

## The complaint

Mr B has complained that Assicurazioni Generali SpA (Generali) declined an income protection claim made under his group income protection policy.

## What happened

In summary Mr B's policy will pay incapacity benefit after a waiting period of 28 weeks if the following definition is met and has been met during the 28-week period:

"As a result of illness or injury, the Member is incapable of performing the Material and Substantial duties of their occupation, and they are not carrying out any other Work or occupation."

Mr B was first absent from work on 4 October 2020 – so in order to succeed in his claim he needed to show evidence of incapacity until 18 April 2021 and beyond.

Our investigator didn't recommend that the complaint be upheld. Mr B appealed.

I issued a provisional decision on 17 February 2023. In that decision I said as follows:

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

*I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I've carefully read all the representations. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is the right outcome.*

*It serves no purpose for me to repeat the medical evidence in detail here - the parties are familiar with it. I'm satisfied by that evidence that Mr B was incapacitated from performing his usual occupation during the 28-week waiting period.*

*I do accept that Mr B's mental health fluctuated during this period. For example, his psychiatrist, whom I'll refer to as Dr E, wrote that he was depressed and unfit for work in October and November 2020 but in December there were early signs of improvement. However Dr E reported that in January Mr B's mood dipped again and she wrote that he had not fully recovered from his depressive illness. I'm not minded to find that any temporary improvement is evidence that Mr B's was able to return to work during the waiting period.*

*Mr B was signed off work by his GP throughout the period and beyond. I note that the reason given was 'stress related problem', until 1 April 2021 when the sick note was issued for 'depressive disorder'. Of course stress isn't an illness, so if Mr B was suffering from stress alone I could understand why Generali would feel that he didn't meet the policy definition of incapacity. It's clear that Mr B was suffering with stress and anxiety in relation to his work but that isn't the whole picture. The totality of evidence doesn't support the conclusion that he wasn't incapacitated during the waiting period, or that his depressive*

*illness ceased at the end of it. Dr E's evidence is that she considered that Mr B was suffering from a depressive illness which incapacitated him from work. This is corroborated by his GP who provided fit notes signing Mr B off work.*

*Generali accepts that as well as being under the care of a psychiatrist, Dr E, Mr B was also having weekly sessions with a psychotherapist and was prescribed antidepressant medication as well as medication for his neurodiverse condition. This is further corroborative evidence that he was being treated for illness as opposed to work related stress.*

*Treatment alone though wouldn't be sufficient to demonstrate that Mr B was incapacitated from his sedentary role as a manager. However reports were also made by Occupational Health (OH) together with a vocational rehabilitation (VR) assessment. The February 2021 OH report found that Mr B was not able to work due to his symptoms but that a phased return to work, with adjustments, could be considered in April 2021. A report in April 2021 said that Mr B remained off work due to depression, anxiety and his neurodiverse condition, ADHD. The VR assessment commissioned by Generali was conducted at the end of May 2021 to understand Mr B's functionality to return to work. It concluded that Mr B would require a further period of recovery before being able to consider a return to work.*

*Generali has expressed concerns about the self-reporting of symptoms. This does seem rather unfair to me. Mr B has been open and honest about his condition and the effects it has on his well-being, his health and his daily life. He was asked to give this detail in the claim form. It is understandable that he would report the effects of his illness to his GP and other professionals when asked. His reporting of the impact his condition had on his ability to make decisions, to focus and carry out his role accords with the independent evidence and his reporting has been consistent. I find it to be credible. Importantly it is corroborated by professionals and clinicians.*

*It follows that for the reasons given I am provisionally satisfied that Mr B's claim should have been admitted at the end of the deferred period. There is evidence that Mr B continued to be incapacitated but I have not assessed to what date or if the claim should be ongoing. This is because I understand that further evidence has been submitted to Generali relating to this period. So I am minded to require Generali to admit Mr B's claim and reassess the evidence past the end of the waiting period - April 2021 - together with the new evidence supplied.*

*Mr B also complained that Generali used insensitive language. I don't find that it did. But I provisionally find that that decline of this claim, which should have been admitted, has impacted Mr B and had a negative impact on his mental and physical health. I am minded to find that compensation is merited and to conclude that £250 is fair in all the circumstances.*

Mr B responded in detail to my provisional decision. In summary he felt that that past 18 months of his life would have gone differently if his claim had been admitted, and he explained why.

Generali didn't respond.

### **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.

I do understand Mr B's strength of feeling about this matter and have considered the impact the claim decline had on his health.

I have re-visited the language that Mr B felt was insensitive. I should point out that it is not

for this service to regulate or punish insurers. But in any event, I don't find the comments made to Mr B's employer in particular, or other comments made, were insensitive. This was a complicated case and Generali explained its reasons for the decline at the time.

Nevertheless I felt that an award of compensation was due and I remain of that opinion. I'm not persuaded to change my provisional finding that £250 was fair and reasonable in all the circumstances.

As Generali has not responded I see no reason to change my provisional findings, which I adopt here.

### **My final decision**

For the reasons given above my final decision is that Assicurazioni Generali SpA should:

- Admit Mr B's claim from the end of the deferred period and reassess in the light of any new evidence.
- Add interest at an annual rate of 8% simple to any benefit payment that Mr B should have received from the date the payment should have been made until settlement.
- Pay Mr B £250 in compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 17 April 2023.

Lindsey Woloski  
**Ombudsman**