



<u>Decision Ref:</u>	2020-0049
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Payment Protection
<u>Conduct(s) complained of:</u>	Rejection of claim - fit to return to work
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a member of a Group Income Protection Voluntary Scheme since September 2006 through her Trade Union, the policyholder. The Provider, against which this complaint is made, is the insurer, responsible for the underwriting of applications for cover and assessing claims.

The Complainant's Case

The Complainant, a public servant, was medically certified as unfit for work from 6 November 2017 and completed an income protection claim form to the Provider on 23 January 2018 wherein she listed her illness and condition as "*Work related stress*".

As part of its assessment of her claim, the Provider referred the Complainant to a Consultant Psychiatrist Professor D. M. for an independent medical examination on 5 March 2018. As his ensuing report deemed the Complainant fit to work, the Provider declined her income protection claim on 13 March 2018. The Complainant appealed this declinature and as part of its review, the Provider referred her to Consultant Psychiatrist Dr F. K. for a further independent medical examination on 11 June 2018. As his ensuing report also deemed the Complainant fit to work, the Provider upheld its decision to decline her income protection claim on 29 June 2018.

In this regard, however, the Complainant, in correspondence to this Office dated 13 August 2018, sets out her complaint, as follows:

"I do in fact meet the definition of disability as set out in the policy. As a result of my mental health issues depression and anxiety...I was not able to perform the material and substantial duties of my normal insured occupation ...

The authenticity of my being unfit for work is supported by two GPs [Dr P. R.] and [Dr R. M] and two Psychiatrists [Dr C. C.] and [Dr J. A.], however the two psychiatrists on behalf of [the Provider] state I am fit to work.

Mental health is a difficult illness to recognise, to address and to prove. I now understand how others suffer. What is considered mild in terms of scores for Psychiatrists feels more severe when you are the one trying to meet the demands life makes on you. There is very little support available for mental health issues unless you can pay and [the Provider's] lack of support in this regard have delayed my return to full health.

*I am currently receiving CBT [**Cognitive Behavioural Therapy**], taking medication and doing yoga and a timeframe of October/November [2018] have been suggested as a return to work date. For [the Provider] not to recognise my illness/disability is resonant of society's poor attitude to mental health".*

The Complainant returned to work on 4 January 2019. In this regard, in her correspondence to this Office dated 17 April 2019, she submits, among other things, as follows:

"I am back in work now in a Section identical to the one I originally left under fair and professional Managers. I am doing good. I do still feel very low at times but I put a face on it and carry on. My confidence and self esteem have taken a big hit. I do still fear ever returning to that frenzied, messed up headspace I was in. I am trying to mind myself".

In her correspondence dated 18 January 2019, the Complainant's Consultant Liaison Psychiatrist Dr C. C. advised, among other things, as follows:

"[The Complainant] eventually managed to return to work and is trying to manage the various stresses involved. My sense is that [she] was unable and unfit to carry out her role...when she was seen by me in April 2018 and it took several months to bring about a clinical improvement to the extent that she was able to return to the workplace".

In addition, in his correspondence dated 14 January 2019, the Complainant's GP, Dr P. R. advised, among other things, as follows:

"In any event [the Complainant's] period of illness for the past two years has been well documented and was at all times certified.

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She was at all times under clinical supervision by myself. Her sick leave was certified and verified by myself. Her condition is completely in keeping with her diagnosis and her need to being off work was completely reasonable”.

In her correspondence to this Office dated 17 April 2019, the Complainant submits, among other things, as follows:

“I was out of work on health grounds whereby I was genuinely unable to do my job. Bear in mind Management at work were of the opinion that I was not able to do my job as per a meeting I had on my last day 27th October 2017. After this meeting I truly felt that Management had began the proceedings of disciplinary action based on my inability to meet my targets. I had made every effort to mediate with Management prior to going on sick leave. I needed to be working, I needed to be earning my wages. I needed to be a functioning person in every walk of life and I was failing on every level. I feel I have a black mark forever more on my permanent record at work due to my sick leave.

I did cite Work Related Stress but it is evidence that I had other extenuating issues in my life and the inflexibility of work was the straw that broke the camel’s back”.

In addition, in her email to this Office dated 14 July 2019, the Complainant submits, *inter alia*, as follows:

“My illness by its very nature is not understood either by the patients or by the professionals. None the less it exists and in my case resulted in my head being tormented for two to three years in every aspect of my life. Trying to appear normal and trying to not be one of those people who isn’t coping and has mental health issues.

I am one of those people and I still have days where I struggle to do my job/to function. I fear ever being back where I was. I am terrified to the extent that I panic, lose focus and well up. I am slower to do my job. I constantly recheck my work, the simplest ask frightened me more than the more difficult task as there is no excuse for making a mistake. My head starts to reel. I feel hot. I am under pressure. I make mistakes, I should not. I feel a lessor person now, more vulnerable, far less capable and I need constant reassurance. It is truly awful.

It is my word, someone who is recovering from mental health issues against [the Provider], a major player in the global insurance industry with years of experience in this field. I requested full payment of my claim on genuine grounds and [the Provider] denied this claim in order to make a profit.

This ongoing dispute with [the Provider] only served to worsen my illness and prolonged my time out of work”.

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The Complainant seeks for the Provider to admit her income protection claim for the period that she was medically certified as unfit to work.

The Complaint for Adjudication

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

The Provider's Case

Provider records indicate that the Complainant completed an income protection claim form to the Provider on 23 January 2018 wherein she noted her first date of absence as 6 November 2017 and listed her illness and condition as "Work related stress". The Provider also received a Practitioner Report completed by the Complainant's GP Dr P. R. on 28 December 2017, wherein he noted the nature and cause of the Complainant's disability as "Stress related symptoms from the workplace. Anxiety/panic feelings. Inability to concentrate on work at hand".

In order for an income protection claim to be payable, a member of the Group Income Protection Voluntary Scheme 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 occupation on a part-time or full-time basis, whether or not for profit or reward or remuneration, including benefit in kind".

As part of its assessment of her claim, the Provider arranged for the Complainant to attend for a medical examination with Consultant Psychiatrist Professor D. M. on 5 March 2018, who was provided with a copy of the Provider's file on this matter. In his ensuing report dated 5 March 2018, Prof D. M. advised, among other things, as follows:

"The diagnosis is of mixed anxiety and depressive symptoms that reflect work-related adjustment issues.

The current illness severity is mild and recovering ...

Specifically, there is limited evidence of significant cognitive impairment, psychosis or impaired social functioning ...

[The Complainant's] typical day...includes engaging with a variety of functional tasks that include significant childcare responsibilities, driving, [other tasks] and managing a household ...

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She is not receiving any formal pharmacotherapy or psychotherapeutic treatment. She has had no engagement with any specialist mental health services ...

In my opinion, [the Complainant] has no psychiatric illness that would be inconsistent with her employment role but there are significant unresolved matters in terms of employment that are the focus of ongoing discussions at present. I am in agreement with her GP who reports that her difficulties and prognosis relate to her request for greater working flexibility and support”.

In this regard, Prof D. M. noted that the Complainant had described a situation where following a transfer in work she felt that the workload was too intense and the additional burden of needing to study for the new role added to this pressure, and she also described a feeling that she was not adequately supported in contrast to other employees and that similar levels of flexibility were not afforded to her.

In addition, the Provider notes that the symptoms the Complainant described of being unable to focus or concentrate were not borne out by the examination conducted. When asked about her daily routine, the Complainant described a very busy day in which she engages in significant childcare responsibilities, caring for an elderly relative, managing a busy household and exercising regularly, which would indicate someone who has an active life outside of work.

During his assessment, Prof D. M. also used formal testing and the mental state examination to assess the severity of the Complainant’s symptoms. The combination of the formal testing, the information provided during the assessment and the fact that the Complainant was not receiving any formal pharmacotherapy or psychotherapeutic treatment led him to conclude that the Complainant was fit to return to work. Even though she had mild residual symptoms, Prof D. M. concluded that the Complainant had no psychiatric illness that would prevent her from working. Whilst recognising that she has a diagnosis of mixed anxiety and depressive symptoms that reflect work-related adjustment issues, Prof D. M. considered that these symptoms were mild and recovering and were not sufficient to prevent the Complainant from returning to work.

Based on the findings of this medical examination, the Provider was of the opinion that the Complainant was fit to return to her normal occupation as she did not satisfy the policy definition of disability. As a result, the Provider wrote to the Policyholder’s Broker on 13 March 2018 to advise that it was declining the Complainant’s income protection claim, as follows:

“Based on the evidence received I regret to advise we are unable to consider [the Complainant’s] claim. IME [independent medical examination] findings indicate that [the Complainant] is currently fit to carry out her normal occupation, There is no objective evidence of disabling...illness that is preventing her from performing the material and substantial duties of her normal occupation, the main obstacle in returning to work is of an industrial relations nature.”.

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In order to appeal this decision, the Complainant had to provide up-to-date objective medical evidence to support her appeal. In this regard, the Provider received correspondence from the Complainant's GP, Dr P. R. dated 15 March 2018, wherein he stated that the Complainant *"remains significantly distressed with overwhelming anxiety which limits her function to work, care for her family and function at any acceptable level. I believe she is not in a fit state to consider going back to work"*. In addition, the Provider received a report from Consultant Liaison Psychiatrist Dr C. C. dated 30 April 2018, based on her first assessment of the Complainant on 30 April 2018, following a referral from her GP on 28 March 2018. In this report, Dr C. C. advises that the Complainant has had symptoms for a considerable time and has been worn down by numerous events in the workplace, where she feels unsupported and somewhat victimised by management and perceives that she has been treated very unfairly, which have all contributed to her current clinical presentation. In addition, Dr C. C. states, among other things, as follows:

"I have prescribed [the Complainant] Lexapro 5mg daily increasing to 10mg after one week for her depressive symptoms. I have arranged to review her in seven weeks. I do not feel that she is fit for work currently given her presentation and I understand she is appealing the decision of [the Provider]. In time she would benefit from engaging in some form of mediation with her employer over work issues that have arisen".

In order to fully assess this appeal, the Provider arranged for the Complainant to attend Consultant Psychiatrist Dr F. K. on 11 June 2018 for a further independent medical examination. In his ensuing report dated 11 June 2018, Dr F. K. advised, among other things, as follows:

"When asked what she could not do at work she replied "It wasn't the work... It was the restrictions about time... If I was moved to another section I could do the work ...

[The Complainant] replied "completely" when I asked if she could do the work if she was changed to normal working hours ...

Her symptoms likely satisfied criteria for diagnosis of an adjustment disorder with mixed anxiety and depressive symptoms ...

Current symptoms severity is mild ...

[The Complainant] has a busy and full life looking after [number of] children and supporting her relative. Symptoms of psychiatric illness are not causing significant restrictions on her ability to carry out normal activities. Therefore, psychiatric illness is not causing disablement in all areas of her life ...

There was no objective of significant depression of mood or of anxiety".

Whilst recognising that the Complainant's symptoms likely satisfied the criteria for a diagnosis of adjustment disorder with mixed anxiety and depressive symptoms, Dr F. K. felt that these symptoms were mild and that any residual symptoms were not of a disabling nature. In addition, Dr F. K. stated that there were significant work-related issues in this case and that it was these that appear to be the main impediment to the Complainant returning to work.

Having carried out a thorough review of the claim, the Provider remained of the opinion that the objective evidence indicated that the Complainant did not satisfy the policy definition of disability and remained fit to return to her normal occupation. As a result, the Provider wrote to the Policyholder's Broker on 29 June 2018 to advise, among other things, as follows:

"[The Complainant's] claim was declined on the 13 March 2018 following a review of the findings received from the independent medical examinations that the member attended on the 05 March 2018 which stated that the member was fit to return to work.

[The Complainant] appealed this decision. As part of the appeal, we arranged a further independent medical examination for the 11 June 2018. We have now received the findings following the most recent medical assessment.

Based on the findings of both independent medical examination and a review of all medical records on file including the appeal documents submitted, it is our opinion that [the Complainant] does not meet the definition of disability as set out in the policy. I must advise therefore that we are unable to change our original decision to decline the claim.

[The Complainant] has been deemed medically fit to return to work to full-time duties. In arriving at our decision, we must be guided by the weight of the objective evidence obtained which, in our opinion, clearly indicates that [the Complainant] does not meet the definition of disablement under the policy and is medically fit to resume her normal occupation".

In order for an income protection claim to be payable, a claimant must satisfy the policy definition of disability. The purpose of income protection is to support employees who demonstrate work disability supported by the objective medical evidence. In this regard, the results of the independent medical examinations carried out by Consultant Psychiatrists Prof D. M. on 5 March 2018 and Dr F. K. on 11 June 2018 advise that the Complainant's symptoms were mild in nature and clearly indicate that she does not have a disabling psychiatric illness and is fit for work. Both report that the Complainant describes an extremely busy day which includes significant childcare responsibilities, caring for an elderly relative, managing a busy household and exercising regularly.

In this regard, the Provider notes that it is generally accepted that a disabling psychiatric complaint not just impedes an individual from working but also adversely impacts their ability to perform normal every-day tasks and activities, however the level of activity the Complainant demonstrated in her day is not commensurate with a disabling psychiatric illness.

In addition, both Prof D. M. and Dr F. K. identified significant work-related issues to be the main impediment to the Complainant returning to work. In this regard, the Provider notes that when Dr F. K. specifically asked the Complainant about returning to work she replied, as follows:

“When asked what she could not do at work she replied “It wasn’t the work... It was the restrictions about time... If I was moved to another section I could do the work ...

[The Complainant] replied “completely” when I asked if she could do the work if she was changed to normal working hours”.

The Provider notes that her own treating doctors have also stated that the Complainant had an adjustment reaction, which appears to have been caused by work stresses. In this regard, for example, the Provider later received a copy of an undated letter from Consultant Psychiatrist Dr J. A., which appears to be from around May 2018 as it is noted that the Complainant attended six months after her first absence. Dr J. A. advises that the diagnosis is adjustment reaction, which is consistent with the other doctors the Complainant has seen. In addition, Dr J. A. states his impression was that the Complainant was experiencing distress with loss in social and occupational functioning and that this distress and impairment appeared to be related to stress at work, however Dr J. A. does not state that the Complainant is unfit for work and notes that she is on no psychotropic medication and discharges her back to the care of her GP. In this regard, the Provider submits that an adjustment disorder diagnosis does not automatically mean that the Complainant is unfit for work.

The purpose of the Group Income Protection Voluntary Scheme of which the Complainant is a member is to support a valid income protection claim for a disabling illness or injury. In this regard, non-medical and work-related issues do not constitute a valid claim. Whilst the Provider is sympathetic to the situation the Complainant is in, it was unable to consider her claim valid as it does not accept that she has a disabling illness and it believes the cause of her absence was due to unresolved issues with her employer around her role and the lack of flexibility in her working arrangements. The Provider submits that the best way for the Complainant to resolve these issues is through dialogue with her employer, which her own Consultant Psychiatrist Dr C. C. acknowledged in her report dated 30 April 2018.

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The objective evidence gathered in the assessments of both Prof D. M. and Dr F. K. do not support that Complainant's opinion that she meets the definition of disability. The formal testing that both doctors carried out showed that the Complainant's symptoms were mild in severity with no evidence of memory or concentration difficulties and would not pose a barrier to returning to work and in addition, the level of activity that she had outside the work environment led both to form the opinion that the Complainant was fit to return to work. Following its review of all the medical information at both the initial claim assessment in March 2018 and during the appeal in June 2018, the Provider concluded that the Complainant did not at that time meet the policy definition of disability for a valid claim. Accordingly, the Provider is satisfied that it declined the Complainant's claim in accordance with the terms and conditions of the Group Income Protection Voluntary Scheme of which she is a member.

The Complainant submitted further correspondence from her GP, Dr P. R. dated 14 January 2019 and her Consultant Liaison Psychiatrist Dr C. C. dated 18 January 2019, however the Provider submits that these reports cannot be considered retrospectively in relation to the initial claim assessment carried out in March 2018 or the appeal in June 2018 or influence the decisions made at those times. In any event, the Provider notes that Dr P. R. and Dr C. C. both submitted reports as part of the Complainant's appeal and the contents of those reports were properly considered in the appeal process at that time.

Whilst it acknowledges and states that it empathises with the fact that there have been a number of personal stressors in her life, the Provider submits that this does not in itself mean that the Complainant met the policy definition of disability. When assessing an income continuance claim, the Provider must consider the claimant's ability to carry out the substantial duties of his or her role and in this instance, both Prof D. M. and Dr F. K. concluded that the Complainant was fit to carry out her normal occupation and the Provider is satisfied that it made the correct decision on the claim.

The Provider notes that the Complainant has since returned to work in January 2019. In this regard, the Provider determined from the medical information that the Complainant was fit to return to work from the time of its assessments in March and June 2018 and states that it is satisfied that it made the correct decision on the claim. However, in an effort to resolve this dispute and allow her closure, the Provider offered the Complainant the sum of €876 in full and final settlement of this matter, this amount representing a one third partial disbursement of the total liability that would have been due had the Complainant had a valid claim, that is, €2,627.55. The Provider notes that though the Complainant declined this offer of €876, it remains open to her to accept.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence.

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The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

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

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

A Preliminary Decision was issued to the parties 24 January 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

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

The Complainant was medically certified as unfit for work from 6 November 2017 and completed an income protection claim form to the Provider on 23 January 2018 wherein she listed her illness and condition as "Work related stress". As part of its assessment of her claim, the Provider referred the Complainant to Consultant Psychiatrist Professor D. M. for an independent medical examination on 5 March 2018. As his ensuing report deemed the Complainant fit to work, the Provider declined her income protection claim on 13 March 2018. The Complainant appealed this declinature and as part of its review, the Provider referred her to Consultant Psychiatrist Dr F. K. for a further independent medical examination on 11 June 2018. As his ensuing report also deemed the Complainant fit to work, the Provider upheld its decision to decline her income protection claim on 29 June 2018.

The Complainant, however, in correspondence to this Office dated 13 August 2018, sets out her complaint, as follows:

"I do in fact meet the definition of disability as set out in the policy. As a result of my mental health issues depression and anxiety...I was not able to perform the material and substantial duties of my normal insured occupation ...

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The authenticity of my being unfit for work is supported by two GPs [Dr P. R.] and [Dr R. M] and two Psychiatrists [Dr C. C.] and [Dr J. A.], however the two psychiatrists on behalf of [the Provider] state I am fit to work.

Mental health is a difficult illness to recognise, to address and to prove. I now understand how others suffer. What is considered mild in terms of scores for Psychiatrists feels more severe when you are the one trying to meet the demands life makes on you.

There is very little support available for mental health issues unless you can pay and [the Provider's] lack of support in this regard have delayed my return to full health".

In this regard, the Complainant seeks for the Provider to admit her income protection claim for the period that she was medically certified as unfit to work.

Income protection policies, like all insurance policies, do not provide cover for every eventuality; rather the cover will be subject to the terms, conditions, endorsements and exclusions set out in the policy documentation. In this regard, Section IV, 'Claims', of the applicable Group Income Protection Policy Conditions provides, among other things, at pg. 10:

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

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

"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 occupation on a part-time or full-time basis, whether or not for profit or reward or remuneration, including benefit in kind".

I note that the Complainant's GP, Dr P. R. completed a Practitioner Report to the Provider on 28 December 2017, wherein he advised, *inter alia*, as follows:

"What is the exact nature and cause of disability?"

Stress related symptoms from the workplace.

Describe the symptoms which prevent the claimant from working.

Anxiety/panic feelings. Inability to concentrate on work at hand ...

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If the condition is not improving, please confirm why this is.

Overwhelmed by the work place, work load, expectation at work & the lack of flexibility regarding work hours and lack of support from work environment

What is your prognosis for the claimant?

Prognosis will depend on how the workload & working hours are managed ...

When is the claimant likely to be able to resume full time work?

Sometime in next 3-6 months ...

Please provide any additional comments which may be of assistance in our assessment.

It would help if the same flexibility of her colleagues' arrangements were available to [the Complainant] in terms of flexitime, start time / finish time / time off, holiday time etc."

As part of its assessment of her claim, I note that the Provider arranged for the Complainant to attend for a medical examination with Consultant Psychiatrist Professor D. M. on 5 March 2018, who in his ensuing report dated 5 March 2018 advised, among other things, as follows:

"[The Complainant] has been on sick leave absence since November 2017 (4 months). She relates this very directly to difficulties that she has experienced at work in that she feels that she has not been sufficiently facilitated in managing her workload and work expectations to the extent that she has experienced work-related stress. She describes a largely happy and productive time during her employment...but reports struggling as she has tried to manage the twin commitments of work with her home life. She has found that her working day is very pressurized and as a result she applied for a transfer from her longstanding base in [Location A] to work from [her employer's] office at [Location B] which is much closer to the family home. She was approved for this move and made the transition in [date] 2016. However, this move required (1) that she undertake additional training, and (2) that she move from a three day week to a four day working week. Very soon after the move (i.e. October 2016) she describes feeling that 'the workload was too intense' and 'not conducive for work and life'. She also found the additional burden of needing to study for the new training (Diploma) added to this pressure. She describes feeling that she was not adequately supported in contrast to other employees and that similar levels of flexibility were not afforded to her. She asked that she be allocated different [work] that would be easier to focus upon in terms of consistency, or that she restrict her activities to desk-based duties rather than doing [other work], and also asked that she reduce to a three day week but these requests were refused.

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[The Complainant] then asked for a transfer back to [Location A] which was approved but upon returning found that the additional driving was stressful and also that her line manager indicated that they would not be able to facilitate a shortened working year (this allows for additional leave that is unpaid for persons who seek greater working flexibility). She reports that her workplace was 'not a family-friendly environment' and that she had reduced the hours of support from her child minder when she moved to [Location B] but that this was not replaceable upon reverting to [Location A] as the childminder had taken on other commitments. She found herself increasingly stressed by this combined domestic and professional workload ...

[The Complainant] reports feeling increasingly stressed and that she often had to leave her desk to gather her composure as she felt unhappy, tearful and overwhelmed. She reports feeling 'burnt out', distracted, forgetful at work with low energy and generalised bodily aches and pains. She reports 'I just didn't feel able any more'. Around the Halloween break she had a meeting with her manager whom she felt 'chastised me about my productivity' and reports 'I felt things has escalated to bullying'. She reports feeling singled out and 'prepared for something...some disciplinary procedures'. She reports feeling overwhelmed and that she left work and met with a friend who supported her until she was able to return home. She then attended her GP [Dr P. R.] and has not returned to work since. There are no formal procedures at present at work – either complaints or disciplinary ...

[Dr P. R.] suggested antidepressant therapy but [the Complainant] preferred not to take this option. He also suggested psychotherapy but she has not attended this. She has preferred to focus upon her day to day lifestyle and engaging with exercise as a principal therapy. She reports that she is 'healing away from the workplace stress'.

[The Complainant] has had regular contact with the HR department and occupational health service at her employment. The medical officer has suggested a transfer in duties and change to a three day week. She wants to 'get the home structures in place before returning to work'. She describes ongoing issues with low confidence, generalized aches and pains, intermittent chest discomfort and irritable bowel along with a fear of falling. These symptoms follow a pattern consistent with generalized anxiety ...

[The Complainant] describes that on a typical day she wakes at around 7.00 am. She organizes her children getting to school and drives them (circa 5 minutes). She then gets some groceries in town, returns home and engages with household chores. She also checks the news and passively engages with the internet. She also exercises regularly now that she has time and has started jogging which she finds therapeutic. She takes coffee and watches Television around 10.30 am. She also has significant responsibilities helping a relative who has various medical issues. One of her children is also undergoing assessment by the early intervention team around issues of [name redacted]. She has the support of a childminder three days a week. She has been catching up on domestic matters of late. She collects the children from school and they have dinner.

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She brings the children to various activities (soccer, swimming) and helps them with homework. She settles down and watches television around 9.30 and goes to bed around 11 pm. She sleeps well as she is often very tired after her busy day ...

Her mood was subjectively and objectively depressed with some flattening to her affective tone. She described no current issues with suicidal ideation. She rated her current mood as 5/10 having previously been 0/10 in November.

She did not have evidence of OCD or panic disorder but did describe an ongoing pattern of generalised anxiety. There was no evidence of any features of psychosis noted. Cognition was intact.

Formal testing

- (i) Montgomery-Åsberg Depression Rating Scale (MADRS)** score was 9/60 which is consistent with active depressive illness of mild severity.
- (ii) MoCA test score** was 30/30 which indicates normal cognition and is in keeping with the rest of the assessment. This level of performance would not pose a barrier to conducting her employment role.
- (iii) Rey 15-item test score** was 15/15 which indicates accurate reporting of abilities and is consistent with her performance in the clinical interview.
- (iv) Hamilton Anxiety Rating Scale score** was 18 which is consistent with significant anxiety of moderate severity ...

The diagnosis is of mixed anxiety and depressive symptoms that reflect work-related adjustment issues.

The current illness severity is mild and recovering ...

Specifically, there is limited evidence of significant cognitive impairment, psychosis or impaired social functioning ...

[The Complainant's] typical day...includes engaging with a variety of functional tasks that include significant childcare responsibilities, driving, [other tasks] and managing a household ...

She is not receiving any formal pharmacotherapy or psychotherapeutic treatment. She has had no engagement with any specialist mental health services ...

In my opinion, [the Complainant] has no psychiatric illness that would be inconsistent with her employment role but there are significant unresolved matters in terms of employment that are the focus of ongoing discussions at present. I am in agreement with her GP who reports that her difficulties and prognosis relate to her request for greater working flexibility and support”.

I note that based on the findings of this medical examination, along with the documentation submitted by the Complainant and her GP, the Provider declined the Complainant's income protection claim as it concluded that she did not satisfy the policy definition of disability and was fit to return to his normal occupation.

In this regard, I note that the Provider wrote to the Policyholder's Broker on 13 March 2018 to advise that it was declining the Complainant's income protection claim, as follows:

"Based on the evidence received I regret to advise we are unable to consider [the Complainant's] claim. IME [independent medical examination] findings indicate that [the Complainant] is currently fit to carry out her normal occupation, There is no objective evidence of disabling...illness that is preventing her from performing the material and substantial duties of her normal occupation, the main obstacle in returning to work is of an industrial relations nature."

As part of her appeal of this decision, I note that the Complainant submitted correspondence from her GP, Dr P. R. dated 15 March 2018, wherein he stated, as follows:

"[The Complainant] has been on sick leave for some time...In my opinion she remains significantly distressed with overwhelming anxiety which limits her function to work, care for her family and function at any acceptable level. I believe she is not in a fit state to consider going back to work. Circumstances may change in the future but as of now she is quite overwhelmed with anxiety. She is currently in receipt of counselling and she is due to be reviewed by our local psychiatric team. In the interim however I would suggest that she is not fit to resume work in any capacity at this present time"

In addition, the Complainant also furnished the Provider with a report from Consultant Liaison Psychiatrist Dr C. C. dated 30 April 2018, wherein she advised, among other things, as follows:

"[The Complainant's] mood is persistently low with associated sleep disturbance, appetite changes and constant teariness. She finds it hard to cope. She denies a current death wish or suicidal ideation.

[The Complainant] has had these symptoms for a considerable period of time and has been worn down by numerous events in the workplace. She feels unsupported by management and feels somewhat victimised for her position. She perceives that she has been treated very unfairly in the workplace and this has contributed to her current clinical presentation.

I have prescribed [the Complainant] Lexapro 5 mg daily increasing to 10 mg after one week for her depressive symptoms. I have arranged to review her in seven weeks. I do not feel that she is fit for work currently given her presentation and I understand she is appealing the decision of [the Provider].

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In time she would benefit from engaging in some form of mediation with her employer over work issues that have arisen”.

In order to fully assess her appeal, I note that the Provider arranged for the Complainant to attend Consultant Psychiatrist Dr F. K. on 11 June 2018 for a further independent medical examination.

In his ensuing report dated 11 June 2018, Dr F. K. advised, among other things, as follows:

“The condition preventing [the Complainant] from working is reported as “work related stress” in the claim form ...

History of illness

[The Complainant] had been working a three-day week since her [children] were born in 2012. In August 2016 she agreed to a transfer from [Location A] to [Location B]. This meant that she would be closer to home. She had to go from a three-day working week to a four-day working week. She had to have extra training but said she saw this as a way to better herself at work.

She found in her new job that she did not have the support to do her work and her training. She had no help from the unions or the employee assistance officer.

Within a couple of months of starting that job she was finding that she was not coping with the work. She said she was frenzied, crying and unable to cope. Her memory was deteriorating. She was unable to learn. She said it was an awful place to be for a person who is proud to do a good job.

She sought a transfer back to [Location A], which was agreed. She agreed to work four days weekly to accommodate training in a new position...She said that there were restrictions in her working conditions compared to others. These restrictions applied to only six out of about 300 employees in the area. She did not have flexibility of hours and was not allowed to take term time. She was expected to be in by 8 AM some days and to stay until 6 PM other days. She said she could not do these hours and look after her family. She could do a 9:30 AM to 5 PM normal day. She said, “I wasn’t able to cope with what they were calling the business needs”. She said her management did not understand. She said, “It all started falling apart... I started to break down... I was overwhelmed... I couldn’t take information in... I couldn’t make it work”.

She said that on the last day at work her line manager took her aside and asked her why she was not performing. She said that there was no acknowledgement of her commitments to her children and family. She said, “They didn’t care”. She felt that she was being forced out but not being offered a transfer.

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Other managers told her that she would have been accommodated if working in another area. She said she had moved back to [Location A] because of work/life balance issues and her management knew this. She felt she was not being treated like others.

[The Complainant] told me that she felt bullied, particularly by her manager's manager. She said, "I know myself I wasn't working... I couldn't work".

She said she was crying the whole time. She said she was very stressed. She said that up to then she had a very good sick leave record. She said, "I just did my best to get on with it... Eventually I couldn't do it". She said she was suffering from anxiety, negativity and pessimism. She said, "I was falling apart literally... it was evident to the dogs on the street that I was stressed".

She said that since she has been off work she has been dreading having to go back. She said she knew she will go back and will overcome this. She said she will not be able to return if she is not 100% because she knows she will not be given any quarter.

She said other people have more support and can make this kind of situation work. Her husband is so busy with his [occupation] that he cannot be supportive. She does not have any extended family to support her. Her childminder was not able to do extra hours.

[The Complainant] has the burden of looking after her [number of] young children as well as looking after her elderly relative. Her relative lives in a granny flat attached to her home. She has suffered from chronic anxiety and has significant health anxieties. She told me that her relative is now receiving psychiatric care ...

Work / occupational issues

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

When asked what she could not do at work she replied "It wasn't the work... It was the restrictions about time... If I was moved to another section I could do the work". These were the restrictions on her hours and on holidays. She said she has asked to move out of that section but was told that she cannot have a transfer. She said that the manager in that section was displeased that she was on a three-day week.

[The Complainant] said that other staff have been accommodated when they have had life/work balance issues. She said, "Is there someone gunning for me?" She is uncertain but thinks that perhaps management think that she is being awkward. She said that new disciplinary procedures have been introduced and somebody has said to her that her manager's manager might like to be the first to use it. She said that that is all talk.

[The Complainant] replied “completely” when I asked if she could do the work if she was changed to normal working hours ...

[The Complainant] had significant problems with her manager and her manager’s manager. She felt that her manager’s manager was bullying her.

She said that she has not set any goals towards a return to work. She said she spoke to another manager who told her that she has to be strong going back. She hopes that after a bit of downtime over summer she may be able to return to work.

She said that when she spoke to a human resources officer he was very rational and understanding, whereas it is a different matter with local management. She said, “It was evident to everybody that I was falling apart in the section... I always did a good job... It didn’t suit me that I was failing”.

She said the employment assistance officer has not been supportive. She said the union has not been supportive. She said that there are various cliques at work and she has no confidence in the union ...

Montgomery-Åsberg depression rating scale (MADRS)

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

The MADRS score for [the Complainant], based on the psychiatric interview on 11/06/2018, was in the range of mild severity.

Hamilton Anxiety Rating Scale (HAM-A)

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

The HAM-A score for [the Complainant], based on the psychiatric interview on 11/06/2018, was in the range of mild severity.

SIMS questionnaire

This is a 75-item multiaxial self-administered screening measure, which may help in determining if there is symptom overstatement. It was completed by [the Complainant] as part of the psychiatric assessment on 11/06/2018.

Her total score of 15 was elevated just above the recommended cut-off score (14) for the identification of possible symptom overstatement. Her scores on two of the five scales within the SIMS were elevated. On the Affective Disorders scale she endorsed 10 of 15 possible symptoms. On the Amnestic Disorders scale she endorsed three of 15 possible symptoms ...

Conclusions / Opinion

[The Complainant] developed depressive and anxiety symptoms in reaction to problems that arose in the workplace. She also had the stress of looking after [number of] young children and her elderly relative. Her symptoms likely satisfied criteria for diagnosis of an adjustment disorder with mixed anxiety and depressive symptoms ...

[The Complainant] developed anxiety and depressive symptoms after an unsuccessful change of place of work within her organisation in August 2016. She then returned to her former place of work but to a new section. She found this stressful and difficult, her perception is that she was bullied by her manager's manager. She feels that she was treated unfairly and different from other staff and not provided support in work/life balance issues ...

Current symptoms severity is mild ...

[The Complainant] has a busy and full life looking after [number of] children and supporting her relative. Symptoms of psychiatric illness are not causing significant restrictions on her ability to carry out normal activities. Therefore, psychiatric illness is not causing disablement in all areas of her life ...

There was no objective of significant depression of mood or of anxiety ...

[The Complainant] was clear that she would be able to return to work if she was allowed to work normal hours. She would preferably want to return to working in a different section also ...

In my opinion [the Complainant] is currently fit to carry out her normal occupation, I am unable to find objective evidence of disabling psychiatric illness that prevents her from performing the material and substantial duties of her normal occupation, any residual symptoms are not disabling in nature.

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There are significant work-related issues in this case and these appear to be the main impediment to [the Complainant] returning to work. She said she would be able to work if she was allowed to do normal core hours between 9:30 AM and 5 PM ...

The outcome of this case will depend on resolution of work-related issues, which need to be addressed through standard human resources and industrial relations channels”.

I note that based on its review of the claim and appeal documentation submitted and the findings of the independent medical examinations that she had attended with Consultant Psychiatrists Prof D. M. on 5 March 2018 and Dr F. K. on 11 June 2018, the Provider concluded that the Complainant did not satisfy the policy definition of disability and as a result, it wrote to the Policyholder’s Broker on 29 June 2018 to advise, among other things, as follows:

“[The Complainant’s] claim was declined on the 13 March 2018 following a review of the findings received from the independent medical examinations that the member attended on the 05 March 2018 which stated that the member was fit to return to work.

[The Complainant] appealed this decision. As part of the appeal, we arranged a further independent medical examination for the 11 June 2018. We have now received the findings following the most recent medical assessment.

Based on the findings of both independent medical examination and a review of all medical records on file including the appeal documents submitted, it is our opinion that [the Complainant] does not meet the definition of disability as set out in the policy. I must advise therefore that we are unable to change our original decision to decline the claim.

[The Complainant] has been deemed medically fit to return to work to full-time duties. In arriving at our decision, we must be guided by the weight of the objective evidence obtained which, in our opinion, clearly indicates that [the Complainant] does not meet the definition of disablement under the policy and is medically fit to resume her normal occupation”.

In this regard, I am satisfied that it was reasonable for the Provider to conclude from the medical evidence before it - which included the claim documentation submitted by the Complainant and her GP and the report from the Complainant’s treating Consultant Liaison Psychiatrist Dr C. C. dated 30 April 2018, as well as the results of the independent medical examinations carried out by Consultant Psychiatrists Prof D. M. on 5 March 2018 and Dr F. K. on 11 June 2018 - that the Complainant did not at that time satisfy the policy definition of disability and that work place issues had a bearing on her absence from work. In this regard, I accept the Provider’s position that non-medical and work-related issues do not constitute a valid income protection claim.

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

"Disability

The member's inability to perform the material and substantial duties of their normal insured occupation as a result of their illness or injury; upon occurrence of which the benefit under the policy becomes payable, after the deferred period.

The member must not be engaged in any occupation on a part-time or full-time basis, whether or not for profit or reward or remuneration, including benefit in kind".

Income protection insurance decisions are based on objective medical evidence and the job demands of the occupation, to ascertain whether the claimant meets the policy definitions for a valid claim. Having considered the weight of the objective evidence before it, and which I have cited from at length, I am satisfied that it was reasonable for the Provider to conclude that the Complainant did not satisfy the policy definition of disability. As a result, I accept that the Provider was entitled to decline the Complainant's income protection claim in accordance with the terms and conditions of the Group Income Protection Voluntary Scheme of which she is a member.

I note the Complainant returned to work on 4 January 2019. In an effort to resolve this dispute, I note the Provider offered the Complainant the sum of €876 in full and final settlement of this matter, this amount representing a one third partial disbursement of the total liability that it calculated would have been due had the Complainant had a valid claim, that is, €2,627.55. The Complainant declined this offer, though the Provider has advised that it remains open for her to accept. In this regard, as I am satisfied that the Provider declined her income protection claim in accordance with the terms and conditions of the Group Income Protection Voluntary Scheme of which she is a member, I consider it is now a matter for the Complainant to advise the Provider directly whether she now wishes to accept or decline this offer.

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

Conclusion

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

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

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

21 February 2020

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.