



<b><u>Decision Ref:</u></b>	2019-0439
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Income Protection and Permanent Health
<b><u>Conduct(s) complained of:</u></b>	Rejection of claim - did not meet policy definition of disability Disagreement regarding Medical evidence submitted
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainant commenced work with her Employer in December 2001 and was automatically included as a member of an Income Continuance Plan, a group scheme that provides income protection benefits to employees of the organisation. The Provider was appointed as the policy underwriter from 1 May 2015.

**The Complainant's Case**

The Complainant, a Human Resources Executive, took annual leave in August and September 2015 and was certified as unfit for work since 7 September 2015 due to “*work related stress*”. The Provider declined the income protection claim in correspondence dated 8 January 2016 as it concluded that “[the Complainant’s] *condition does not prevent you from carrying out your pre-disability occupation and as a result you are not considered “disabled” within the meaning of the policy*”. The Complainant appealed this decision but the Provider affirmed its declination in its correspondence dated 25 October 2017, as it “*is of the opinion that [the Complainant’s] claim relates to an internal Industrial Relations/Human Resources issue in the workplace...we are unable to accept claims for payment where the principle factors preventing a return to work are not related to the claimant suffering from a medical condition that totally prevents them from working*”.

In this regard, the Complainant states, as follows:

*“[The Provider] appear to focus on the reasons for my absence from work than on my medical condition...When [the Provider] and [my Employer] pay to have me “independently” medically assessed they appear to get reports back saying I am fit to return to work.*

*Both my own GP and Psychiatrist whose care I am still under confirm that I am not medically fit to return to work. I was independently medically assessed by a doctor from Social Welfare who confirmed I am unfit to return to work. Previous correspondence from my Psychiatrist to [the Provider] advising I would continue to engage with my employer while on sick leave...have been misinterpreted as being medically fit to engage regarding a return to work. I continue on medication and under the care of both my GP and Psychiatrist”.*

The Complainant also expresses concern as to the independence of the medical examination that her Employer arranged for her to attend in November 2017, as follows:

*“In November 2017 [my Employer] sent me for an “independent” medical assessment with [Dr A] in [an occupational healthcare practice]. [This occupational healthcare practice] are [my Employer]’s Occupational Health Providers. [Dr A.] works for [the Provider] and the month prior sat on a panel that declined my Income Continuance claim. I have serious concerns that [Dr A] was already in possession of my file in advance of meeting with me and could in no way be independent. Neither [my Employer] or [Dr A] advised me that she also works for [the Provider]. To me this is a serious conflict of interest and in no way “independent””.*

In addition, the Complainant submits that *“[the Provider] appear to focus on the reasons for my absence from work than on my medical condition and...even changed the definition of my disability that I am covered under to avoid payment”.* In this regard, the Provider furnished the Complainant with a policy definition of disability in its correspondence dated 8 January 2016 (wherein it first declined her claim) that it later advised her in its correspondence dated 25 October 2017 (wherein it declined her appeal) was incorrect.

As a result, the Complainant now seeks for *“a thorough independent review”* of her claim.

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

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

Provider records indicate that the Complainant completed an Income Protection Claim Form on 1 December 2015 detailing that she had been off work since 20 August 2015, had first sought medical advice on 1 September 2015 and was then certified as unfit for work from 7 September 2015 due to *"work related stress"*.

Her Employer completed an Employer Income Protection Claim Form on 3 December 2015 detailing that the Complainant was absent from work since 20 August 2015 as a result of *"work related stress"*. The Provider received these claim forms and supporting documentation on 17 December 2015.

In order for an income protection claim to be admitted, the claimant must satisfy the Specified Income Continuance Plan definition of disabled, as follows:

*"An Insured Person is disabled if in the opinion of the Company he is, by reason of injury or sickness totally unable to engage in the duties of his Normal Occupation and you are not engaged in any other occupation"*.

In this regard, the Members Handbook, which the Provider gives to the policy administrator for onward transmission to the members, provides, among other things, as follows:

*"The Insurer, advised by its Chief Medical Officer, will medically assess your claim to determine if you satisfy the policy definition of Disability."*

*To qualify to receive Disability Benefit under the Plan, the Insurer must be satisfied you are totally unable to carry out your duties under your normal occupation because of illness or injury and you are not following any other occupation"*.

In this case, to meet the policy definition of disabled, the Complainant must be totally unable to engage in the duties of her normal occupation as a Human Resources Executive.

In order to fully and fairly assess the income protection claim, the Provider began by reviewing the information provided by both the Complainant herself and her Employer on their respective claim forms. The Complainant confirmed that she had been off work from 20 August 2015 due to work related stress, had first sought medical advice on 1 September 2015 and had been certified as unfit for work by her GP due to work related stress since 7 September 2015 and was unable to perform any of the duties of her employment as a Human Resources Executive. In addition, the Complainant indicated that *"my immune system v. run down in Sept 2015 but now restored"* and that she was not undergoing any treatment, medication or therapy in respect of her condition, other than *"Rest"*. Her Employer confirmed that the Complainant's job remained open for her to return to and that in relation to her rehabilitation and returning to the workplace it had held with the Complainant *"numerous discussions – but claimants doctor continues to certify her as unfit for work"* due to *"work related stress"*.

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As part of its claim assessment, the Provider wrote to the Complainant's GP, Dr B on 18 December 2015 asking him to complete a Private Medical Attendance Report and to provide a copy of his GP attendance notes for the previous 12 months and a copy of any hospital reports he held in relation to the Complainant. Dr B confirmed in the Private Medical Attendance Report dated 31 December 2015 that he had diagnosed the Complainant with work related stress on 1 September 2015 and that she was not able to return to work.

He indicated that the factors preventing a return to work were *"mainly work related. [The Complainant] would like to work reduced hours but her work place will not facilitate this"* and that when she might be in a position to resume work on either a part or full time basis *"depends on her work"*.

Included in the papers provided by Dr B were the occupational health assessment reports prepared for the Complainant's Employer by Dr C and Dr D, who are occupational health physicians employed by an occupational healthcare practice utilised by the Employer. In this regard, having met with the Complainant on 14 October 2015, Dr C advises in her ensuing report dated 14 October 2015, among other things, as follows:

*"It is my assessment that this colleague is fully fit for work. Her medical health is being managed appropriately and there was no medical condition affecting her ability to attend or complete her role on assessment today. As outlined above she had numerous issues with regards to the terms of her employment and I note the accommodations which you have previously made. Of course this is an organisational issue and I have suggested that she discuss this with your further. In my opinion she is fit to return to work. She outlined that she enjoyed the HR environment. Her issues are logistical in nature, regarding workload and working time arrangements as outlined above. I cannot validate what may or may not occur in the workplace. She outlined that working remotely is not an impediment to her work and states that she has good organisation in place to travel to Dublin one day per week without affecting her role"*.

In addition, having met with the Complainant on 4 November 2015, Dr D, occupational health physician, advises in her ensuing report dated 4 November 2015, among other things, as follows:

*"In my opinion [the Complainant] is medically fit to carry out the duties of her role: however, I think she is unlikely to attend work at present, citing work as a barrier to her return.*

*It appears there is a conflict between [the Complainant's] perceptions of the work environment and her employer's expectations with regard to work load completion. In my view the solution to this situation is non-medical.*

*I have advised [the Complainant] that I do not think it is in her best interests to remain on sickness absence on account of these work issues. [The Complainant] reports work difficulties for a long time and I note that she has an absence for work related stress in the past. I have advised [the Complainant] to re-engage with the organisation, whether informally or formally, to see if a satisfactory and enduring resolution is possible at this point.*

*If there is an Employee Assistance Programme available, I recommend [the Complainant] be made aware of how to contact it. If not, I would appreciate if the organisation would consider supporting 4-6 sessions of counselling to facilitate effective engagement with the organisation e.g. after 2-3 sessions are completed to establish perspective”.*

The Provider’s Claims Department carefully assessed all of the information obtained in relation to the Complainant’s condition against the policy definition of disability. The file was also reviewed by Dr A, one of the Provider’s Chief Medical Officers. Whilst the information obtained did indicate that the Complainant was out of work due to work related stress, her GP, Dr B and occupational health physicians Dr C and Dr D. and the Complainant herself confirmed that this was due to internal matters between the Complainant and her Employer and was not related to her ability to perform her duties as a Human Resources Executive. In addition, the information obtained also indicated that the Complainant was motivated to return to the workplace if alternative working arrangements were put in place for her by her Employer.

In the circumstances, the Provider wrote to the Complainant on 8 January 2016 to confirm that the claim had been declined, as follows:

*“Your condition does not prevent you from carrying out your pre disability occupation and as a result you are not considered disabled within the meaning of the policy. In this regard, I regret to advise you that your claim has been declined for payment...If your GP has any additional information in support of your claim, we would ask that you send it to us for consideration”.*

The Complainant and her Employer completed fresh claim forms in June 2017, almost 18 months after the claim was declined. In this regard, the Complainant completed an Income Protection Claim Form on 14 June 2017 advising that she had been off work since 20 August 2015, had first sought medical advice on 1 September 2015, was certified as unfit for work from 7 September 2015 due to “work related stress” and detailed the nature of her disability as “work related stress, prolonged adjustment disorder, prominent anxiety financial stress, undergoing psychotherapy”. Her Employer completed an Employer Income Protection Claim Form on 15 June 2017 detailing that the Complainant was absent from work since 7 September 2015 and that she “remains certified unfit to return to work as by her doctor”. The Provider received these claim forms and supporting documentation on 30 June 2017, which included a letter of appeal from the Complainant dated 14 June 2017, wherein she advised, among other things, as follows:

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*"As you are aware I have been out of work since September 2015 on work related stress leave.*

*During this time I have been under the care of my own doctor, [Dr B] and also since 31<sup>st</sup> August, 2016 the care of [Dr E], Consultant Psychiatrist ...*

*Since September 2015 my doctor has continued to submit medical certificates confirming that I am unfit to work and referred me to [Dr E] whose care I am still under (at significant personal cost to myself).*

*In January 2016 you advised my claim for Income Continuance was declined. At that time and since I have been personally feeling very vulnerable, not been sleeping and suffering from severe stress including financial stress ...*

*As a result of my claim been declined, I have recently had to sell my house.*

*Over the past two years, I have got no support from [my Employer] and the HR Department as regards facilitating my return to work. Currently I am on anti-depressant medication and do not feel in any way fit to return to the organisation. Prior to this I have struggled to avail of treatments available to me and at times have negative thought patterns experiencing thoughts of life not worth living.*

*The financial and emotional stress I am under is continuous in relation to my worry of not been able to provide for myself and my family.*

*Mentally I am suffering and struggling. Below are my symptoms on a daily basis:*

*My concentration is very poor.*

*My ability to plan my day and time is impaired.*

*I suffer with anxiety and panic attacks when faced with having to complete tasks.*

*I suffer disturbed sleep. I experience early morning waking with negative thought patterns.*

*I lack any motivation to carry out tasks.*

*I am socially withdrawn and find it difficult to talk and interact with people.*

*I have difficulty in coping with housework let alone consider office work.*

*I have difficulty dealing with conflict/difficult situations and feel unable to assert myself.*

*My self-esteem is very low for some considerable time.*

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*My physical energy is still very poor.*

*When I think of the work situation at [my Employer] I experience flashbacks to negative behaviours enacted towards me in the workplace and to times I was treated in a negative manner in work with repeated criticisms which left me feeling not valued as a team member”.*

In addition, the Complainant had also enclosed with her claim documentation a copy of her correspondence to her Employer dated 20 February 2017. In this letter, the Complainant expressed her dissatisfaction in relation to the outcome of a further occupational health assessment her Employer had arranged for her with Dr F on 17 November 2016.

In this regard, Dr F advised in her resulting report, among other things, as follows:

*“In my opinion, [the Complainant] is currently medically fit to participate in any meetings you may wish to arrange in relation to a return to work. In my opinion the augmentation of [the Complainant’s] recover [sic] period with CBT [Cognitive Behavioural Therapist] counselling should improve her symptoms significantly enough to facilitate a return to work in early 2017. I discussed my recommendation with [the Complainant] and she indicated she does wish to return to work and does realise she needs to meet with her HR to achieve this”.*

The Provider notes that in its correspondence to the Complainant dated 8 May 2017, the Complainant’s Employer advised, among other things, as follows:

*“[The occupational healthcare practice utilised by the Employer] have now reverted to me having consulted with your consultant psychiatrist, [Dr E], who has confirmed to them that you are fit to engage in relation to your return to work. You have indicated in your letter that you wish to have a resolution of this issue, as it has been ongoing since September 2015. I too wish to bring this matter to a resolution and have on numerous occasions invited you to meet with me, to discuss your return to work. In support of your return to work, I re-iterate that I am happy to facilitate your return on a reduced hours basis for an initial 6 week period to help your re-integration to the organisation”.*

As part of its reassessment of the claim, the Provider wrote to the Complainant’s GP, Dr B on 4 August 2017 asking him to complete a Private Medical Attendance Report and to provide a copy of his GP attendance notes and any hospital reports he held for the period January 2016 to August 2017 in relation to the Complainant. In addition, the Provider also wrote to Dr E, the Complainant’s own treating Consultant Psychiatrist, seeking a specialist report in which she was asked to respond to a number of specific questions in relation to the Complainant’s condition.

Dr B confirmed in the Private Medical Attendance Report dated 1 September 2017 that the Complainant’s current symptoms were *“fatigue, stress, low energy, depression, suicidal thoughts recently”*, that she was prevented from a return to work due to *“depression and suicidal ideation”*.

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The Provider notes that the enclosed attendance notes show that on 3 March 2016, after the initial claim had been declined on 8 January 2016, Dr B had certified the Complainant as medically fit to return to work on a three day week for an initial period of six months. Dr B later confirmed in a note dated 27 April 2016 that this proposal had been rejected and that the Complainant's mood had again deteriorated. In this regard, Dr B referred the Complainant to Dr E, a Consultant Psychiatrist, to help her deal with the work related stress. The Complainant attended Dr E on 31 August 2016 for a mental health assessment and in her ensuing report to Dr B dated 8 September 2016, she provided a detailed history of the work related stress suffered by the Complainant but expressed no opinion as to her fitness to return to work.

In her specialist report to the Provider dated 4 September 2017, Dr E confirmed that she had seen the Complainant six times since August 2016 and that the Complainant had also attended for three appointments with an occupational therapist, one appointment with a cognitive behavioural therapist and one appointment with a nurse therapist. In addition, Dr E also advised, among other things, as follows:

*"[The Complainant] describes the stress of the working environment caused her ill health and she feels that she is unable to return to that work environment. She describes that she is fearful that her health will deteriorate further if she were to return. She also describes high levels of distress regarding how she feels her case has been handled and how she has been treated since being on leave ...*

*In my opinion, [the Complainant] is medically fit to engage with her employer to resolve the workplace issue. From my consultations with [the Complainant], I do not think that it is feasible for her to attempt to return to work in her former workplace. However, I feel that if the workplace issues were not present or resolved and she had continued treatment and support I would foresee that she could recover to such an extent that she would be able to engage in employment in an alternative workplace".*

The Provider states that its Claims Department carefully assessed the information obtained in relation to the claim appeal in conjunction with Ms R. G., the Provider's Occupational Health Advisor, who on 5 September 2017 recommended that the Provider consider obtaining an independent medical examination report to establish if the Complainant was medically fit for work from a mental health perspective.

As a result, the Provider arranged for the Complainant to attend for an independent psychiatric assessment with Dr G, Consultant Psychiatrist, on 26 September 2017. In advance of this assessment, the Provider wrote to Dr G on 18 September 2017 to provide him with some background on the claim and copies of the medical reports obtained.



In his ensuing report dated 26 September 2017, Dr G advises, among other things, as follows:

*“[The Complainant] was working four days weekly in the regional office in [location] and one day on head office in Dublin...She told me that in March 2016 her GP proposed that she return to work on three days weekly, a phased return, but her employers were unwilling to facilitate it. The condition preventing her from working is reported as work related stress in the private medical attendance report ...*

*There are significant work-related issues in this case...The problems date back to 2013. [The Complainant] alleges that she was systematically bullied since that time by two managers. She does not feel she will be able to return to work [with her Employer]...She said she wants to work again and will do so when she feels better. She said she has not felt well enough to consider other jobs...She said that she cannot go back to work in that environment...It was therefore clear that [the Complainant] is not motivated to return to work [with her Employer]”.*

Dr G outlined that the Complainant’s diagnosis was one of an adjustment disorder with anxiety and depressive symptoms caused by bullying in the workplace. He advised that her symptom severity was mild, that there was no objective evidence of depression or anxiety of significance and that there was no evidence that symptoms of psychiatric illness were disabling her from carrying out normal activities of living. In addition, Dr G outlined that the Complainant had not set any goals to return to work and that she feels unable to return to work with her Employer. In this regard, Dr G concluded his report by stating, as follows:

*“In my opinion [the Complainant] is currently fit to carry out her normal occupation. There is no objective evidence of disabling psychiatric illness that would prevent 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.*

*There are significant problems of an industrial relations nature in this case. [The Complainant] is poorly motivated to return to work because of her perception that she [was] bullied over a long period of time. It is these industrial relations problems that are the impediment to her return to work with [her Employer], rather than disablement from psychiatric illness”.*

This report from Dr G was assessed by the Provider’s Claims Department and Ms R. G., the Provider’s Occupational Health Advisor, who also prepared a report on 11 October 2017 (which was incorrectly dated 11 April 2017) to assist the Claims Department in reaching a final decision on the matter.

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In this report, Ms R. G. advises, among other things, as follows:

*“[The Complainant] has responded positively to prescribed treatments. She has availed of CBT and supportive sessions from her nurse specialist. Her issues of concern relate to her perceived work related stressors. The two managers she had concerns with were promoted in the business. I believe [the Complainant] could now consider a return to work if she were to enter dialogue with her new management team in attempts of resolving her work related concerns. If she fails to make a transition back to work it would only be regarded as a life style choice...With due regard to all the medical evidence on file, I feel it would be appropriate for [the Provider] to stand over their original decision to decline the claim”.*

As a result, the Provider wrote to the Complainant on 25 October 2017 to confirm that her claim appeal was declined as the claim related to an industrial relations/human resources matter that should be addressed directly with her Employer.

This letter highlighted that during its initial claims assessment, the Provider had quoted an incorrect definition of disability in its decline correspondence dated 8 January 2016. The Provider apologised for any confusion this may have caused, however it notes that the two definitions were almost identical and that its administrative error did not in any way disadvantage the Complainant. The Provider states that for completeness and in the interest of fairness, its Claims Department has assessed the claim under both definitions but the decision to decline remains the same, irrespective of which definition of disability is used. As a gesture of goodwill, the Provider would like to offer the Complainant the sum of €500 for any confusion caused as a result of the reference to an incorrect definition of disability in its correspondence of 8 January 2016, and this offer remains open to her to accept.

The Provider notes that prior to it reaching a final decision in relation to a claim, its Claims Department regularly consults with one of its Chief Medical Officers. It is important to note however that whilst the views of the Chief Medical Officer are taken into account by the Claims Department, a claim is assessed by a Claims Handler and then reviewed by at least one Claims Manager. As such, the final decision on any claim rests solely with the Claims Department.

In relation to the original claim which was declined in January 2016, the Claims Department obtained a view from Dr A before communicating its decision to the Complainant. The Provider notes that Dr A also works for the occupational healthcare practice utilised by the Complainant's Employer. In this regard, the Provider is satisfied that Dr A's role as one of the Provider's Chief Medical Officers is separate to her work with the occupational healthcare practice utilised by the Complainant's Employer and that Dr A formed her opinion by reviewing all of the medical information obtained by the Provider in relation to the Complainant's claim.

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Furthermore, Dr A was not involved with the claim appeal which was submitted to the Provider in June 2017. The decision to decline the claim appeal was reached by the Claims Department following a consultation with Ms R. G., the Provider's Occupational Health Advisor (who is not an employee of the occupational healthcare practice utilised by the Complainant's Employer) and following a careful assessment of the additional medical evidence provided by the Complainant's GP, Dr B, the occupational health report prepared by Dr F, the specialist report obtained from the Complainant's own treating Consultant Psychiatrist, Dr E and the independent psychiatric report prepared by Dr G, Consultant Psychiatrist.

The Complainant submitted to the Offices of the Financial Services and Pensions Ombudsman as part of her complaint papers a report dated 8 November 2017 prepared by Dr A. at the request of the Complainant's Employer, and which the Provider had not previously had sight of. This report did not therefore form part of the assessment of the claim appeal and indeed it was prepared two weeks after the appeal had been declined. In this regard, Dr A was not involved in the assessment of the claim appeal throughout 2017 and her involvement in the original claim decision in January 2016 was limited to providing an opinion which was taken into account by the Claims Department in arriving at the final claims decision, but which was not the only opinion taken into account at that time.

The Provider's decision to decline the claim was reached following a careful assessment of all of the medical information obtained. This included the medical evidence provided by the Complainant's GP, Dr B, the occupational health assessment reports prepared by Dr C, Dr D and Dr F for her Employer, the specialist report provided by the Complainant's own Consultant Psychiatrist, Dr E, and the independent psychiatric report prepared by Dr G, Consultant Psychiatrist. Account was also taken of the information provided by both the Complainant and her Employer in the claim forms, and the written correspondence exchanged between the two.

The Provider states that it is satisfied that there were sufficient independent views obtained to support the decline of the claim, both at the outset and on appeal. Based on all the information obtained, whilst the Provider fully appreciates that the Complainant has had a difficult working relationship with her Employer, this does not by itself mean she is unable to perform the duties of her normal occupation as a Human Resources Executive. The medical reports obtained indicate that the Complainant is capable of carrying out the duties of her normal occupation as a Human Resources Executive. It is apparent from a review of the medical and other information obtained that the Complainant would like to return to the workplace but does not, however, wish to return to her Employer due to difficulties she has encountered with them over the years. Her GP, Dr B considered the Complainant medically fit to return to the workplace in March 2016. Her own treating Consultant Psychiatrist, Dr E considers the Complainant to be fit to engage with her Employer with a view to returning to work. Dr G, an independent Consultant Psychiatrist, has also stated that the Complainant is fit to carry out her normal occupation as a Human Resources Executive.

The Provider assessed the Complainant's claim and appeal against the policy definition of disability. The medical reports obtained confirm that the Complainant is capable of returning to work in her capacity as a Human Resources Executive. The Complainant has confirmed that she is motivated to return to work but does not wish to return to her Employer due to particular issues she experienced whilst working there. In the circumstances, the Provider would encourage the Complainant to consider what options are open to her in relation to taking up a position as a Human Resources Executive with another employer if she does not wish to return to her Employer.

Accordingly, the Provider is satisfied that the Complainant does not meet the policy definition of disabled and that is declined the claim in accordance with the policy terms and conditions.

### **Decision**

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

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

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

A Preliminary Decision was issued to the parties 16 April 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, I set out below my final determination.

The complaint at hand is that the Provider wrongly or unfairly assessed and declined the Complainant's income protection claim. In this regard, the Complainant commenced work with her Employer in December 2001 and was automatically included as a member of the Specified State Agencies Income Continuance Plan, a group scheme that provides income protection benefits to employees of a number of state agencies. The Provider was appointed as the policy underwriter from 1 May 2015.

The Complainant, a Human Resources Executive, has been certified an unfit for work since 7 September 2015 due to *"work related stress"*. The Provider declined the income protection claim in correspondence dated 8 January 2016 as it concluded that *"[the Complainant's] condition does not prevent you from carrying out your pre-disability occupation and as a result you are not considered "disabled" within the meaning of the policy"*. The Complainant appealed this decision but the Provider affirmed its declinature in its correspondence dated 25 October 2017, as it *"is of the opinion that [the Complainant's] claim relates to an internal Industrial Relations/Human Resources issue in the workplace...we are unable to accept claims for payment where the principle factors preventing a return to work are not related to the claimant suffering from a medical condition that totally prevents them from working"*.

In this regard, the Complainant states, as follows:

*"[The Provider] appear to focus on the reasons for my absence from work than on my medical condition...When [the Provider] and [my Employer] pay to have me "independently" medically assessed they appear to get reports back saying I am fit to return to work. Both my own GP and Psychiatrist whose care I am still under confirm that I am not medically fit to return to work. I was independently medically assessed by a doctor from Social Welfare who confirmed I am unfit to return to work. Previous correspondence from my Psychiatrist to [the Provider] advising I would continue to engage with my employer while on sick leave...have been misinterpreted as being medically fit to engage regarding a return to work. I continue on medication and under the care of both my GP and Psychiatrist"*.

I note from the documentary evidence before me that the Complainant completed an Income Protection Claim Form on 1 December 2015 detailing that *"certified on work related stress leave since 7<sup>th</sup> Sept, 2015...my immune system v. run down in Sept 2015 but now restored"* and that she was undergoing at that time no treatment, medication or therapy in respect of her condition other than *"Rest"*. Her Employer completed an Employer Income Protection Claim Form on 3 December 2015 detailing that the Complainant was absent due to *"work related stress"* and that in relation to her rehabilitation and returning to the workplace it had held with her *"numerous discussions – but claimants doctor continues to certify her as unfit for work"*.

Income Continuance 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.

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In this regard, in order for her income protection claim to be admitted, the Complainant must satisfy the Specified Income Continuance Plan definition of disabled, as follows:

*“An Insured Person is disabled if in the opinion of the Company he is, by reason of injury or sickness totally unable to engage in the duties of his Normal Occupation and you are not engaged in any other occupation”.*

In this regard, the Members Handbook provides, among other things, as follows:

*“The Insurer, advised by its Chief Medical Officer, will medically assess your claim to determine if you satisfy the policy definition of Disability.*

*To qualify to receive Disability Benefit under the Plan, the Insurer must be satisfied you are totally unable to carry out your duties under your normal occupation because of illness or injury and you are not following any other occupation”.*

In this case, in order to meet the policy definition of disabled, the Complainant must be totally unable to engage in the duties of her normal occupation as a Human Resources Executive, and not just specifically as a Human Resources Executive with her Employer.

As part of its claim assessment, the Provider wrote to the Complainant’s GP, Dr B on 18 December 2015 asking him to complete a Private Medical Attendance Report and to provide a copy of his GP attendance notes for the previous 12 months and a copy of any hospital reports he held in relation to the Complainant. Dr B confirmed in the Private Medical Attendance Report, dated 31 December 2015, that he had diagnosed the Complainant with work related stress on 1 September 2015 and indicated that the factors preventing a return to work were *“mainly work related. [The Complainant] would like to work reduced hours but her work place will not facilitate this”* and that when she might be in a position to resume work on either a part or full time basis *“depends on her work”*.

I note that included in the papers provided by Dr B were the occupational health assessment reports prepared for the Complainant’s Employer by Dr C and Dr D, who are occupational health physicians employed an occupational healthcare practice utilised by the Employer. In this regard, having met with the Complainant on 14 October 2015, I note that Dr C advises in her ensuing report dated 14 October 2015, among other things, as follows:

***“REASON FOR REFERRAL – NATURE OF ILLNESS/INJURY***

*I note that [the Complainant’s] medical certificates cite work-related stress as the reason for her absence...[The Complainant] outlined to me the recent history of her medical symptoms and the investigations which were performed. I am happy to report that these are non-contributory to her current absence at this juncture. We also discussed her activities of daily living. She outlined the nature of her alleged work-related stressors as being workload related.*

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*She stated that her tasks are highly demanding from an administrative perspective and questioned the assessment by the external assessor with regards to her role she outlined another stressor as the requirement to work a five-day week. There was no evidence of any underlying psychological condition today. I performed an appropriate mental state examination.*

### **FITNESS FOR WORK – WORK RESTRICTIONS/MODIFICATIONS**

*It is my assessment that this colleague is fully fit for work. Her medical health is being managed appropriately and there was no medical condition affecting her ability to attend or complete her role on assessment today. As outlined above she had numerous issues with regards to the terms of her employment and I note the accommodations which you have previously made. Of course this is an organisational issue and I have suggested that she discuss this with you further. In my opinion she is fit to return to work. She outlined that she enjoyed the HR environment. Her issues are logistical in nature, regarding workload and working time arrangements as outlined above. I cannot validate what may or may not occur in the workplace. She outlined that working remotely is not an impediment to her work and states that she has good organisation in place to travel to Dublin one day per week without affecting her role”.*

In addition, having met with the Complainant on 4 November 2015, I note that Dr D advised in her ensuing report dated 4 November 2015, among other things, as follows:

*“In my opinion [the Complainant] is medically fit to carry out the duties of her role: however, I think she is unlikely to attend work at present, citing work as a barrier to her return.*

*It appears there is a conflict between [the Complainant’s] perceptions of the work environment and her employer’s expectations with regard to work load completion. In my view the solution to this situation is non-medical.*

*I have advised [the Complainant] that I do not think it is in her best interests to remain on sickness absence on account of these work issues. [The Complainant] reports work difficulties for a long time and I note that she has an absence for work related stress in the past. I have advised [the Complainant] to re-engage with the organisation, whether informally or formally, to see if a satisfactory and enduring resolution is possible at this point.*

*If there is an Employee Assistance Programme available, I recommend [the Complainant] be made aware of how to contact it. If not, I would appreciate if the organisation would consider supporting 4-6 sessions of counselling to facilitate effective engagement with the organisation e.g. after 2-3 sessions are completed to establish perspective”.*

/Cont’d...

Having assessed all of the information obtained in relation to the Complainant's condition against the policy definition of disability, the Provider wrote to the Complainant on 8 January 2016 to confirm that the claim had been declined, as follows:

*"Your condition does not prevent you from carrying out your pre disability occupation and as a result you are not considered disabled within the meaning of the policy. In this regard, I regret to advise you that your claim has been declined for payment...If your GP has any additional information in support of your claim, we would ask that you send it to us for consideration".*

I accept that it was reasonable for the Provider to conclude from the evidence before it at that time that the Complainant did not satisfy the policy definition of disability and that her absence from work was due to internal matters between the Complainant and her Employer and was not related to her ability to perform her duties as a Human Resources Executive.

I note from the documentary evidence before me that the Complainant and her Employer completed fresh claim forms in June 2017. In this regard, the Complainant completed an Income Protection Claim Form on 14 June 2017 advising that she was *"certified on work related stress leave since 7<sup>th</sup> Sept, 2015...work related stress, prolonged adjustment disorder, prominent anxiety financial stress, undergoing psychotherapy"*. Her Employer completed an Employer Income Protection Claim Form on 15 June 2017 detailing that the Complainant was absent from work since 7 September 2015 and *"remains certified unfit to return to work as by her doctor"*. In addition, in her correspondence to the Provider dated 14 June 2017, I note that the Complainant advised, among other things, as follows:

*"As you are aware I have been out of work since September 2015 on work related stress leave.*

*During this time I have been under the care of my own doctor, [Dr B] and also since 31<sup>st</sup> August, 2016 the care of [Dr E], Consultant Psychiatrist ...*

*Since September 2015 my doctor has continued to submit medical certificates confirming that I am unfit to work and referred me to [Dr E] whose care I am still under (at significant personal cost to myself).*

*In January 2016 you advised my claim for Income Continuance was declined. At that time and since I have been personally feeling very vulnerable, not been sleeping and suffering from severe stress including financial stress ...*

*As a result of my claim been declined, I have recently had to sell my house.*

*Over the past two years, I have got no support from [my Employer] and the HR Department as regards facilitating my return to work. Currently I am on anti-depressant medication and do not feel in any way fit to return to the organisation. Prior to this I have struggled to avail of treatments available to me and at times have negative thought patterns experiencing thoughts of life not worth living.*

/Cont'd...

*The financial and emotional stress I am under is continuous in relation to my worry of not been able to provide for myself and my family.*

*Mentally I am suffering and struggling. Below are my symptoms on a daily basis:*

*My concentration is very poor.*

*My ability to plan my day and time is impaired.*

*I suffer with anxiety and panic attacks when faced with having to complete tasks.*

*I suffer disturbed sleep. I experience early morning waking with negative thought patterns.*

*I lack any motivation to carry out tasks.*

*I am socially withdrawn and find it difficult to talk and interact with people.*

*I have difficulty in coping with housework let alone consider office work.*

*I have difficulty dealing with conflict/difficult situations and feel unable to assert myself.*

*My self-esteem is very low for some considerable time.*

*My physical energy is still very poor.*

*When I think of the work situation at [my Employer] I experience flashbacks to negative behaviours enacted towards me in the workplace and to times I was treated in a negative manner in work with repeated criticisms which left me feeling not valued as a team member".*

I note that the Provider then wrote to the Complainant's GP, Dr B on 4 August 2017 asking him to complete a Private Medical Attendance Report and to provide a copy of his GP attendance notes and any hospital reports he held for the period January 2016 to August 2017 in relation to the Complainant. In this regard, Dr B confirmed in the Private Medical Attendance Report, dated 1 September 2017, that the Complainant's current symptoms were "*fatigue, stress, low energy, depression, suicidal thoughts recently*", that she was prevented from a return to work due to "*depression and suicidal ideation*" and that when she might be in a position to resume work on either a part or full time basis "*depends on her work*". I note that the enclosed attendance notes included the following entries:

*"03/03/2016 work related stress cert til 15/4/16*

*I have reviewed [the Complainant] today, her stress levels have improved and she is feeling much better.*

/Cont'd...

*Since this is the second time in three years [the Complainant] has been out sick on work related stress, I feel she is medically fit to return to work for a 3 day week for the next six months. She can be reviewed again at that stage ...*

*27/04/2016 ... I found [the Complainant's] mood to have improved in March 2016 and recommended that she return to work initially on a 3 day week for a set period of time to allow her return to work on a graduated basis. This recommendation was rejected however and [her] mood and stress levels have deteriorated since then*

*I have referred her to a psychiatrist in Galway to help deal with the work related stress and will await the outcome of this appointment”.*

In her correspondence to the Complainant's GP dated 8 September 2016, Dr E, Consultant Psychiatrist advised, among other things, as follows:

*“[The Complainant] attended for a mental health assessment on 31/08/16 ...*

**History of Presenting Problems:** *[The Complainant] has been working for [her Employer] for the last 15 years and has been in the HR department for the last 10 years. Around 2011/2012 she moved from the head office [in Dublin] to the office in [location] where she started encountering problems with one of her colleagues very early on which caused [the Complainant] huge stress. She brought the issues to her manager on a number of occasions but very little was done about this. She made a complaint against her manager but said it was twisted to make it seem as if the complaint was made against her colleague and this made things very tense in work.*

*The stress in work was constant, [the Complainant] lost a stone in weight and sometimes got sick in work. She was out of work on stress leave from September to December 2013 and when she went back to work some of her duties were changed around. Her workload then started to increase, she often had to take work home with her in the evenings and weekends and often had sleepless nights. She felt that because of the complaints she had made that she was being bullied by her HR managers – she was not granted parental leave and often wasn't allowed to take time off for things that she really needed. Because [the Complainant] works in HR she felt she was trapped because she didn't have anywhere else to go for support. The stress mounted and one day last August [she] felt extremely weak. She went to her GP and her bloods were taken, the results of which were very poor. Her immune system was really low and up until that point she was getting a lot of colds and flues. [The Complainant] has been out of work since then and reports feeling “beyond stressed”. Any communication from work she nearly gets a panic attack.*

/Cont'd...



*A few months ago she was experiencing chest pain, she had an ECG which did not detect anything abnormal, and she still gets a lot of headaches. When she starts thinking about work her breathing changes, she get sweaty palms and chest pains. Her GP recommended earlier this year to go back to work on a phased basis but her employers wouldn't agree to this as they think she is fit to return to work ...*

*[The Complainant] reports feeling exhausted every day and says she is irritable all the time. She has become more withdrawn and feels like she is "existing rather than living". The stress is impacting on her wider life and her relationships with her family. Her decision making has become poor and she said she is not as reliable. She feels she is "physically, mentally and emotionally wrecked". She used to be a strong assertive person but that has gone now. Her interest and memory are poor and she has no motivation. She worries about things more than she used to. She denied any suicidal ideation but said that it is hard to keep going. She has exhausted her sick leave pay and is on her pension rate of pay since around January or February. She is under huge financial stress as a result of this now. She thinks she will have to default on her mortgage and doesn't know what will happen next. She fears that if she does go back to work that the bullying will continue ...*

**Mental State Examination:** *[The Complainant] was pleasant and forthcoming at interview. She made good eye contact and established rapport. She was anxious and her speech was increased in rate but normal in volume. She did not have a death wish, thoughts of self-harm or suicidal ideation. She did not have any psychotic symptoms. Her cognitive function was grossly intact and insight was present.*

**Initial Clinical Formulation:** *Prolonged adjustment reaction – work-related stress and financial stress, prominent anxiety and stress related symptoms.*

**Treatment Recommendations:** *Medication was discussed but [the Complainant] would prefer not to take medication. She did have one session of CBT in the past and didn't find it helpful but she did agree to consider trying it again. In the meantime she is being referred to OT and is for a review in two months or earlier if needed".*

In addition, also as part of its claim reassessment, the Provider wrote to Dr E, the Complainant's own treating Consultant Psychiatrist, seeking her response to a number of specific questions in relation to the Complainant's condition. In her report to the Provider dated 4 September 2017, Dr E stated, among other things, as follows:

*"Following the initial assessment, I have had six consultations with [the Complainant], the most recent being on 24/07/17. In addition, she has had three appointments with our occupational therapist, one appointment with our CBT therapist and one with our nurse therapist ...*

*Following the initial assessment on 31/08/16, the initial clinical formulation was of a prolonged adjustment reaction relating to work related stress and financial stressors, with prominent anxiety symptoms.*

/Cont'd...

*The treatment plan at that stage was to focus on psychotherapeutic interventions for stress and anxiety management and she attended our occupational therapist and CBT therapist.*

*As time progressed, the psychosocial stressors increased. There were increasing financial stressors as she remained out of work this culminated in her selling her house and with her son, moving back to live with her mother.*

*Her anxiety symptoms increased and her mood has become more depressed and despondent.*

*We commenced antidepressant medication in May, initially at low dose and increased in June to [named medication] 10mg daily.*

*At last review on 24/07/17, [the Complainant] remained distressed. There were ongoing psychosocial stressors, specifically relating to recent developments in the work issue. Her mood was low. She had persisting anxiety, irritability, sleep disturbance, poor appetite. She has intermittent vomiting and diarrhoea. She admitted to having thoughts of futility, but no active suicidal ideation.*

*Her mother, [age], is providing support for activities of daily living, particularly with regard to caring for her son [name] who is [age] in addition to day to day household chores. She describes that her mum is providing her with a lot of support at present. [The Complainant] is also trying to focus on keeping up regular physical activity, going for walks and eating three regular meals as she had lost weight in the early part of the year.*

*At the time of initial assessment, [the Complainant] had been out of work for twelve months. Prior to this, she had worked in the human resources department [with her Employer] for the previous ten years. In recent years, she had transferred from the head office to an office in [location].*

*She described difficulties in the office with a Dublin based work colleague, which had caused her high levels of stress and she brought this to the attention of her line manager. She was out of work on stress leave from September to December 2013. On return, she describes that her duties were changed and her workload increased. She requested parental leave, but this was not granted. She felt that she was being bullied by her managers in the human resources department because she had made a complaint. She described increasing levels of anxiety, sleep disturbance and weight loss. In August 2015, she had an episode of weakness in a shopping centre. She attended her GP and had been out of work on sick leave since that time.*

[The Complainant] describes the stress of the working environment caused her ill health and she feels that she is unable to return to that work environment. She describes that she is fearful that her health will deteriorate further if she were to return. She also describes high levels of distress regarding how she feels her case has been handled and how she has been treated since being on leave ...

She has engaged well with treatment, both psychotherapy and medication. However, her symptoms, particularly anxiety and mood symptoms have not improved and if anything, have been gradually deteriorating over time, as the stressors have been building up.

In my opinion, [the Complainant] is medically fit to engage with her employer to resolve the workplace issue. From my consultations with [the Complainant], I do not think that it is feasible for her to attempt to return to work in her former workplace. However, I feel that if the workplace issues were not present or resolved and she had continued treatment and support I would foresee that she could recover to such an extent that she would be able to engage in employment in an alternative workplace”.

I note that having assessed the information obtained in relation to the claim appeal, the Provider’s Occupational Health Advisor, Ms R. G. recommended on 5 September 2017 that the Provider should consider obtaining an independent medical examination report to establish if the Complainant was medically fit for work from a mental health perspective.

As a result, the Provider arranged for the Complainant to attend for an independent psychiatric assessment with Dr G, Consultant Psychiatrist, on 26 September 2017. In his ensuing report dated 26 September 2017, Dr G advised, among other things, as follows:

“[The Complainant] was working four days weekly in the regional office in [location] and one day on head office in Dublin...She told me that in March 2016 her GP proposed that she return to work on three days weekly, a phased return, but her employers were unwilling to facilitate it.

The condition preventing her from working is reported as work related stress in the private medical attendance report ...

There are significant work-related issues in this case...The problems date back to 2013. [The Complainant] alleges that she was systematically bullied since that time by two managers.

She does not feel she will be able to return to work [with her Employer] ...

She said she wants to work again and will do so when she feels better. She said she has not felt well enough to consider other jobs ...

*She said that she cannot go back to work in that environment. She said, "It's a place I can never go back to...It's no workplace environment...They made your life hell". It was therefore clear that [the Complainant] is not motivated to return to work [with her Employer] ...*

### **Conclusions/Opinion**

#### *Diagnosis:*

*The diagnosis is an adjustment disorder with anxiety and depressive symptoms, the stressor necessary for this diagnosis being [the Complainant'] perception that she was bullied in the workplace.*

#### *Circumstances of development of illness:*

*...[The Complainant] developed an intense emotional reaction with depressive and anxiety symptoms in reaction to problems that arose in the workplace. She perceives that she was systematically bullied over a long period of time.*

#### *Current Symptoms:*

*...Current symptom severity is mild. Based on the history, there has been improvement since she went on sick leave ...*

*In my opinion [the Complainant] is currently fit to carry out her normal occupation. There is no objective evidence of disabling psychiatric illness that would prevent 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.*

*There are significant problems of an industrial relations nature in this case. [The Complainant] is poorly motivated to return to work because of her perception that she bullied over a long period of time. It is these industrial relations problems that are the impediment to her return to work with [her Employer], rather than disablement from psychiatric illness".*

This report from Dr G was assessed by the Provider's Claims Department and Ms R. G., the Provider's Occupation Health Advisor, who also prepared a report on 11 October 2017 (which was incorrectly dated 11 April 2017) to assist the Claims Department in reaching a final decision on the matter.

/Cont'd...

In this report, I note that Ms R. G. advises, among other things, as follows:

*"[The Complainant] has responded positively to prescribed treatments. She has availed of CBT and supportive sessions from her nurse specialist. Her issues of concern relate to her perceived work related stressors.*

*The two managers she had concerns with were promoted in the business. I believe [the Complainant] could now consider a return to work if she were to enter dialogue with her new management team in attempts of resolving her work related concerns. If she fails to make a transition back to work it would only be regarded as a life style choice.*

*With due regard to all the medical evidence on file, I feel it would be appropriate for [the Provider] to stand over their original decision to decline the claim".*

As a result, the Provider wrote to the Complainant on 25 October 2017 to advise, as follows:

*"We have now thoroughly reviewed the medical information received and we have finalised our assessment of your claim for benefit. Our claims Committee is of the opinion that you claim relates to an internal Industrial Relations/Human Resources issue in the workplace; we would respectfully suggest that this could be addressed with your employer. In this regard, I regret to inform you that your appealed claim has not been accepted for payment of benefit".*

In addition, the Provider furnished recordings of telephone calls between the Complainant and Provider as part of its evidence. I have considered the content of these calls and I note from a recording of a telephone call between the Complainant and the Company that took place on 9 August 2017 that the Complainant advises the Agent, *"To ever return to that workplace, as soon as I'd be in I'd be back out again cause the way I've been treated and things don't change".*

In order to have a valid claim, the claimant must meet the policy definition of disabled. In this case, the Complainant must be totally unable to engage in the duties of her normal occupation as a Human Resources Executive, and not just specifically as a Human Resources Executive with her Employer.

I accept that it was not unreasonable for the Provider to conclude from the evidence before it that the Complainant did not satisfy the policy definition of disability and that her absence from work was due to internal matters between the Complainant and her Employer and was not related to her ability to perform her duties as a Human Resources Executive.

As a result, I accept that the Provider declined the income protection claim in accordance with the policy terms and conditions.

/Cont'd...



In addition, I note that the Complainant complains that the Provider *“changed the definition of my disability that I am covered under to avoid payment”*. In this regard, I note that when the Provider wrote to the Complainant on 8 January 2016 declining the claim, it provided the following definition of disability:

*“Total disablement shall be deemed to exist where (a) the Insured Person is unable to carry out the duties pertaining to his/her normal occupation by reason of disablement arising from bodily injury sustained or sickness or illness contracted and (b) the Insured Person is not engaging on a full-time or part-time basis in any other occupation (whether or not for profit or reward or remuneration, including benefit in kind)”*.

In its correspondence dated 25 October 2017 wherein it declined the appeal, the Provider noted that this was an incorrect definition of disability and that the appeal had been assessed against the correct policy definition of disability, as follows:

*“An Insured Person is disabled if in the opinion of the Company he is, by reason of injury or sickness totally unable to engage in the duties of his Normal Occupation and you are not engaged in any other occupation”*.

I note that the Provider has apologised for any confusion that this may have caused and I accept its position that the two definitions were similar and that its administrative error did not therefore in any way disadvantage the Complainant. I also note that the Provider’s Claims Department has now assessed the claim under both definitions but that the decision to decline remains the same, irrespective of which definition of disability is used, indicating as it does the similarity between the two definitions.

Nevertheless, administrative errors of this nature can cause considerable confusion. I note that the Provider, as a gesture of goodwill, has offered the Complainant the sum of €500 in respect of any confusion it may have caused as a result of the reference to an incorrect definition of disability in its correspondence of 8 January 2016. I accept that this is a reasonable offer and it is now a matter for the Complainant to advise the Provider if she wishes to accept its offer.

Furthermore, I note that the Complainant submits *“I was independently medically assessed by a doctor from Social Welfare who confirmed I am unfit to return to work”*.

The Complainant is in receipt of an invalidity pension. Having considered a recording of her telephone call with the Provider on 1 November 2017, I note that the Complainant submits that the only truly independent assessor in this matter is the Department of Employment Affairs and Social Protection’s assessor who determined her eligibility for invalidity pension, as this was not being paid by either her Employer or the Provider to assess her.

I am, however, satisfied that the decision of the Department of Employment Affairs and Social Protection to award the Complainant an invalidity pension is not relevant to the Provider's assessment of her income protection claim, since the criteria for an invalidity pension used by that Department is very different to the definition of disability contained in the Group Income Protection policy. In addition, the Provider, as an insurer, is entitled to make its own decisions on fitness for work or otherwise using the definition and criteria it has set out in its policy terms and conditions.

Finally, I note that the Complainant expresses concern as to the independence of the medical examination that her Employer arranged for her to attend in November 2017, as follows:

*"In November 2017 [my Employer] sent me for an "independent" medical assessment with [Dr A] in [an occupational healthcare practice]. [This occupational healthcare practice] are [my Employer]'s Occupational Health Providers. [Dr A] works for [the Provider] and the month prior sat on a panel that declined my Income Continuance claim. I have serious concerns that [Dr A] was already in possession of my file in advance of meeting with me and could in no way be independent. Neither [my Employer] or [Dr A] advised me that she also works for [the Provider]. To me this is a serious conflict of interest and in no way "independent"."*

I can fully understand the Complainant's concerns with such a situation and I do not think it ideal that any medical practitioner would provide assessments in such circumstances. However, it is not within the remit of this Office to consider the conduct of medical practitioners. This is a role for the Medical Council.

That said, I note that the Provider upheld its decision to decline the Complainant's claim on 25 October 2017. As a result, any subsequent medical examination, including the medical examination that her Employer arranged for her to attend in November 2017, had no bearing on the Provider's decision to decline her claim as this decision had already been made and communicated.

In addition, while I note from the documentary evidence before me that Dr A acted in her capacity as one of the Provider's Chief Medical Officers in offering an opinion to the Provider prior to it declining the Complainant's claim in January 2016, there is no documentary evidence before me indicating the Dr A was in any way involved in or made any recommendations in relation to the Provider's reassessment of the Complainant's claim in June 2017.

I do however, believe it would be prudent for the Provider to avoid situations where such perceived conflicts of interest can occur as they run the risk of undermining confidence in the assessment process.

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

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## **Conclusion**

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

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

**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

13 May 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.