An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0411
Sector:	Insurance
Product / Service:	Payment Protection
Conduct(s) complained of:	Rejection of claim - fit to return to work Failure to process instructions in a timely manner
Outcome:	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant was employed with her former Employer from September 2011 to January 2018. This Employer is the policyholder of a Group Income Protection Policy with the Provider against which this complaint is made, and the Complainant was an insured person under this group policy.

The Complainant's Case

Following a road traffic accident that she was involved in as a cyclist [in January 2016], the Complainant, a Senior Manager, was certified as unfit for work since 10 August 2016. She submitted an Income Protection Employee Claim Form to the Provider in January 2017 detailing the nature of her illness, as follows:

> *"Post-concussion symptoms and post traumatic disorder following road accident [in January 2016]. Due to head injury and concussion, headaches, dizziness are prevalent in particular on the left side of head which has been injured.*
>
> *Road accident resulted in a broken left elbow (3 fractures), head injury, concussion, back injury, left leg injury. Current condition is: left leg pain and back pain had deteriorated and is the strongest since the day of the accident. Unable to sit in the same position for more than 10 minutes due to the back pain and left leg numbness*

and pain. Ongoing physiotherapy with…physio clinic on a weekly basis. Meeting psychologist regularly, antidepressants have been prescribed to be taken from chronic pain and to regulate mood (amitriptyline).

No menstruation since the accident. Ongoing appointments with National Maternity Hospital and referral to endocrinologist …

Unable to sit in the same position for more than 10 mins due to left leg pain and numbness and back pain.

Due to headaches and pain I am finding it hard to fall asleep and rest at night, therefore my energy and concentration is impacted during the day.

Psychologically and mentally I am in the early stage of recovery antidepressants have been recently prescribed to help me in that regard. Physically and psychologically I am unable to return to work …

Condition is deteriorating, new symptoms appear. Physical condition is the worst since December 2016 due to strong headaches, leg and back pain and leg numbness, I am unable to rest and fall asleep as before. This is impacting me psychologically, my mood and my overall mental health".

Following its assessment, the Provider concluded that the Complainant was fit to return to her normal occupation as she did not satisfy the policy definition of disability and it declined the Complainant's income protection claim on 10 April 2017, a decision it upheld upon review on 19 September 2017.

As part of its initial assessment of her claim, the Provider arranged for the Complainant to attend for assessment with Dr H, specialist in Occupational Medicine on 1 February 2017. In this regard the Complainant submits, as follows:

"Firstly, [Dr H] *informed me that she had not read or reviewed my file before the appointment. I was tearful and getting suicidal thoughts during the visit as my physical, mental, psychological and emotional condition needed to be taken into account. Secondly, it took from 1st February 2017 to 11 April 2017 for my employer to receive the decision of my initial claim … My employer has raised the length of time this took to come through and I have been informed that* [the Provider's] *decision has been delayed due to outstanding queries with* [Dr H] *who had been on prolonged leave … I am very shocked that* [Dr H]*'s opinions are at total odds of that of my treating doctors and the vocational assessor of my employer, especially in circumstances where* [Dr H] *informed me that she had not read my file before the appointment"*.

The Complainant notes that she attended her Employer's doctor, Dr M on 11 January 2017 and in his ensuing Report to her Employer advises, among other things, as follows:

"Currently she is not fit for work …

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> *Clinically* [the Complainant] *displays evidence of PTSD. Her sleep, appetite, energy, and concentration remain poor. She also reports elements of anhedonia. She continues to suffer unpleasant flash backs of the event.*
>
> *Her physical symptoms have evolved and worsened since our last meeting. She is not in a position to RTW at this time …*
>
> [The Complainant] *is not fit for work. I will see her again in twelve weeks-time. This appointment has been scheduled"*.

In addition, the Complainant notes that in her correspondence dated 5 July 2017, Ms G, Counselling Psychologist advises, among other things, as follows:

> *"Based on my recent consultation with* [the Complainant]*, her emotional state has deteriorated since I saw her in January. While her treatment was previously geared towards trauma, the symptoms of low mood seem most prominent now and her symptoms are compatible with a depressive episode. She reports she cannot afford psychological therapy at this point in time and is reluctant to try an SSRI* [an antidepressant] *due to previous difficulties with thought of self-harm.*
>
> *I think it would be very difficult for her to negotiate a return to work considering her emotional state and without professional guidance on multiple levels. I have suggested to her that she seek a referral from her GP to see a psychiatrist.*
>
> *I would have significant concerns about the wellbeing of this young woman, particularly considering the lack of stable accommodation, the fact that she has no family in Ireland, the increasing mental health concerns, and her current limited access to medical care".*

The Complainant sets out her complaint, as follows:

> *"Firstly, the overall process has taken from 1st February 2017 until the 5th October 2017. This results that I have been on unpaid leave since the 10th February 2017. I have had to give up my rented accommodation and become essentially homeless, living out of a suitcase from one friend's accommodation to another.*
>
> *Secondly, this has impacted my recovery adversely in all aspects, psychologically, mentally, emotionally and physically. I have not been able to use medical services to aid my recovery due to financial matters.*
>
> *Thirdly,* [the Provider] *did not send a letter regarding the claim denial. They have not remarked on why they believe I am medically fit to return to work. They say I am fit to return to work, what about payment from 10th February* [2017] *until now?*
>
> *Finally,* [the Provider] *disregard my own GP's opinion and* [my Employer's] *occupational health doctor's view that I am unfit to return"*.

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The Complainant seeks for the Provider to admit her income protection claim.

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

The Provider's Case

The Complainant was employed with her former Employer from September 2011 to January 2018. This Employer is the policyholder of a Group Income Protection Policy with the Provider and the Complainant was an insured person under this group policy.

Provider records indicate that the Complainant completed a Claim Form on 11 January 2017, detailing her illness, as follows:

> *"Post-concussion symptoms and post traumatic disorder following road accident [in early 2016]. Due to head injury and concussion, headaches, dizziness are prevalent in particular on the left side of head which has been injured.*
>
> *Road accident resulted in a broken left elbow (3 fractures), head injury, concussion, back injury, left leg injury. Current condition is: left leg pain and back pain had deteriorated and is the strongest since the day of the accident. Unable to sit in the same position for more than 10 minutes due to the back pain and left leg numbness and pain. Ongoing physiotherapy with…physio clinic on a weekly basis. Meeting psychologist regularly, antidepressants have been prescribed to be taken from chronic pain and to regulate mood (amitriptyline). No menstruation since the accident. Ongoing appointments with National Maternity Hospital and referral to endocrinologist"*.

The Provider also received an Employer Claim Form dated 12 January 2017 wherein the Employer advised that the Complainant was unfit for work due to *"RTA and head injury"* from 10 August 2016. In addition, the Provider received on 9 February 2017 a General Practitioner Report from the Complainant's GP, Dr F advising that the nature of her disability was *"post-concussion syndrome"*.

The Provider notes that as the group income protection policy has a 26 week deferred period, which ended on 7 February 2017, the first date for which cover could commence from was 8 February 2017. In order for a claim to be payable, the Company notes that the claimant must satisfy the policy definition of disability, 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 assessment of her claim, the Provider arranged for the Complainant to attend for a medical examination with Dr H, Specialist in Occupational Medicine on 1 February

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2017. In her ensuing report dated 21 March 2017, Dr H advised, among other things, as follows:

> *"On examination* [the Complainant] *appeared well and in no distress. She was tearful at times. Her mood and affect appeared normal. There was no evidence of anxiety …*
>
> *On examination of her neck, she had a full and painless range of movement cervical spine …*
>
> *She had a full range of movement lumbar spine on sitting, was able to touch her toes. She had a full range of extension, lateral flexion, lateral rotation of lumbar spine …*
>
> *While* [the Complainant] *claims that the main reason she is not at work is because of her back and leg pain – examination was entirely and reassuringly normal throughout and MRIs have also been normal"*.

Following its assessment, the Provider concluded that the Complainant was fit to return to her normal occupation as she did not satisfy the policy definition of disability and it declined her income protection claim on 10 April 2017.

The Complainant appealed this decision in July 2017 and submitted to the Provider a letter from her Counselling Psychologist, Ms G dated 5 July 2017 and a letter from her GP, Dr F dated 10 July 2017 in support of her appeal.

In order to further consider the matter, the Provider then arranged for the Complainant to attend for a medical examination with Dr K, Consultant Psychiatrist on 8 August 2017. In his ensuing report dated 8 August 2017, Dr K advised, among other things, as follows:

> *"*[The Complainant] *was appropriately dressed and there was no evidence of self-neglect. She was well groomed …*
>
> *She engaged well in the interview and good rapport was established. Her behaviour was within normal parameters during the assessment …*
>
> *Referral to the specialist psychiatry services has not been necessary and is not currently indicated …*
>
> *There was no objective evidence of depression of mood of any significance. She was normally interactive and spontaneous during the assessment. Affect was not restricted. There was no evidence of anxiety, agitation or tension. There was no evidence of negative or depressive cognitions …*
>
> *In my opinion, from the perspective of psychiatric illness,* [the Complainant] *is currently fit to carry out her normal occupation. There is no objective evidence of disabling psychiatric illness that is preventing her from performing the material and substantial duties of her normal occupation. Any residual symptoms are not disabling in nature. It is reasonable to return to work when there are residual symptoms of*

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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".

The Provider states that it carried out a thorough review of her claim and it remained its opinion that the Complainant did not satisfy the policy definition of disability. In this regard, the Provider wrote to the Complainant's Employer on 19 September 2017 to advise that it was standing over its decision to decline the claim.

The Provider asserts that as an insurer, it is entitled to gather medical evidence and arrange independent medical assessments in order to assist it in making an informed decision. This It states that it is standard practice in the insurance industry. In order to reach this decision, the Provider arranged for the Complainant to attend two medical examinations. The initial assessment was based on the claim cause arising from the road traffic accident and head injuries suffered, thus the Provider arranged for the Complainant to be examined by a specialist in occupational medicine. The claim was appealed on the grounds of post-traumatic stress, hence the Provider then arranged for the Complainant to be assessed by a consultant psychiatrist.

The Provider states that at no stage did it ignore the opinions or contents of the medical reports submitted by the Complainant. Both of the Provider appointed examiners were given with a copy of the full file, inclusive of all medical reports. In addition, the Provider states that both are very experienced occupational health and mental health professionals and the Provider has no concerns in relation to either's ability to form an independent opinion as to the Complainant's fitness for work. In forming their opinions, both examiners would have considered the medical evidence provided to them in conjunction with the actual assessment that they carried out on the day.

In order for an income protection claim to be payable, a claimant must satisfy the definition of disability. In this regard, the Provider states that it must be guided by the weight of objective medical evidence and in this case, both assessors, Dr H, Specialist in Occupational Medicine and Dr K, Consultant Psychiatrist indicated that the Complainant was fit for work. The Provider acknowledges that the Complainant may have some ongoing residual symptoms, however any residual symptoms are not disabling in nature.

It is generally accepted that a disabling psychiatric condition not just impedes an individual from working but also adversely impacts an individual's ability to perform normal everyday tasks and activities. The Provider notes that this is not that case in this instance as Dr K, Consultant Psychiatrist observed that *"there is no evidence that* [the Complainant] *is disabled by psychiatric symptoms or illness from carrying out normal daily activities"*.

Furthermore, the Provider notes from her medical assessments with Dr H and Dr K that the Complainant reported that her general level of activity was restricted, that is, physical and social activity and that her level of mobility was restricted by pain.

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In this regard, as part of its assessment of the claim, the Provider states that it performed desktop research and during this identified that the Complainant had posted a photograph of herself having a motor cycle ride on 16 December 2016, attending the launch of a skin rejuvenation website on 7 February 2017 and appearing on a T.V. Show on 1 March 2017. The Provider considers that this is not compatible with her reported level of activity to the medical examiners and indicates that the Complainant is capable of more than she originally reported and that her social media posts instead corroborate the examiners' opinions that she is not medically disabled from working.

The Provider submits that the Complainant and the level of activity she has demonstrated over a long period is not commensurate with a disabling psychiatric illness that would prevent her from working.

In response to the concerns raised in relation to delays that the Complainant states she experienced during the claims process, the Provider states that it was not its intention to cause any distress and it sincerely apologises if it has done so. However, it states that the claim process can take a number of months to reach conclusion, especially where additional assessments are taking place.

The Provider notes that it received notification in January 2018 that the Complainant had tendered her resignation and was terminating her employment. It states that this has no impact on its claim decision.

Finally, the Provider notes that the Complainant seems to be under the impression that she is entitled to the payment of income protection benefit. It is not the purpose of the policy to make guaranteed payments when an employee's sick pay entitlements cease. Instead, a claim is only approved where the Provider is satisfied that the individual is medically disabled from working. In this case, it states that based on the weight of objective medical evidence and the level of activity the Complainant demonstrated on her social media profile, the Provider concluded, does not support a claim for medical disablement.

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

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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 11 November 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 for Adjudication

The complaint at hand is that the Provider wrongly and unfairly declined the Complainant's income protection claim.

The Complainant was employed with her former Employer from September 2011 to January 2018. This Employer is the policyholder of a Group Income Protection Policy with the Provider and the Complainant was an insured person under this group policy.

Following a road traffic accident that the Complainant was involved in as a cyclist early in 2016, the Complainant, a Senior Manager, was certified as unfit for work since 10 August 2016. She submitted an Income Protection Employee Claim Form to the Provider in January 2017 detailing the nature of her illness as set out above in the Complainant's and Provider's Case.

Following its assessment, the Provider concluded that the Complainant was fit to return to her normal occupation as it decided that she did not satisfy the policy definition of disability and it declined the Complainant's income protection claim on 10 April 2017, a decision it upheld upon review on 19 September 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.

In this regard, the Policy Conditions of the applicable Group Income Protection Policy booklet defines 'Disability' at pg. 4, 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"*.

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As a result, the Provider will only pay an income protection claim where the claimant satisfies this policy definition of disability.

As part of its assessment of her claim, the Provider arranged for the Complainant to attend for a medical examination with Dr H, Specialist in Occupational Medicine on 1 February 2017.

In her ensuing report dated 21 March 2017, Dr H advised in her summary, among other things, as follows:

> [The Complainant] *was involved in a significant road traffic accident in [early 2016]. She continued working until August 2016, when mounting stress, anxiety, panic attacks and the constant worry about the lack of her periods, left leg and lumbar pain, put her out of work.*
>
> *She had since engaged with intensive treatment with a psychologist, a physiotherapist, with intermittent reviews with her GP. A barrier to further progress towards recovery appears to lie in the mental health domain and I believe that she needs to be strongly encouraged to engage in a more active exercise programme. There is no evidence to suggest at assessment and based on all of her normal scans that it is unsafe for her to do so. She has probably become quite deconditioned since the accident. Prior to the accident she was exceptionally fit, partaking in multiple activities, hiking, cycling, walking, running, marathons etc., so this is a huge change for her.*
>
> *I have strongly advised her to commence a phased graded programme of exercise and to engage in this with her physiotherapist. I have also strongly advised her to get a diary and to start slowly re-engaging in all of the normal activities of daily living, including work. There have been patterns of social avoidance since the accident.*
>
> *In my view,* [the Complainant] *should be fit to resume work in 4 weeks. I recommend that if you wish to support her with CBT, this might be useful for about 6 or 8 sessions. I believe she has otherwise engaged in everything that can be done to support her.*
>
> *I believe that she needs to re-engage in all normal activities of daily living including work. She has sustained soft tissue injuries in the accident. She has PTSD which is slowly resolving and panic attacks in that context.*
>
> *The amenorrhoea is likely to slowly resolve and this very much concerns her. She does need much encouragement and support to now get back to her normal living.*
>
> *A psychiatric assessment in due course might be beneficial. While she claims that the main reason she is not at work is because of her back and leg pain – examination was entirely and reassuringly normal throughout and MRI's have also been normal.*
>
> *I recommend a return to work inside 4 to 6 weeks, probably working 50% of her normal hours and slowly phasing up to normal hours over a 6-12 week timeframe"*.

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Following its assessment, the Provider concluded that the Complainant was fit to return to her normal occupation as it decided she did not satisfy the policy definition of disability and it declined the Complainant's income protection claim on 10 April 2017.

I note that the Complainant appealed this decision in July 2017 and submitted to the Provider a letter from her Counselling Psychologist, Ms G dated 5 July 2017 and a letter from her GP, Dr F dated 10 July 2017 in support of her appeal.

In this regard, I note that in her correspondence dated 5 July 2017, Ms G, Counselling Psychologist advises, among other things, as follows:

> *Based on my recent consultation with* [the Complainant]*, her emotional state has deteriorated since I saw her in January. While her treatment was previously geared towards trauma, the symptoms of low mood seem most prominent now and her symptoms are compatible with a depressive episode. She reports she cannot afford psychological therapy at this point in time and is reluctant to try an SSRI* [an antidepressant] *due to previous difficulties with thought of self-harm.*
>
> *I think it would be very difficult for her to negotiate a return to work considering her emotional state and without professional guidance on multiple levels. I have suggested to her that she seek a referral from her GP to see a psychiatrist.*
>
> *I would have significant concerns about the wellbeing of this young woman, particularly considering the lack of stable accommodation, the fact that she has no family in Ireland, the increasing mental health concerns, and her current limited access to medical care".*

In addition, I note that in his correspondence dated 10 July 2017, the Complainant's GP, Dr F advises, as follows:

> *"This girl is depressed and has ongoing severe depression. Previous head injury [early 2016]. This girl is unfit for work. We understand she has not received any income protection since February '17. This girl is now homeless and suicidal. I would be very grateful if you could communicate the medical grounds on which her income protection is being denied. I am very concerned for her prognosis"*.

As a result, and in order to further consider the Complainant's income protection claim, I note that the Provider arranged for the Complainant to attend for a medical examination with Dr K, Consultant Psychiatrist on 8 August 2017. In his ensuing report dated 8 August 2017, Dr K advised, among other things, as follows:

> [The Complainant] *hopes to return to work in September 2017. She had considered returning to work this month but felt panicked at the prospect and deferred returning.*
>
> *In my opinion, from the perspective of psychiatric illness,* [the Complainant] *is currently fit to carry out her normal occupation. There is no objective evidence of*

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disabling psychiatric illness that is preventing her from performing the material and substantial duties of her 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".

I note that following this assessment, the Provider remained of the opinion that the Complainant did not satisfy the policy definition of disability and wrote to her Employer on 19 September 2017 to advise that it was standing over its decision to decline her income protection claim.

Whilst I note that the Complainant has provided reports from her GP, Dr F and her Counselling Psychologist, Ms G, as well as reports from her Employer's doctor that all advise that she is unfit to return to work, I accept that the Provider, as an insurer, is entitled to gather evidence and arrange separate medical assessments in order to assist it in making an informed decision on income protection claims.

I note that as part of its assessment of the Complainant's claim, the Provider states that it performed desktop research and asserted that this "*research*" indicated that the Complainant was capable of more than she originally reported and that her social media posts instead corroborated the examiners' opinions that she is not medically disabled from working.

In a response to this the Complainant, in a submission to this Office dated 21 May 2018, stated:

Activity throughout 2016 and 2017, as mentioned by [Provider]:

- Illustration with capture "May 29, 2016 – Sky dive", enclosed by [Provider]. This event has taken place on the 26th of September, 2015 [Provider] mistakenly interpreted the date this image has been used on as a cover photo as it relates to a past event [that is prior to the Complainant's accident].

- With regards to [Provider]'s statement: "[Complainant] posted a picture of herself having a motor cycle ride dated 16 December 2016", this photo has been taken by a friend who has visited to show his motorcycle outside of the Complainant's previous residence. Bike has been on a stable stationary mode, with two wheels in front and a supporting "motorbike leg" being used. The Complainant stayed in captured position for the duration of a photo capture.

- In terms of [Provider]'s statement: "[Complainant] can be seen at an event, a launch of a skin rejuvenation product – dated 7 February 2017", the Complainant received an invitation from [name redacted] to join an event, lasting approximately an hour at [location] on the 6th of February, 2017.

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The purpose of this event has been to celebrate the launch of [details redacted] a brand new advanced skincare website offering rejuvenation treatments for scarring, wrinkles and so much more, together with [details redacted]. Complainant's familiarity with [name redacted] commenced in October, 2016 when the purpose was to aid her physical recovery by performing various body and health screen tests due to hormones imbalances and related injuries. Test results, displaying severely chronic, acute and severely acute hormone imbalances, with severely chronic, chronic, acute or severely acute body part injuries and stress related misbalances throughout 2016 and 2017, are available for provision upon request. Complainant's participation in the mentioned event on the 6th of February, 2017 was a simple act of expressing gratitude for [name redacted]'s help in terms of her health throughout those challenging years.

- Regarding "[Complainant] can be seen at an event, [T.V. Show]", a friend has invited to join this show to aid Complainant's psychological recovery. Show has lasted approximately 40 minutes and people from audience have been provided with an opportunity to take a photo with [presenter] at the end of the show. This is a capture under those mentioned circumstances.

The Complainant goes on to outline that she was very active in her charity work prior to her accident and provides much detail.

She also states:

"On the 1st of February, 2017 Dr H suggested to get engaged in a more active exercise programme as [Complainant] became quite deconditioned since the accident. Prior to the accident she has been exceptionally fit, partaking in multiple activities, hiking, cycling, walking, running, marathons, etc., so this was a huge traumatic change for her. Dr H has strongly advised [Complainant] to commence a phased graded programme of exercise and to engage in this with her physiotherapist. Dr H has strongly advised to start slowly reengaging in all the normal activities of daily living as there have been patterns of social avoidance since the accident.

The Provider should ensure that any information it proposes to rely on in deciding a claim is accurate and verified.

I note that the Provider's appointed Specialist in Occupational Medicine, gave her opinion that the Complainant should be fit to resume work in 4 to 6 weeks from the date of her report, that is from 21 March 2017, which would mean a possible resumption of work in May 2017.

A suggested phased return to work was to be on 50% normal hours basis to be slowly phased up to normal hours over a 6-12 week timeframe (meaning that it would not be until August 2017, before a full resumption of work was recommended). The Specialist also suggested to the Provider that a psychiatric assessment might be beneficial.

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The Provider did not admit the claim on either a full time basis or on the recommended phased basis. The Provider also did not follow the Specialist's suggestion of a psychiatric assessment at that time.

It was only upon an appeal by the Complainant of the Provider's decision, to not admit the claim, that the Provider arranged a medical examination with a Consultant Psychiatrist for 8 August 2017. The Consultant Psychiatrist's opinion was that from the perspective of psychiatric illness, the Complainant was: *"currently fit to carry to carry out her normal occupation".* I consider that *"currently fit"* implies that at that point in time the Consultant Psychiatrist considered the Complainant fit for work.

From the medical evidence set out above it can be seen that, as and from August 2017, the Complainant's medical condition has been fully investigated by the Complainant's own treating doctors and the Provider's appointed doctors. I consider that the Provider's handling and assessment of this claim was for the most part reasonable and thorough. Medical examinations were arranged on behalf of the Provider and all the Complainant's medical conditions were ultimately assessed. The Complainant provided a number of medical reports from her own treating doctors / specialists and I accept that these were considered by the Provider.

I accept that the Complainant's role of Senior Manager would involve a high level of attentiveness from a person and require a high degree of both physical and mental good health.

The medical specialists, while disagreeing on her fitness for work, did acknowledge her medical history and did put forward suggestions regarding a return to work for example, as mentioned above, a phased return to work was recommended by the Provider's own appointed occupational specialist.

It is not my role to determine the Complainant's medical condition or to adjudicate on conflicts of medical opinion. My role is to examine the conduct of the Provider in reaching its decision not to pay any benefit, under the policy, to the Complainant.

I must determine, in that respect, whether the Provider acted correctly and reasonably in reaching the decision which it did, on the basis of the totality of the medical or other evidence available to it at that time.

While the Provider has found that the Complainant did not meet the criteria for payment of benefit, I believe, based on the medical evidence before me, that it was unreasonable for the Provider to find that the Complainant did not meet the criteria of disablement at any time.

That said, while the evidence points to the Complainant having medical problems which would have initially qualified her for the disability benefit (after the expiry of the deferred period 07/02/2017), how long the payment could be paid for, is on the evidence less certain. Ultimately, the evidence indicates that what was required was a greater recovery / adjustment period before a return to work was reasonably possible for the Complainant.

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This was something that was clearly recommended by the Provider's appointed occupational specialist. That specialist did not expect that the phased return to work would be long in nature. I also accept on the evidence that payment of benefit would not have been long term in nature, but I believe some payment of benefit was necessary, as the Provider's own appointed specialist indicated, to allow a period of time for a sufficient improvement in the Complainant's health and to assist the Complainant to adjust back into the workplace.

For the reasons set out above, I partially uphold this complaint and direct the Provider to make a once off payment to the Complainant amounting to six months' full benefit.

Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in ***Section 60(2) (b) and (c).***

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by making a one off payment to the Complainant amounting to six months' full benefit. This payment is to be made into an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in ***Section 22*** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

5 December 2019

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

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address, and

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