



<u>Decision Ref:</u>	2020-0421
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Income Protection and Permanent Health
<u>Conduct(s) complained of:</u>	Rejection of claim - depression/mental health illness
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant, a secondary school teacher, incepted an income protection policy with the Provider on **17 February 1993**, through a named brokerage.

The Complainant's income protection policy is noted to be a *"long-term financial service"* within the meaning of the ***Financial Services and Pensions Ombudsman Act 2017***. **Section 51** of the Act, ***'Time limits for complaints to Ombudsman'***, prescribes that for a complaint relating to a *"long-term financial service"* (in the absence of the Ombudsman taking the view that there are reasonable grounds for requiring a longer period, and that it would be just and equitable to do so) *"the conduct complained of"* must have occurred *"during or after 2002"* (**Section 51(3)(a)**). For that reason, any elements of the Complainant's complaint relating to the sale of the income protection policy in January and February 1993 falls outside the jurisdiction of this Office and therefore does not form part of this investigation.

The Complainant's Case

The Complainant was medically certified as unfit for work in **November 2014** (she later retired on ill-health grounds in **March 2017**) and completed an income protection claim form to the Provider on 5 November 2015 wherein she described her illness as *"recurrent depression, generalised anxiety disorder"*.

As part of its claim assessment, the Provider arranged for the Complainant to attend for an independent medical examination with a Consultant Psychiatrist on **11 December 2015**.

The Complainant notes that the Provider then telephoned her on **10 December 2015**, as follows:

"[The Provider] contacted me by phone and informed me that there was a problem with my claim and suggested that I may if I wished postpone the medical appointment with [the Consultant Psychiatrist] due to take place the next morning. I informed [the Provider] that I would attend the appointment as scheduled".

The Provider subsequently wrote to the Complainant on 14 March 2016 to advise that an Exclusion for Mental or Functional Nervous Disorders applied to her income protection policy at the time when it commenced in 1993, due to her occupation as a secondary school teacher, and therefore her claim for income protection was declined.

In this regard, the Complainant set out her complaint in the Complaint Form she signed on 11 June 2016, as follows:

"On 14/03/2016 I received written notification from [the Provider] that my Claim was declined on the grounds that a Mental or Functional Nervous Disorders Exclusion for teachers was introduced in 1991 [on its individual income protection policies].

I was not informed of this Exclusion until after I submitted my claim. I did not receive any written correspondence from [the Provider] about this Exclusion until I received [the Provider's] Final Response on the 14/03/2016. I requested copies of all the original relevant documentation.

[The Provider] is unable to locate the following documents:

- *The original policy document.*
- *The original [Acceptance Letter] they claim I signed.*
- *The original letter [the Provider] claim was sent to me in 1993 informing me of the Exclusion.*

It is therefore impossible for [the Provider] to justify the decision to decline my claim

... On the night of 25/01/1993 [Mr B.] and his colleague from [the brokerage] sold a Permanent Health Policy (now Income Protection) to me. They were acting as Brokers for [the Provider]. My husband...was present throughout the meeting.

I informed the Brokers that I was a Secondary School teacher and the Application Form was filled in during this meeting.

*At **no time** during the meeting or thereafter was I informed that an Exclusion existed for any reason pertaining to teachers".*

In addition, in her letter to this Office dated **25 October 2017**, the Complainant submits, *inter alia*, as follows:

“[The Complainant] was not made aware either verbally or in writing by [the Broker] (acting as agents for [the Provider]) that an Exclusion for ‘Mental or Functional nervous disorders’ particular to teachers existed until after she submitted her claim in 2015.

Had [the Complainant] been made aware of such an Exclusion, she would have purchased an Income Protection policy from any other insurance company that did not have such an exclusion particular to teachers.

[The Provider’s] decision to decline [the Complainant’s] claim is based on what should have happened in normal circumstances, but in fact did not. None of the documents which [the Provider] claim to have been issued to [the Provider] were received by [the Complainant]. ...

[The Provider] supports [its] decision to decline [the Complainant’s] claim on documents that they cannot locate”.

As a result, the Complainant seeks for the Provider to admit her income protection claim.

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

The Provider’s Case

Provider records indicate that the Complainant, a secondary school teacher, incepted an income protection policy with the Provider on **17 February 1993**, via a named brokerage.

The Complainant was medically certified as unfit to work from 17 November 2014 and completed an income protection claim form to the Provider on 5 November 2015 wherein she described her illness as *“recurrent depression, generalised anxiety disorder”*. The Provider subsequently wrote the Complainant on 14 March 2016 to advise that as an Exclusion for Mental or Functional Nervous Disorders applied to her income protection policy when it commenced in 1993 due to her occupation as a secondary school teacher, that her claim for income protection was declined. The Complainant complains that this Exclusion was not communicated to her at the time she incepted her income protection policy.

The Provider notes that the Complainant completed the income protection application on **25 January 1993** with a named Broker. As this Broker was not and has never been a tied agent of the Provider, the Provider considers that the Complainant retained the Broker to act on her behalf in relation to her application and was therefore acting as her agent. The Provider can therefore only respond to the complaint points which relate to the Provider, as the Insurer.

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The Provider say however that in August 2016, it managed to make contact with Mr B., the Broker in question, but he only had a vague recollection of the Complainant and did not have a file on the matter.

The Provider notes, by way of background, that the reason for the introduction of the Exclusion for Mental or Functional Nervous Disorders, was that the premium rates charged in 1991 did not reflect the increased risk of stress-related illnesses experienced by teachers in Ireland. Rather than increase the premium rates which would have been cost prohibitive to teachers, the Provider instead introduced the Exclusion for Mental or Functional Nervous Disorders on all of its individual income protection policies for teachers. This allowed the Provider to continue to offer competitive premium rates to teachers on income protection insurance. The Provider notes that this complaint raises matters going back to 1993, the business practices then, and the records available now concerning such matters.

The Provider noted that the Complainant stated in her Complaint Form that it was unable to locate three documents, as follows:

"[The Provider] is unable to locate the following documents:

- *The original policy document.*
- *The original [Acceptance Letter] they claim I signed.*
- *The original letter [the Provider] claim was sent to me in 1993 informing me of the Exclusion".*

In this regard, the Provider would like to comment on each of these documents, as follows:

- The Provider has produced a copy of the Complainant's Policy Schedule, which detailed the Exclusion for Mental or Functional Nervous Disorders, as follows:

"No entitlement to benefit shall arise if the circumstances giving rise to the a claim for benefit are directly or indirectly attributable to:- mental or functional nervous disorders".

The Provider is satisfied that this Policy Schedule was issued in 1993. The Insurer as it was then, sold its Irish business to the Provider some years ago. The process however remains the same, the original Policy Schedule is sent to the policyholder as a record of the contract entered into and a copy is retained by the Insurer.

- The Provider has produced a copy of the Acceptance Letter dated 17 February 1993 that issued to the Complainant in 1993 informing her that the Exclusion for Mental or Functional Nervous Disorders applied, as follows:

"No entitlement to benefit shall arise if the circumstances giving rise to the a claim for benefit are directly or indirectly attributable to:- mental or functional nervous disorders".

The Provider is satisfied that this Acceptance Letter would have issued in accordance with the normal business process then and now. Its Underwriters have confirmed that it could not have put the Complainant's income protection policy in place without first having received her signed acceptance of the Exclusion.

The Provider does not have a copy of this Acceptance Letter signed by the Complainant but notes that if her argument on this point that she did not receive or sign this letter is accepted, (which the Provider does not,) then it submits that in such circumstances, there would be no valid income protection policy.

- The Provider does not have a copy of the cover letter to the Complainant that enclosed her policy documents in 1993, though it does retain a copy of the Policy Schedule as stated.

The Provider notes that this is an unusual situation whereby the Complainant as the policyholder is looking to claim upon a policy and does not have the original policy document issued in February 1993 but when the Provider produces a copy of this policy document, it is claimed by the Complainant that these are not the terms and conditions entered into.

In addition, the Provider also acknowledges that it is also a difficult position for the Complainant as there would appear to be a valid claim if the Exclusion for Mental or Functional Nervous Disorders did not apply on her policy, though such a claim if admitted would be subject to ongoing review.

The Provider has produced the following documentary evidence to support its position:

- The Memorandum to Brokers dated 1 July 1991 confirming that the Exclusion for Mental or Functional Nervous Disorders applied to all teacher occupations on its individual income protection policies from **3 July 1991**. This Exclusion has applied since. The Provider would reasonably expect that the Broker would have informed the Complainant of this Exclusion at the point of sale, however this is a matter for the Complainant and her Broker.
- The Underwriting Summary Sheet specific to the Complainant's policy, which contains a stamp "EXCLUDE MENTAL OR FUNCTIONAL NERVOUS DISORDERS", signed by Mr L. on 17 February 1993.
- A copy of the Acceptance Letter dated 17 February 1993 addressed to the Complainant that issued from its systems in 1993 informing her that the Exclusion for Mental or Functional Nervous Disorders applied, as follows:

"No entitlement to benefit shall arise if the circumstances giving rise to the a claim for benefit are directly or indirectly attributable to:- mental or functional nervous disorders".

The normal underwriting process was and still is, that a Policy Schedule shall only issue upon receipt of the signed Acceptance Letter from the proposer.

- A copy of the Complainant's Policy Schedule that issued from its systems in 1993 and which contains the Exclusion for Mental or Functional Nervous Disorders, as follows:

"No entitlement to benefit shall arise if the circumstances giving rise to the a claim for benefit are directly or indirectly attributable to:- mental or functional nervous disorders".

This is the best available evidence for the basis of the contract and it is stated on the Policy Schedule that the income protection policy *"is issued on the basis of the application dated 25.01.1993"*.

The Provider considers that the assertion by the Complainant regarding the alleged non-receipt of any policy documentation, may well be explained by the fact that these documents were sent to her some now 27 years ago. The fact that the documentation has since been located, including the Policy Schedule with the Exclusion noted, suggests that the documents were indeed sent to the Complainant, but that she has, understandably with the passage of time, no recollection of having received them.

The Provider acknowledges that there were service issues in relation to its handling of the Complainant's income protection claim and her subsequent complaint. The Provider accepted and apologised for these matters previously and an ex-gratia payment was accepted by the Complainant in November 2016 in full and final settlement of these specific issues, namely, €250 for the Provider's attempt on 10 December 2015 to cancel her medical appointment at late notice and €500 for the delay in supplying documents.

The Provider notes that the primary reason for these delays and service issues was that it was initially unable to produce a copy of the Acceptance Letter and Policy Schedule particular to the Complainant, until it learnt that these documents were retained on a closed archive system with the previous Insurer in the UK. The Provider was not aware that such an archive still existed until it pushed this point as part of its very detailed and diligent investigation into the Complainant's complaint in order to produce these documents from 1993.

Having reviewed the file, the Provider is satisfied that the standard Exclusion for Mental or Functional Nervous Disorders applied to the Complainant's income protection policy due to her occupation as a teacher. In this regard, it is the view of its Health Claims Team that the Complainant's income protection claim arising from her stated illness of *"recurrent depression, generalised anxiety disorder"* falls within this Exclusion. Notwithstanding the Exclusion for Mental or Functional Nervous Disorders, the Complainant's income protection policy provided her with valuable cover throughout her teaching career.

Accordingly, the Provider is satisfied that it declined the Complainant's income protection plan in accordance with its terms and conditions.

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The Complaint for Adjudication

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

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 **12 October 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.

I note that the Complainant, a secondary school teacher, incepted an income protection policy with the Provider on 17 February 1993, via a named brokerage. The policy has a deferred period of 52 weeks and the sum assured in more recent times was limited to €220 per week.

The Complainant was medically certified as unfit for work in November 2014 (and has since retired on ill-health grounds in March 2017). She completed an income protection claim form to the Provider on **5 November 2015** wherein she described her illness as "*recurrent depression, generalised anxiety disorder*". The Provider wrote to the Complainant on **14 March 2016** to advise that an Exclusion for Mental or Functional Nervous Disorders applied to her income protection policy when it commenced in 1993 due to her occupation as a secondary school teacher. As a result, her claim for income protection was declined.

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As outlined above, the Complainant submitted in the Complaint Form she sent to this office dated **11 June 2016**, that:

"I was not informed of this Exclusion until after I submitted my claim. I did not receive any written correspondence from [the Provider] about this Exclusion until I received [the Provider's] Final Response on the 14/03/2016. I requested copies of all the original relevant documentation.

[The Provider] is unable to locate the following documents:

- *The original policy document.*
- *The original [Acceptance Letter] they claim I signed.*
- *The original letter [the Provider] claim was sent to me in 1993 informing me of the Exclusion.*

It is therefore impossible for [the Provider] to justify the decision to decline my claim".

I note that the Provider has produced a copy of its Memorandum to Brokers dated 2 July 1991 confirming that the Exclusion for Mental or Functional Nervous Disorders applied to all teacher occupations on its individual income protection policies from 3 July 1991, as follows:

"I have set out below the wording of the exclusion which is to apply:

No benefit shall be payable if the circumstances giving rise to a claim for benefit are directly or indirectly attributable to mental or functional nervous disorders".

In this regard, I am satisfied from the documentary evidence before me that since **3 July 1991**, the Provider has applied an Exclusion for Mental or Functional Nervous Disorders to all teacher occupations on its individual income protection policies.

In this regard, I also note that the Underwriting Summary Sheet held on the Provider's paper file and specific to the Complainant's policy contains a stamp *"EXCLUDE MENTAL OR FUNCTIONAL NERVOUS DISORDERS"*, signed by Mr L. on 17 February 1993.

I also note from the documentary evidence before me that the Provider has succeeded in obtaining from the original Insurer's closed archive system, a copy of the Policy Schedule in the Complainant's name with an effective date of 17 February 1993, which states, *inter alia*, as follows:

"This policy is issued on the basis of the application dated 25.01.1993 made by the insured and provided that the first premium had been paid it came into force on the Date of Risk Assumed.

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Provided that all due premium have been paid and all Policy Conditions complied with [the Provider] will pay a benefit in the circumstances described in the Booklet except that:-

*No entitlement to benefit shall arise if the circumstances giving rise to a claim for benefit are directly or indirectly attributable to:-
mental or functional nervous disorders”.*

In addition, I note that the Provider has also obtained from this closed archive system a **“Head Office Copy Of Acceptance Letter”** addressed to the Complainant dated **17 February 1993**, as follows:

“...

*No entitlement to benefit shall arise if the circumstances giving rise to a claim for benefit are directly or indirectly attributable to:-
mental or functional nervous disorders*

...

...risk will be assumed from the date we receive your acceptance of the terms set out in this offer (unless you have already asked for the risk to commence from a later date) provided we have by then received a signed Direct Debiting Mandate or other remittance.

This offer expires in any event six months after 17.02.93”.

[Emphasis added]

I note that the Provider has advised that given the passing of time, it has been unable to locate a copy of the Acceptance Letter signed by the Complainant but it submits that in accordance with both the contents of the Head Office Copy Of Acceptance Letter and the business practices in place then and now, the Complainant’s income protection policy would not have come into force without her first having supplied the Provider with a signed Acceptance Letter.

The Complainant asserts that she did not receive the Acceptance Letter or the Policy Schedule that the Provider has now produced copies of. Whilst any element of her complaint relating to the sale of the income protection policy 27 years ago in 1993, falls outside the jurisdiction of this Office and therefore does not form part of this investigation, I am mindful of the fact that by paying her monthly premium the Complainant commenced a contract of insurance with the Provider. In this regard, the Complainant will no doubt have expected to receive policy documentation from the Provider confirming the details of the contract, such as a Policy Schedule. If she had received no such documentation in and around the policy commencement date in February 1993, I am of the opinion that it would have been expected that the Complainant would have contacted the Provider, or the Broker that sold her the income protection policy, to request the relevant documentation confirming her policy details.

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I note that the Complainant refers to an internal Provider email of **15 February 2016** that is contained within the file of evidence supplied to this Office by the Provider, which states, amongst other things, as follows:

"I cannot locate underwriting file so I cannot say for certainty that MFND [Mental or Functional Nervous Disorders] exclusion was advised to claimant at inception of her policy in 1993.

I would be most grateful if you could review this claim and provide me with your opinion. Would you be prepared or not to waive the MFND?"

In this regard, the Complainant submits in her letter to this office dated 25 October 2017 that *"this is now written evidence from within [the Provider] that a question existed as to whether or not [the Complainant] was advised about the exclusion in the first place"*.

However, I consider that the internal Provider email of 15 February 2016 should be read within the context of the email thread that it is a part of, which evidences the Provider's search through its archives for copies of the policy documents, and which then culminates with the following email from Health Claims Manager Mr C. on 3 March 2016, as follows:

"The Claims Committee considered this claim in detail yesterday afternoon and have agreed that the claim should be declined on the basis that there is a MFND [Mental or Functional Nervous Disorders] exclusion on [the Complainant's] policy and the claim comes within this exclusion.

Whilst we are continuing to locate [the Complainant's] underwriting file, the Claims Committee are satisfied that the information we have obtained confirms that the MFND exclusion applies to her policy and also that she would have had to have accepted it in order for her policy to be issued;

our policy record system confirms the exclusion on her policy

copy of letter issued to all brokers in July 1991 confirming the introduction of Mental or Functional Nervous Disorders exclusion for teachers

confirmation from our Underwriting Department that we would not issue an Income Protection policy to a teacher without receiving their signed acceptance of the exclusion

the exclusion has applied continuously since its introduction in 1991 to the present day.

Can you prepare an initial draft of the decline letter, which will also serve as our Final Response letter, for me to review in conjunction with [Mr J.]".

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Based on the evidence made available by the parties, which includes the copy of the Acceptance Letter addressed to the Complainant and a copy of the Policy Schedule in her name, both confirming that the Exclusion for Mental or Functional Nervous Disorders applied to her policy, I am satisfied that the Provider was entitled to form the opinion, as it did, that it should decline the Complainant's income protection claim arising from her stated illness of "*recurrent depression, generalised anxiety disorder*" in accordance with the terms and conditions of the insurance arrangement in place.

Finally, in his email to this Office dated 3 February 2020, the Complainant's husband advises that the Complainant "*continues to pay her monthly premium and is still unemployed because of illness*".

I note that the Complainant retired on ill-health grounds on **6 March 2017**. Having listened to the recording of the telephone call that the Complainant's husband made to the Provider at 10:50 on 15 May 2015, I note that the agent clearly advised that the Complainant's income protection policy would never pay out beyond any early retirement date and he indicated that he understood this.

In this regard, given that she retired on ill-health grounds on 6 March 2017, I am of the opinion that it would be reasonable and appropriate for the Provider to refund the Complainant the sum of any premiums she has paid since that date and this aspect of the matter is something which the Complainant should pursue directly with the Provider, if she wishes to do so. Insofar as the substantive complaint is concerned however, it is my Decision, on the evidence before me that it is not appropriate to uphold the Complainant's complaint that the Provider acted wrongfully in declining her claim for benefit, under the policy in place.

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.



**MARYROSE MCGOVERN
DEPUTY FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

4 November 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—

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- (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.**

