An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0216
Sector:	Insurance
Product / Service:	Income Protection and Permanent Health
Conduct(s) complained of:	Rejection of claim - fit to return to work
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant [a medical professional], is a member of a Group Income Protection Scheme since 16 April 2014 and the Provider is the Insurer, against which this complaint is made, responsible for the underwriting of applications for cover and assessing claims.

The Complainant's Case

The Complainant submitted an income protection claim form to the Provider on 22 February 2017, wherein she provided the following information:

> *"**Date you stopped working** [date redacted]*
>
> ***Date symptoms began** 18/10/2016*
>
> ***Exact nature of condition or injury** Depression + Burnout*
>
> ***Nature of symptoms** Reduced concentration + tolerance, fatigue, insomnia, detachment and lack of enthusiasm".*

As part of its assessment of her claim, the Provider arranged for the Complainant to attend for a medical examination with Consultant Psychiatrist Prof D. M. on 28 April 2017. Based on his ensuing report, the Provider determined that the Complainant was at that time fit to carry out her normal occupation and thus that she did not meet the policy definition of disablement.

The Provider did, however, admit the claim and pay the Complainant income protection benefit from the end of the deferred period, 18 June 2017, to 1 July 2017.

The Complainant appealed this decision in November 2017 and the Provider arranged for her to attend for a medical examination with Consultant Psychiatrist Dr P. D. on 15 December 2017. Based on his ensuing report, the Provider remained of the opinion that the Complainant was fit to carry out her normal occupation and upheld its original decision to cease payment of her claim from 1 July 2017.

The Complainant does not accept the findings of these medical examinations nor the decisions of the Provider in relation to her income protection claim.

In her complaint to this Office, the Complainant advises, as follows:

> *"Having worked as a [medical professional] for over 20 years I found myself in the situation where I had to refer to Occupational Health and our* [employer's] *Support Counsellor in Aug 2016. I was finding work (and life in general) overwhelming. Every task no matter how small or routine required supreme effort and concentration. Anxiety prevented sleep which compounded the issue. Empathy and sympathy were replaced by detachment (at best) and intolerance or impatience. These are not comfortable or appropriate emotions for someone whose duty is the care and welfare of others …*
>
> *I had kept my GP informed of my difficulties and following a particularly dreadful weekend in Oct '16 I was diagnosed with Depression and Burnout* [and] *commenced medication at that time …*
>
> *I feel I fulfil the* [policy] *criteria of disablement…I don't consider it possible, ethical or appropriate for me to care for others when mentally unwell. Throughout 2017 I was cared for and supported by GP,* [Dr R. B.] *(Psychiatrist), Counsellor and Line Managers. It was Occupational Health and my Line Manager who applied for and obtained Critical Illness Protocol on my behalf. This extended full pay to 17/06/'17 and half pay to 13/10/'17 when* [my employer] *pay ceased. Since then I'm in receipt of just €193/wk from DEASP …*
>
> *My symptoms (now) and at that time* [of the medical examinations arranged by the Provider] *have settled because I manage them (or avoid any triggers) by staying at home and avoiding social interaction …*
>
> [Dr P. D.]*'s report left me reeling. It bore no resemblance to* [Prof D. M.]*'s report or indeed anything I was feeling.*
>
> *Mental health issues are so difficult to describe and even harder to prove, it would seem. The decision to decline my claim makes me feel like a fraud, a malingerer. You have no idea how hurtful this decision was to my already injured confidence and self-worth"*.

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In addition, in her correspondence to this Office dated 28 May 2019, the Complainant submits, among other things, as follows:

> *"The main dispute seems to me to revolve around the criteria of disablement. My symptoms may be vague, but they are very real and present to me. While concentration, sleep disturbance and anxiety levels have improved, lack of empathy and wanting to withdraw completely from society has not. Left to my own devices I would exist entirely alone in a separate world with no demands or expectations of me. I know how impossible it must be for "normal' people to understand this feeling …*
>
> *My symptoms have settled due in large part to absence from work …*
>
> *Patients deserve and the (Professional Body] and [Employer] demand that as a [medical professional] I deliver competent, conscientious and sympathetic care carried out in an ethical manner. I am not capable of delivering that. It would be a lie and quite possibly an offence for me to return to work and pretend I could. I can't expect my colleagues to pick up the slack because I just can't face it. That pressure would add to my problems and I doubt anyone would wish to work with me.*
>
> *Although psychically capable of completing daily activities, I struggle to find the motivation or energy to do so. On the occasions when I'm out in the world I can pass myself, but it is exhausting. When on duty I can't "run away" for work or interacting with people. It is part of my role and responsibility as a [medical professional] …*
>
> *I am anxious to return to work as I hate being a burden to anyone. It has taken me a very long time to accept that recovery will take as long as it takes…I would love to know that at 53 years of age my productive/fulfilling life is not over. Of all my symptoms this issue of returning to work has been the greatest worry and caused the most fear. Time is one of the necessities required to recover. Income Protection provides time out without financial loss and being a burden on anyone. It is the security blanket I assumed I'd have when taking out my policy."*

In her email to this Office dated 9 October 2019, the Complainant advises, *"I was assessed and awarded Invalidity pension in Jan of this year"*.

The Complainant seeks for the Provider to *"honour the policy I took out with them"* and to reinstate her income protection claim from 1 July 2017 *"until such time as I return to work"*.

The Complainant's complaint is that the Provider wrongly and unfairly ceased payment of her income protection claim, in circumstances where she continued to be certified as unfit to work thereafter.

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The Provider's Case

The Provider states that, in order for income protection benefit to be payable, the claimant must satisfy the Group Income Protection Scheme policy definition of disablement, as follows:

> *"**1. Disablement** - For the purpose of this Policy*
>
> *(i) total disablement shall be deemed to exist where (a) the Insured Person is unable to carry out the duties pertaining to his 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)".*

The Provider states that this Group Income Protection Scheme is, generally speaking, designed to dove-tail with the public sector sick pay arrangements, so that when an insured person has a loss of income as a result of an illness or injury, and if the Provider is satisfied that there is a valid claim in accordance with the policy terms and conditions, then it will pay a benefit to them. In this case, taking into account the fact that she was granted Critical Illness Protocol by her employer and thus received full salary up to 17 June 2017, the Provider states that any liability under this claim would be from 18 June 2017 onwards, when the Complainant was placed on half pay by her employer.

As part of its assessment of her income protection claim, the Provider arranged for the Complainant to undergo a Tele-Interview with a specialist nurse on 5 April 2017, where she was asked to provide details regarding, among other things, her occupational duties and her medical complaint and history.

In addition, the Provider also arranged for the Complainant to attend for a medical examination with Consultant Psychiatrist Prof D. M. on 28 April 2017, who in his ensuing Report dated 28 April 2017 advised, among other things, as follows:

> *"*[The Complainant] *reports her mood as much better …*
>
> *Her mental health is improving …*
>
> *The diagnosis is of a depressive illness which has settled and is presently mild/ recovered in severity. The precise nature and severity of symptoms of depression have included low mood, poor interest, low energy, anxiety and social withdrawal. These have now mostly settled and are not unduly restricting her day to day lifestyle …*

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> *The future prognosis of her condition is good in that she has responded well to therapy, has minimal previous history and has good social capital with a robust premorbid personality"*.

In its cover letter dated 21 April 2017, the Provider put a number of specific questions to Prof D. M. including *"4. In your opinion, is* [the Complainant] *currently fit to carry out her normal occupation at her normal working hours?"* to which he replied in his Report dated 28 April 2017 as *"4. Yes"*.

At the time of this medical examination, the Complainant had been absent from work for over three months. Whilst it had not been afforded the opportunity to assess her claim in the early stages of her absence, the Provider states that it was happy to accept from the contents of Prof D. M.'s Report that the Complainant had been unwell and incapable of working since [date redacted]. However, the Provider notes that Prof D. M. indicated that the Complainant's depressive illness had settled and was mild in severity, that the prognosis was good and that she had responded well to treatment and that there was no medical reasons preventing her from resuming her normal occupation as a [medical professional] at that time should she choose to do so.

Having assessed the objective medical evidence received, the Provider states that it was satisfied that the Complainant did not meet the policy definition of disablement and was fit to return to her normal occupation.

Nevertheless, taking all matters into account, the Provider decided that it would support the Complainant's claim and make income protection payments up to 1 July 2017 to allow time for arrangements to be made for her to return to work. The Provider also offered the services of an External Case Manager to coordinate a return to work plan and monitor this with the Complainant and her employer.

The Provider notified its decision to the Complainant in its letter dated 26 May 2017, wherein it also advised that some administration details were outstanding which were required in order to calculate and pay her benefit from the end of the deferred period up to 1 July 2017.

In this regard, the Provider was originally advised that the Complainant's employer had placed her on half pay on 13 March 2017. The Provider states that had this been the case it would have admitted her claim from the date. However, the Provider was later informed that the Complainant was granted Critical Illness Protocol, that is, an extension of her full pay for three extra months, resulting in her having remained on fully salary up until 17 June 2017. The Provider then admitted the Complainant's income protection claim from 18 June to 1 July 2017, rather than from 13 March to 1 July 2017. The gross amount of benefit paid to the Complainant was €328.48.

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The Complainant emailed the Provider on 1 June 2017 to express her disappointment with its decision. The Provider, on further reflection, advised by email on 9 June 2017 that it would be prepared to extend payment of her claim to 1 August 2017 if the Complainant wished to engage in the return to work process, however she did not avail of this offer as she felt unable to return to work.

The Complainant subsequently appealed the Provider's decision to cease payment of her income protection claim by way of letter dated 8 November 2017, wherein she enclosed a Report from her treating Consultant Psychiatrist Dr R. B. dated 12 October 2017.

As part of its appeal review, the Provider arranged for the Complainant to attend for an independent medical examination with Consultant Psychiatrist Dr P. D. on 15 December 2017, who in his ensuing Report dated 15 December 2017 advised, among other things, as follows:

> *"*[The Complainant] *did not appear depressed or anxious. There was no evidence of psychosis and she was not suicidal.*
>
> *She was well oriented. Her concentration and memory appeared normal and she was judged to be of above-average intelligence …*
>
> *She is currently receiving satisfactory treatment in terms of psychotropic medication under the supervision of a Consultant Psychiatrist as well as ongoing counselling…*
>
> *It would appear that* [the Complainant] *is undergoing some form of mid-life crisis which she should be able to resolve with counselling in the near future. However, this does not represent a formal psychiatric illness. Therefore, she is not unable by reason of psychiatric illness or injury to carry out the duties of her normal occupation. Her prognosis is good"*.

Having completed its appeal review, the Provider wrote to Complainant on 23 January 2018 to advise that it was satisfied that its previous decision to cease payment of her income protection claim from 1 July 2017 was correct and thus her appeal had not been successful.

The Provider states that it is satisfied that it made the correct decision to pay the Complainant's income protection claim to 1 July 2017, based on the medical evidence received as part of its claim assessment and subsequent appeal. It states that the Complainant was afforded the opportunity to set out the job demands of her role during the telephone interview and the two independent medical examinations and in this regard, the Provider has assessed the claim against this occupation at all times. The Provider is satisfied that the detailed objective medical reports from the two independent consultant psychiatrists clearly show that the weight of the evidence strongly supports the view that the Complainant is fit to resume her normal occupation.

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Following its appeal decision and during this complaints process, the Provider was furnished with two additional medical reports on behalf of the Complainant. In this regard, in his Report dated 9 November 2018, Consultant Psychiatrist Prof T. D. stated his opinion that the Complainant was unfit for work at that time but that she should be in a position to return to work in the coming months. In his Report dated 18 December 2018, Consultant Psychiatrist Dr R. B. advised that the Complainant's condition had not yet resolved.

In view of this new evidence, the Provider reviewed the claim and it arranged for the Complainant to attend for a medical examination with Consultant Psychiatrist Prof H. O'C. on 4 March 2019. In so doing, if Prof H. O'C. was in agreement with the Complainant's treating Consultant Psychiatrists Prof T. D. and Dr R. B., the Provider states that it would have accepted that the definition of disablement had been met at present and would then also have been happy to accept that the definition had been met on an ongoing basis since the claim ceased on 1 July 2017 and reinstate the Complainant's claim from that date.

In his Report dated 4 March 2019, Prof H. O'C. advised, among other things, as follows:

> *"To begin with cognitive testing,* [the Complainant] *did extremely well with no significant cognitive deficits …..*
>
> *On examination,* [the Complainant] *presented as an extremely pleasant and courteous woman who was cooperative with the overall assessment. She was somewhat tense at times during the assessment but overall she engaged very well. She was not overtly depressed or anxious. She was not psychotic. She was not suicidal …*
>
> *The diagnosis is that of a mild to moderate depressive episode that has currently responded well to a combination of medication and supportive counselling …*
>
> *At present* [the Complainant's] *symptoms are relatively mild in that she has somewhat reduced levels of motivation and energy but her mood is generally good and she functions at a good level in terms of everyday activities …*
>
> *Notwithstanding the fact that* [the Complainant] *has ongoing problems with motivation and energy and the fact that she feels stressed at the thought of returning to work, her depressive symptoms have responded to antidepressant medication and Counselling and she is not disabled from carrying out normal daily household activities or the responsibilities of her job"*.

In arriving at his final conclusions, the Provider notes that Prof H. O'C. had access to all of the available medical information including the reports from the Complainant's treating doctors.

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As part of its assessment of her claim, the Provider notes that the Complainant has now attended for three separate independent medical examinations with three different Consultant Psychiatrists and all three independent doctors have advised that, in their respective opinions, the Complainant does not meet the policy definition of disablement and that she is fit to carry out her normal occupation. The Provider acknowledges the evidence submitted by the Complainant's own doctors and confirms that it has not dismissed the content of these reports and that it has given them careful consideration at all times during the claims process. The Provider states that it cannot ignore the evidence presented from the results of the three independent medical examinations.

In relation to the Complainant's comments to the effect that her symptoms have settled due in large part to her absence from work, the Provider notes that there is no evidence to suggest that a return to work would cause any relapse or that this issue constitutes grounds for the Complainant remaining off work.

During the assessment of a claim, the Provider states that it must consider the possibility of the risk of relapse if the insured person were to return to work. In this regard, if the weight of the objective medical evidence received indicated that there was an unacceptable risk of relapse if the insured person were to return to work, then the Provider states that it would recognise that the policy definition of disablement has been met in such cases. The Provider also states that it acknowledges that the risk of relapse is difficult to quantify without being tested. However, in this case, the Provider notes that there is no medical evidence to suggest that there is any unacceptable risk of relapse where the Complainant to return to work.

In relation to the Complainant's comments regarding Dr P. D.'s Report dated 15 December 2017, namely, *"*[Dr P. D.]*'s report left me reeling. It bore no resemblance to* [Prof D. M.]*'s report or indeed anything I was feeling"*, the Provider states that it is satisfied that Dr P. D. provided a detailed, impartial assessment, however, if there are particular aspects of his Report that the Complainant has issue with, the Provider would be happy to raise these with Dr P. D., if she would like it to do so.

In relation to the Complainant's comments regarding how she felt when the Provider made its decisions on her claim, namely, *"The decision to decline my claim makes me feel like a fraud, a malingerer. You have no idea how hurtful this decision was to my already injured confidence and self-worth"*, the Provider notes that when it is making any decisions on claims, it is making such decisions on the basis of the medical evidence before it and it is not making any judgements on the character or the integrity of the insured person. The Provider states that it deeply regrets any upset caused to the Complainant and this was not its intention.

The Provider points out that while the Complainant's employer previously granted Critical Illness Protocol to her and she is currently in receipt of benefit from the Department of Employment Affairs and Social Protection, the criteria for the payment of such monies are different to the criteria for the payment of an income protection claim and the Provider cannot be bound by the decisions of other parties when arriving at its decision on the claim.

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In this regard, it states that income protection is an insured benefit only payable where the Provider is satisfied that the policy definition of disablement has been met and continues to be met. In this instance, the Provider has concluded that the medical evidence indicates that the Complainant does not currently meet the policy definition of disablement.

It remains the Provider's opinion, based on the weight of the medical evidence received, that the Complainant is fit to carry out her normal occupation and does not meet the policy definition of disablement. Accordingly, the Provider stats that it is satisfied that it ceased payment of the Complainant's income protection claim on 1 July 2017 in accordance with the terms and conditions of the Group Income Protection Scheme of which she is a member of.

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 on 21 May 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.

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The Complaint for Adjudication

The complaint is that the Provider wrongly and unfairly ceased payment of the Complainant's income protection claim, in circumstances where she continued to be certified as unfit to work thereafter.

The Complainant is a member of a Group Income Protection Scheme since 16 April 2014 and the Provider is the Insurer for this Scheme, responsible for the underwriting of applications for cover and assessing claims.

The Complainant, a [medical professional], submitted an income protection claim form to the Provider on 22 February 2017, wherein she provided the following information:

> *"**Date you stopped working** [date redacted]*
>
> ***Date symptoms began** 18/10/2016*
>
> ***Exact nature of condition or injury** Depression + Burnout*
>
> ***Nature of symptoms** Reduced concentration + tolerance, fatigue, insomnia, detachment and lack of enthusiasm*
>
> ***Details of current treatment** Eflexor 75 mgs daily*
>
> ***Expected date of return to work** Unknown".*

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, I note that the 'Provisions, Conditions and Privileges' section of the applicable Group Income Protection Scheme policy document provides, among other things, as follows:

> *"**1. Disablement -** For the purpose of this Policy*
>
> *(i) total disablement shall be deemed to exist where (a) the Insured Person is unable to carry out the duties pertaining to his 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) …*

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4. Duration of Payment

The Benefit shall become payable from the expiry of the Deferred Period and shall continue throughout disablement up to whichever of the following shall first occur

(i) the Insured Person ceasing to be disabled for the purposes of this Policy

(ii) the Insured Person being deemed by the Company to have ceased to be disabled for the purposes of this Policy …

***7. Prevision of Evidence Tests and Information – Claims** …*

(ii) The Insured Person as often as is required by the Company shall submit to medical examination, psychiatric assessment, assessment by an occupational therapist or any other medical or other assessment or tests to include the taking and testing of blood, urine or other samples".

In order for an income protection claim to be payable, a claimant must satisfy the policy definition of disablement

As part of its assessment of her claim, I note that the Provider arranged for the Complainant to attend for an independent medical examination with Consultant Psychiatrist Prof D. M. on 28 April 2017, who in his ensuing Report dated 28 April 2017 advised, among other things, as follows:

*"**Illness History***

[The Complainant] *describes being generally happy in her work until 2016. Early in that year there were some issues with a difficult person who is a relative of one of their patients. The [team] encountered quite a degree of stress and the [Employer] responded by engaging the services of a counsellor to assist with their adjustment.* [The Complainant] *found this helpful but noticed that she was becoming disillusioned with work and started to ruminate on the pressures of work. She describes having always been quite perfectionistic but that this became a bigger issues and that she started to feel irritated and overwhelmed by difficulties at work. Also, around this time she began experiencing menopausal symptoms with disturbed sleep and a general sense of physiological destabilization with fatigue, constant worrying about the job when off duty and loss of interest in her usual hobbies (she is very active in the community and GAA) with social avoidance and withdrawal. Between August and October in 2016 she found herself increasingly struggling and had to deal with longstanding hip pain which required a brief period of sick leave but otherwise she continued with work.*

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In October, during a visit to her GP he suggested that she might be depressed and she commenced antidepressant therapy (venlafaxine XL 75mg per day). She took two weeks leave with a septic throat and returned to work. She describes the 'heaviness' lifting, but she remained disillusioned with work and feels that she realized that she was experiencing 'burnout'. After a busy Christmas at work she felt lethargic and flat and again visited her GP who suggested that she step back from work for a month. She has not returned to work since and is currently exploring her options.

Since then, she reports her mood as much better and that she is getting out more again but suspects that she may have come to the end of the road with her current employment role. She continues with venlafaxine XL 75mg per day …

Mental State Examination

A formal assessment of mental state at interview revealed a casually dressed and pleasant woman. She drove to the appointment. [The Complainant] *was able to describe events in excellent detail and with minimal difficulty in terms of concentration and recall during the interview. It was easy to establish a good rapport with her and we shared humour about a number of issues.*

Her mood was subjectively and objectively euthymic with a resonant affective tone. At times during the interview she was upset but overall was positive in outlook. She rated her mood as improved but with some bad days. There were no recent or previous ideas of self-harm. There was no evidence of any major disturbance to thinking or perception. She described increased obsessionality since her difficulties began with some compulsive behaviours. These were largely ego-syntonic in nature and not so frequent as to be disabling. There were no features of psychosis or other major mental illness noted. Cognition was grossly intact.

Formal testing:

(i) ***Montgomery-Asberg Depression Rating Scale*** *(MADRS) score was 6/60 which is consistent with recovered depressive illness.*

(ii) ***MoCA test score*** *was 30/30 which indicates borderline/normal cognition. This level of performance was consistent with that evidenced during the general interview and would not impede her ability to engage with the responsibilities of her employment.*

(iii) ***Structured Inventory for Malingered Symptomatology*** *(SIMS) score was 9/75 which suggests that* [the Complainant] *does not endorse a raised frequency (>14) of symptoms that are atypical in patients with genuine psychiatric or cognitive disorders.*

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(iv) ***Ret 15-item test score*** *was 12/15 which is consistent with accurate reporting of abilities and consistent with her performance in the other tests that were conducted and with the clinical interview.*

Employment circumstances:

[The Complainant] *has been on sick leave absence since [date redacted] (three months). She has experienced some depressive symptoms with social withdrawal and loss of motivation and enjoyment. Her mental health has been improving but she has no plans to return to work yet and is unsure if a return to her current [role] is an option that she is keen to take up as she feels that she had reached a point of burnout that a change is needed. She is not keen to consider early retirement due to financial constraints. She hopes to stay on leave for six months (i.e. until July 9th) before re-engaging with work as she expects that this will aid her continued recovery. She remains well engaged with therapeutic supports, including antidepressant therapy (venlafaxine XL 75mg per day) which she is receiving from her GP. She has not attended specialist mental health services but did complete a course of counselling in 2016. Her post remains available for her to return.*

Specific Issues:

1. *The diagnosis is of a depressive illness which has settled and is presently mild/recovered in severity. The precise nature and severity of symptoms of depression have included low mood, poor interest, low energy, anxiety and social withdrawal. These have now mostly settled and are not unduly restricting her day to day lifestyle …*

2. *…* [the Complainant] *is able to engage with a variety of activities in her day to day lifestyle that includes socializing, driving, running a household etc.*

3. *The current treatment involves low dose antidepressant therapy (venlafaxine XL 75mg per day) overseen by her GP. This is providing effective symptoms control.*

4. [*In your opinion, is* [the Complainant] *currently fit to carry out her normal occupation at her normal working hours?* (as asked by the Provider in its cover letter to Prof D. M. dated 21 April 2017)] *Yes …*

6. *The future prognosis of her condition is good in that she has responded well to therapy, has minimal previous history and has good social capital with a robust premorbid personality. However, from the perspective of her job, she is unsure whether she wants to return to her previous role and is considering other options at present".*

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Having considered the contents of this Report, I note that the Provider concluded that the Complainant was at that time fit to carry out her normal occupation.

I note, however, that the Provider did take the decision to admit the Complainant's income protection claim from the end of the policy deferred period to 1 July 2017 and wrote to her on 26 May 2017 to advise her of this decision. In addition, it also offered to pay for an External Case Manager, a Rehabilitation Consultant at Absences Management Solutions, who would assist the Complainant in making the transition back to work.

I note from the documentary evidence before me that the Complainant emailed the Provider at 02:16 on 1 June 2017 to express her disappointment with its decision, as follows:

> *"I was very disappointed (distraught really) to receive your correspondence on Monday. Consequently it has taken me a few days to compose myself …*
>
> *I'm on sick leave due to depression.* [Prof D. M.] *in his report has concluded quite rightly that this depression has settled. This is due to, daily medication, lifestyle changes but most importantly time away from work which was a major contributor to my illness, I am not cured and feel a return to work now would result in a relapse or a worsening of my depression.*
>
> *The mere thought of it fills me with dread and keeps me awake at night, hence the late hour of this email! However this is my only option if my claim is rejected.*
>
> *The main symptom of my depression is a need to withdraw from society including family and friends. As interacting with people is one of the main duties of my work…I don't see how I don't fulfil* [the policy definition of disablement]. *Unless your Case Manager can cure depression I not sure how she could be of benefit to me without changing the very nature of [role].*
>
> *I took out income protection to insure that I could pay my bills if I was out sick for longer than [Employer] entitlements covered. I have no desire to defraud or deceive in any way, just pay my bills while I recover and in due time return to work. I would appreciate if you would reconsider my claim"*.

I note that the Provider, on further reflection, advised the Complainant by email on 9 June 2017 that it would be prepared to extend payment of her claim to 1 August 2017 if she wished to engage in the return to work process, however I note that the Complainant felt unable to return to work at that time.

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The Complainant subsequently appealed the Provider's decision to cease payment of her income protection claim from 1 July 2017 by way of correspondence dated 8 November 2017, wherein she enclosed a brief Report from her treating Consultant Psychiatrist Dr R. B. dated 12 October 2017, wherein he advised, as follows:

> *"Many thanks for your kind referral of* [the Complainant] *whom I saw on the 28th September 2017. In short, without precipitant she suffered a Depressive Episode that appears to have only partially responded to Venlafaxine XL 75mg mane and her mood certainly remains suboptimal to such a degree that I share your opinion that she remains at present unfit for return to work. At this juncture I have now [given] her a prescription to increase Venlafaxine XL to 150mgs mane and have advised that she continues to engage with her [company redacted] counsellor. I have arranged to see her in one month and will keep you informed"*.

As part of its appeal review, the Provider then arranged for the Complainant to attend for an independent medical examination with Consultant Psychiatrist Dr P. D. on 15 December 2017, who in his ensuing Report dated 15 December 2017 advised, among other things, as follows:

> *"**Background Summary:***
>
> 1. [The Complainant] *went off work on sickness absence on [date redacted] certified as unfit due to "depression and burn-out". She described her symptoms as "reduced concentration and tolerance, fatigue, insomnia, detachment and lack of enthusiasm"*.
>
> 2. *Regarding this condition, "I had been slipping into this for 1 ½ years…"*
>
> 3. *From October 2016, she was prescribed Efexor (anti-depressant medication) which she found helpful.*
>
> 4. *On 28/04/2017,* [the Complainant] *attended* [Prof D. M.]*, Consultant Psychiatrist, for the purposes of an independent medical examination with respect to eligibility for her current income protection claim. It was* [Prof D. M.'s] *opinion that* [the Complainant] *was suffering from a depressive illness which had settled and was "…presently mild/recovered in severity…"*
>
> 5. *At that time, she was hoping to return to work in or around July 2017.*
>
> 6. *She did not return to work and was subsequently referred to* [Dr R. B.]*, Consultant Psychiatrist, whom she first saw on 28/09/2017 and attended approximately monthly thereafter.* [Dr R. B.] *increased her Venlafaxine (Efexor) medication to 150 mg daily.*

/Cont'd…

7. *All along, she had been attending* [Ms A.[name redacted]], *Counsellor/Psychotherapist, through the [company redacted]. She estimates she has seen her on approximately 8 or 9 occasions, the last within the past 2 weeks. Her next appointment is in January 2018. Asked if she finds it good, she said, "Absolutely…she's very practical…" …*

Physical Health:

1. *She is in reasonably good health and on no medication other than her psychotropic medication.*

2. *She has been going through the Menopause and experiencing "hot flushes…" which wake her out of her sleep.*

Current Symptoms:

1. *"I'm present now 90 – 95% of the time (this was in relation to her earlier feeling of detachment)…"*

2. *"Some of the symptoms I had before like my tolerance, I'm not sure because I'm not challenged…"*

3. *"At work, I was putting on my uniform and putting on my mask…so it's hard to judge what it would be like if I went back to work…"*

4. *"But the thought of having to care for somebody…"*

5. *"The therapist told me I had to stop living in my head…she said to me, 'What do you feel?'…I've done 20 years of caring…work contributed to it…it challenged me when I wasn't able for it…but, I don't know what caused it…"*

6. *"My concentration is probably better…"*

7. *"My frustration and anger, that's gone…before, everything was a mountain…I would get this ball of bile inside me at work ready to spew…and I had no energy then…"*

8. *"My sleep has improved…"*

9. *"Around August/September, I feel I emerged from something…I woke up…"*

10. *"I was anxious then, but not now…things like today (coming to her current assessment), they're few and far between, but they make me feel anxious…"*

11. *"The feeling of wanting to withdraw…"*

/Cont'd…

12. *Asked if her symptoms were improving, she said, "I'm ready now to make some effort to get on with my life…" …*

Ability to Work:

1. [The Complainant] *said she regarded herself as unable to work.*

2. *Asked in what way she was unable to work, she said, "I don't want to care for people…I have no empathy…no desire…it would be dishonest and unethical to do it…"*

3. *"When I'm at work, I have to work…it's my personality…"*

4. *"I don't want to be that person who doesn't do the work…if staffing is short, you just have to do it…"*

5. *"If I'm there, I want to be there and fit for duties…"*

6. *She has had discussions with occupational health, "They said I can come back when I'm ready to come back…I'll go back when I'm ready…" She last attended 3 weeks ago.*

7. *She said there was no bullying or interpersonal difficulties and she has no legal action. She said her employers have been supportive and she has been granted extended sick leave. (She had used up some of her sick leave prior to going off in [date redacted]).*

8. *Asked regarding targets, she said, "If you had asked me a couple of months ago, I would have said yes…" but she does not have targets at the moment.*

9. *Asked if she regarded herself as retired, she said, "I'm only 51…I had a great life… I want to return to it…not being around people doesn't do it for me…this is completely alien to my personality…"*

10. *"I'm hoping with time things will improve…I want to be part of the world again…I have to live… I have to work…I want to get back to where I was…'*

Rey 15 Item Test

1. *The Rey 15 Item Test is a simple test which detects gross malingering of memory in 50% of the cases where it is present. It is comprised of 5 sets of 3. The respondent is shown the 15 items and asked to remember as many as possible, Scores less than 9 in the absence of specific brain dysfunction suggest falsification.*

/Cont'd…

2. [The Complainant] *scored 15 out of 15 items on this test.*

Structured Inventory of Malingered Symptomatology (SIMS)

1. *This is a screening questionnaire of malingering psychopathology and cognitive symptoms consisting of 75 questions over 5 categories and can be a useful adjunct for identification of suspected feigning of symptoms.*

2. *The results of the SIMS test administered by* [Prof D. M.] *on 28/04/2017 were reviewed. Her overall score of 9 was not elevated above the recommended cut-off score for this test (>14).*

Mini-Mental State Exam Test:

1. *This is a test of cognitive functioning and includes measures of orientation in time and placed, recall and memory, language and reading comprehension.*

2. [The Complainant] *scored a satisfactory 30 out of 30 items on this test.*

Test of Executive Functioning:

[The Complainant] *satisfactorily performed the Clock Test, a screening test of Executive Functioning.*

Mental State on 15/12/2017:

1. [The Complainant] *presented for interview appropriately dressed and groomed. She was early for the appointment. She had driven even though she was nervous, "If it had been raining, I would not have driven…I had to concentrate…I had to turn off the radio…"*

2. *She was very pleasant and courteous in manner and cooperative to the interview process. She came across as a high functioning individual with a firm handshake, good eye contact and highly professional.*

3. *She did not appear depressed or anxious. There was no evidence of psychosis and she was not suicidal.*

4. *She was well oriented. Her concentration and memory appeared normal and she was judged to be of above-average intelligence.*

5. *She became somewhat tearful when she was discussing how she missed her old life. Asked if she felt she was going through an existential crisis, she said she was*

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not sure, that she had been ruminating about the cause of her current condition, but she was unable to come up with a likely explanation.

Conclusions/Opinion:

1. [The Complainant] *went off work in the context of what she described as burn-out or depression.*

2. *It does appear that she has lost enthusiasm for her work and has experienced a sense of detachment, frustration and anger with low tolerance.*

3. *Since she has been off work, these symptoms have improved.*

4. *She is currently receiving satisfactory treatment in terms of psychotropic medication under the supervision of a Consultant Psychiatrist as well as ongoing counselling/*

5. *In her personality, as the eldest of [number of] children,* [the Complainant] *has always over-functioned and in that context, it is not surprising that she became disillusioned.*

6. *Her day-to-day level of functioning is reasonably satisfactory. She can drive, use the computer, and read though she is still quite dissatisfied with her current condition.*

7. *Her current symptoms are quite vague and relate more to dissatisfaction with life.*

8. *In addition, she is experiencing menopausal symptoms which may also have some relevance.*

9. *It would appear that* [the Complainant] *is undergoing some form of mid-life crisis which she should be able to resolve with counselling in the near future.*

10. *However, this does not represent a formal psychiatric illness.*

11. *Therefore, she is not unable by reason of psychiatric illness or injury to carry out the duties of her normal occupation.*

12. *Her prognosis is good*".

Having completed its appeal review, I note that the Provider wrote to the Complainant on 23 January 2018 to advise that it was satisfied that its previous decision to cease payment of her income protection claim from 1 July 2017 was correct and thus her appeal had been unsuccessful.

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The Complainant later furnished two further medical reports. In this regard, in his Report dated 9 November 2018, I note that Consultant Psychiatrist Prof T. D. advised, as follows:

> *"I saw* [the Complainant] *on the 22nd October 2018. She describes her mood as flat at present and says she is very socially withdrawn. She says she enjoys being on her own and avoids people. Her sleep is very variable and some nights she sleeps poorly. In general her appetite is good.*
>
> *She said she worries excessively but is not experiencing panic attacks. She admits that her concentration has improved of late.*
>
> *She had been unwell for two years and these was no clear precipitant for the current episode …*
>
> *She is currently on Venlafaxine 225 mgs mane. This was increased recently …*
>
> *Mental state examination revealed a pleasant lady who answered questions coherently and to the point. Her mood was depressed. She describes anxiety. There was no evidence of panic attacks or agoraphobia. There was no evidence of any psychotic features. She is a woman of normal intelligence. Her concentration throughout interview was good …*
>
> *My overall impression is of a major depressive episode.*
>
> *I have advised her to increase the Venlafaxine to 300 mgs mane. I have given her general advice in relation to diet and exercise. I believe while she is unfit for work at the moment that she should be in a position to do so in the coming months".*

In addition, in his Report dated 18 December 2018, I note that Consultant Psychiatrist Dr R. B. advised, as follows:

> *"*[The Complainant] *is attending me. She suffers with Depressive Disorder which has not yet resolved.*
>
> *I have requested a second opinion re* [the Complainant's] *fitness to return to work from* [Prof T. D., Consultant Psychiatrist] *and following assessment he was also of the opinion (9.11.18) that* [the Complainant] *was unfit to return to work"*.

In light of this new evidence, I note that the Provider agreed to review the Complainant's claim once again.

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In this regard, the Provider arranged for the Complainant to attend for an independent medical examination with Consultant Psychiatrist Prof H. O'C. on 4 March 2019, who in his Report dated 4 March 2019 advised, among other things, as follows:

> *"To begin with cognitive testing,* [the Complainant] *did extremely well with no significant cognitive deficits noted on the MoCA Test, where she scored 29 out of 30. Likewise she did extremely well with the Rey Figure Copying Testing, indicating a good degree of cooperation with the overall assessment …*
>
> *She was last working in January of 2017 when she was employed as a [medical professional] …*
>
> *In recent months she would say that her mood varies between 5 and 7 out of 10, when self-graded. She feels that her energy levels are 'flat; and she reports reduced levels of motivation She does report some increase in her interest levels in recent weeks,*
>
> *Her sleep pattern seems to have changed completely in that she tends to stay up late at night reading or watching television and as a result tends to rise late in the morning or afternoon.*
>
> *She denied any psychotic symptoms. She denied any ideas of suicide or deliberate self-harm although she does report a passive death wish.*
>
> *She would say that she was last completely well in 2015 and she feels that she had a gradual decline into depression thereafter.*
>
> *She has no history of mental health problems prior to 2015.*
>
> *Likewise she has no particular psychological or social stressors that she can identify.*
>
> *She would say is that since she stopped work her mood and anxiety levels have improved considerably, but she still needs to protect herself from too much activity or stress …*
>
> *Her only medication is the antidepressant Venlafaxine 300mg once daily ….*
>
> *On examination,* [the Complainant] *presented as an extremely pleasant and courteous woman who was cooperative with the overall assessment. She was somewhat tense at times during the assessment but overall she engaged very well. She was not overtly depressed or anxious. She was not psychotic. She was not suicidal.*

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Regarding her occupation, [the Complainant] *said that she has been working as a [medical professional] in a* [named location] *since 2007, doing both day shifts and night shifts.*

However, she would say that she was finding it extremely difficult in 2015 and 2016 to maintain a high level of care for her patients. She found that she was rehearsing her day in work while in bed the night before and she found this whole process exhausting over time. She found that she had to check and recheck her work frequently. As a result of this she attended Occupational Health in August 2016 and she also mentioned her stress levels to her GP. She had a Counsellor arranged through [her Employer] and her GP started her on an antidepressant (Venlafaxine) around that time.

She subsequently attended [Dr R. B.]*, a Private Psychiatrist…whom she continues to attend and she had had an assessment with* [Prof T. D.]*, Consultant Psychiatrist…She also continues to see a Counsellor every two months …*

She has no plans to return to her previous employment and she cannot see any way in which she could return to work on a phased or on a reduced hours basis. Her only idea of returning to work would involve working in a job where other people were too dependent on her and where there were no pressures on her to complete work if she did not feel well enough …

What is the exact diagnosis of the condition?

The diagnosis is that of a mild to moderate depressive episode that has currently responded well to a combination of medication and supportive counselling.

Please outline the nature and severity of current symptoms.

At present [the Complainant's] *symptoms are relatively mild in that she has somewhat reduced levels of motivation and energy but her mood is generally good and she functions at a good level in terms of everyday activities …*

What treatment is* [the Complainant] *currently receiving to address these symptoms?

[The Complainant] *is currently taking high dose antidepressant medication and she is also attending a Counsellor every two weeks. Her antidepressant is being monitored by her GP and by a private Psychiatrist (*[Dr R. B.]*) …*

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

Notwithstanding the fact that [the Complainant] *has ongoing problems with motivation and energy and the fact that she feels stressed at the thought of returning to work, her depressive symptoms have responded to antidepressant medication and Counselling and she is not disabled from carrying out normal daily household activities or the responsibilities of her job"*.

Income protection is an insured benefit only payable where the policy definition of disablement has been met and continues to be met. In this regard, I note that the 'Provisions, Conditions and Privileges' section of the applicable Group Income Protection Scheme policy document provides, among other things, as follows:

> *"**1. Disablement** - For the purpose of this Policy*
>
> *(i) total disablement shall be deemed to exist where (a) the Insured Person is unable to carry out the duties pertaining to his 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) …*

The purpose of income protection is to support employees who demonstrate work disability supported by the objective medical evidence. 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.

The diagnosis of a medical condition is not, in and of itself, sufficient to determine claim validity, nor does it automatically equate to work disability; rather the weight of the objective medical evidence must clearly indicate that the claimant has *"total disablement"* insofar that they are unable to carry out the duties of their occupation as a result of the medical condition. In this regard, I note that the Provider has never disputed that the Complainant had a medical condition. I note that the Provider has concluded from the medical evidence before it that the severity of the Complainant's condition at the time of her independent medical examinations was such that it did not render her totally unable to carry out the duties of her normal occupation as a [medical professional].

Having considered the weight of the medical evidence before it, and which I have cited from at length, I am of the opinion that it was not unreasonable for the Provider to conclude that the Complainant was fit to carry out her normal occupation. For this reason, I accept that the Provider ceased payment of the Complainant's income protection claim from 1 July 2017

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in accordance with the terms and conditions of the Group Income Protection Scheme of which she was a member of.

In her email to this Office dated 9 October 2019, the Complainant advises, *"I was assessed and awarded Invalidity pension in Jan of this year"* from the Department of Employment Affairs and Social Protection. The criteria for the payment of an invalidity pension is different to the criteria for the payment of an income protection claim, where the claimant must satisfy the policy definition of disablement in order to have a valid income protection claim. The Complainant's income protection claim was strictly governed by the terms and conditions of the Group Income Protection Scheme, which forms the basis of the contract of insurance and the Provider is entitled to form its own opinion on fitness for work, in accordance with the relevant policy terms and conditions. In this regard, I accept the Provider's position that it cannot be bound by the decisions of other parties when arriving at its decision on an income protection claim and in this instance, it has concluded that the medical evidence indicates that the Complainant does not meet the policy definition of disablement.

For the reasons outlined 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

11 June 2020

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

(a) ensures that—

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

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

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