

The complaint

Mr P is unhappy that Assicurazioni Generali S.p.A ('Generali') hasn't accepted liability for a claim made under a group income protection policy ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my decision.

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.

That includes all the points made by Mr P in response to our investigator's view. I appreciate the time this must've taken him, and I am thankful for his detailed reply. I acknowledge I've only summarised his points, and in my own words. I won't respond to everything said. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to be able to fulfil my statutory remit.

The relevant policy terms and conditions

The policy terms say:

Benefit is payable...once a member has continuously satisfied the relevant definition of Incapacity for a period of time greater than the Deferred Period.

The policy schedule sets out the applicable definition of incapacity as:

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.

The policy terms say "work" means:

On the part of a Member, any employment, self-employment, or consultancy or engaging in any work or physical activity which gives rise, or is capable of giving rise, to any remuneration, income, fees, profits, capital or other gains, whether or not they are taxable and whether or not they are paid to, or to the order of, or enjoyed, whether directly or indirectly, by the Member or any person with whom he lives or to whom he is related or who is dependant on him.

The policy terms also say:

If the policy is discontinued, the Principal Employer's entitlement to claim Benefit in respect of any Member who was Incapacitated prior to the date of discontinuation shall continue...

The decision not to accept liability for the claim

I know Mr P will be very disappointed, and I have a lot of empathy for the situation he finds himself in, but for reasons set out below, I'm satisfied that Generali has acted fairly and reasonably by concluding that no claim can be made under the policy in respect of Mr P's absence from work.

- Mr P was signed off work by his GP for three months at the start of September 2022 and the policy ended at midnight on 31 August 2022.
- I'm satisfied that given the way in which incapacity is defined under the policy terms, Mr P wasn't incapacitated until that date as he was carrying out 'work' as defined by the policy terms. Although, he may not have been carrying out his full duties (and he says he hadn't done so for some time before being signed off sick by his GP), he was still in full time work, wasn't absent through sickness and was receiving his salary from his employer immediately prior to, and when, the policy ended.
- So, under a strict interpretation of the policy terms, I don't think Mr P met the definition of incapacity at the time the policy ended. And I'm persuaded that Generali has fairly concluded that a claim can't be considered on the policy, which ended shortly before Mr P was signed off sick from work.
- I've carefully considered whether that leads to a fair and reasonable outcome in the circumstances of this complaint. And I'm satisfied it does (although, from Mr P's perspective, I can understand why he'd disagree).
- Mr P says he could've legitimately been signed off work sick before the start of September 2022. He says that he'd realised his health was deteriorating in July 2022 and he told his employer at the start of August 2022 that he couldn't continue working. Mr P says that rather than reduce his hours, he agreed to work until the beginning of September 2022 to ensure a smooth handover of his duties. However, I don't think this means Generali should consider a claim outside of the policy terms. Although, it was aware of his medical condition and that there were regular conversations with the policyholder about his illness deteriorating, I don't think it was under any obligation in the circumstances of this case to consider a claim if made after the policy ended.
- At the start of August 2022, Mr P says Generali agreed that a claim should be submitted once he was signed off sick from the beginning of September 2022 and didn't say that a claim should be made before then. However, I don't think Generali was aware that the policy was unlikely to be renewed by the policyholder. And besides, whether Mr P is too unwell to work and met the definition of incapacity is a medical issue. If Mr P and his employer had agreed one month in advance that Mr P would continue working his usual hours until the beginning of September 2022 (to handover his work), and Mr P felt well enough to do so, then I don't think it would be fair and reasonable for me to conclude that Mr P was effectively incapacitated before the policy ended.
- I note that for some time before the policy ended Generali was aware of Mr P's illness and provided support for him to stay in work for as long as possible. In 2021, Generali put Mr P on its early intervention scheme and provided him with vocational rehabilitation support, whilst he was still working. However, I'm not satisfied that this means a claim was made under the policy before it ended. Under the heading

'claiming for benefit payments' the policy says that the principal employer "shall promptly notify Generali when a Member has been continuously absent from Work for one month (or has Worked on a reduced basis for a period greater than one month) due to injury or illness" and that a "a formal claim for Benefit shall be made by the Principal Employer as soon as reasonably practicable but in any event no later than 6 weeks..." From what I've seen, I'm not persuaded that a claim was made for the Benefit before the policy ended (although support was given by Generali).

- I've also taken into account that Mr P says that the insurer to whom his employer switched cover has also said it won't be considering a claim for income protection as under the terms of that policy it says that Mr P wasn't actively at work at the time the policy started with it. However, I'm not convinced that means Generali ought reasonably to consider a claim under the policy outside of the policy terms. If Mr P is unhappy with the decision of the other insurer, he's free to pursue a complaint against it.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 November 2024.

David Curtis-Johnson
Ombudsman