

The complaint

Mr Q is unhappy that Zurich Assurance Ltd (Zurich) declined his income protection claim.

Mr Q is being represented on this complaint.

What happened

Mr Q is insured under his employer's group income protection insurance policy. The policy pays a benefit in certain circumstances if Mr Q is unable to carry out his employment, after a deferred period of 26 weeks. Zurich is the underwriter on the policy.

In July 2022, Mr Q was diagnosed with Follicular Lymphoma. He was signed off from work from 1 March 2023 and a claim was submitted to Zurich.

Zurich reviewed the medical evidence. It declined Mr Q's claim on the basis that the evidence didn't meet the definition of incapacity as set out in the terms and conditions of the policy.

Mr Q brought his complaint to this service. Our investigator didn't uphold the complaint. She didn't think Zurich had acted unfairly in declining the claim as there wasn't sufficient medical evidence to support the claim as required by the policy terms and conditions.

Mr Q disagreed with the investigator's findings and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

At the outset, I wanted to acknowledge that the whole situation has been very difficult for Mr Q. Whilst I understand that he is experiencing a greater degree of uncertainty due to his current diagnosis, my role is to reach an independent and impartial outcome that's fair and reasonable, based on the information available to me. I don't doubt that Mr Q has been impacted by the diagnosis, but this doesn't automatically mean that Zurich must pay his claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this income protection policy and the circumstances of Mr Q's claim, to decide whether I think Zurich has treated him fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Mr Q. Rather it reflects the informal nature of our service, its remit and my role in it.

I've first considered the terms and conditions of this policy, as it forms the basis of the contract between Mr Q's employer and Zurich.

The policy states for a claim to be paid the definition of incapacity must be met. On page 4 of the policy document, incapacity is defined as:

'Incapacity or Incapacitated means an illness or injury that causes the member to be unable to work and is applicable under this policy. The Incapacity definition that applies is in your policy schedule..'

The incapacity benefit Mr Q has on his policy is 'standard'. This is defined on page 5 as:

'The member cannot perform the Material and Substantial Duties of their employment and they're not doing any paid work.'

And 'Material and Substantial Duties' means the duties that are essential activities for which a member is employed that take up a significant proportion of their time.

Generally, in insurance, it's for the consumer to show their claim is valid. In this case, Mr Q is required to provide medical evidence to show he is unable to work and cannot perform the material and substantial duties of his employment due to injury or illness.

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Mr Q's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available medical evidence to decide whether I think Zurich acted fairly and reasonably in declining Mr Q's claim.

I've been provided with detailed medical evidence relating to Mr Q's diagnosis and condition since 2022. The issue for me to determine is whether I think the medical evidence supports Zurich's decision that Mr Q doesn't meet the policy definition of incapacity.

The GP report dated May 2023 states that Mr Q's condition is static, and no investigation or tests were pending. His GP said Mr Q's abilities were rated as slightly reduced or normal function. The letters from the Consultant Haematologist stated that Mr Q's condition was static, and the long-term prognosis was good. There was no physical restriction to work, and the main reason Mr Q is off from work was due to stress because of his diagnosis and his cognitive impairment. Whilst there is no doubt that Mr Q has a medical condition, the evidence suggests that he hasn't received any further medical treatment except the regular blood tests, he isn't on any medication and his symptoms weren't significant but remained static. And I note the GP signed him off from work, but I wouldn't usually consider that fitness to work statements based on self-reported symptoms are sufficient evidence to demonstrate that a policyholder cannot carry out their employment.

Mr Q had an occupational health assessment in August 2023. This stated Mr Q was suffering mild to moderate depression in relation to his diagnosis and didn't know if it would become more aggressive. The report stated Mr Q was unfit to work at present. I've carefully considered this too. I have to look at the medical evidence in its totality. The letter predominantly relates to self-reported symptoms with the basis of helping and supporting Mr Q with his condition.

Zurich's Chief Medical Officer (CMO) reviewed the medical evidence provided by Mr Q. This stated that Mr Q is suffering from a reactive mood disturbance especially as he hasn't required therapy or been referred to the mental health services. He said there was no active mental health plan so to say there was a mental health problem would be incorrect. Whilst

there is a potential for relapse there is no timescale for this.

Mr Q's medical information was passed to a Consultant Clinical Psychologist for an Independent Medical Examination (IME). The IME report dated 11 October 2023 set out a detailed summary of Mr Q's status and which ultimately concluded that Mr Q wasn't affected by a debilitating mental condition. The report stated that in the two questionnaires Mr Q completed, his anxiety score was low or fairly low. Whilst he may not be completely symptom free, he is not affected by a formal mental health problem that would impede his capacity to work. And in terms of everyday activities, the consultant didn't think Mr Q was limited in any marked ways, he wasn't on any medication and was receiving support from a specialist cancer group.

The IME is objective and independent, and the consultant has reviewed Mr Q's medical history and medical records. The consultant is a specialist in clinical psychology. So, I think the report does, on balance, carry more persuasive weight.

Having taken into account the level of detail and specific conclusions contained in the medical evidence, I'm satisfied that, on balance, the evidence shows it's likely that Mr Q doesn't meet the policy definition of incapacity. There is no dispute that Mr Q has been diagnosed with a medical condition since 2022, but there isn't sufficient evidence that suggests medically he is unable to perform the material and substantial duties of his employment due to injury or illness.

Mr Q says his role is specialised and there's no alternative role that his employer can offer. However, it's not up to Zurich to give any thought to the practical arrangements of a return-to-work plan – that's a matter which is between Mr Q and his employer.

Mr Q says he wants to focus on his health at this current time as he may need cancer treatments in the future. Whilst I understand why he feels this way, that's not the same as being unable to work due to injury or illness as defined by the policy. And I don't think the medical evidence doesn't currently suggest that Mr Q is debilitated to the extent that he can't carry out the material and substantial duties of his employment.

And, Mr Q says his cognitive function is slightly impaired. However, the test is whether Mr Q meets the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely that he does. There is insufficient medical evidence to say that Mr Q is currently incapable to carry out the material and substantial duties of his employment.

Based on all the available evidence, I don't think Zurich has declined Mr Q's claim unfairly. I don't find that there are any reasonable grounds upon which I could direct Zurich to pay Mr Q's claim. It follows therefore that I don't require Zurich to do anything further.

My final decision

For the reasons given above, I don't uphold Mr Q's complaint about Zurich Assurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 11 December 2024.

Nimisha Radia
Ombudsman