An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0302
Sector:	Insurance
Product / Service:	Payment Protection
Conduct(s) complained of:	Claim handling delays or issues
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainant is a member of a Group Disability Scheme and her Employer is the policyholder. The policyholder's financial services broker is the Scheme Administrator. The Provider is the Insurer of the Scheme, responsible for the underwriting of applications for cover and for assessing claims.

The Complainant's Case

Following the death of her husband, the Complainant, who at the time was working part-time as [occupation], commenced her absence from work on **4 July 2017** and later submitted a Claim Form to the Provider in **April 2018**, detailing that she was absent due to the *"bereavement of sudden death of husband"* and to *"allow myself to mourn, get counselling, find a grieving support group, mediation meeting, talk to family and friends"*.

The Provider declined to consider this claim as the Complainant was not under the care of a specialist and there was no indication that she was suffering from a medical condition. Rather it seemed that she had taken time out in order to work through the grieving process.

The Complainant subsequently submitted a further Claim Form to the Provider in **July 2018**, detailing that she was absent due to *"bereavement reaction for sudden tragic death of husband, suffering from depression, stress, shock, traumatised memory loss, insomnia, disbelief, low self-confidence and low self-esteem"* and that she had been attending Consultant Psychiatrist Dr P. since **May 2018**.

As part of its claim assessment, the Provider arranged for the Complainant to attend for an independent medical assessment with Consultant Psychiatrist Dr F. on **17 September 2018**.

Following this, the Provider declined the disability claim as it concluded that the medical evidence did not indicate that the Complainant satisfied that policy definition of disabled, that is, that she was *"totally incapable by reason of illness or injury of following* [her] *normal occupation"*, a decision it later affirmed upon review.

In this regard, the Complainant sets out her complaint, as follows:

> *"I am asserting that as a result of the trauma of my late husband's death, I have been totally incapable of working in my normal occupation. My treating doctors have certified me as unfit to work and are providing appropriate treatments and medical supports to assist me.*
>
> *I refer to the amended report of my Consultant Psychiatrist,* [Dr P.]*, dated 22 November 2018 as her first report contained factual errors and to the reports from my GP* [Dr M.]*. It is my case that there is a clear diagnosis of a mental illness, which is clearly stated by my treating doctors as a disabling illness and it comes within the* [policy] *definitions as per the* [Provider's] *own wording.*
>
> *I say that the* [Provider] *have* [erred] *in not recognising the full extent and nature of my illness. I refer to the* [Provider's] *own review by their Consultant* [Dr F.] *dated 19th September 2018, however, notwithstanding his findings, my Consultant continues to recommend that I do not return to work and my GP agrees with this current finding"*.

In this regard, in her letter dated **5 June 2018**, the Complainant's treating Consultant Psychiatrist Dr P. advised, *inter alia*, as follows:

> *"*[The Complainant] *attended me for examination on 23rd May 2018 on which occasion I found that she was severely depressed, suffering from low mood, insomnia, agitation, lack of energy, low self-confidence and low self-esteem. She was recently traumatised by an inquest into her late husband's death and this also has been very traumatic for her and caused her condition to deteriorate.*
>
> *Following examination of* [the Complainant] *I diagnosed a Depressive Illness and recommended that she have a trial of the sedative Quetiapine at a dose of 25-50 mgs at night and I will review her condition in due course.*
>
> *Meanwhile I have strongly recommended to* [the Complainant] *that she continue the counselling which she has in the past found beneficial.*
>
> *Finally it is my opinion that* [the Complainant] *is currently unfit to return to the workplace"*.

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Similarly, in her correspondence to the Complainant's GP Dr M. dated 22 November 2018, the Complainant's treating Consultant Psychiatrist Dr P. advised, *inter alia*, as follows:

> *"Following examination on this occasion it is my opinion that* [the Complainant]*'s abnormal grief reaction is enduring. She has ongoing symptoms of low mood, impaired sleep, lack of energy and poor concentration.*
>
> [The Complainant] *continues to take the major tranquilliser Quetiapine 50 mgs nocte and I have now recommended that she take Escitalopram 20 mgs daily. At previous consultations prior to this,* [the Complainant] *was reluctant to take antidepressant medication and was depending on counselling for recovery but this has not proved successful. She has now agreed to take Escitalopram 20 mgs daily. She will continue with the Quetiapine 50 mgs nocte.*
>
> *Finally it is my opinion that* [the Complainant]*'s condition is such that she is incapable of being gainfully employed at the present time due to the ongoing nature of her illness"*.

In addition, in its correspondence dated **10 December 2019**, the Complainant's Employer advises, *inter alia*, as follows:

> *"*[The Complainant's] *condition during July 2017 and September 2019 was severely debilitating. She was not in a position to return to meaningful work duties as outlined in her job specification during this period due to her anxiety, depression and grief. Her GP and Consultant Psychiatrist refused to certify her as fit to return to work during this time …*
>
> *As her employer we were obliged to make 'reasonable accommodations' to facilitate her return to work with her mental health condition. Appropriate measures were put in place to ensure that her depression was facilitated and did not impede on her access to employment. We welcomed* [the Complainant] *back to the team in late September 2019. Her condition is continuously monitored"*.

In her correspondence to this Office dated 27 April 2020, the Complainant submits, *inter alia*, as follows:

> *"Sadly my husband passed away suddenly and tragically at the age of* [redacted] *on* [date] *and left me to rear our two* [ages over 18 redacted] *children on my own.*
>
> *The first year of my husband's death – was blank, I just could not put my head around what had happened. At this present time I just don't understand how* [the Provider] *are going against the expertise of my GP and Consultant Psychiatrist and my Human Resources Manager as they repeatedly stated that I was not fit for work"*.

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The Complainant seeks for the Provider to admit her disability claim for the period of her medically certified absence from work.

The Provider's Case

Provider records indicate that the Complainant is a member of a Group Disability Scheme and the Provider is the Insurer. In order for a valid disability claim to arise, the following definition of disabled must be met:

> *""Disabled" in respect of a Member means that he is totally incapable by reason of illness or injury of following his normal Occupation and is not following any other occupation for remuneration, profit or reward and "Disability" exists in respect of a Member when he is Disabled and has completed the Deferred period".*

The Provider notes that the medical evidence received throughout this case indicated that the Complainant was suffering from a prolonged grief reaction, which is not an illness. In this regard, whilst it is completely understandable that the Complainant was suffering ongoing symptoms of grief following the loss of her husband, the medical evidence on file confirmed that these symptoms were not of such severity or incapacitating to render her completely incapable of performing her occupational duties as a secretary.

On the initial Claim Form she completed on **12 March 2018**, the Complainant stated the exact nature of the incapacity from which she was suffering as *"bereavement of sudden death of husband"*. The Provider notes that bereavement does not constitute an illness or injury as referenced in the policy definition of disabled. In addition, the Complainant confirmed in the Claim Form that she was not under the care of a specialist and was receiving no treatment and taking no medication to alleviate her symptoms.

As a result, the Provider confirmed to the Scheme Administrator by email on **12 April 2018** that no claim could be considered, as follows:

> *"The purpose of Income Protection is to provide cover in the event an individual is rendered totally incapable of performing their occupational duties directly as a result of an illness. Whilst* [the Provider] *have every sympathy for this lady, it is very clear from the information provided on the Claim Form that she ceased working following the death of her husband and had remained off work to deal with this bereavement. She is not under the care of a Specialist, nor is she in receipt of any medical treatment. There was no indication she is suffering from a medical condition and has rather taken time out to work through the grieving process. This is not what Income Protection is designed to cover and I regret to advise we will not be considering this claim".*

On the subsequent Claim Form she completed on **26 July 2018**, the Complainant stated the exact nature of the incapacity from which she was suffering was, as follows:

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> *"I am suffering bereavement reactions for sudden and tragic death of husband, suffering from depression, stress, shock, traumatised, memory loss, insomnia, disbelief, low self-confidence and low self-esteem"*.

The Complainant advised that she had ceased working on **2 May 2017** (later confirmed as 4 July 2017). Prior to ceasing work, the Complainant had been working on a part-time basis. She confirmed that she was under the care of Consultant Psychiatrist Dr P. and was receiving appropriate treatment.

As part of its claim assessment, the Provider wrote to the Complainant's GP Dr M. on 13 August 2018 asking him to complete a Private Medical Attendant's Report. In the completed Report dated **17 August 2018**, Dr M. confirmed that the Complainant had ceased working on 4 July 2017 due to *"bereavement reaction"*. In addition, Dr M. furnished a copy of the Complainant's medical records, which confirmed that she had been referred for bereavement counselling in September 2017. There were no further attendances with Dr M. in relation to treatment or advice for any symptoms such as memory loss, insomnia or depression, as the Complainant stated she was suffering with on the Claim Form she completed on 26 July 2018.

In addition, the Provider notes that the entry in the medical notes for **20 April 2018** is, as follows:

> *"Refer* [the Complainant] *as insurers are not paying income continuance policy as no specialist involved".*

The Provider submits that it is apparent from this entry that the Complainant was referred to a Consultant Psychiatrist for the purposes of the application of her income continuance policy, rather than as the result of a direct need for specialist intervention and care due to ongoing symptoms of bereavement. As the Complainant had submitted a Report from her treating Consultant Psychiatrist Dr P. with her Claim Form, a further report was not required.

In order to assess the claim further, the Provider arranged for the Complainant to attend for an independent medical assessment with Consultant in General Adult Psychiatry Dr F. on 17 September 2018. This assessment consisted of a psychiatric interview and also a measure of the Montgomery-Åsberg Depression rating scale and the Hamilton Anxiety rating scale, in addition to a review of the medical reports received.

Both of these scales are clinician-rated instruments that are completed based on a comprehensive psychiatric interview and measure the severity of depressive illness. Dr F. determined that the Complainant's rating on both scales was in the range of mild severity.

The Provider notes that Dr F. confirmed the diagnosis of adjustment disorder, a prolonged grief reaction. On mental state examination, he noted that the Complainant engaged well in interview and her behaviour was within normal parameters. She understandably became sad and tearful when talking about her late husband, however this was appropriate within normal mood parameters and not disproportionate. There was no evidence of depression, anxiety, tension, psychosis or agitation. In addition, there was no evidence of memory or concentration difficulties during the assessment

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Dr F. was of the opinion that the Complainant was fit to carry out her normal occupation and that there was no objective evidence of a disabling psychiatric illness that would prevent her from carrying out her normal occupational duties of a secretary. Dr F. noted that whilst it was understandable that the Complainant would find it difficult to consider working whilst continuing to grieve for her husband, it was not in her best interest that she remain on sick leave. He advised that she would benefit from a return to work as part of the rebuilding of her life and whilst this would undoubtedly be a difficult thing to do, a prolonged period of absence from work was likely to contribute to delaying progression of the grieving process.

The Provider notes that in order for a valid disability claim to arise, the following definition of disabled must be met:

> *""Disabled" in respect of a Member means that he is totally incapable by reason of illness or injury of following his normal Occupation and is not following any other occupation for remuneration, profit or reward and "Disability" exists in respect of a Member when he is Disabled and has completed the Deferred period".*

The deferred period for the Scheme is 13 or 26 weeks, depending on whether the member is suffering a non-Critical or Critical Illness, as determined by the Employer. Therefore, the Provider says that for a valid claim to be considered, the Provider required evidence that the Complainant was totally incapable of performing her occupational duties, which she had previously being carrying out on a part-time basis, at the end of the 13 week deferred period in October 2017 (assuming this grief reaction would be classed as a non-Critical Illness). The Provider says that there is no medical evidence to suggest that the Complainant was suffering symptoms of an illness that were of such severity that would render her totally incapable of working at the end of the deferred period (she did not attend a specialist until May 2018), or thereafter.

The Provider believes that it is completely understandable that the Complainant would find the thought of being in the workplace overwhelming and not feel able to deal with this, however this is not what the income protection policy is designed for. Instead, it is designed to provide an additional disability benefit for Scheme members who are rendered totally incapable of working, directly as a result of illness or injury. The Provider declined this claim on the basis that the medical evidence did not support that the Complainant was suffering from such as illness.

The Provider says that following her attendance for the independent medical assessment with Dr F. in September 2018, the Complainant submitted a report from her treating Consultant Psychiatrist Dr P. dated 22 November 2018, which was based on a contemporaneous review carried out on **19 November 2018**.

In this report, Dr P. noted that the Complainant presented with moderately low mood and remained emotionally labile and at times seemed anxious, but had no suicidal ideation or psychotic symptoms.

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The Provider says that this Report was referred to the Provider's Chief Medical Officer Dr G., who deemed that it contained no significant new information that would alter the decision to decline the claim. In this regard, Dr G. concluded that the Complainant's symptoms and presentation were unchanged from that during her independent medical assessment with Dr F. on 17 September 2018 and advised that there was no new evidence that would alter the decision or prompt referral for a further independent assessment.

As a result, Dr G. wrote to the Complainant's GP Dr M. on **17 January 2019**, as follows:

> *"The reason for declinature of this claim is that the patient is 'not totally incapable of performing the occupation of Secretary' due to illness or injury. Whilst we appreciate that the claimant has been through a difficult time, and are very much sympathetic to her situation, the medical evidence confirms that she has recovered sufficiently to return to work"*.

The Provider is satisfied that the medical evidence received indicates that the Complainant was not totally incapable by reason of injury or illness of performing the duties of her normal occupation and therefore the policy definition of disabled had not been met.

Accordingly, the Provider is satisfied that it declined the Complainant's disability claim in accordance with the terms and conditions of the Group Disability Scheme, which she is a member of.

The Complaint for Adjudication

The Complainant's complaint is that the Provider wrongly or unfairly declined her disability claim, in circumstances where she was medically certified as unfit to work.

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.

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A Preliminary Decision was issued to the parties 18 August 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The Complainant is a member of a Group Disability Scheme and her Employer is the policyholder. The policyholder's financial services broker is the Scheme Administrator. The Provider is the Insurer of the Scheme, responsible for the underwriting of applications for cover and assessing claims.

The complaint at hand is that the Provider wrongly or unfairly declined the Complainant's disability claim, in circumstances where she was medically certified as unfit to work. In this regard, following the death of her husband in **June 2017**, the Complainant, who prior to her absence was working as a secretary part-time, went absent from work on 4 July 2017.

I note that the Complainant later completed a Claim Form to the Provider on **12 March 2018**, as follows:

> *"**Please state the exact nature of the incapacity from which you are suffering:***
> *Bereavement of sudden death of husband.*
>
> ***In what way does this incapacity prevent you from following your occupation?***
> *Physically, intellectually, emotionally, fearful, lack of confidence, trauma, pain, lack of concentration, forgetful, tearful.*
>
> ***Which duties can you still perform?***
> *Allow myself to mourn, get counselling, find a grieving support group, mediation meetings, talk to family and friends.*
>
> ***Please give the date on which symptoms first commenced:***
> *[date]*
>
> ***When did the incapacity cause you to cease working?***
> *05-06-2017*
>
> ***When do you expect you will be fit enough to return to work?***
> *July 2017? (Not certain) …*
>
> ***Name and Address of your Medical Attendant***
> *…*

/Cont'd…

Have you consulted any other doctors or attended hospital as an in-patient or as an out-patient?
No

What treatment are you currently receiving?

Who prescribed this treatment?

[The spaces for responses are struck through]

Given that the Complainant had indicated that she was suffering from bereavement and was not under the care of a specialist and was receiving no treatment and taking no medication to alleviate her symptoms at that time, I am satisfied that it was reasonable for the Provider to decline the claim. In this regard, I note that the Provider confirmed to the Scheme Administrator by email on 12 April 2018 that no claim could be considered, as follows:

> *"The purpose of Income Protection is to provide cover in the event an individual is rendered totally incapable of performing their occupational duties directly as a result of an illness. Whilst* [the Provider] *have every sympathy for this lady, it is very clear from the information provided on the Claim Form that she ceased working following the death of her husband and had remained off work to deal with this bereavement. She is not under the care of a Specialist, nor is she in receipt of any medical treatment. There was no indication she is suffering from a medical condition and has rather taken time out to work through the grieving process. This is not what Income Protection is designed to cover and I regret to advise we will not be considering this claim".*

I note that the Complainant completed a second Claim Form on **26 July 2018**, as follows:

> ***"Please state the exact nature of the incapacity from which you are suffering:***
> *I am suffering bereavement reactions for sudden and tragic death of husband, suffering from depression, stress, shock, traumatised, memory loss, insomnia, disbelief, low self-confidence and low self-esteem. I enclose a copy of letter from my GP dated 11/7/18 and from my psychiatrist* [Dr P.]
>
> ***In what way does this incapacity prevent you from following your occupation?***
> *I cannot go to work, and I cannot be there.*
>
> ***Which duties can you still perform?***
> *None*
>
> ***Please give the date on which symptoms first commenced:***
> *[date]*
>
> ***When did the incapacity cause you to cease working?***
> *02-05-2017*
>
> ***When do you expect you will be fit enough to return to work?***

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[No answer]

…

Have you consulted any other doctors or attended hospital as an in-patient or as an out-patient?

[Dr P.] *Consultant Psychiatrist…23/05/2018, 16/07/2018 …*

What treatment are you currently receiving?

I am on sedative Quetiapine pills, receiving counselling and attending Al-Anon meetings regularly".

I note that the enclosed letter from the Complainant's treating Consultant Psychiatrist Dr P. dated **5 June 2018** advised, *inter alia*, as follows:

> *"*[The Complainant] *attended me for examination on 23rd May 2018 on which occasion I found that she was severely depressed, suffering from low mood, insomnia, agitation, lack of energy, low self-confidence and low self-esteem. She was recently traumatised by an inquest into her late husband's death and this also has been very traumatic for her and caused her condition to deteriorate.*
>
> *Following examination of* [the Complainant] *I diagnosed a Depressive Illness and recommended that she have a trial of the sedative Quetiapine at a dose of 25-50 mgs at night and I will review her condition in due course.*
>
> *Meanwhile I have strongly recommended to* [the Complainant] *that she continue the counselling which she has in the past found beneficial.*
>
> *Finally it is my opinion that* [the Complainant] *is currently unfit to return to the workplace"*.

The Group Disability Scheme which the Complainant is a member of, like all insurance policies, does 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 Provision 5, '**Benefits**', of the applicable Group Disability Scheme Policy Booklet provides, *inter alia*, at pg. 7, as follows:

> *"Subject to the provisions of this Policy, the Company will, if a Member becomes Disabled and his Disability continues after the end of the Deferred Period, pay the Benefit…"*.

As a result, in order for disability benefit to be payable, a claimant must satisfy the policy definition of disabled. In this regard, Provision 1, '**Definitions**', of this Policy Booklet provides, *inter alia*, at pg. 2, as follows:

> *""Disabled" in respect of a Member means that he is totally incapable by reason of illness or injury of following his normal Occupation and is not following any other occupation for remuneration, profit or reward and "Disability" exists in respect of a Member when he is Disabled and has completed the Deferred period …*

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> *"Disability" exists in respect of a Member when he is Disabled and has completed the Deferred period…".*

As part of its claim assessment, I note that the Provider wrote to the Complainant's GP Dr M. on **13 August 2018** asking him to complete a Private Medical Attendant's Report. In the completed Report dated **17 August 2018**, Dr M. confirmed that the Complainant had ceased working on **4 July 2017** due to *"bereavement reaction"*. I also note that in his letter to the Provider dated 22 August 2018, Dr M. advised, as follows:

> *"I can confirm that* [the Complainant] *attended the surgery on 5th July, she was diagnosed with bereavement reaction and certified unfit for work following the … death of her husband in June 2017.*
>
> [The Complainant] *was given the post mortem results of her husband's death in February 2018 and the Inquest results in [date], awaiting resulting proved to be a distressing time for her.*
>
> [The Complainant] *attended counselling and Al Anon meeting's* (sic) *as a result of her husband's condition. Her two children sat College Exams in 2017, they also had difficulty in coming to terms with their father's death, this has contributed to her prolonged grief reaction.*
>
> ***My recommendation is that* [the Complainant] *is unfit to return to the workforce.***
>
> *I feel that* [the Complainant] *should be eligible for this payment as she was suffering from a prolonged grief disorder due to the sudden and tragic nature of her husband's death"*.

In addition, Dr M. also supplied the Provider with a copy of the Complainant's medical records and whilst these records confirmed that she had been referred for bereavement counselling in September 2017, I note that there were no other attendances with Dr M. recorded in relation to treatment or advice for any symptoms such as memory loss, insomnia or depression that the Complainant had stated on the Claim Form she completed on 26 July 2018.

In addition, I note the entry in the medical notes for **20 April 2018** is, as follows:

> *"Refer* [the Complainant] *as insurers are not paying income continuance policy as no specialist involved".*

Enclosed with these medical records was a report from the Complainant's treating Consultant Psychiatrist Dr P. to the Complainant's GP dated **4 June 2018**, which stated, *inter alia*, as follows:

> *"Thank you for referring the* [Complainant] *whom I saw in consultation on 23rd May 2018. As you are aware,* [the Complainant] *has recently become very depressed and*

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distressed following the inquest on her late husband …. [The Complainant] *informed me that her husband* [personal details] *… and a subsequent post-mortem revealed that he had died from a coronary.* [The Complainant] *and her two children were understandably very distressed following his death, the sudden nature of his death and the way his death happened. They were both angry at the hospital treatment of his condition and also felt guilty themselves…*

[The Complainant] *lives on her own. She has two children* – [ages redacted]*. Both children come home at weekends. They also had difficulty coming to terms …*
[The Complainant] *informed me that she is now financially stressed as she has not as yet been able to access her Insurance Income Protection Funds.*

[The Complainant] *informed me that she attended a counsellor for eight sessions following her husband's death and found it beneficial. She subsequently attended a private counsellor for a further eight sessions and reports that this also helped. She is a member of Al-Anon and has been for several years and finds the support of Al-Anon very beneficial..*

She herself has worked in the [occupational] area at [her Employer] *and she reports that she has enjoyed her work there and plans on returning there in the future. She feels that at the present time she is not well enough to return to work.*

On mental state examination [the Complainant] *presented as a well-groomed woman who established good rapport with the interviewer and maintained good eye contact. She was sad and depressed throughout the interview and was tearful on several occasions. She informed me that she is generally very emotional and had difficulty controlling her emotions. There was no evidence of any psychotic symptoms or suicidal ideation. She was orientated in all spheres.* [The Complainant] *informed me that she has great difficulty sleeping – that she wakens early, can't get back to sleep and also has difficulty falling asleep.*

I diagnosed a Depressive Illness and recommended to [the Complainant] *that she have a trial of Quetiapine initially 25 mgs nocte and this later could be increased to 50 mgs if the need arises. I explained to the patient that this would help stabilise her mood and enhance her sleep. I have recommended that she continue with that medication until her condition improves. Sher is not anxious to take an antidepressant medication and I feel that if she continues with the counselling it will benefit her.*

It is my opinion that [the Complainant] *suffers from a Depressive Illness with strong grief symptoms and in my opinion she is currently unfit to return to her place of work"*.

I note that in order to assess the claim further, the Provider arranged for the Complainant to attend for an independent medical assessment with Consultant in General Adult Psychiatry Dr F. on **17 September 2018**. In his ensuing Report of the same date, I note that Dr F. advised, *inter alia*, as follows:

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*"**Background***

[The Complainant] *last worked in her profession as [occupation] with* [her Employer] *in 2017. She told me that she has worked for that organisation since March 19xx.* [The Complainant] *was working part-time …five days weekly.*

The condition preventing her from working is reported as "bereavement reaction" in the Private Medical Attendant's Report.

History of illness

[The Complainant] *has been on sick leave since the death of her husband…in … 2017.*

She told me her husband … The post-mortem result was not available until February 2018. That showed that he had died from a heart attack secondary to … The inquest was held in [date].

[The Complainant] *said that she was in shock for the first year after her husband died. She said she is now getting over the shock and the pain is worse …*

Current symptoms

[The Complainant] *said she does not feel good. She said, "I feel emotional all the time… I have no self-esteem… I don't like meeting people". She said she is nervous meeting people. She continues to feel sad about her husband's death.*

She misses her husband. …

Sleep continues to be disturbed with difficulty getting off to sleep and waking during the night.

[The Complainant] *told me that she is comfort eating. She said she has gained about one stone in the past year.*

Energy levels are lower than normal.

Treatment

[The Complainant] *is attending* [Dr P.]*, Consultant Psychiatrist …*

She first attended her in May 2018. Her last appointment was at the end of August and her next will be in early October. [Dr P.] *has prescribed the sedating antipsychotic quetiapine 50 mg nocte to help with sleep.*

[The Complainant] *had counselling with* [Ms S.] *through her* [employee assistance programme] *in 2017. She had eight sessions. She then attended* [Mr E.] *four or five*

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times for private counselling. She has been allocated further … counselling sessions and will start with [Ms D.] *on the week after this assessment.*

Daily routine

[The Complainant] *told me she gets up before 9 AM. In the morning she goes for a walk … for 60 to 90 minutes.*

She goes to the gym…two or three times weekly. She swims and goes to … classes.

[The Complainant] *is able to* [do] *normal house work and domestic chores. She cooks for the family.*

She visits her mother, who lives an hour's drive away, about twice weekly. Her mother lives independently.

She watches television in the evening. She has been reading books about bereavement. She does not read novels.

She meet[s] *friends for coffee. She told me that her family is close and family members visit each other. She is not on social media.*

Work / occupational issues

[The Complainant] *said she would like to go back to work but feels she is not strong enough yet. She said she would be no good for her company at this time. She said that she becomes very emotional with people. She feels she could not sit at a desk for a long time.*

She said that she also has problems with her memory which she feels had deteriorated. She said she cannot remember dates or keep things in her head.

She hopes that with time she will be all right to return to work.

She liked her job. She had good relationships with her colleagues and management...

When asked about goals towards a return to work she said that perhaps she may be able to return to work towards the end of November 2018. She said it is difficult to estimate when she might feel ready because some days she feels better than other days.

She has contact with some colleagues with whom she has friendships. She does not have much contact with her manager. A human resources officer called a couple of times to her home last year but that person has left the company and she has not met her replacement.

She has not had any occupational health assessments …

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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 17/09/2018, 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 17/09/2018, was in the range of mild severity.*

Mental state examination on 17/09/2018

[The Complainant] *was appropriately dressed and there was no evidence of self-neglect. She was well groomed.*

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

[The Complainant] *was sad and tearful when talking about her husband. This was within normal mood parameters, was appropriate, and was not disproportionate. Mood was not pathologically depressed. Affect was not restricted. Affect was normally reactive.*

There was no evidence of anxiety, tension or agitation.

There was no abnormality of the form or stream of thoughts. There was no evidence of psychosis.

There was no evidence of memory or concentration difficulties in the assessment.

Conclusions / Opinion *…*

The diagnosis is an adjustment disorder, a prolonged grief reaction …

[The Complainant] *has been grieving for her husband who died in [date] 2017 …*

/Cont'd…

Current symptom severity is mild. [The Complainant] *continues to grieve for her husband. She was sad and tearful when talking about him. This was within normal parameters of reactive mood and was not disproportionate, therefore not pathological …*

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

Whilst it is understandable that [the Complainant] *finds it difficult to consider working when she continues to grieve for a husband, it is not in her best interest that she remain on sick leave. She will benefit from returning to work as it will be part of normalisation and rebuilding of her life, and that of her children, without her husband. Whilst this is undoubtedly a difficult thing to do, a prolonged period of absence from work following a significant bereavement is likely to contribute to delaying progression of the grieving process …*

[The Complainant] *continues to grieve but with time there will be healing and rebuilding of her life"*.

Following its claim assessment, I note that the Provider emailed the Scheme Administrator on 8 October 2018 to advise, *inter alia*, as follows:

"For a valid claim to arise, the Insured must be totally incapable by reason of illness or injury of following their normal occupation.

The medical evidence received during the assessment of this claim provides no indication that [the Complainant] *is suffering from a disabling illness. There has been no diagnosis of a medical condition that would prevent her from carrying out her occupational duties.*

The information on file confirms that [the Complainant] *is suffering from a prolonged grief reaction, following the sudden passing of her husband. Whilst it is completely understandable that she would find it difficult to consider working whilst continuing to grieve, the purpose of this Income Protection cover is to provide payment to an Insured who is rendered totally incapable of working, directly as the result of an incapacitating medical illness.*

I have every sympathy for [the Complainant] *as she undoubtedly has had a significant loss in her life however there is no evidence that it is a medical illness that is preventing her return to work and in the circumstance I regret to advise we are declining this claim for benefit"*.

/Cont'd…

Similarly, I note that the Provider wrote to the Complainant on **8 October 2018**, as follows:

> *"For a valid claim to arise, the Insured must be totally incapable by reason of illness or injury of following their normal occupation. This criteria is set out within your policy terms and conditions.*
>
> *The medical evidence received during the assessment of this claim provides no indication that you are suffering from a disabling illness. There has been no diagnosis of a medical condition that would prevent you from carrying out your occupational duties.*
>
> *The information on file confirms that you are suffering from a prolonged grief reaction, following the sudden passing of your husband. Whilst it is completely understandable that you would find it difficult to consider working whilst continuing to grieve, the purpose of this Permanent Health Insurance cover is to provide payment to an Insured who is rendered total incapable of working, directly as the result of an incapacitating medical illness.*
>
> *There is no evidence that it is a medical illness that is preventing your return to work and in the circumstance I regret to advise we are declining this claim for benefit"*.

I note that the Complainant sought to appeal this decision and as part of her appeal, her GP Dr M. wrote to the Provider on **27 October 2018** to advise, as follows:

> *"I can confirm that* [the Complainant] *attended the surgery on 5th July, she was diagnosed with bereavement reaction and certified unfit for work following the tragic death of her husband in … 2017.*
>
> [The Complainant] *was given the post mortem results of her husband's death in February, 2018 and the inquest results May 2018, awaiting resulting proved to be a distressing time for her.*
>
> [The Complainant] *has attended counselling and Al Anon meeting's* (sic) *as a result of ... Her two children sat College exams in 2017, they also had difficult*[y] *in coming to terms with their father's death, this has contributed to her prolonged grief reaction.*
>
> *I feel that* [the Complainant] *should be eligible for this payment as she was suffering from a prolonged grief disorder due to the sudden and tragic nature of her husband's death and totally incapable by reason of her illness of following her normal occupation"*.

In addition, I note that in her correspondence dated 22 November 2018, the Complainant's treating Consultant Psychiatrist Dr P. advised, as follows:

/Cont'd…

"[The Complainant] *attended me for review on* ***19th November 2018****.* [She] *informed me that her mood has not improved in any significant way and she still feels depressed. She has ongoing guilt feelings in relation to her husband's tragic death. The nature of her husband's death has made her grieving particularly stressful.*

[The Complainant] *informed me that in the past six months there has been a decrease in her confidence. She has difficulty conversing with individuals she meets on a casual basis and is frequently emotional and tearful on social encounters.*

[The Complainant] *reports that her sleep is still disturbed with early morning awakening followed by drowsiness later into the morning and* [she] *has a tendency to remain on in bed. The daytime fatigue, the loss of drive and lack of energy all contribute to her feelings of depression.*
[The Complainant] *informed me also that due to her negative feelings she has been comfort eating and has gained weight which further affects her self-esteem and confidence.*

[The Complainant] *informed me that she missed the social interaction which she enjoyed in the workplace. Her concentration remains impaired and she lacks motivation.*

On mental examination [the Complainant] *presented with moderately low mood, no suicidal ideation and no psychotic symptoms. She remains emotionally labile and at times seems anxious.*

Following examination on this occasion it is my opinion that [the Complainant]*'s abnormal grief reaction is enduring. She has ongoing symptoms of low mood, impaired sleep, lack of energy and poor concentration.*

[The Complainant] *continues to take the major tranquilliser Quetiapine 50 mgs nocte and I have now recommended that she take Escitalopram 20 mgs daily. At previous consultations prior to this,* [the Complainant] *was reluctant to take antidepressant medication and was depending on counselling for recovery but this has not proved successful. She has now agreed to take Escitalopram 20 mgs daily. She will continue with the Quetiapine 50 mgs nocte.*

Finally it is my opinion that [the Complainant]*'s condition is such that she is incapable of being gainfully employed at the present time due to the ongoing nature of her illness.*

I have arranged to review [the Complainant]*'s condition again in one month and will keep you informed. It is my opinion that in approximately three months if* [the Complainant] *continues with treatment she will hopefully be ready to return to the workplace".*

/Cont'd…

I note that having considered these two additional medical reports submitted on behalf of the Complainant, the Provider's Chief Medical Officer Dr G. stated in the Chief Medical Officer Referral Sheet to *"Maintain Decline"* on **13 December 2018**. In this regard, I note that the Provider concluded that these two additional reports contained no significant new information that would alter the decision to decline the disability claim, insofar as the Complainant's symptoms and presentation were unchanged from that during her independent medical assessment with Dr F. on 17 September 2018 and thus that there was no new information to prompt referral for a further independent assessment.

The purpose of income protection/disability benefit is to support employees who demonstrate work disability supported by the objective medical evidence. Income protection/disability benefit 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 of the opinion that it was reasonable for the Provider to conclude that the Complainant did not satisfy the policy definition of disabled in October 2017, when any liability it may have had in this matter was due to commence, or that she satisfied the policy definition thereafter.

In this regard, being prescribed medication 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 is totally incapable by reason of illness or injury, as required by the Group Disability Scheme terms and conditions, of following his or her normal occupation, in this instance the occupation of being a secretary.

As a result, I am satisfied that the Provider declined the Complainant's disability claim and subsequent appeal in accordance with the terms and conditions of the Group Disability Scheme which she is a member of.

For those reasons, it is my Decision therefore, on the evidence before me that this complaint cannot reasonably be upheld.

Conclusion

/Cont'd…

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

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

MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

10 September 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.