An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

| | |
|---|---|
| **Decision Ref:** | 2022-0131 |
| **Sector:** | Insurance |
| **Product / Service:** | Employers Liability |
| **Conduct(s) complained of:** | Maladministration |
| **Outcome:** | Rejected |

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

The Complainant, a public sector employee, incepted a **Salary Protection Policy** on **14 February 2011**.

The Complainant is the Policyholder, and the Trade Union she is a member of is the Grantee of the Salary Protection Scheme that her policy is incepted under. The Grantee engages the services of an Insurance Brokerage to administer the Scheme on its behalf, hereinafter 'the Intermediary'.

The Provider was the Insurer of this Salary Protection Scheme, responsible for the underwriting of applications for cover and assessing claims. The Provider ceased being the Insurer from **1 December 2012**, though it remains responsible for those claims that were in payment at that time, for the duration of such claims.

This complaint concerns the Provider's decision to cease payment of the Complainant's salary protection claim.

### The Complainant's Case

The Complainant completed a **Claim Form** to the Provider on **22 November 2011** advising that she had been unfit for work since **17 May 2011** due to *"sigmoid diverticular disease"*.

### 2011

The Complainant's GP completed and sent a **Medical Certificate** to the Provider on **2 December 2011** confirming that the Complainant was suffering from this condition.

**2012**
Following its assessment, the Provider admitted the Complainant's salary protection claim in **April 2012**, with payments backdated to **18 November 2011**, which was the end of the policy deferred period.

**2013**
The Complainant remained fully absent from work until **4 May 2013.**

On **5 May 2013**, the Complainant returned to work with a reduced attendance of 13.5 hours a week, carried out over 2 days a week.

From **1 July 2013**, the Complainant increased her attendance to 14.25 hours a week, over 2 days.

From **16 September 2013**, the Complainant increased her attendance to 21 hours a week, over 3 days.

**2014**
From **1 February 2014**, the Complainant increased her attendance to 25.25 hours a week, over 3 days.

From **28 April 2014**, the Complainant reduced her attendance back to 21 hours a week, over 3 days.

From **5 June 2014**, the Complainant was absent from work due to her illness.

On **5 August 2014**, the Complainant returned to work, attending 21 hours a week, over 3 days.

**2015**
From **5 June 2015**, the Complainant increased her attendance to 28 hours a week, over 4 days.

From **2 August 2015**, the Complainant increased her attendance to 28.25 hours a week, over 4 days.

**2016**
From **2 July 2016**, the Complainant reduced her attendance to 22.5 hours a week, over 4 days.

From **2 August 2016**, the Complainant increased her attendance to 30 hours a week, over 4 days.

Throughout this period, the Provider continued to pay the Complainant a proportionate salary protection benefit, adjusted to take account of the different hours she was working.

/Cont'd…

The Complainant says that following a claim review in **December 2016**, the Provider ceased payment of this proportionate salary protection benefit with effect from **1 January 2017**, as it concluded that because the Complainant's standard working hours were 30 hours per week at the time her disability absence first commenced on **17 May 2011**, that she had therefore returned to her standard pre-disability working hours on **2 August 2016,** and no further benefit was payable.

The Complainant says the Provider incorrectly based its assessment of her salary protection benefit on a 30-hour working week instead of a 37 hour working week throughout the duration of the claim, and that the Provider was incorrect to cease payment of her salary protection claim in circumstances where she had returned to only working a 30 hour week.

In her letter emailed to this Office on **8 August 2018**, the Complainant submits, among other things, that:

> *"… In May* [2011] *I became ill and was unable to return to work until May 2013 …*
>
> *When I returned to work in 2013 it was on a full time contract on a phased basis. The hours worked pre-disability 30 hours per week was parental leave and shorter working year.*
>
> *From 2013 to date I have not been able to return to work full time due to my ongoing medical condition …"*

In her email to this Office on **11 May 2020**, the Complainant submits that:

> *"…* [The Provider] *is basing my claim on 30 hours per week this is what I was working when I applied to become a member as I was on a short working year …"*

The Complainant sets out her complaint in the **Complaint Form** she completed, as follows:

> *"… I have been in payment on my claim from 2011 and returned to work in May 2013. In my application form for salary protection I put my working hours as 30 per week. I was on the shorter working year in 2010 and availed of parental leave and shorter working years from 2005 to 2010 when I went out on sick leave due to a medical condition.*
>
> *In May 2013 I returned to work on a full time contract on a phased return. My employer has confirmed this with* [the Provider]*. In the years from May 2013 to date my working hours have increased and deceased due to my ongoing illness … Over the course of that period from 2013 to 1/1/17* [the Provider] *continued my payment when I was working four days a week 30 hours …*

/Cont'd…

*My claim was reviewed in 2015 and on the 6/1/2016 I received a letter from* [the Intermediary] *stating I am pleased to advice* (sic) *that* [the Provider] *have completed* [its] *review of your claim.* [The Provider] *has confirmed that they would be maintaining benefits paid under the scheme in respect of the claim.*

*In 2017 my hours were reduced due to my ongoing illness, and I have not been paid for that … My hours were also reduced in 2018 from 30 hours to 25 hours per week due to my ongoing illness. I have not been paid by* [the Provider] *for these periods.*

*I have had to return to 30 hours per week due to financial reasons and am currently out on sick leave. I cannot work full time 37 hours per week due to ongoing illness. I am requesting that my salary protection benefits be reinstated based on a 37 hour per week and a back payment made to me from* [the Provider] …"

The Complainant seeks for the Provider to reinstate her salary protection claim from **1 January 2017** on the basis that her full time working hours are 37 hours per week and that it pay her a proportionate salary protection benefit, adjusted to take account of the hours she has worked since then.

**The Provider's Case**

Provider records indicate that the Complainant completed an Income Protection **Claim Form** to the Provider on **22 November 2011** advising that she had been unfit for work since **17 May 2011** due to *"sigmoid diverticular disease"*. The Complainant's GP also completed a **Medical Certificate** to the Provider on **2 December 2011** confirming that the Complainant was suffering with this condition.

The Provider notes that the Complainant confirmed in the **Claim Form** that her standard working hours were 30 hours per week, as follows:

*"**What are your standard working hours per week?** 30"*.

The Provider says that as a result, it assessed the Complainant's claim against the **Salary Protection Policy** definition of 'disablement' and her ability to perform her pre-disability occupation of 30 hours per week, as follows:

*"**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 in any other occupation for profit or reward or remuneration".*

/Cont'd…

Following its claim assessment, the Provider admitted the Complainant's salary protection claim in **April 2012**, with payments backdated to **18 November 2011**, the end of the policy deferred period.

The Provider says the Complainant's employer confirmed on **20 December 2011** that when the Complainant ceased work in **May 2011** her salary at that time was **€70,123.52**, and the Provider thus calculated the benefit payable at that time, based on that figure.

The Provider notes that the Complainant remained fully absent from work until **1 May 2013**, at which time she returned to work on a reduced attendance of 13.5 hours a week, over 2 days a week and transferred to a different employer district.

The Provider says it was happy to support the Complainant's part-time return to work and it continued to pay her a proportionate salary protection benefit, adjusted to take account of the different hours she was working, in accordance with the **Salary Protection Policy** definition of 'partial disablement', as follows:

> *"(ii) partial disablement shall be deemed to exist where (a) following a period of total disablement as in Sub-Provision 1 (i), which period is to be decided by the Company, an 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 with the written consent of the Company re-engages in his normal occupation with loss of earnings as a result or engages in some other occupation for profit or reward or remuneration".*

The Provider lists the full details of the proportionate benefit amounts it subsequently paid to the Complainant, as follows:

*From 1 May 2013: 2 days per week (13.5 hours)*
Earnings: €50.56* per hour x 13.5 x 52 = €35,493.12
Proportionate Benefit: €24,787.00 per annum / €2,065.59 per month
(*The Provider says this hourly rate of €50.56 was an incorrect rate it used at the time)

*From 1 July 2013: 2 days per week (14.25 hours)*
Earnings: €40.53 per hour x 14.25 x 52 = €30,032.72
Proportionate Benefit: €33,983.00 per annum / €2,831.92 per month

*From 16 September 2013: 3 days per week (21 hours)*
Earnings: €40.53 per hour x 21 x 52 = €44,258.76
Proportionate Benefit: €24,769.00 per annum / €2,064.09 per month

*From 1 February 2014: 3 days per week (25.25 hours)*
Earnings: €40.53 per hour x 25.25 x 52 = €53,215.89
Proportionate Benefit: €19,005.00 per annum / €1,583.75 per month

/Cont'd…

*From 28 April 2014: 3 days per week (21 hours)*
Earnings: €40.53 per hour x 21 x 52 = €44,258.76
Proportionate Benefit: €24,818.00 per annum / €2,068.17 per month

*From 5 June 2015: 4 days per week (28 hours)*
Earnings: €40.53 per hour x 28 x 52 = €59,011.68
Proportionate Benefit: €15,289.00 per annum / €1,274.09 per month

*From 2 August 2015: 3 days per week (28.25 hours)*
Earnings: €40.53 per hour x 28.25 x 52 = €59,538.57
Proportionate Benefit: €14,946.00 per annum / €1,245.50 per month

*From 2 July 2016: 4 days per week (22.5 hours)*
Earnings: €40.53 per hour x 22.5 x 52 = €47,420.10
Proportionate Benefit: €18,590.00 per annum / €1,549.17 per month

*From 2 August 2016: 4 days per week (30 hours)*
Earnings: €40.53 per hour x 30 x 52 = €63,226.80
Proportionate Benefit: €10,213.00per annum / €851.09 per month.

The Provider says that as part of a review of her claim, it arranged for the Complainant to attend for a medical examination on **27 November 2015** with the Specialist in Occupational Health, who had previously examined the Complainant on its behalf, in **June 2012**. This Specialist stated in her report that:

> *"…* [The Complainant] *is working 30 hours per week over 4 days – 10% desk based and 90% on the road …*
>
> [The Complainant] *continues with ongoing difficulties with diverticular disease, but seems to be managing it reasonably well within the context of work …*
>
> *She has a recent diagnosis of rheumatoid arthritis. There are very few supporting findings on examination today other than mild tenderness affecting joints. I could find no evidence of any joint swelling…"*

The Provider says it was clear from this report that the Complainant was working 30 hours per week and therefore, as she was now back working her standard pre-disability hours, payments on her claim ought to have ceased with immediate effect. However, due to an oversight on its part, the Provider says it did not at that time, pick up on the fact that the Complainant had increased her attendance to 30 hours per week and it continued to pay a partial benefit in error, in respect of her working 28.25 hours per week.

/Cont'd…

The Provider says that following a further claim review in **June 2016**, it was spotted that the Complainant had increased her attendance to 30 hours a week, based on the **November 2015** report from the Specialist in Occupational Health. However, due to a further oversight on its part, the Provider says it recalculated a proportionate benefit on the claim and wrote to the Intermediary to advise that this would be **€10,213.00** per annum with effect from **1 July 2016**. The Provider says it was an error on its part to continue paying a partial benefit, when the Complainant had resumed working her standard pre-disability hours and that instead, payment should have ceased with immediate effect.

The Provider says that having informed the Intermediary of the revised benefit, it then received notification that the Complainant would only be working 3 days a week for **June** and **July 2016**, with a return to a 4-day week in **August 2016**. As a result, the Provider did not implement the revised proportionate benefit of **€10,213.00** per annum at that time, as it needed to clarify specific dates. Having received this additional information from the Intermediary in **October 2016**, the Provider wrote to the Intermediary on **11 November 2016** to confirm the proportionate benefit of **€10,213.00** per annum, with effect from **2 August 2016** and benefit arrears in the amount of **€365.61** issued to the Complainant in respect of her reduced working during **June** and **July 2016**.

The Provider says it further reviewed the Complainant's claim in **December 2016**, when at that point it became apparent that she had resumed working her standard pre-disability hours of 30 hours per week and that payments on her claim should cease with immediate effect. The Provider says that because there is no basis for paying a partial claim for any insured person when they have returned to working their pre-disability hours, the Provider wrote to the Intermediary on **14 December 2016** to advise that it was ceasing payment of the Complainant's claim with effect from **1 January 2017**.

The Provider says that the Intermediary emailed it on **13 January 2017** to advise that the Complainant disagreed with its decision to cease payment of her claim. As part of its appeal process, the Provider arranged for the Complainant to attend once again for a medical assessment with the Specialist in Occupational Medicine on **28 June 2017** and this Specialist stated in her report dated **4 July 2017** that:

> *"… At the present time,* [the Complainant] *is struggling with her symptoms and with chronic ongoing pain. Her pain scores are averaging 6. Notwithstanding this, she is very motivated to stay and be in work.*
>
> *In my view, she is managing all of her symptoms well within the context of work, she is limiting her hours of work when having a flare and resuming work at a 30-hour week when capable.*
>
> *At the present time, I believe she is capable of resuming work to a 30-hour week within the next 2 weeks. Thereafter, I do believe that those hours of work are probably at the limit of her current capacity …"*

/Cont'd…

The Provider says that as this Specialist confirmed that the Complainant was fit to work her standard pre-disability hours of 30 hours per week, just as the Specialist had also previously identified in her **November 2015** report, it was satisfied that the Complainant did not meet the policy definition of disablement and it stood over the decision it made in **December 2016** to cease payment of her salary protection claim, with effect from **1 January 2017**.

The Provider notes that the Complainant's complaint centres around what her contracted hours were at the time she went on sick leave in **May 2011**. It says in that regard that when she incepted her **Salary Protection Policy** under the Scheme on **14 February 2011**, the Complainant had been working 30 hours per week since **1 July 2009**. The Provider says that in accordance with the policy terms and conditions, a claim must be assessed against the role the insured person was performing at the date they ceased work, and this would include the number of hours worked in that role.

The Provider says the Complainant herself confirmed in the **Claim Form** she completed on **22 November 2011,** that her standard working week was 30 hours per week and her employer later confirmed in correspondence dated **30 November 2017** that since **1 July 2009** the Complainant was not working in a full time capacity, having reduced her hours to a 30 hour week at that time.

In addition, as the Complainant was paying salary protection premiums based on a salary reflective of a 30-hour week, the Provider is satisfied that there can be absolutely no dispute that the Complainant's standard pre-disability hours were 30 hours per week and it says that it was on that basis that the Complainant was insured and remunerated accordingly.

Further, the Provider says there is no evidence to suggest that at any time during her membership of the Scheme, that the Complainant was working in a fulltime capacity or that her contracted hours were 35 or 37 hours per week or that her claim should have been assessed on that basis. In that regard, the Provider confirms that at no time did it assess the Complainant's salary protection claim against her normal working hours being anything other than 30 hours a week.

The Provider says that it understands that the Complainant's contracted working hours increased from 30 to 32 hours per week, effective from **1 July 2013**. However, as the Complainant was working a standard weekly total of 30 hours at the time her claim commenced in **May 2011**, and indeed, for some 2 years before she first incepted her **Salary Protection Policy**, the Provider says that this is the number of hours it must assess her claim against, under the policy.

In response to the Complainant's comment in her **Complaint Form** that *"I cannot work full time 37 hours per week due to ongoing illness"*, the Provider respectfully suggests that whether or not medical reports indicate that the Complainant is not in a position to work a 37-hour week is not material in this matter.

/Cont'd…

The Provider says that the fact is, that at the time the Complainant submitted a salary protection claim, and indeed since before she first incepted her **Salary Protection Policy**, her normal contracted hours of attendance were 30 hours per week, and she was paying salary protection premiums based on a salary reflective of those hours. As a result, the Provider is satisfied that any salary protection claim must be assessed against these hours only.

In relation to the Complainant having reduced her working hours from **7 March 2017** to below 30 hours per week due to her ill-health, the Provider says it ceased being the insurer of the **Salary Protection Scheme** from **1 December 2012** and that the applicable **Transfer Cover Agreement** between the Provider and the new insurer provides that:

> *"Any current claimant who returns to full time work for a period of more than 6 months and who wishes to claim again for the same illness/condition will be the responsibility of* [the new insurer]*".*

The Provider says that it ceased payment of the Complainant's salary protection claim with effect from **1 January 2017**, though it says that as she had in fact returned to her normal pre-disability hours of 30 hours per week on **2 August 2016** that this is the actual date when her entitlement to benefit ceased. The Provider notes the Complainant's next period of reduced absence commenced on **7 March 2017**, some seven months later.

The Provider says that because the Complainant had returned to working 30 hours per week on **2 August 2016**, and then worked her standard pre-disability hours for more than six months, her cover with the Provider therefore ceased, in line with the **Transfer Cover Agreement** between the Provider and the new insurer, and as a result, it says that any future claims she might make, including for the period when she moved to reduced hours from **7 March 2017**, are not the Provider's responsibility and should be made to the new insurer of the Scheme. The Provider says that it understands that the Complainant has submitted a more recent claim to the current insurer of the **Salary Protection Scheme** in that regard.

When it responded on **16 December 2020** to the formal complaint investigation by this Office, it was the Provider's stated position that it had inadvertently used an incorrect salary in calculating the Complainant's salary protection benefits when it admitted her claim and throughout the duration of the claim, in that it had based her benefit on a salary of **€70,123.52**, which it later transpired was the salary for fulltime hours, in that this was the salary the Complainant would have been entitled to, when she ceased working in **May 2011** if she had been working full time, at that time.

In that regard, the Provider maintained that the Complainant's actual salary for working a 30 hour week in **May 2011** was **€58,351.84** and that her benefits should have been calculated and paid based on that lower figure. This, the Provider advised, had resulted in a very significant overpayment being made by the Provider to the Complainant in the region of **€42,000.00** gross, though the Provider said that it would not be seeking to recoup this overpayment.

/Cont'd…

More recently, having been asked by this Office to provide documentary evidence in support of this position, the Provider advised in its correspondence dated **6 December 2021** that:

> *"While we believe there is still some uncertainty in respect of* [the Complainant's] *salary at the time payments under her claim began, it appears that the correct salary was €70,123.52 and I can confirm that we are happy to accept this based on the information to hand. Therefore, as payments made in respect of her claim were based on this salary, the overpayment information that we previously outlined in our Submission letter regarding the salary used to calculate the benefits under the claim, may be ignored.*
>
> *However, as* [the Complainant] *has resumed working her normal hours of 30 hours per week in June 2016, an overpayment in respect of the period June 2016 to January 2017 did occur. As advised previously, I can confirm that we are not seeking to recoup any of the overpayment made to* [the Complainant]*".*

In summary, the Provider says it is satisfied that the Complainant's standard pre-disability role in **May 2011**, and indeed since before she first incepted her **Salary Protection Policy** in **February 2011**, required her to work 30 hours a week and it says that any claim must therefore be assessed against those hours. The Provider paid the Complainant's salary protection claim whilst she was unfit to perform her standard 30-hour week, however when she resumed her normal pre-disability hours on **2 August 2016**, the Provider is satisfied that there was no basis for the continuation of the claim as the Complainant no longer satisfied the policy definition of disablement.

The Provider acknowledges that it inadvertently made mistakes when calculating the salary protection benefit due, however, it says that these mistakes did not prejudice the Complainant in any way and in fact were financially advantageous to her as, for example, her claim was paid for a longer period, from **2 August** to **31 December 2016**. The Provider says that it is not seeking to recoup from the Complainant any overpayments it made.

## The Complaint for Adjudication

The complaint is that the Provider incorrectly assessed the Complainant's salary protection claim throughout its duration, based on a 30-hour working week, instead of a 37-hour working week. The Complainant says that the Provider then wrongfully or unfairly ceased payment of her salary protection claim in circumstances where she had returned to working only a 30-hour week.

## 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

/Cont'd…

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 **15 March 2022**, 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 substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note that the Complainant completed a **Claim Form** to the Provider on **22 November 2011** advising that she had been unfit for work since **17 May 2011**. Following its assessment, the Provider admitted the Complainant's salary protection claim in **April 2012**, with payments backdated to **18 November 2011**, the end of the policy deferred period.

The Complainant remained fully absent from work until **4 May 2013**.

I note that from **5 May 2013** to **1 August 2016**, the Complainant returned to work with a varying reduced attendance, and that the Provider continued to pay her a proportionate salary protection benefit throughout that period, adjusted to take account of the different hours she was working.

On **2 August 2016**, the Complainant returned to working 30 hours a week. I note that the Provider subsequently ceased payment of her proportionate salary protection benefit, on the basis that the Complainant had been working 30 hours a week prior to the commencement of her disability absence on **17 May 2011** and that having returned to working this same number of hours, her entitlement to any benefit ceased.

The Complainant says the Provider was wrong to cease payment of her claim as her working a 30-hour week was not a return to her working fulltime hours. She says that the Provider incorrectly based its assessment of her salary protection benefit on a 30-hour working week, instead of a 37-hour working week, throughout the duration of the claim.

/Cont'd…

It is important to note that the salary protection premium charged by the Provider is set at a fixed percentage of the salary the policyholder receives. The employer deducts this amount on behalf of the Provider directly from the policyholder's salary on a weekly, fortnightly or monthly basis, depending on the frequency of the pay cycle.

In her email to this Office on **8 August 2018**, the Complainant advised that:

> *"The hours worked pre-disability 30 hours per week was parental leave and shorter working year".*

I note that prior to her incepting her **Salary Protection Policy** with the Provider on **14 February 2011**, the Complainant's salary was, from **1 July 2009**, calculated based on her working a 30-hour week. Accordingly, the salary protection premium collected by the Provider was a percentage of the reduced salary the Complainant received, for working this shorter week.

As a result, the Complainant, since she incepted her **Salary Protection Policy** with the Provider on **14 February 2011** and prior to her disability absence some three months later, on **17 May 2011**, only ever paid a salary protection premium based on her working a 30-hour week and I am satisfied therefore, that this was the number of hours she was insured for, at the time her absence commenced.

To find otherwise would, in my view, perversely result in the Complainant then being insured for working a number of hours greater than the hours which she worked before her absence and in this case, greater than the number of hours she had ever worked since becoming a member of the Scheme. This would result in the Complainant financially profiting from her illness, which is not the purpose of salary protection insurance.

I am of the opinion that if the Complainant had returned to working 37 hours a week or, for that matter, any number of hours greater than 30 hours a week, before her being medically certified as unfit for work from **17 May 2011**, then her salary, and likewise her salary protection premium, would have increased to reflect the total hours she was then working and this would then have been the number of hours she would have been insured for at the time her absence commenced and against which her salary protection benefit would have been assessed. This, however, is not the case, in this instance.

For these reasons, I am satisfied that the Provider was entitled to assess the Complainant's salary protection benefit on the basis that she was working a 30-hour week, at the time when she became disabled, within the meaning of the policy. I am satisfied that it remained entitled to do so throughout the duration of her claim, until **1 July 2013**.

In that regard, I note from the documentary evidence before me, that in its letter to the Provider dated **13 May 2014**, the Complainant's employer was asked:

> *"***[The Complainant]** ***advised on her claim form that her standard working hours per week were 30 hours, therefore please confirm if this indicates*** **[the Complainant]** ***has increased her hours from her normal contract?***

/Cont'd…

I note that the Employer replied that:

> *Yes,* [the Complainant] *contract arrangement would have been on 30 hours per week when she first* [transferred] *in May* [2013]*, however, under the Haddington Road Agreement this would increase to 32 hours per week effective from the 1st July 2013".*

Notwithstanding this increase in hours, I remain satisfied that it was correct for the Provider to assess the Complainant's salary protection claim at all times during the duration of the claim, based on the 30-hour week that she was so working at the time when her disability absence commenced on **17 May 2011**.

As I accept that the Complainant's **Salary Protection Policy** provided her with cover in respect of her working a 30-hour week throughout the duration of her claim, and as the Complainant returned to working a 30-hour week from **2 August 2016**, I am satisfied that the Complainant was no longer entitled to a salary protection benefit from that date.

Having returned to working a 30-hour week from **2 August 2016**, the Complainant later had cause to reduce her working hours to below 30 hours per week from **7 March 2017** due to her ill-health.

In that regard, I note the Provider ceased being the insurer of the **Salary Protection Scheme** from **1 December 2012** and that the applicable **Transfer Cover Agreement** between the Provider and the new insurer provides that:

> *"Any current claimant who returns to full time work for a period of more than 6 months and who wishes to claim again for the same illness/condition will be the responsibility of* [the new insurer]*".*

I accept that when the Complainant returned to working a 30-hour week from **2 August 2016**, she was no longer entitled to a salary protection benefit from that date, notwithstanding that the Provider had mistakenly continued to pay her claim until **1 January 2017**.

I note the Complainant's next period of reduced absence commenced on **7 March 2017**, some seven months after her actual entitlement to a salary protection benefit had ceased on **2 August 2016**.

I accept the Provider's position that because the Complainant had returned to working 30 hours per week on **2 August 2016**, and that she then worked her standard pre-disability hours for more than six months, that her cover with the Provider ceased and shifted to the new insurer, in line with the **Transfer Cover Agreement** between the Provider and the new insurer.

/Cont'd…

In that regard, I am satisfied that any claim the Complainant may have arising more than six months after **2 August 2016**, including for the period from **7 March 2017** when her working hours once again reduced to below 30 per week, is not a matter for the Provider but such a claim should instead be made to the new insurer.

The Provider has, by its own admission, made a number of mistakes when calculating the salary protection benefit due to the Complainant, however, I accept the Provider's position that these mistakes were financially advantageous to her as, for example, her claim was paid for a longer period, from **2 August** to **31 December 2016**. In that regard, I am also mindful that when its error first came to its attention in **December 2016**, the Provider promptly wrote to the Intermediary on **14 December 2016** to advise that it was ceasing payment of the Complainant's claim. I note the Provider says it is not seeking to recoup from the Complainant any overpayments it made, which I consider to be a very reasonable approach for it to take in this matter.

Having regard to all of the above, the evidence does not, in my opinion, support the complaint that the Provider incorrectly based its assessment of the Complainant's salary protection benefit on a 30-hour working week instead of a 37-hour working week throughout the duration of the claim, or that the Provider then wrongfully or unfairly ceased payment of her salary protection claim in circumstances where the Complainant had returned to working a 30-hour week.

Accordingly, on the evidence before me, I am satisfied that this complainant cannot be upheld that this complaint cannot be upheld.

**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**
**Financial Services and Pensions Ombudsman (Acting)**

11 April 2022

/Cont'd…

**PUBLICATION**

**Complaints about the conduct of financial service providers**

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.

**Complaints about the conduct of pension providers**

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.