disturbed with initial and middle insomnia. He naps for one to two hours during the day,

He said his appetite is not great. His weight has increased because he is not as physically active.

Libido is greatly diminished. He said that he is sleeping in a separate room from his partner because of his insomnia.

He described his energy levels as very bad. He said motivation is poor and he finds it difficult to do things.

[The Complainant] *said his confidence is very low. He said that he sometimes feels what is the point and there seems to be no way out.*

He has been avoiding people but his partner has been trying to persuade him to get out and do things. He has found it difficult to mix and go into shops or crowded places.

Treatment

[The Complainant] *told me that he has been prescribed the antidepressant citalopram 20 mg daily since November 2016. He said it may have helped. He told me that he has not been fully compliant with medication, taking it intermittently.*

He has been attending [Dr M.]*, a counsellor, for the last couple of weeks. He said he is talking to him and feels the sessions so far have been in the nature of an evaluation.*

He is uncertain if he has been referred to a psychiatrist …

Work / occupational issues

There are significant work-related issues in this case …

[The Complainant] *told me that he thinks he cannot go back to his job. He said, "I can't take the pressure and stress in the office… The job has got very pressured… It gets in on top of me… I can't take the pressure of deadlines".*

When asked what would have to change in order for him to return to work he said that a less pressured job and a three-day week would help. He said that he believes that this would help him to cope. However, he is not optimistic that this will be accommodated by his employers. He said that he has been told that he would have to interview for any other position that he might consider.

[The Complainant] *said, "I know I couldn't go back to the accounts payable position"* …

/Cont'd…

Medical history

[The Complainant] *injured his right leg in a road traffic accident when he was aged xx years. He had a significant fracture of the tibia, which resulted in shortening of that leg. In xxxx he had surgery to lengthen his leg. Since then he has suffered from cellulitis repeatedly, every three to four months. He said that he has not had cellulitis since April of last year and he wonders if the cellulitis outbreaks might in some way be related to stress …*

Montgomery-Åsberg depression rating scale (MADRS)

The Montgomery-Åsberg depression rating scale is a clinician-rated instrument that assesses the range of symptoms that are most frequently observed in patients with major depression. It is completed based on a comprehensive psychiatric interview. It is not a diagnostic instrument but is considered a measure of illness severity.

The MADRS score for [the Complainant]*, based on the psychiatric interview on 25/02/2017, was in the range of mild severity.*

Hamilton Anxiety Rating Scale (HAM-A)

The Hamilton Anxiety Rating Scale is a clinician rated instrument that measures the severity of anxiety symptoms. It is completed based on a comprehensive psychiatric interview. It is not in itself a diagnostic instrument for anxiety and a diagnosis should not be made based on the scoring in the HAM-A alone.

The HAM-A score for [the Complainant]*, based on the psychiatric interview on 25/02/2017, was in the range of mild severity.*

SIMS questionnaire

This is a 75-item multiaxial self-administered screening measure, which may help in determining if there is symptom overstatement. It was completed by [the Complainant] *as part of the psychiatric assessment on 25/05/2017.*

His total score of 19 was elevated above the recommended cut-off score (14) for the identification of possible symptoms overstatement. His score on three of the five scales with in the SIMS were elevated, he endorsed a high frequency of symptoms that are atypical in patients with genuine psychiatric disorders, raising the possibility of symptom overstatement.

On the Affective Disorders scale he endorsed nine of 15 possible symptoms. This rate of endorsement of symptoms that do not generally occur in a constellation, even in an atypical mood or anxiety disorder, is suggestive of symptom overstatement.

/Cont'd…

On the Neurologic Impairment scale he endorsed six (cut-off >2) illogical or atypical neurological symptoms that are found rarely in individuals with neurological disorder.

On the Amnestic Disorders scale he endorsed three of 15 possible symptoms; endorsement of more than two of these symptoms is suggestive of symptom overstatement. Thus he endorsed symptoms of memory impairment that are inconsistent with patterns of impairment seen in brain dysfunction or injury.

Rey Test

The Rey 15 item memory test comprises five sets of three items which the patient is instructed to remember when shown for 20 seconds. Although apparently a complex memory task, it is in fact easy to remember and reproduce the items. Scores of less than nine in the absence of specific brain dysfunction may be of clinical significance.

[The Complainant] *scored 15 in this test.*

Mental state examination on 25/05/2017

[The Complainant] *had driven to the hospital for the assessment. He walked with the aid of a walking stick. He had a noticeable limp because of his leg problem.*

He was overweight. Otherwise, there was no evidence of self-neglect. He was well groomed.

He engaged well in the interview and good rapport was established. His behaviour was within normal parameters during the assessment.

There was no evidence of depression of mood during the assessment. His affect was not restricted and there was normal reactivity. There was no evidence of anxiety, agitation or tension.

Thought content was preoccupied with the problems that had occurred in the workplace.

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

The diagnosis is an adjustment disorder, the stressor necessary for this disorder being the problems that [the Complainant] *had in the workplace …*

/Cont'd…

[The Complainant] *developed psychological symptoms in reaction to problems in the workplace. He felt unsupported by his management and feels that he was bullied. The dissatisfaction with the new office environment is also likely to have been a significant issue in him developing his symptoms …*

Current symptoms are mild in severity. His symptoms are reactive to the adverse working situation, and are within the normal parameters of mood as a reaction to adverse situations …

[The Complainant] *told me that he has not been fully compliant with his antidepressant therapy. He has just started counselling. Treatment to date has been relatively minimal and less than might be expected for an illness of such severity as to cause total disablement from working. …*

There is no objective evidence of depression or anxiety of significance. The reported mood disturbance is reactive to the adverse situation in the workplace …

[The Complainant] *has not set any goals towards a return to work. He told me that he feels he cannot return to the same position. He is willing to consider returning to a less pressured situation but it is unclear whether his employers will accede to this. He had been told he will need to interview for any such position he had not entered into any negotiations with his employer about such a move …*

I gained the impression that there is a degree of resentment and anger with his employers and the way they have dealt with him in recent times. He perceives his management and human resources as being unsympathetic and bullying …

In my opinion [the Complainant] *is currently fit to carry out his normal occupation. There is no objective evidence of disabling psychiatric illness that is preventing him from performing the material and substantial duties of his normal occupation. Any residual symptoms are not disabling in nature.*

It is reasonable to return to work when there are residual symptoms of psychiatric illness because work and achievement of occupational functioning have therapeutic benefits. Occupational functioning is recognised to be an integral and essential part of recovery from psychiatric illness.

There are significant industrial relations issues in this case and these appear to be the primary factors that are preventing [the Complainant] *from working at this time. There is no doubt that he had psychological symptoms as part of an emotional reaction to these problems. However, it is the workplace problems rather than the psychological symptoms that prevent him from doing his job at this time. His current psychological symptoms are not disabling.*

The prognosis will depend on the outcome of the industrial relations issues".

/Cont'd…

I am satisfied that it was reasonable for the Provider to conclude from the contents of this report that the Complainant did not satisfy the policy definition of disability.

I note that based on the claim documentation submitted and the findings of the independent medical examination, the Provider concluded that the Complainant did not satisfy the policy definition of disability and as a result, it wrote to the Complainant's Employer on 19 June 2017 to advise that it was declining the Complainant's income protection claim, as follows:

> *"Based on the evidence received I regret to advise we are unable to consider* [the Complainant's] *claim. IME* [independent medical examination] *findings suggest that:*
>
> > *"*[The Complainant] *is currently fit to carry out his normal occupation".".*

The Complainant appealed the Provider's decision to decline his income protection claim. As part of his appeal, I note that the Complainant submitted a letter dated 21 August 2017 from his treating Consultant Psychiatrist, Dr J. which provides, as follows:

> *"*[The Complainant] *is currently attending [Name of service provider redacted] .* [He] *was reviewed for the first time on 09/08/17.* [The Complainant] *is receiving treatment for a depressive episode.* [He] *will be next seen in two weeks' time at the outpatient clinic. He will receive community follow up for the time being"*.

As part of its assessment of his appeal, I note that the Provider arranged for the Complainant to attend for an independent medical examination with Consultant Psychiatrist, Dr D. on 11 October 2017. In his ensuing report dated 11 October 2017, Dr D. advises, *inter alia*, as follows:

> *"**Background***
>
> [The Complainant] *works as an accounts payable assistant three days a week and became absent on 18th October 2016 with symptoms noted in the claim form (depression, anxiety, stress, low energy, poor sleep – one hour some nights, poor concentration, lack of focus and poor motivation).*
>
> ***Psychiatric Symptoms:***
>
> [The Complainant] *says his psychiatric symptoms, as described, came on gradually over a period of time due to the difficulties at work. These were low mood, low energy, panic attacks, feeling of anxiety, not able to concentrate, not able to focus, and feelings of frustration. He has sleep difficulties as well. Things became so difficult that he was unable to concentrate at work, therefore went on sick leave.*
>
> ***Current Psychiatric Symptoms:***
>
> *Currently* [the Complainant] *said that he has very low periods, with loss of motivation and confidence. He said the low periods could last for the whole evening sometimes.*

/Cont'd…

He said he also has mood swings from low to high … He has no obsessional thoughts or ruminations, he does become preoccupied with negative thoughts, such as feelings of regret, which go round and round in his head, and he finds it hard to break the cycle …

Past Psychiatric History:

[The Complainant] *says that he has had no previous treatment for psychiatric disorder but looking back since the road traffic accident in which he was involved in 19xx, he has had periods of feeling low, which might last weeks at a time. During these times he would feel down and feel the future was bleak. They could go on for weeks or months.*

Current Treatment:

He is current on Cipramil 40mg daily, the dose having been increased by [Dr J.] *in August. He attends* [Dr M.] *for cognitive behaviour therapy on a weekly basis. He has been referred to the local psychiatric services, where he was seen in August and had his medication increased.*

Past Medical History:

He had a serious road traffic accident in xxxx…

He still has recurrent cellulitis as a result of this accident and has to go to hospital for about three weeks several times a year, with a week's recuperation after that …

Personnel Issues:

There were changes at work. Firstly that there was a new accounts package which he found difficult to use quickly enough leading to pressure from his manager to meet monthly deadlines. Secondly he had been moved from his own office to a shared office, where he said he was shoved in the corner. An additional factor affecting workload was that during his sick leave periods of three to four weeks for cellulitis in his leg, the bulk of the work is not done and there is a backlog for him on his return. He has approached his supervisor on the advice of a colleague to have this issue dealt with, however, his supervisor dismissed his representations.

Patient's Perception of what's Stopping him from Working:

[The Complainant] *said that if he has to go back to work he would not be able to handle the stress or the pressure and he would crack up. He said his head is not there at all. He said he could not return to his current position as the role has changed a lot, there were new systems and about two years ago the office had been changed to an open plan format. He described it as like a chicken coop and says that he has been stuck in a corner. He said he thought that he might be able to return to a different job in time…*

/Cont'd…

Claims Assessor's Questions:

1. *Does* [the Complainant] *currently have a formal psychiatric diagnosis?*

   [The Complainant] *has symptoms of feeling anxious and depressed due to the changes at work, which he found difficult to adapt to, some stressors at home, which have settled somewhat …*

3. *Please outline the nature and severity of the current symptoms.*

   … His symptoms are at the mid end of the spectrum and are not of a nature or severity to render him disabled from work. His lack of wellbeing is likely to be exacerbated by his daily consumption of three to four glasses of wine and intermittent consumption of one or two bottles of wine …

5. *What restrictions/limitations are there on his normal daily activities?*

   There are no major restrictions on his routine due to psychiatric issues …

7. *What goals has* [the Complainant] *set himself regarding a return to work?*

   [The Complainant] *has no goals regarding a return to the workforce. He says that he cannot return to his current position …*

9. *In your opinion, is* [the Complainant] *currently fit to carry out his normal occupation?*

   It is my opinion that [the Complainant] *is currently fit from a psychiatric perspective to carry out his normal occupation. He could take certain measures to improve his quality of life, such as abstaining from alcohol and might benefit from some support in adapting to the changes at work and dealing with the backlog when he is absent due to cellulitis"*.

I am satisfied that it was reasonable for the Provider to conclude from the contents of this report that the Complainant did not satisfy the policy definition of disability.

I note that based on its review of the claim documentation submitted and the findings of the independent medical examinations that the Complainant had attended with Consultant Psychiatrists Dr F. on 25 May 2017 and by Dr D. on 11 October 2017, the Provider concluded that the Complainant did not satisfy the policy definition of disability and as a result, it wrote to his Employer on 16 November 2017 to advise that it was upholding its decision to decline the Complainant's income protection claim, as follows:

> *"As you know* [the Complainant's] *claim was declined on the 19 June 2017 following a review of the findings received from the independent medical examination that the*

/Cont'd…

> *member attended on the 25 May 2017 which stated that* [the Complainant] *was fit to carry out his normal occupation.*
>
> [The Complainant] *appealed this decision. As part of the appeal, we arranged a further independent medical examination for the 11 October 2017. We have now received the findings following the most recent medical assessment.*
>
> *Based on the findings of both independent medical examination and a review of all medical records on file including the appeal documents submitted, it is our opinion that* [the Complainant] *does not meet the definition of disability as set out in the policy. I must advise therefore that we are unable to admit this claim.*
>
> [The Complainant] *has been deemed medically fit to return to work to full-time duties, in arriving at our decision, we must be guided by the weight of the objective evidence obtained which, in our opinion, clearly indicates that* [the Complainant] *does not meet the definition of disablement under the policy and is medically fit to resume his normal occupation".*

In addition, I am satisfied that it was reasonable for the Provider to conclude from the original claim documentation submitted by the Complainant himself as well as from the results of the independent medical examinations carried out by Consultant Psychiatrists Dr F. on 25 May 2017 and by Dr D. on 11 October 2017, that work place issues have a bearing on the Complainant's absence from work. In this regard, I accept the Provider's position that non-medical and work-related issues do not constitute a valid income protection claim.

In this regard, in order for an income protection claim to be payable, a claimant must satisfy the policy definition of disability. In this regard, the 'Interpretation' section of the applicable Group Income Protection Policy Conditions provides, *inter alia*, at pg. 4:

> ***"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 must be 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 am satisfied that it was reasonable for the Provider to conclude that the Complainant did not satisfy the policy definition of disability. As a result, I am thus satisfied that the Provider declined the Complainant's income protection claim in accordance with the terms and conditions of the Group Income Protection Scheme of which he is a member.

/Cont'd…

I note from the documentary evidence before me that notwithstanding its decision to uphold the declinature of his income protection claim in November 2017, the Complainant submitted further medical reports to the Provider in 2018. In this regard, in his letter to the Complainant's GP, Dr T. dated 8 February 2018, I note that the Complainant's treating Clinical Psychologist, Dr M. advises, *inter alia*, as follows:

> *"The reason given for the referral was described as recent onset of very low mood, with interference in life and work. The referred noted that* [the Complainant] *had become very withdrawn and subdued, disinterested, with no motivation, and recent passive death wish. He had been commenced on Cipramil on the date of referral.*
>
> ***Attendance:***
> *I met with* [the Complainant] *for initial psychological assessment on 12/05/2017 and met with him for a total of 13 sessions of assessment and intervention.* [He] *cancelled two offered sessions and did not attend one agreed session. Engagement was discontinued as I am due to leave the [name of service provider redacted] on[Date redacted]. Although the service is currently recruiting for a replacement psychologist and the service will still continue to accept referrals, there is no one available currently to continue treatment with* [the Complainant]. *Consequently,* [he] *has been discharged from the service …*
>
> ***Formulation of presenting difficulties:***
> [The Complainant] *initially presented with symptoms of post-traumatic stress disorder, anxiety, low-mood, low levels of activity, and social withdrawal. He had a "xxxx" with corresponding mobility difficulties arising from a serious … accident in xxxx and chronic recurring cellulitis on the same leg with a history of multiple hospitalisations to treat this.* [The Complainant] *was out of work on illness leave when I met with him for assessment …*
>
> *Clinical interview supported by assessment with the PTSD Diagnostic Scale for DSM-5 (PDS-5) indicated that* [the Complainant] *experienced symptoms that corresponded with a diagnosis of Post-Traumatic Disorder (DSM 5). …* [The Complainant] *has also had recurring leg infections/cellulitis sometimes requiring three to four hospitalisations per year for treatment.*
>
> *In support of a diagnosis of post-traumatic stress disorder,* [the Complainant] *reported experiencing the following symptoms in relation to the above noted incident of exposure to threatened death and serious injury (criterion A 0 DSM 5). He reported ongoing intrusion symptoms (criterion B – DSM 5), consisting of: recurring distressing memories 2-3 times per week (previously involuntary up until 3 years ago); involuntary nightmares of the events leading to the accident 2-3 times per week; intense psychological distress and marked physiological reactions to cues associated with the event, for instance reporting subjective units of distress of 9 out of 10 when discussing the event.*

/Cont'd…

[The Complainant] *reported persistent avoidance of stimuli associated with the accident (criterion C – DSM 5), including cognitive and affective avoidance …*

[The Complainant] *described alteration in cognitions and mood associated with the accident (criterion D – DSM5) …*

[The Complainant] *described alterations in arousal and reactivity following the accident (criterion E – DSM 5), including hypervigilance, difficulty concentrating, and difficulty sleeping …*

The above described disturbances has reportedly endured for approximately 34 years following [his accident]

These above outlined post-traumatic symptoms appear to have increased [the Complainant's] *vulnerability to the stress of subsequent events, including the accumulative effect of subsequent trips/falls and hospitalisation in predisposing him to anxiety, stress, and low-mood. Repeated hospitalisations have required significant periods of leave from work.* [The Complainant] *described how, upon returning from each hospitalisation his work load would have accumulated, which would contribute to increased stress. Given* [his] *vulnerability to stress, he said that he made unsuccessful efforts to change his role within his company to one with a less stressful workload. He described a number of subsequent interactions with management that led to him feeling upset, unsupported, rejected, and devalued.* [The Complainant] *subsequently went on illness leave. This experience appears to have precipitated his current presentation of depression, which is maintained by many of the above outlined post-traumatic responses, avoidant coping, withdrawal, self-blame, rumination and worry.* [The Complainant] *did not report current suicidal ideation, plan, intent, behaviour, or a history of the same …*

Recommendations:
[The Complainant] *continues to experience many of his presenting symptoms and remains vulnerable to psychological distress given the presence of enduring sequelae of post-traumatic stress. Given the severity and chronicity of his difficulties,* [the Complainant] *would benefit from referral for multi-disciplinary treatment in his local community mental health team…*[The Complainant] *would benefit from psychological intervention that would include a specific treatment aimed at ameliorating his post-traumatic stress symptoms and processing trauma memories. He would also benefit from a continued focus on developing skills in emotion regulation and self-compassion, and in increasing meaningful and pleasurable activities".*

In addition, I also note that in her occupational health assessment dated 19 February 2018, Dr R. advises, as follows:

*"**Reason for Referral / Nature of Illness Injury***
[The Complainant] *was referred for assessment of his medical fitness to work. He has been absent on sick leave since 17/10/2016. He has suffered from anxiety/depression*

/Cont'd…

over the last years. His symptoms increased in October 2016 due to personal stressors. He also alluded to some work related issues, namely his workload/pressure at work. I am not in a position to validate his observations, but I mention them as they were central to the history offered today. He has received appropriate treatment. He remains under specialist care. At examination today he appeared unwell.

Fitness for Work – Restrictions / Accommodations
[The Complainant] *is currently unfit to return to work. His symptoms are ongoing and disabling, affecting his activities of daily living. In light of his slow recovery progress I see no realistic prospect of his resuming work inside the next 6 months. In the future* [the Complainant] *says he wishes to return to work to a less demanding role as he finds his role demanding and he does not cope well with change. You may wish to engage with him to consider his concerns and address them as deem appropriate. I can confirm* [the Complainant] *is fit to engage in such a meeting. The consideration of reasonable accommodations/gradual phased return to work/working in an open plan environment are real issues to address at a much later stage when or if his symptoms improve. I suggest to review him if no sign of a return to work within the next 6 months. Prognosis at this point for a successful return to work appears very guarded"*.

The Complainant refers to the report from his treating Clinical Psychologist, Dr M. dated 8 February 2018, and in particular where Dr M. advises that the Complainant *"presented with symptoms of post-traumatic stress disorder, anxiety, low-mood, low levels of activity, and social withdrawal"* and *"Clinical interview supported by assessment with the PTSD Diagnostic Scale for DSM-5 (PDS-5) indicated that* [the Complainant] *experienced symptoms that corresponded with a diagnosis of Post-Traumatic Disorder (DSM 5)"*. In his email to this Office dated 4 October 2018, the Complainant submits that *"*[Dr M.] *made a diagnosis of suffering from PTSD for over 34 years which clearly predates such workplaces issues to which* [the Provider] *refer as the reason I went on sick leave"*.

In this regard, in its ensuing email to this Office dated 9 November 2018, I note that the Provider submits, *inter alia*, as follows:

"On [the Complainant's] *original claim form and GP there was no mention of PTSD being an issue.* [The Complainant] *did not report this to either of the consultants he was assessed by* [Dr F. & Dr D.] *and we stand by our comments that it appears he went on illness leave as a result of subsequent interactions with management as documented in* [Dr M.]*'s report. Nevertheless we considered the case carefully and we are satisfied there is no evidence of a disabling mental illness"*.

In addition, in its email to this Office dated 30 November 2018, the Provider also submits, *inter alia*, as follows:

"We have reviewed the matter again and we are happy with the decision made on the claim. [The Complainant's] *GP nor psychiatrist* [Dr J.] *ever mentioned PTSD at any*

/Cont'd…

stage during the claim or the appeal process. Furthermore this was not detected by the independent consultants [Dr F. / Dr D.]. *It therefore seems highly unusual that* [the Complainant] *is being given such a retrospective diagnosis which spans over three decades.*

It now appears [the Complainant] *is focusing on a possible diagnosis of PTSD as the cause or reasons for his absence. We feel it is unfair to introduce a further aspect of his health into the claims process at this late stage. However we will revaluate the claim and in particular* [the Complainant's] *view that long standing PTSD is a significant factor in his absence from work. We are happy to arrange a further Independent Medical Assessment if* [the Complainant] *is in agreement to attend this".*

However, in his email to this Office dated 20 January 2019, I note that the Complainant advises, as follows:

"I will attend another medical assessment as suggested by the Provider with a suitable independent Doctor subject to the following.

That this will only happen on condition that there will be absolutely no SHARING OF MY MEDICAL, WORK, HEALTH ETC RECORDS REPORTS FILES LETTERS EMAILS ETC. WITH ANYONE.

The chosen Doctor is to assess my medical health totally, fair, Proper and unbiased. Otherwise no Point".

I note that in its email response to this Office dated 25 January 2019, the Provider submits, as follows:

"I note [the Complainant's] *conditions for attending a further medical assessment and under no circumstances are we accepting any pre conditions from* [the Complainant] *in this regard.*

As part of arranging a further assessment it is standard practice for all insurers to provide a copy of their entire medical file to the examiner which includes any previous assessments or reports from the claimant I can confirm that we cannot accept [the Complainant's] *terms under any circumstances and we will therefore not be arranging a further medical assessment".*

In this regard, I take the view that it was fair and reasonable for the Provider to offer to arrange for the Complainant to attend for a third independent medical examination in order this time to determine if post-traumatic stress disorder (a diagnosis that I am mindful did not form part of his original income protection claim) is a significant factor in his absence from work. Whilst the Complainant has stated that he will only attend such an independent medical examination if the medical examiner in question is not provided with the Provider's file in relation to his income protection claim, I am satisfied that this proposed third independent medical examination arises from the original income protection claim

/Cont'd…

submitted by the Complainant and that it is both appropriate and reasonable that the medical examiner would have access to the Provider's file on this matter, in order to make a full and fully informed finding.

In all of the circumstances, I am satisfied that the evidence before me discloses no wrongdoing on the part of the Provider and accordingly, I do not believe that it is appropriate to 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.

MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

2 October 2019

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.**