

The complaint

Mr G complains about the decision by Zurich Assurance Ltd to terminate his income protection claim.

What happened

Mr G is covered by his employer's group income protection scheme, the aim of which is to pay benefit in the event he can't work because of illness or injury.

In 2018, Mr G stopped work due to depression and post-traumatic stress disorder (PTSD). He submitted a claim to Zurich, which was accepted.

Zurich reviewed the claim in 2019 and arranged for Mr G to attend an independent medical examination (IME) with a consultant psychiatrist (Dr R). Dr R thought that Mr G would be able to return to work in 12 weeks' time. Zurich therefore terminated the claim on that basis. Unhappy with this, Mr G brought a complaint to this service.

Our investigator didn't recommend the complaint be upheld. She thought Zurich's reliance on Dr R's opinion had been reasonable, and that it had therefore been appropriate for Zurich to terminate the claim.

I issued a provisional decision on 22 November 2022. Here's what I said:

"The policy defines incapacity as:

"The member cannot perform the Material And Substantial Duties of their employment and they are not doing any paid work."

As our investigator has explained, in terminating the claim, the onus is on Zurich to show that Mr G no longer met the above definition of incapacity.

The IME took place in November 2019. In the report Dr R said he thought that Mr G continued to suffer from symptoms of PTSD. However, he thought there had been a significant improvement in Mr G's condition with the psychological treatment and support he had received. Dr R thought Mr G continued to suffer from the symptoms of the condition only in mild intensity. He noted that Mr G had been prescribed a starting dose of antidepressant medication (5mg), and recommended this be increased to 15mg to help with his symptoms of anxiety and depression.

Dr R said that Mr G could not see himself returning to any form of employment at that time, or in the future, until his complaint of bullying at work was resolved through a tribunal. However, Dr R said:

"In my opinion, with the nature and severity of his current symptoms and the balance of probability, he should be able to make a phased return to work in approximately twelve weeks' (which will allow a further period of time for recovery) time to his insured or a suitable occupation, starting with twelve hours a week, gradually increasing his hours by four hours

every two to three weeks to full-time depending on his overall progress.”

Zurich terminated the claim in January 2020. Though it paid Mr G a further six months benefit to allow him further time to reintegrate into the workplace.

It seems to me that Zurich was too hasty to terminate the claim when it did. It's clear Dr R thought that Mr G needed a further period of recovery before he could return to work, and estimated (on the balance of probability) that he would be able to work after 12 weeks.

That was presumably based on Dr R's view that Mr G's symptoms would continue to improve. However, given that 12 weeks is a significant amount of time, I would have expected Zurich to have made enquiries with Mr G's GP to ensure there hadn't been significant changes to his health before actually terminating the claim.

Mr G's GP has provided a letter dated 10 February 2020. The GP described how Mr G's symptoms had declined over the past eight years. She also said that:

“Over the last two months in particular he has been self-neglecting, socially isolating himself and suffering from great anxiety. His mood has also deteriorated significantly and he is having some suicidal thoughts.”

The GP went on to say that Mr G had become more forgetful, and his memory and concentration had been affected. She said he struggled with day-to-day activities, and she did not think he was physically or mentally fit to work.

I think there's sufficient evidence here to support that Mr G's symptoms worsened between the date of the IME and the date Dr R thought he should be able to return to work. That being the case, I don't think it was reasonable for Zurich to rely on Dr R's view from November 2019 that Mr G could return to work at the end of January 2020.

Consequently, I'm not persuaded Zurich has shown that Mr G no longer met the definition of incapacity when it terminated the claim in January 2020.

Having said that, it may be that little or no redress is due to Mr G. I say that because I understand his employment ended at some point in 2020 (I don't know the exact date, as there has been a reference to both June and September 2020), and Zurich paid benefit up to 30 June 2020.

The policy terms explain that membership will end when:

“The Member is no longer employed by you... (unless we continue to pay the benefit – see 6.5).”

Section 6.5 of the policy says:

“A Member who is Incapacitated and leaves service after the end of the Deferred Period will not be a Member and benefits will not continue to be paid to them unless you tell us in advance and we consider the circumstances to be satisfactory...”

Mr G says he lost his job because of Zurich's decision to terminate his claim.

In cases such as this, if we're satisfied there's sufficient evidence to support that a claimant lost their job because of an insurer's decision to decline/terminate an income protection claim, we might ask the insurer to pay the claim beyond the date the employment ended.

Our investigator asked Mr G for evidence that he'd lost his job as a direct result of Zurich's claims decision, but he wasn't able to provide this.

Whilst I appreciate Mr G's employment ended around the same time that his claim payment was stopped by Zurich, I note that his employment wasn't terminated because of ill-health. Instead, he reached a settlement agreement with his employer, and I would assume this was due to the ongoing employment dispute between the parties.

I'm therefore not persuaded that Mr G lost his job solely because of Zurich's decision to terminate his claim, and so I don't intend to require Zurich to pay Mr G benefit past the date his employment ended."

I asked both parties for any further comments they wished to make before I made a final decision.

Zurich responded with the following main points:

- It thinks I have taken Mr G's GP evidence at face value. In Zurich's opinion the GP report is a record of Mr G's self-reported symptoms without objective evidence to substantiate the symptoms he claimed to be experiencing.
- It says GP's are advocates for their patients, and it is therefore surprised by the weight placed on the GP evidence.
- The IME took 90 minutes and was a face-to-face assessment with a consultant psychiatrist. Zurich says Dr R was best placed to construct a view on Mr G's condition.
- If Mr G's employment ended on 30 June 2020, then it agrees he would not have suffered a financial loss and no benefit would be paid.

Mr G responded with the following:

- The scheme terms say that Zurich can offer rehabilitation support to help someone recover from an illness, and support them and their employer with return to work advice. Mr G says this wasn't offered to him.
- He provided correspondence between him and his former employer relating to his reasons for leaving his employment, as well as medical evidence.
- He says his former employer would have kept him on and he would still be an employee, if it were not for Zurich's decision to terminate his claim. He says that because of Zurich's decision to do so, his former employer said they would end his employment.
- He thinks the Zurich policy should have continued until 30 September 2020, based on information he had been given by his former employer.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I remain of the same view expressed in my provisional decision, and I'll explain why.

Zurich says that I've taken Mr G's GP evidence at face value, and that it believes this to be a record of Mr G's self-reported symptoms rather than objective evidence. Mr G's claim was for depression and PTSD, and therefore it's not clear what objective evidence Zurich would expect to see to support that Mr G's symptoms were as the GP described. In any event, I

have no reason to doubt what the GP has said, and so I remain satisfied that the GP evidence from February 2020 supports that Mr G's symptoms didn't continue to improve over the three-month period, as Dr R had thought may happen.

To be clear, I don't dispute that greater weight would usually be given to the opinion of a consultant psychiatrist over that of a GP. However, the circumstances are slightly unusual here, as Dr R made an estimation, on the balance of probabilities, about Mr G's health in 12 weeks' time. A lot can happen in 12 weeks. Therefore, I would have expected Zurich to have checked with Mr G's GP that his symptoms hadn't become worse over that period before terminating the claim. If Zurich had done this, it could have then passed the information from the GP to Dr R for his opinion. Instead, Zurich terminated the claim based on Dr R's assumption that Mr G would improve over the following 12 weeks without checking that this was actually the case. I therefore remain of the view that Zurich should not have terminated the claim when it did.

Mr G says that Zurich didn't offer him rehabilitation or coaching to address his pain or bullying at work. My understanding is that the rehabilitation service provided by Zurich isn't always offered, and this would depend on the illness and whether the claimant was in a position to return to work. I don't find that Zurich was obliged to offer this. Also, I would not expect an insurer to provide support to someone regarding a grievance with their employer, as this would be an employment matter.

I've read the minutes that Mr G has provided of a meeting that took place between him and his previous employer. I see that they discussed alternative roles, as well as the possibility of him being dismissed under the ill health capability procedure. However, other emails Mr G has provided show that the site was closing down and he was due to be made redundant when that happened. Therefore, Mr G wasn't dismissed under the ill health capability procedure, and instead it seems his employer offered him an early redundancy package because his claim with Zurich had ended, which Mr G accepted.

I therefore remain of the opinion that Mr G hasn't shown that his former employer ended his employment solely because of Zurich's decision to terminate his claim. It follows that I won't be requiring Zurich to make any payment beyond the date that Mr G's employment ended.

Mr G has now clarified that his last day of employment was 30 June 2020. As Zurich paid benefit up to this date, I don't require it to make any further payment.

Whilst Mr G thinks the Zurich cover should have continued until 30 September 2020, the scheme terms make it clear that the cover ends when employment ends. If Mr G's former employer led him to believe otherwise, he should raise his concerns directly with them.

I note that Mr G has also raised concerns about the redundancy settlement he received from his former employer. He should raise his concerns about this directly with that company, as Zurich had no control over his redundancy settlement.

My final decision

My final decision is that I uphold this complaint. However, as Zurich has already paid benefit to the end of Mr G's employment, it doesn't need to do anything further to settle the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 February 2023.

Chantelle Hurn-Ryan
Ombudsman