

## **The complaint**

Mr R is unhappy that Canada Life Limited declined a claim made on a group income protection insurance policy.

Although Mr R is represented in this complaint, I've referred to him throughout.

## **What happened**

Mr R had the benefit of a group income protection insurance policy ('the policy'). Subject to the remaining terms, the policy can pay out a monthly benefit if Mr R is unable to work due to illness (or injury) after the deferred period.

In 2022, Mr R was signed off work by his GP as being too ill to work due to post Covid-19 symptoms and a claim was made on the policy. Canada Life declined the claim because it said there wasn't enough evidence to conclude that Mr R was incapacitated as defined by the terms of the policy.

Mr R appealed that decision, providing further evidence in support of his submissions but Canada Life maintained its decision to decline the claim. It said the additional information provided by Mr R hadn't changed its previous understanding of the overall medical and functional status of Mr R during the deferred period and it concluded that the claim didn't meet the definition of incapacity.

Our investigator looked into what happened and didn't uphold Mr R's complaint. Mr R disagreed and raised further points in reply which didn't change our investigator's opinion. So, his complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision in December 2024 explaining in more detail why I wasn't intending to uphold Mr R's complaint. An extract of my provisional decision is set out below.

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Subject to the remaining terms of the policy, Canada Life will pay the monthly benefit if a member of the policy is incapacitated. The definition of incapacity relevant to this complaint is the 'standard' definition as confirmed by the policy schedule. The standard definition explains:

We will treat a member as suffering incapacity, if, throughout the deferred period and beyond, the member's illness or injury prevents them from, and makes them incapable of, performing the material and substantial duties of their normal occupation.

Illness is defined as:

Clinical ill-health causing a material deterioration in physical or mental health.

Material and substantial means:

The duties that a member is normally required to do to perform their normal occupation, and which cannot reasonably be omitted or modified by you or the member. The duties refer to the tasks the member is required to perform, and whether those tasks could be carried out for you or any other employer.

In addition, a journey to and from the member's normal residence to their normal place of work is not regarded as part of the normal occupation.

Has Canada Life fairly and reasonably declined the claim?

The Insurance Conduct of Business Sourcebook ('ICOBS') says insurers must act fairly and promptly when handling claims made under the policy. And it mustn't unreasonably decline a claim.

When making a claim, it's for Mr R to establish his claim and in this case, that means establishing that he was incapacitated as defined by the policy terms.

I'm not a medical expert. So, I've relied on all the evidence available to me when considering whether Canada Life has acted fairly and reasonably here. I know Mr R will be very disappointed but for reasons I'll go on to explain below, I'm currently satisfied Canada Life has acted fairly and reasonably by declining the claim.

- For around ten weeks before the end of June 2022, Mr R had been returning to work on a phased basis, having been off work with similar symptoms for a briefer period of time before then. This was on the advice of occupational health.
- An occupational health report dated around two weeks before Mr R's long-term absence began in June 2022 reflects that Mr R had been able to work up to 3.5 days per week but had struggled to increase his hours beyond this and reported his fatigue levels to be "highly variable". In the opinion of the occupational health consultant, Mr R was fit to remain in work three days per week at that time and for the next 10-12 weeks.
- Mr R says he asked the occupational health consultant during a meeting in June 2022 whether he should continue working as he felt so tired. And he was advised that he should as the longer he remained off work the harder it might be for him to return. However, that isn't reflected in the report, and I'm satisfied that the occupational health opinion at the time was that Mr R was fit to work three days each week.
- Mr R says that he managed to work for a couple more weeks but then experienced significant overall burnout and was signed off sick by his GP. However, I've seen nothing from a medical perspective explaining what changed and, although feeling fatigued, why Mr R was able to work three days each week up to then as part of a phased return to work.
- The next occupational health report is dated May 2023, so almost one year later. The report reflects that Mr R's symptoms increased shortly after the last occupational health appointment in June 2022 to the extent that he was no longer able to work due to fatigue. However, Mr R being unable to work due to fatigue is based on his self-reporting. And although the occupational health consultant felt that Mr R was unable to work at the time of the report in May 2023, I don't think that's relevant to whether he met the definition of incapacity during the deferred period. So, I've placed less

weight on the contents of the occupational health report dated May 2023.

- The claim form completed by Mr R in support of the claim lists brain fog, fatigue, headaches and anxiety/stress as the symptoms preventing him from working.
- Although referred to in his claim form and subsequent witness statement prepared in support of his appeal, the first mention of Mr R having headaches in his medical records is early September 2022 (so not throughout the deferred period) and it's reflected that these had been ongoing for the past couple of weeks.
- During the deferred period, there's not much mention in the GP records explaining how Mr R's symptoms were impacting his functionality or why, in June 2022, his condition deteriorated to the point that he was unable to work for an extended period. The records reflect Mr R's symptoms as self-reported by him. And during the deferred period, it doesn't look like he underwent any objective functional tests to assess the impact his post Covid-19 symptoms were having on him and his ability to work.
- An early intervention report prepared by a nurse on behalf of Canada Life dated August 2022 also makes no mention of headaches. And reflects that Mr R said that having a period of rest had helped him and he'd not been feeling so physically fatigued although he did still feel mentally fatigued and screen work 'drains him'.
- Canada Life has said that during this time, Mr R was able to carry out other tasks such as helping with a renovation project. In his witness statement Mr R says that since stopping work, on a good day, he'd spend around 1.5 hours doing some DIY (flooring, skirting, panelling etc). And I note that there's an entry in his GP notes from January 2023 (which isn't too long after the end of the deferred period, so I still think is relevant) which reflects that Mr R's main symptom is tiredness but he "generally feels refreshed in the mornings". It's also reflected that Mr R is "trying to keep busy each day helping organise house being built".
- I appreciate Mr R's normal occupation was more sedentary in nature and before his duties were adjusted involved line management responsibilities and numerous video calls each day. However, I don't think Canada Life has acted unreasonably by considering the activities Mr R was able to do, even he was also required to sleep for a couple of hours during the day.
- When deciding this case, I've taken into account the witness evidence I've received. And although this is relevant, I've placed more weight on the available medical evidence during the deferred period and shortly thereafter. I'm satisfied that this more likely reflects the impact Mr R's symptoms were having on him at the relevant time. Whereas many of the witness statements and character references are dated around a year after the start of the deferred period and describe Mr R's symptoms more generally over a significant period. When assessing the claim, Canada Life is considering whether Mr R was incapacitated throughout the deferred period. So, I'm more persuaded by the contemporaneous evidence available at the time.
- I've also taken into account other medical evidence including the letters from Mr R's consultant rheumatologist dated June and July 2023 which says, in their opinion, Mr R hadn't been fit to work in his usual occupation since June 2022 and will not be able to do so for the foreseeable future. These letters are dated around a year after the start of deferred period and are based on Mr R's reporting of symptoms. There's little detail explaining why Mr R couldn't carry out the material and substantial duties of his

normal occupation as defined by the policy terms during the deferred period.

- Mr R was signed off by his GP as being unable to work during the deferred period (and beyond) and I've taken that into account. However, there's a specific incapacity definition that needs to be met under the policy for the benefit to be paid.
- I've also considered but placed less weight on the contents of Canada Life's chief medical officer's report dated August 2023 prepared after Mr R's appeal with supporting documents. The chief medical officer is also a consultant physician and rheumatologist. The report concludes that Mr R most likely has burnout fatigue syndrome which isn't a recognised illness by the World Health Organisation so doesn't meet the illness definition under the policy. However, having read the report and the basis on which that diagnosis has been made, I don't think it's fair and reasonable for Canada Life to rely on the conclusions of that report. I'm persuaded that untested assumptions have been made about Mr R and he didn't have an opportunity to discuss or provide evidence about the points the chief medical officer has relied on when concluding the diagnosis of burnout fatigue syndrome.
- However, leaving aside the conclusions of that report, I'm satisfied for the reasons set out above that Canada Life has fairly and reasonably declined the claim.

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I invited both parties to provide any further information in response to my provisional decision. Canada Life responded, agreeing with my provisional decision. Mr R raised further points in reply. In summary these included:

- Whilst Mr R was on a phased return to work, he was doing very little actual work, and he wasn't carrying out the material and substantial duties of his occupation. Attempting to work proved that he couldn't.
- It is no surprise that someone who is attempting to work while ill would suffer deterioration in their health, as supported by the witness evidence provided.
- Canada Life hasn't shown that the policyholder (Mr R's employer) disagreed that Mr R was incapacitated.
- It hasn't been established that Mr R's account of why he couldn't continue working isn't credible so it should be taken at face value. Mr R has provided evidence in support of his good character and trustworthiness.
- The occupational health report dated May 2023 says Mr R "clearly suffered a considerable deterioration...shortly after the last assessment".
- Busy clinicians do not record everything in their correspondence. They are trusted to exercise good judgement based on their clinical assessment.
- A GP fit note to the effect that a person is not fit for any work should meet the test of being unable to carry out the said occupation.
- If functionality tests had been suggested by the medical examiners, Mr R would've gladly taken them. Canada Life could've asked for these if it would've helped clarify whether Mr R was incapacitated.
- It's strange that I've referred to Mr R's ability to do DIY for a period of time during the day when considering whether Mr R could undertake the material and substantial duties of his occupation. This was gentle and not comparable work. Mr R also rested and slept for a period of time during the day after this.

- I shouldn't have placed less weight on the witness evidence. The witnesses paint a very graphic picture of incapacity.
- Mr R's condition didn't change in any material way over time and he was absent from work due to illness rather than through choice.

Mr R also provided a further report from a specialist pain and fatigue rehabilitation provider dated May 2024 which summarises the work they've been doing with Mr R since the summer of 2023. At that time, it reflects that he scored the maximum score on the fatigue scale questionnaire. It concludes that Mr R was unfit for work and remained unfit to carry out his former role due to cognitive capacity and fatigue.

### **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'm thankful for the additional comments made in response to my provisional decision which I've carefully considered. I acknowledge I've only summarised those points – and in my own words. I won't respond to every comment made. No discourtesy is intended by this. As I explained in my provisional decision, I've focussed on what I think are the key issues relevant to this complaint. 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.

Having considered the further points, I remain satisfied that Canada Life has fairly declined the claim. I do not seek to minimise the impact of Mr R's symptoms on him, and I can see he has been through a very difficult time. I have a lot of empathy for his situation. However, there is a specific definition of incapacity that needs to be met and I find that Canada Life has fairly concluded that Mr R hasn't established that he was incapacitated as defined by the policy terms throughout the deferred period.

- The policy terms reflect that the deferred period is the period throughout which a member "suffers an incapacity and is unable to work due to that incapacity". So, I'm satisfied that the period during which Mr R was working a phased return in 2022 doesn't count towards the deferred period as he was working (albeit on reduced hours and carrying out less responsibilities).
- I'm satisfied Canada Life has carried out a fair and reasonable review of the medical evidence when taking the decision to decline the claim.
- Although Mr R was certified as being unable to work by his GP and was waiting to attend a long-covid clinic, there's little in his medical records from the deferred period and shortly after to show how his functionality was impacted or why he couldn't carry out his role with adjustments. And what there is in the medical records from around this time reflects Mr R's self-reporting of his symptoms such as fatigue and difficulty concentrating. When assessing the claim, I'm satisfied that Canada Life fairly relied on what was in Mr R's medical records from that time.
- Mr R was certified as being signed off work by his GP in June 2022, a couple of weeks after an occupational health report reflecting that his fatigue levels were highly variable, but he was fit to work three days per week with adjustments. I know the reasons why Mr R says that he couldn't work shortly after this occupational health assessment but the medical records from the time don't provide much insight from a medical perspective as to why he was no longer able to work.

- I've taken into account the occupational health assessment from May 2023, which was carried out by telephone and is almost a year after the previous assessment in June 2022 referred to above. It does refer to Mr R's symptoms increasing shortly after that last assessment to the extent "he found he was no longer able to sustain attendance at work due to significant fatigue". And that since then Mr R had found that his symptoms had deteriorated. The consultant physician in occupational medicine concludes that, in their opinion, Mr R remained unfit for any work and "he has clearly suffered from a considerable deterioration in his symptoms shortly after the last assessment and has had no improvement in the intervening time".
- However, this conclusion is based on Mr R's self-reporting of symptoms and is dated many months after the end of the deferred period. I'm satisfied that the available medical evidence from around the time of the deferred period is more persuasive given that Mr R needs to establish that he was incapacitated throughout the deferred period.
- I don't think it's for Mr R's employer to determine whether he was incapacitated as defined by the policy. Mr R also says that Canada Life could've suggested Mr R undergo functionality tests. But there's no obligation for Canada Life to do this. It's for Mr R to establish that he met the definition of incapacity when making a claim, supported by medical evidence.
- Although Mr R was certified as being unable to work by his GP, and whilst a relevant consideration, this isn't by itself enough to show that he met the policy definition of being incapacitated.
- I've also considered the report dated May 2024, but again, I've placed less weight on that given how long after the end of the deferred period this is dated and the period it comments on.

So, for these reasons and for reasons set out in my provisional decision (an extract of which is set out above and forms part of this provisional decision) I don't uphold Mr R's complaint.

### **My final decision**

I don't uphold Mr R's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 March 2025.

David Curtis-Johnson  
**Ombudsman**