

The complaint

Mr B is unhappy Assicurazioni Generali SpA (AGS) terminated his income protection claim.

What happened

Mr B had a group income protection policy with AGS via his employer. In July 2020 he became absent from work due to ongoing fatigue and was later diagnosed with long covid. So he made a claim under his income protection policy.

AGS accepted the claim and backdated benefit payment to 4 January 2021 which was the end of his deferred period.

After paying the claim for over a year, AGS required a continuation form to be filled out and obtained medical reports to review if Mr B was still entitled to a benefit under the policy.

On 22 August 2022, AGS terminated benefit payments. They said they didn't consider the policy definition of incapacity to be satisfied. And highlighted that the most recent GP records didn't show evidence of Mr B receiving ongoing medical support or treatment.

Unhappy with this, Mr B appealed the decision. In February 2023 AGS maintained their position and concluded they had fairly terminated the benefit.

Due to AGS's conclusion that he no longer met the definition of incapacity, Mr B's employer said he needed to start a phased return to work in June 2023. He worked from home and performed lighter duties. However, he was unable to sustain this return to work. He continued to take absences and suffered a deterioration in his health.

In August 2023 Mr B's employer explained his absence wasn't sustainable for them as a business and his employment contract was terminated due to incapacity.

Our investigator looked into what had happened. She explained she didn't think AGS had provided evidence to support there had been an improvement to Mr B's conditions and ability to work. So she thought they had unfairly ceased Mr B's benefit payment. She recommended the benefit was reinstated and backdated to when payments ceased. And AGS should also pay Mr B £200 in compensation for unfairly terminating his benefit and causing stress.

AGS agreed to reinstate the claim and backdate it. And pay the £200 compensation. Mr B asked for further clarification on the remedy and raised additional points. In summary he said:

- It was solely due to AGS stopping his claim that his employer terminated his employment in August 2023.
- If AGS had not made this error he would've continued receiving benefit payments until his health improved, he returned to work or he reached 65/state pension age
- He also lost out on his standard employment benefits amounting to approximately £1,500 per when his employment contract was terminated

- His benefit payments are subject to annual increases so he missed out on the 2023 and 2024 annual uplifts (when official UK inflation was above 10%)

Our investigator said AGS should reinstate the claim while assessing it against the remaining terms and condition of the policy which included:

"An individual ceases to be a Member and any entitlement of Benefit ceases on the earliest to occur of the following: the date they cease to be an Employee"

Mr B felt strongly that the above term wasn't valid in the circumstances because his employment was only terminated because AGS unfairly stopped paying his benefits.

The case was then passed to me for a decision. I issued a provisional decision explaining that I was intending to uphold this complaint. I said:

As AGS accepted Mr B's claim it's for them to demonstrate that the decision to terminate the claim was fair. Having reviewed everything, I agree with our investigator that AGS unfairly terminated Mr B's claim. But I think AGS need to go further to put things right than our investigator recommended.

Due to AGS's conclusion that Mr B no longer met the definition of incapacity, he was asked to start a ten week phased return to in June 2023. His employer put several reasonable adjustments in place. He worked from home and performed lighter duties. This included taking longer breaks to manage his fatigue and limiting the number of meetings due to the cognitive impact this might have.

However, the evidence shows Mr B was unable to sustain this return to work. He continued to need to take leave from work and he appears to have suffered a deterioration in his health. So I think it's reasonable to conclude Mr B returned to work sooner than he should've in June 2023.

I'm persuaded by the evidence from Mr B's employer that his employment contract then went on to be terminated solely because AGS had stopped paying his group income protection claim and his absence wasn't sustainable for them as a business. So if it wasn't for AGS's error, its most likely that Mr B would still be employed.

As such, in the circumstances of this specific case, I don't think it's fair for benefit to stop at the point Mr B's employment was terminated in August 2023. I think it's reasonable for AGS to treat Mr B as if his policy was still in place.

The onus remains on AGS to fairly demonstrate Mr B no longer meets their definition of incapacity or fairly decline cover against the remaining terms of their policy. Its reasonable for AGS to continue to review the claim and instruct an independent medical examiner to assess Mr B's condition and capabilities.

Mr B has also explained that when his employment was terminated because of AGS's error, he lost out on his monthly standard employment benefit allowance. He has provided evidence of his payslips and from what I've seen I think it would be fair for AGS to review this evidence and calculate his monthly allowance. Mr B should then be reimbursed this monthly figure.

I've also thought carefully about the non financial impact AGS's error had on Mr B during an already difficult time with his health. It's clear the termination of his benefit payments caused him distress and worry. He then had to return to work when he wasn't ready. And I've no doubt exacerbated his symptoms. I'm mindful that one of Mr B's symptoms was extreme

fatigue – so overexerting himself would've impacted his recovery. He then lost his job which would have been extremely distressing and caused additional worry.

So taking everything into account, I think the compensation should be increased to a payment of £750 in total for the upset and distress AGS caused by unfairly terminating Mr B's benefit.

I explained I intended to uphold the complaint. I recommended AGS reinstated the claim and pay Mr B directly the monthly income protection benefit, plus the sum of his employee benefit allowance. And they should pay £750 compensation for the upset to Mr B by unfairly terminating the benefit and causing him to return to work before his health had improved

Responses to my provisional decision

Mr B accepted my recommendation. AGS disagreed and sent in a detailed response challenging the redress I'd set out. In summary they said:

- The insurance contract stipulates that payment of a claim ceases on termination of employment. By requiring payment beyond termination of employment, my provisional decision is rewriting the contract, which is beyond the powers of this Service
- There isn't sufficient evidence to show Mr B's employment termination was solely attributable to their decision to cease payments under the claim
- The employment termination occurred a year after the claim was stopped
- Paying the employee benefit isn't covered under the policy so its unreasonable for this to be included

I must now reach a final 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.

ICOBS 8.1.1R(3) says that AGS must not unreasonably reject a claim. AGS haven't disputed that their decision to terminate the claim was unfair. But the issue of how to put this right remains in dispute.

Paying benefit after termination of employment

Mr B's employment was terminated on 31 August 2023, and the insurance contract says AGS doesn't have an obligation to continue paying the benefit beyond that date. However, in the circumstances of this case I think it's reasonable for AGS to depart from this and treat Mr B as if his policy was still in place. I say that because for the reasons already set out in my provisional decision, I'm persuaded his employment was terminated because AGS unfairly refused to continue paying his employer's claim for Mr B's absence.

AGS has said there is insufficient evidence to show Mr B's employment termination was solely attributable to their decision to cease payment of the claim. But I disagree.

It's important to note that an employer is prevented from terminating an employee in receipt of income protection benefit on the grounds of continuing incapacity to work (*Aspden v Webbs Poultry and Meat Group (Holdings) Ltd as affirmed by the Supreme Court in Tesco Stores Ltd v Union of Shop, Distributive and Allied Workers [2024] UKSC 28*). So Mr B's employer was unable to terminate his contract of employment while AGS was paying the

benefit for his income protection claim. But when AGS ceased paying the claim, then his employer was able to terminate his employment.

This is evidenced in the termination letter to Mr B where his employer mentions his absence from work, it's clear that it refers almost exclusively to absences after AGS stopped benefit payments:

"The purpose of this hearing was to discuss your capability in fulfilling your contract of employment. This specifically related to your absence from work since August 2022... My findings: that your levels of absence since August 2022 are unacceptable."

I'm persuaded this indicates that Mr B's employer had the above case law above in mind and was considering termination because AGS had stopped paying their income protection for him.

AGS highlighted Mr B's termination happened more than a year after his benefits payments stopped, so they can't be related. I've thought carefully about the timeline of events in this specific case, but I remain persuaded his employment termination was a result of his benefit payments being stopped unfairly.

I say that because once the benefit payment has stopped, Mr B appealed the decision after obtaining further medical evidence, which included a confirmed diagnosis of Long Covid. This was then followed by an unsuccessful ten-week phased return to work in June 2023 where his employer put several reasonable adjustments in place. But the evidence shows Mr B was still unable to sustain his return to work - he suffered a deterioration in his health and had to take more time off because he'd returned to work when he was still unwell.

I think it's fair that Mr B's employer didn't make a decision about his employment until after the appeal and return to work processes had been completed. And I don't think the timeframe here was unreasonable.

Taken all the above into account, my position remains that if it wasn't for AGS's error, its most likely that Mr B would still be employed. So it was their own wrongdoing which enabled them to escape having to pay this claim further.

As such, in the circumstances of this specific case, I don't think it's fair for benefit to stop at the point Mr B's employment was terminated in August 2023.

Paying additional Employee benefits

I've considered AGS's arguments on this point and having reviewed the policy documents I agree the inclusion of this would go beyond the contract of insurance.

The benefit is defined as:

Policy *Basic Benefit: 75% of Insured Salary.*
Schedule

Insured Salary: The greater of OTE and basic annual salary plus the annualised value of salary sacrificed for regular replacement pension contributions under a companywide pension plan or a named pension scheme. OTE will be fixed at 1 January each year.

It's clear that the policy only provides cover for salary and pension contributions - it has never included any additional employee benefits. So, on reflection I don't think it's fair to say Mr B is entitled to this under the policy.

Finally, Mr B has confirmed he received £37,690.28 in connection with the termination of his employment and also a pro-rated salary for the hours he worked during his attempted phased return, amounting to £9,431.91. It's important these figures are taken into account and deducted from AGS's settlement amount.

Putting things right

Assicurazioni Generali SpA need to put things right by:

- Reinstating Mr B's claim and continuing to pay the monthly income protection benefit in accordance with the policy terms and conditions, except the terms relating to Mr B's continued employment.
- Benefit payments should be backdated to the date of termination and include any annual increases. 8% simple interest should be added and calculated from the date each payment was due, up until the date of settlement.
- Deduct the settlement Mr B received from his employer and his phased return salary
- Paying £750 compensation for the upset caused by unfairly terminating the benefit causing Mr B to return to work before his health had improved

*All payments will need to be made direct to Mr B as he is no longer employed.

**If AGS considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give Mr B a tax deduction certificate if he asks, so he can reclaim the tax from HM Revenue & Customs if appropriate.

***There is a limit on the amount of compensation that the Financial Ombudsman Service can require a business to pay. Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £415,000, plus any interest that I think is appropriate. The award limit here would apply to both the backdated and future benefit payments in relation to this income protection claim. If settlement goes over the limit, then I would recommend AGS still pay the remaining balance, but they don't have to do what I recommend.

My final decision

I uphold this complaint against Assicurazioni Generali SpA and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 January 2025.

Georgina Gill
Ombudsman