An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0487
Sector:	Insurance
Product / Service:	Payment Protection
Conduct(s) complained of:	Disagreement regarding Medical evidence submitted
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant is a member of a **Group Income Protection Scheme** since **2004**. The Policyholder is the Complainant's Employer and the Provider is the Insurer, responsible for assessing claims. This complaint concerns the Provider's decision to cease payment of the Complainant's income protection claim.

The Complainant's Case

The Complainant was involved in a workplace incident on **[Date Redacted]** in which a member of the public entered her workplace and confronted her with two weapons. The Complainant says this event was *"hugely traumatic"* for her and she was absent from work on a medical certificate from **[Date Redacted]** and was later diagnosed with post-traumatic stress disorder.

The Complainant completed a **Group Income Protection Claim Form** to the Provider on **23 August 2017** wherein she detailed, among other things, as follows:

> *"**Describe in detail your illness/condition***
> *Suffering from anxiety + stress, also depression. Crying a lot. Need help to care for my children as get upset very easily. Cannot concentrate, not sleeping well. Extreme tiredness. Had an incident with a customer who had a [incident detail redacted] – suffering from flashbacks since*
>
> ***How does your condition prevent you from working?***
> *Cannot concentrate. Afraid to meet people, get very anxious if have to leave house. Crying a lot …*

Has a diagnosis been made?
☑ ***Yes*** ☐ ***No***

If Yes, please provide details
Stress – Anxiety – Depression …

Is your condition ☐ ***Deteriorating*** ☐ ***Improving*** ☑ ***Stable***

Please provide details
Was on Xanax, now on anti-depressant, still feeling down + anxious + very nervous all the time

Are you symptoms ☑ ***Constant*** ☐ ***Intermittent***

Please provide details
Have difficulty concentrating + remembering things, very tired. Still very anxious about even small things. Cannot face meeting people, worried if I have to leave the house. Nervous feeling in my stomach. Difficulty sleeping".

Following its assessment, which included the Provider arranging for the Complainant to attend for a medical examination with a Consultant Psychiatrist on **29 September 2017**, the Provider declined the Complainant's income protection claim by way of letter to the Policyholder dated **9 November 2017**.

The Complainant appealed this declinature in **March 2018** and following its review, which included the Provider arranging for the Complainant to attend for a further medical examination with a second Consultant Psychiatrist on **13 June 2018**, the Provider admitted the Complainant's income protection claim in **July 2018** from **23 October 2017** (the end of the policy deferred period) to **8 August 2018** only, a period of some 10 months.

The Complainant, in appealing the decision to cease payment of her income protection claim from **8 August 2018**, furnished the Provider with a letter from her treating Consultant Psychiatrist dated **4 October 2018** that stated:

> *" … On referral from her GP* [the Complainant] *reported low mood recurrent nightmares where she vividly goes through a distressing incident with a customer which occurred during the course of her work…She reports to be very nervous and anxious all the time. She suffers panic attacks when she is in public buildings always expecting someone to attack her or confine her to the building. She is very protective of her children always worrying something will happen to them.* [The Complainant's] *experience has been further exacerbated by her perception of* [her employer's] *management of her following the incident …*
>
> *She says she has become almost totally reclusive …*

/Cont'd…

She reports low mood with occasional thoughts that she would be better off dead. She is sad all the time and reports emptiness and loneliness. She says she is irritable with her husband and kids and shouts at time without [provocation]. *She reports intermittent sleep disturbance, poor appetite and has lost an amount of weight. She had lost interest in all her hobbies and interests. She describes difficulties with focus and loss of enjoyment in t.v. and has also lost interest in the family home and in her self care and appearance. She constantly avoids people and has lost all her confidence and has very low self esteem at present.*

She is presently on Fluoxetine 60 mgs, Mirap 7.5 mgs was added at her last OPD appointment and she has been referred urgently for CBT. She is being reviewed every two weeks at our OPD department and has the support of our local community psychiatrist nurse. She will need a considerable amount of CBT sessions to improve her situation and get her back to where she was prior to the incident.

In my opinion [the Complainant] *needs a considerable amount of time on her medication which may still need to be altered to get the maximum benefit from it for her. She will be in therapy for a considerable amount of time so she will not be available for work for the foreseeable future".*

As part of its assessment of her appeal, the Provider arranged for the Complainant to attend for another medical examination with a third Consultant Psychiatrist on **13 November 2018**, however the Provider wrote to the Policyholder on **3 December 2018** to advise that it was unable to consider the Complainant's claim further.

The Complainant complains that the Provider ceased payment of her income protection claim even though she remained unfit to return to work. In this regard, the Complainant's treating Consultant Psychiatrist states in her **Report** to the Complainant's Solicitors dated **17 July 2019**, among other things, that:

"I considered that [the Complainant's] *Post-Traumatic Stress Disorder had lessened in severity, particularly the intrusive symptoms of the disorder including upsetting images and memories of the incident. There had also been an improvement in* [the Complainant's] *associated anxiety and low mood, but at the time of assessment* [on **15 July 2019**]*, she remained very avoidant of situations which could trigger memories of the incident, such as passing the bank where she had been working. She continued to report an impact on her sleep, concentration and interest, but had managed to overcome some of her self-isolation and fear; for example, at the time of follow-up assessment, she had returned to collecting her children from school.*

At the time of follow-up assessment, I considered that [the Complainant's] *PTSD was in the mild to moderate range of severity.*

/Cont'd…

With regard to her Depressive Disorder, [the Complainant] *remained on the maximum dose of Fluoxetine, augmented by a low dose of the antidepressant Mirtazapine. There had been a definite and significant improvement in the severity of* [the Complainant's] *Depressive Disorder, which was now at the milder end of the spectrum.* [The Complainant] *continued to report her mood as low, with a tendency to cry with little provocation and outlined reduced enjoyment in her life. She describes reduced drives such as appetite and libido, and continued to report poor interest, concentration and sleep (also symptoms of PTSD).*

Notwithstanding [the Complainant's] *progress at the time of follow-up assessment and her engagement with therapy, I considered that her future prognosis for recovery must remain guarded, and was concerned about her capacity to return to work in the* [building] *where the incident had occurred. I considered that in the short term, a return to work was unlikely"*.

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

"In April 2017 I was involved in an incident at work…whereby I was confronted by a customer who carried a large stick and a knife. It was a hugely traumatic experience. I was diagnosed by 3 psychiatrists as having [post-traumatic stress disorder]*. I have been seen by* [my employer's] *doctor every 2 months and she has said at each* [appointment] *that I am unfit for work, as have my psychiatrists and my GP.* [The Provider] *have refused to pay, stating 3 times that I am fit to work (I have seen three psychiatrists on* [the Provider's] *behalf. Following the second occasion/psychiatrist appointment* [the Provider] *went back on* [its] *word and said* [it] *would pay me for 3 months* (sic)*. I am currently still under the care of HSE Psychiatrist and am undergoing treatment. I am now struggling to pay my mortgage and my only income towards this and other household bills is illness benefits. I have continuously stated that I am not fit to work, as have my psychiatrists and GP…This has all added to my stress … "*

In addition, in her email to this Office on 1 February 2020, the Complainant submitted:

"I am still attending CBT every 2 weeks and sometimes weekly.

I also attend [my employer's] *own doctor…every 2-3 months…and she still states that I am unfit to work.*

I am also currently under the care of my own GP and the HSE community mental health team…All of these professionals along with [my treating] *consultant psychiatrist state that I am Unfit to work".*

The Complainant seeks for the Provider to reinstate payment of her income protection claim from **8 August 2018** as she says she has continued to remain unfit to return to work beyond that date and in that regard, in the **Complaint Form** she completed, she states:

"[The] *policy stated that they would pay 60% of any monthly income. I haven't been paid since August* [2018]*. This should be approx.* [€]*600 per month"*

/Cont'd…

The Provider's Case

The Provider says its records indicate that the Complainant completed a **Group Income Protection Claim Form** on **23 August 2017** wherein she detailed the illness that prevented her from working since **24 April 2017**, as follows:

> *"Suffering from anxiety + stress, also depression. Crying a lot. Need help to care for my children as get upset very easily. Cannot concentrate, not sleeping well. Extreme tiredness. Had an incident with a customer who had a [incident details redacted] – suffering from flashbacks since".*

In addition, the Complainant's GP completed an **Income Protection Practitioner Report** to the Provider in **September 2017**, wherein he advised, among other things, as follows:

> *" … **What is the exact nature and cause of disability?***
> *Anxiety – Flashbacks – Depression*
>
> ***Describe the symptoms which prevent the claimant from working***
> *Palpitations – Acute shortness of breath – Crying … "*

In order for an income protection claim to be payable, a member of the **Group Income Protection Scheme** must satisfy the policy definition of disability, as follows:

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

In order to assess the claim and to consider whether she satisfied this definition of disability, the Provider arranged for the Complainant to attend for a medical examination with a Consultant Psychiatrist on **29 September 2017**, who in his ensuing **Report** of the same date stated:

> *" …* [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.*
>
> *Mood was not significantly depressed…There were no signs of anxiety, agitation or tension …*
>
> *Current symptom severity is mild …*
>
> *There is no objective evidence of disabling psychiatric illness that is preventing her from performing the material and substantial duties of her normal occupation. Any residual symptoms are not disabling in nature … "*

/Cont'd…

In addition, the Provider says that on the SIMS questionnaire administered by this Consultant Psychiatrist, the results were significantly elevated, indicating a high frequency of symptoms that are highly uncommon in patients with genuine psychiatric or cognitive disorders and in that regard, the Provider notes that the Consultant Psychiatrist stated:

> *" … [the Complainant) endorsed symptoms of memory impairment that are inconsistent with patterns of impairment seen in brain dysfunction or injury … "*

The Provider says that based on the findings of this assessment, it was of the opinion that the Complainant was fit to return to her normal occupation as she did not satisfy the policy definition of disability.

As a result, the Provider wrote the Policyholder on **9 November 2017** to advise that it was declining the income protection claim, as follows:

> *"Based on the evidenced received I regret to advise we are unable to consider* [the Complainant's] *claim …*
>
> *If* [the Complainant] *is unhappy with the decision on her case, there is a facility for her to appeal the decision. It would be up to* [the Complainant] *to provide us with up-to-date objective specialist evidence to support her appeal. This should be submitted by 9 February 2018. The evidence submitted should clearly indicate that* [the Complainant] *is currently totally disabled from following her normal occupation. If no such evidence is available, our decision will remain unchanged"*.

The Provider received appeal evidence from the Complainant in **March 2018**. This was a **Report** to the Complainant's Solicitors from her treating Consultant Psychiatrist, whom the Complainant had first attended on **13 January 2018**. The Provider says that this evidence provided some detail and insight into the Complainant's condition and symptoms and also in relation to how this was preventing her from working.

In order to further consider the claim, the Provider arranged for the Complainant to attend for a further psychiatric evaluation with a different Consultant Psychiatrist on **13 June 2018**, who in his ensuing **Report** of the same date advised, among other thing, that:

> *" …* [The Complainant's] *attention, concentration and memory were good. She has good insight, she wasn't distressed at any point during the interview …*
>
> [The Complainant] *has had post traumatic stress disorder, in partial remission …*
>
> *Returning to work would probably help her to improve further …*

/Cont'd…

> *It is my opinion that* [the Complainant] *is currently fit to carry out her normal occupation. This is based on the fact that she has had appropriate treatment and that she has improved. She has residual anxiety but not of a nature or severity that renders her unfit to work. Her memory complaints are examples of everyday forgetting and would not affect her functioning at work. Part of her restricted daily activities is due to her not wanting to be seen out and about when she if off sick … "*

The Provider says it is generally accepted that a disabling psychiatric complaint not only impedes an individual from working, but also adversely impacts an individual's ability to perform normal every-day tasks and activities, however it notes that there is no evidence that this is the case in this instance, as the Consultant Psychiatrist advised in his **Report** that:

> *" …* [The Complainant] *gets up in the morning with the children. Three of them are in school. When they are gone to school, she minds the[age of child redacted]. She does some housework and hoovering, she goes for a walk which she enjoys. She brings the [age of child redacted] in the buggy … "*

When the Provider assessed the claim at the point of appeal, it was satisfied that the Complainant had met the policy definition of disability for a short period. However, it noted that the Consultant Psychiatrist concluded in his **Report** of **13 June 2018** that the Complainant was at that time currently fit to carry out her normal occupation. This opinion was based on the fact that she has received appropriate treatment and had improved, and though she had residual anxiety, this was not of a nature or severity that rendered her unfit to work.

In acknowledgement of that fact that this Consultant Psychiatrist had confirmed that the Complainant was in partial remission, the Provider says it made a payment to financially support the Complainant, covering the period from **23 October 2017** (the end of the policy deferred period) to **8 August 2018**, in the amount of **€12,467.07** (twelve thousand four hundred and sixty-seven Euro and seven Cent).

This benefit payment was in line with the Schedule of Benefits under the **Group Income Protection Scheme** and as this is a corporate policy, the payment was paid directly to the Policyholder, to be then processed through its payroll system.

The Provider wrote to the Policyholder on **6 July 2018**, as follows:

> *"I am writing in relation to the appeal for income protection benefit submitted by you in respect of* [the Complainant]. *We have now received the IME report following the assessment on 13 June 2018 and based on the evidence received and review of all medical records on file, our decision is to put this claim into payment with effect from 23 October 2017 and cease from the 8 August 2018 to allow the Employer time to arrange back to work plans for* [the Complainant]*".*

The Provider notes that the Complainant never attempted a return to work following the payment made, and it received a further appeal from her in **October 2018**.

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In order to consider this appeal, the Provider arranged for the Complainant to attend for a psychiatric evaluation with a third Consultant Psychiatrist on **13 November 2018**, who in his ensuing **Report** of the same date advised, among other things, that:

> *"There is no evidence of progressive cognitive decline and while she reports subjective memory problems, these were not evident objectively during the interview …*
>
> *It seemed unusual that she should continue to feel afraid of seeing the aggressive customer again, given that his anger was more directed at the* [employer] *than personally at her …*
>
> [The Complainant] *has been comprehensively treated by her GP and mental health services to date. She is on combination antidepressant and anti-anxiety medications with limited effect…Her treatment is not progressing as expected and she is not making the gains one would expect to see in someone with a diagnosis of posttraumatic stress disorder. Reasons for this include her avoidance of challenging any of her anxiety and confronting situations she feels uncomfortable in. She also has an ongoing legal case against her employer which may be a factor in delaying her recovery …*
>
> *In my opinion,* [the Complainant] *is fit to carry out her normal occupation…She is not benefitting from continued absence from work and I think it is in her interest to start planning her return".*

The Provider notes that this Consultant Psychiatrist reported that though she subjectively reported feeling panicky in busy and social settings along with autonomic symptoms of anxiety, objectively the Complainant was not overly distressed during the assessment and her mood was not significantly or severely depressed, she had no psychotic symptoms and she maintained good attention and concentration throughout. The Provider says that these results would indicate someone who is capable of returning to work.

Following this review, the Provider says it remained its opinion that the Complainant did not satisfy the policy definition of disability, noting that the symptoms and reasons for not returning to work the Complainant described having, namely poor memory and concentration, were not borne out by the examination she had attended with the Consultant Psychiatrist on **13 November 2018**.

As a result, the Provider wrote to the Policyholder on **3 December 2018** to advise that:

> *" … Based on the claim appeal evidence received and the recent IME carried out I regret to advise we are unable to consider* [the Complainant's] *claim … "*

/Cont'd…

The Provider notes that the purpose of the **Group Income Protection Scheme** is to support a valid claim for a disabling illness or injury. In ceasing payment of the Complainant's income protection claim from **8 August 2018**, the Provider, on review of the file, was satisfied that the overall weight of the medical evidence indicated that the Complainant's symptoms at that time were not of a disabling nature in that she was not medically disabled from performing her duties. Accordingly, the Provider says that its decision to only make an income protection payment in respect of the Complainant's claim up until **8 August 2018** was correct.

The Provider says that at no stage did it ignore the opinions or contents of the Complainant's treating doctors' medical reports. As the Insurer, the Provider says it is entitled to gather medical evidence and arrange assessments to assist it in making an informed decision. In order to reach its decision, the Provider arranged for the Complainant to be assessed by 3 different Consultant Psychiatrists and each found her to be fit to return to her normal occupation. In forming their opinions, each of these doctors considered the medical evidence provided by the Complainant's treating doctors in conjunction with their own assessments and the Complainant's job description, as furnished by the Policyholder.

The Provider acknowledges that the Complainant has an ongoing mental health complaint, however it does not believe that it is of such a disabling nature, that it prevents her from working. The Provider says it is important to note that the diagnosis of a medical condition does not automatically equate to work disability. As the Insurer, the decision on work disability rests with the Provider and having considered the file on this matter, the Provider was satisfied that the Complainant was fit to return to work, in that she did not satisfy the policy definition of disabled.

Finally, while it sympathises with the Complainant for the difficult workplace incident she had to endure, the Provider says it is evident there are other significant contributing factors of an industrial relations nature, which it believes are preventing her from resuming work. In this regard, the Provider notes that the Complainant is currently engaged in legal proceedings against her employer the Policyholder and in this regard, the Provider submits that until these proceedings have reached their conclusion, even if the Complainant felt she was indeed fit to return work, it is highly unlikely that such a return would take place.

The Complaint for Adjudication

The complaint is that in August 2018, the Provider wrongfully, or unfairly, ceased payment of the Complainant's income protection claim, even though she remained unfit to return to work.

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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 **1 November 2021**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant was involved in a frightening workplace incident on **7 April 2017** in which a member of the public entered her workplace and confronted her with two weapons. The Complainant, who was absent from work on a medical certificate from **24 April 2017** was later diagnosed with post-traumatic stress disorder, and she completed a **Group Income Protection Claim Form** to the Provider some 4 months later, on **23 August 2017** wherein she detailed, among other things, as follows:

> *"**Describe in detail your illness/condition***
> *Suffering from anxiety + stress, also depression. Crying a lot. Need help to care for my children as get upset very easily. Cannot concentrate, not sleeping well. Extreme tiredness. Had an incident with a customer who had a [incident details redacted] – suffering from flashbacks since".*

I note that following its claim assessment, the Provider declined the Complainant's income protection claim by way of letter to the Policyholder dated **9 November 2017**.

The Complainant appealed this declinature in **March 2018** and following its review, the Provider admitted the claim in **July 2018** with effect from **23 October 2017** (the end of the 6 month policy deferred period) to **8 August 2018** only.

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The Complainant appealed this decision to cease payment of her income protection claim, however following its review, the Provider wrote to the Policyholder on **3 December 2018** to advise that it was standing over its decision to cease payment of the claim.

I note from the documentary evidence before me that as part of her appeal, the Complainant supplied the Provider with a letter from her treating Consultant Psychiatrist dated **4 October 2018** that stated:

> *"… On referral from her GP* [the Complainant] *reported low mood recurrent nightmares where she vividly goes through a distressing incident with a customer which occurred during the course of her work…She reports to be very nervous and anxious all the time. She suffers panic attacks when she is in public buildings always expecting someone to attack her or confine her to the building. She is very protective of her children always worrying something will happen to them.* [The Complainant's] *experience has been further exacerbated by her perception of* [her employer's] *management of her following the incident …*
>
> *She says she has become almost totally reclusive …*
>
> *She reports low mood with occasional thoughts that she would be better off dead. She is sad all the time and reports emptiness and loneliness. She says she is irritable with her husband and kids and shouts at time without* [provocation]. *She reports intermittent sleep disturbance, poor appetite and has lost an amount of weight. She had lost interest in all her hobbies and interests. She describes difficulties with focus and loss of enjoyment in t.v. and has also lost interest in the family home and in her self care and appearance. She constantly avoids people and has lost all her confidence and has very low self esteem at present.*
>
> *She is presently on Fluoxetine 60 mgs, Mirap 7.5 mgs was added at her last OPD appointment and she has been referred urgently for CBT. She is being reviewed every two weeks at our OPD department and has the support of our local community psychiatrist nurse. She will need a considerable amount of CBT sessions to improve her situation and get her back to where she was prior to the incident.*
>
> *In my opinion* [the Complainant] *needs a considerable amount of time on her medication which may still need to be altered to get the maximum benefit from it for her. She will be in therapy for a considerable amount of time so she will not be available for work for the foreseeable future".*

It is not the role of this Office to adjudicate in conflicts of medical evidence. Rather, it is the role of this Office to examine the totality of the medical evidence which was before the Provider when it made the decision in **July 2018** to admit the Complainant's income protection claim for a period of 10 months only from **23 October 2017** to **8 August 2018**, and its subsequent decision to stand over this outcome upon appeal in **December 2018**. This Office must determine if these were reasonable decisions based upon the medical evidence that was available to the Provider at the time when it made those decisions now complained of by the Complainant.

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I am satisfied that this is in accordance with the views of the High Court in *Baskaran v. FSPO* [2016/149MCA], where the Court confirmed that:

> *"The function of the* [Financial Services and Pensions Ombudsman] *in considering the…complaint was, in general terms, to assess whether or not* [the Provider] *acted reasonably, properly and lawfully in declining the claim of the Appellant"*.

The **Group Income Protection 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.

Section IV, '**Claims**', at pg. 12 of the applicable **Policy Conditions** states:

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

As a result, in order for income protection to be payable, a claimant must satisfy the policy definition of disability. In this regard, the '**Interpretation**' section of the **Policy Conditions** defines '**Disability**' at pg. 4, as follows:

> *"The member's inability to perform the material and substantial duties of their normal insured occupation as a result of their illness or injury; upon occurrence of which the benefit under the policy becomes payable, after the deferred period.*
>
> *The member must not be engaged in any other occupation"*.

In addition, Section IV, '**Claims**', of the **Policy Conditions** states at pg. 13, as follows:

> *"**THE CLAIMS PROCESS** ….*
>
> *We will arrange any such independent examinations with any physician chosen by us as may be reasonably required to assess our liability under the claim and cover the cost of the independent examination".*

I note that as part of its initial claim assessment, the Provider arranged for the Complainant to attend for a medical examination with a Consultant Psychiatrist on **29 September 2017**. I note that this Consultant Psychiatrist advised in his **Report** of the same date that:

> *" … **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.*

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The MADRS score for [the Complainant]*, based on the psychiatric interview on 29/09/2017, 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 based on the scoring in the HAM-A alone.

The HAM-A score for [the Complainant]*, based on the psychiatric interview on 29/09/2017, was in the range of mild severity.*

SIMS questionnaire

This is a 75-item multiaxial self-administered screening measure, which may help in determining if there is symptom overstatement. It was completed by [the Complainant] *as part of the psychiatric assessment on 29/09/2017.*

His total score of 18 was elevated above the recommended cut-off score (14) for the identification of possible symptom overstatement. Her scores on two of the five scales within the SIMS were elevated. She endorsed a high frequency of symptoms that are atypical in patients with genuine psychiatric disorders, raising the possibility of symptom overstatement.

On the Affective Disorders scale she endorsed 10 of 15 possible symptoms. This rate of endorsement of symptoms that do not generally occur in a constellation, even in an atypical mood or anxiety disorder, is suggestive of symptom overstatement.

On the Amnestic Disorders scale she endorsed four of 15 possible symptoms; endorsement of more than two of these symptoms is suggestive of symptom overstatement. Thus she endorsed symptoms of memory impairment that are inconsistent with patterns of impairment seen in brain dysfunction or injury …

Mental state examination on 29/09/2017

[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 …

Mood was not significantly depressed. There was no restriction of affect. There was normal affective reactivity. There were no signs of anxiety, agitation or tension.

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

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There was no evidence of memory or concentration difficulties …

Conclusions / Opinion …

The diagnosis is [an] *adjustment disorder, the stressor necessary for this diagnosis being the incident she experienced in her place of work in April 2017 …*

Current symptom severity is mild …

In my opinion [the Complainant] *is currently fit to carry out her normal occupation. There is no objective evidence of disabling psychiatric illness that is preventing her from performing the material and substantial duties of her normal occupation. Any residual symptoms are not disabling in nature.*

It is reasonable to return to work when there are residual symptoms of psychiatric illness because work and achievement of occupational functioning have therapeutic benefits. Occupational functioning is recognised to be an integral and essential part of recovery from psychiatric illness.

I am concerned that there is a real risk of [the Complainant] *becoming deconditioned and deskilled the longer she remains out to work. It is understandable that she is apprehensive about returning to work given the traumatic event that lead to her sick leave. Continuing avoidance of the workplace will only make it more difficult for her to return in the future".*

I note that based on the findings of this assessment in December 2017, the Provider concluded that the Complainant was fit to return to her normal occupation as she did not satisfy the policy definition of "Disability" and it wrote the Policyholder on **9 November 2017** to advise that it was declining the income protection claim.

I note that in **March 2018** the Complainant appealed the decision to decline her claim and submitted a **Report** to the Provider which her treating Consultant Psychiatrist had prepared for her Solicitors, dated **22 January 2018**, wherein the Consultant Psychiatrist concluded that:

"… I considered that [the Complainant] *had been suffering from Post-traumatic Stress Disorder (PTSD) since the incident, which was of moderate severity …*

In addition to the PTSD outlined, I considered that [the Complainant] *had suffered from an episode of Depressive Disorder, which was of at least moderate severity.* [The Complainant] *described her mood as low and irritable, with fleeting suicidal thoughts. She described reduced sleep, impaired concentration, loss of interest, reduced appetite and likely weight loss. She also reported a loss of libido and a negative self-appraisal. She had been started on antidepressant medication by her doctor, but although her symptoms had improved, particularly since starting counselling, they had not resolved.*

/Cont'd…

In my opinion, [the Complainant's] *psychological symptoms had been exacerbated by her reported experience of* [her employer's] *management of her illness, and especially by the intervention of her area manager…who had not acknowledged the role of the incident in* [the Complainant's] *illness, and who had repeatedly advised her to come off prescribed medication.* [The Complainant] *reported feeling harassed by* [her area manager]*, and was apprehensive of further contact from her.*

[The Complainant] *described some improvement since engaging with counselling, and she was open to a trial of an alternative antidepressant. I considered her prognosis for recovery to be guarded due to the persistence and severity of her symptoms to date, and the marked avoidance symptoms associated.*

In my opinion, [the Complainant] *was not fit to return to work at the time of my assessment, and will need more intensive psychotherapy, to facilitate a return to work, in addition to a further improvement in her depressive symptomatology. Cognitive behaviour therapy (CBT) is a psychological treatment with an evidence base in the treatment of PTSD and Depressive Disorder, and in the private sector in* [location] *sessions vary from €100 to €150 in cost.* [The Complainant] *would be likely to benefit from 12 to 15 sessions of CBT".*

I note that as part of its appeal process, the Provider arranged for the Complainant to attend for a further medical examination with a different Consultant Psychiatrist on **13 June 2018**, who in his ensuing **Report** of the same date advised, among other thing, that:

*" … **Patient's perception of what's stopping here from working:***
[The Complainant] *said she even gets a fear when she sees the* [employer's] *building. She goes along way around to her doctors, so that she won't have to pass* [her workplace]*…She also has thoughts of her meeting with* [her area manager] *and she feels that was a negative interaction with her. She summarised that it was the forgetfulness, the worry and the irritability were problems for her …*

Mental State Examination:
She looked well, she was cooperative with the history and examination. She seemed nervous about the assessment but she wasn't depressed. Her speech was normal in rate, tone and volume, her mood was good. She was able to smile and laugh appropriately. Her attention, concentration and memory were good. She has good insight, she wasn't distressed at any point during the interview …

[The Complainant] *has had post traumatic stress disorder, in partial remission …*

Her current mental state is normal …

She still has anxiety relating to two issues at work. The incident which occurred in April and her inactions with [her area manager] *…*

The prognosis is for her to continue to improve further. Returning to work would probably help her to improve further …

/Cont'd…

> *It is my opinion that* [the Complainant] *is currently fit to carry out her normal occupation. This is based on the fact that she has had appropriate treatment and that she has improved. She has residual anxiety but not of a nature or severity that renders her unfit to work. Her memory complaints are examples of everyday forgetting and would not affect her functioning at work. Part of her restricted daily activities is due to her not wanting to be seen out and about when she if off sick".*

I note that as this Consultant Psychiatrist had confirmed that the Complainant was in partial remission of Post-Traumatic Stress Disorder, the Provider made a claim payment to the Policyholder covering the period from **23 October 2017** (the end of the policy deferred period) to **8 August 2018**, in the amount of **€12,467.07** (twelve thousand four hundred and sixty-seven Euro and seven Cent).

I am of the view that it was reasonable for the Provider, based on the medical evidence before it, to admit and pay the Complainant's income protection claim from the end of the policy deferred period up to **8 August 2018**.

In addition, I am satisfied that it was in accordance with the **Policy Conditions** for the Provider to pay this claim benefit directly to the Policyholder, and that it was then a matter for the Policyholder to process this benefit to the Complainant through its payroll system.

I note that the Complainant appealed the Provider's decision to cease payment of her income protection claim in August 2018, by furnishing the Provider with a letter from her treating Consultant Psychiatrist dated **4 October 2018** that stated:

> *"… On referral from her GP* [the Complainant] *reported low mood recurrent nightmares where she vividly goes through a distressing incident with a customer which occurred during the course of her work…She reports to be very nervous and anxious all the time. She suffers panic attacks when she is in public buildings always expecting someone to attack her or confine her to the building. She is very protective of her children always worrying something will happen to them.* [The Complainant's] *experience has been further exacerbated by her perception of* [her employer's] *management of her following the incident …*
>
> *She says she has become almost totally reclusive …*
>
> *She reports low mood with occasional thoughts that she would be better off dead. She is sad all the time and reports emptiness and loneliness. She says she is irritable with her husband and kids and shouts at time without* [provocation]. *She reports intermittent sleep disturbance, poor appetite and has lost an amount of weight. She had lost interest in all her hobbies and interests. She describes difficulties with focus and loss of enjoyment in t.v. and has also lost interest in the family home and in her self care and appearance. She constantly avoids people and has lost all her confidence and has very low self esteem at present.*

/Cont'd…

She is presently on Fluoxetine 60 mgs, Mirap 7.5 mgs was added at her last OPD appointment and she has been referred urgently for CBT. She is being reviewed every two weeks at our OPD department and has the support of our local community psychiatrist nurse. She will need a considerable amount of CBT sessions to improve her situation and get her back to where she was prior to the incident.

In my opinion [the Complainant] *needs a considerable amount of time on her medication which may still need to be altered to get the maximum benefit from it for her. She will be in therapy for a considerable amount of time so she will not be available for work for the foreseeable future".*

I note that as part of review, the Provider arranged for the Complainant to attend for another medical examination with a third Consultant Psychiatrist on **13 November 2018**, who in his ensuing **Report** of the same date advised, among other things, that:

*"… **Work Issues***
[The Complainant] *has worked for* [her employer] *for[duration redacted] . Prior to the incident in [date redacted] , she said she enjoyed her job. Following the incident she said she was reprimanded by senior managers for how she handled the situation. She was also subsequently told that her work performance was lower than expected*

[The Complainant] *said she fears she will be isolated and unfairly treated by her area manager if she returns to work. She had [actions redacted] her employer over the incident and the[redacted].*

She met with her Occupational Health department one week ago, She was told she is still unfit for work and a follow-up review has been scheduled for three months' time. She does not feel she is well enough to do her job …

Mental State Examination
[The Complainant] *presented as a thin casually dressed lady. She was accompanied to the assessment by her father, her speech was fluent and low in volume.*

She was close to tears during the assessment. She appeared shy and reserved but not panicky. She was not overly distressed during the assessment. Objectively, her mood was not significantly or severely depressed. She had no psychotic symptoms. She maintained good attention and concentration throughout the interview. She has good insight into the excessive nature of her fear and she was not suicidal …

[The Complainant] *has been diagnosed with posttraumatic stress disorder …*

There is no evidence of progressive cognitive decline and while she reports subjective memory problems, these were not evident objectively during the interview …

[The Complainant] *has been comprehensively treated by her GP and mental health services to date. She is on combination antidepressant and anti-anxiety medications with limited effect.*

/Cont'd…

She has been in therapy for a year now with little objective improvement in her symptoms. Her treatment is not progressing as expected and she is not making the gains one would expect to see in someone with a diagnosis of posttraumatic stress disorder. Reasons for this include her avoidance of challenging any of her anxiety and confronting stations she feels uncomfortable in. She also has an ongoing legal case against her employer which may be a factor in delaying her recovery …

[The Complainant] *has no goals set regarding return to work. She said her Occupational Health department feels she is unfit for at least another three months Ongoing legal proceedings against her employer and her poor relationship with her area manager might be factors inhibiting her recovery and return to the workplace …*

[The Complainant] *fears she will be isolated and unfairly treated by her area manager if she returns. She has taken a [actions redacted] which is another factor delaying her return. She is still afraid of meeting the aggressive customer even though his grievance was with* [her employer] *and not personally directed at her …*

In my opinion, [the Complainant] *is fit to carry out her normal occupation. She has residual anxiety related to an incident at work about 18 months ago but this anxiety does not disable her from working. She is not benefitting from continued absence from work and I think it is in her interest to start planning her return … "*

I note that the Provider, having considered this report of November 2018, concluded that the Complainant did not satisfy the policy definition of "Disability" and wrote to the Policyholder on **3 December 2018** to advise that it was unable to consider the Complainant's claim further.

Having considered all of the evidence available, I am of the opinion that it was reasonable for the Provider, based on the medical evidence before it on **6 July 2018**, to admit and pay the Complainant's income protection claim for a period of 10 months only, from **23 October 2017** to **8 August 2018**, in that it had concluded that in August 2018, the Complainant no longer satisfied the policy definition of disability at that time. This benefit was paid for a short period beyond the date of the Provider's decision of **6 July 2018** in order to allow time for the Policyholder and the Complainant to make arrangements for her return to work, though I note the Complainant did not return to work.

In addition, I am also of the opinion that it was reasonable for the Provider, following its appeal, to conclude from the medical evidence before it on **3 December 2018** that whilst the Complainant may have some residual symptoms, these were not such as prevented her from performing the material and substantial duties of her normal occupation and thus that she no longer satisfied the policy definition of "disability" beyond **8 August 2018**.

I note that by email on **27 January 2020** the Complainant submitted to this Office a **Report** her treating Consultant Psychiatrist had prepared for her Solicitors dated **17 July 2019**.

/Cont'd…

In this regard, I am conscious that the Provider's conduct being complained of is the decision of the Provider in **July 2018** to cease payment of the Complainant's income protection claim, and its subsequent decision in **December 2018** to stand over this decision on appeal.

As the Provider can only make its claim decisions based on the medical information available to it at the relevant time, I take the view that the contents of the **Report** from the Complainant's treating Psychiatrist Consultant dated **17 July 2019** can have no bearing on the decisions the Provider made respectively 11 months before and 7 months before that report was written.

The purpose of income protection is to support employees who demonstrate work disability supported by objective medical evidence. Income protection insurance decisions are based on objective medical evidence and the job demands of the occupation, to ascertain whether the claimant meets the policy definitions for a valid claim.

The Complainant's income protection claim was governed by the terms and conditions of the **Group Income Protection Scheme**, which forms the basis of the contract of insurance between the Provider and the Policyholder, and in order for an insured person to be eligible for income protection benefit, he or she must satisfy the policy definition of "disability"

I am satisfied that the Provider, as an insurer, is entitled to form its own reasonable views on a claimant's fitness or otherwise for work and to arrive at its own reasonable conclusions when making decisions on claims, on the basis of the medical evidence available to it at that time.

In this regard, the diagnosis and treatment of a medical condition, or being medically certified as unfit for work, is not, in and of itself, sufficient to validate a claim under the policy, nor does it automatically equate to "disability" within the meaning of the policy definition. Rather, the weight of the objective medical evidence must clearly indicate that the insured is unable to perform the material and substantial duties of their normal insured occupation, as required by the **Group Income Protection Scheme** terms and conditions.

The Complainant has since the preliminary decision was issued by this Office, sought to rely on the views of her employer's doctors, in support of her position. It is the terms and conditions of the policy cover which however is relevant to the decision making of the Provider, on the basis of the medical evidence available to the Provider at the relevant time.

Having regard to all of the above, I am satisfied that the evidence does not support the complaint that the Provider wrongly or unfairly ceased payment of the Complainant's income protection claim in **August 2018**. Accordingly, I do not consider it appropriate to uphold this complaint.

Conclusion

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

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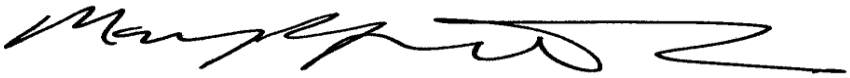
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

7 December 2021

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.