

## The complaint

Mr T has complained that MetLife Europe d.a.c. ceased his claim for income protection benefit under his employer's group insurance policy.

## What happened

Mr T went off work in January 2020 because of issues with his ankle. A short course of physiotherapy was recommended but, for various reasons, this continued until October 2022. At that time a report from the physiotherapist said that Mr T had a full range of movement, albeit with some pain on certain movements. A phased return to work was recommended. MetLife commissioned a Functional Capacity Evaluation (FCE) which took place in February 2023. Following a review of the report, which showed unreliable symptom reporting, MetLife ceased benefits with effect from March 2023.

Mr T appealed and MetLife reviewed the claim, requesting further medical information but the decision to cease benefit didn't change. Mr T appealed again but consideration was postponed until Mr T had seen a consultant. MetLife then considered the consultant's report as well and an occupational health report but didn't conclude that benefit should be reinstated.

Unhappy Mr T brought his complaint to our service. He is represented by Ms G, but for ease of reading I shall just refer to representations as being made by Mr T.

Our investigator didn't recommend that the complaint be upheld. They didn't think that MetLife had done anything wrong in terminating Mr T's claim in the light of the evidence.

Mr T said that the FCE report on which MetLife had relied was substantially flawed and contradicted by his own consultant. He felt that the assessment carried out by his employer was more comprehensive and assessed him against his actual job description.

As no agreement was reached the matter was passed to me to determine. I issued a provisional decision saying 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.*

*MetLife has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably. So I've looked carefully at all the circumstances in order to see if MetLife treat Mr T fairly. Having done so I've reached a different conclusion to that reached by the investigator for the following reasons:*

- There is no dispute that Mr T has suffered with his ankle and for this reason MetLife originally accepted his claim. But on review it felt the evidence didn't support an ongoing finding of incapacity in accordance with the policy definition. This is that the member is unable to perform, due to illness or injury, the material and substantial*

*duties required of them in their own occupation which they were performing immediately prior to being incapacitated and are not following any other occupation. I don't presently find that the medical evidence supports that conclusion.*

- I say that because it is for MetLife to show that Mr T no longer meets the definition of incapacity. It has relied, in the main, on a physiotherapy report and the FCE results. It also notes that there is nothing in Mr T's medical records to show he continued to report pain to his GP. But Mr T has countered these arguments. He felt that physiotherapy was making his symptoms worse. However he also says that he did complete a course on the NHS prior to the physiotherapy to which MetLife refers. A decision was taken to end the physiotherapy due to lack of progress. The discharge report notes that Mr T had regained 100% movement in his ankle and a phased return to work was recommended. Although the report noted too that Mr T had some pain on eversion, it didn't support the conclusion that Mr T was unable to work in his occupation due to illness or injury.*
- With regard to the GP notes Mr T points out that there are several references to ankle pain. It seems that he was advised to reduce his pain medication due to problems with his kidney. He deals with the ongoing pain in his ankle with the use of pain relief medications.*
- In February 2023 MetLife arranged a FCE for Mr T. Mr T feels that this investigation was substantially flawed, did not undertake the required tests, failed to assess him against his actual job and miscalculated several areas in the FCE scale. I don't find Mr T's comments regarding this evaluation are wholly justified, and I can understand why MetLife took the view that Mr T's there were inconsistencies in Mr T's self-reporting.*
- However in July 2023 Mr T met with an Accredited Specialist in Occupational Medicine for an occupational health assessment. The specialist undertook a physical examination which showed evidence of discomfort and tenderness over the arthritic joint in his left foot and a slightly reduced range of movement of the left ankle mainly due to pain. He reported that putting pressure on steps could result in significant pain and discomfort for Mr T in the foot and ankle. The report concluded that Mr T was unfit for work and this was likely to be the case for the next six months, if not longer. Asked about recommendations for adjustment, the specialist didn't identify any adjustment that could facilitate Mr T's sustainable and safe return to work at that time.*
- I note that there have been some delays in the assessment of the claim, but I'm satisfied that these were mostly outside of MetLife's control. It waited for a consultant's report which advised a further injection was planned. I acknowledge that MetLife felt the next option would be surgery given its discussions with Mr T. But the planned course is evidence that Mr T was still experiencing pain and needed treatment. I make no further comment with regard to his finger issue, as this didn't originally form part of the claim.*
- It is agreed that Mr T's insured role is a physical one. He needs to climb ladders and scaffolding. He is also required to drive, although his testimony is that he can – but only an automatic vehicle. As Mr T's claim was already in payment in order to cease payment MetLife needed to show he no longer met the policy definition of incapacity. I haven't disregarded the FCE or the physiotherapist report, but on balance, and in particular with reference to the occupational health report, I am not persuaded that it has done so.*

- *Accordingly I am minded to require MetLife to reinstate Mr T's claim and pay benefit in accordance with the remaining policy terms and conditions, with interest.*

I invited both parties to respond, but said that unless the information changed my mind, my final decision was likely to be along the lines of my provisional decision.

MetLife accepted my provisional decision and indicated that it was ready to proceed with payment of benefits and interest.

Mr T also accepted the decision but made some further submissions, in summary:

- As a result of the decision to terminate his claim Mr T's employer dismissed him.
- He had incurred legal costs which he wished to be reimbursed with interest.
- He said that his reputation with his employer had been irretrievably damaged as he had been labelled as a liar.
- Mr T and his family had suffered two years of financial hardship at a difficult time in their lives due to other medical issues.
- MetLife should suffer a financial penalty that compensates Mr T and deters it from making financial decisions at the expense of the beneficiary and for the profit of the company.

### **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've considered the representations that Mr T has now made with care but having done so I'm not persuaded to change my provisional decision and I adopt the findings made here. I will explain why.

I recognise the impact the termination of his claim has had on Mr T and his family, but I'm not privy an information regarding Mr T's work situation or his dismissal from work. I've seen nothing to suggest it was as a direct consequence of his termination of benefits. And in this decision, I'm considering only the actions of MetLife, not those of his employer.

Mr T has said that MetLife should suffer a financial penalty. This service doesn't regulate financial firms – that is the role of the Financial Conduct Authority. Likewise in awarding redress we don't look to punish financial firms, rather our statutory remit is dispute resolution. I found that there was evidence that MetLife had sought to review the claim fairly, but on balance I didn't agree with the conclusion it had reached. I'm satisfied that requiring MetLife to reinstate Mr T's claim and pay interest is fair and reasonable in all the circumstances. The interest proposed is intended to put Mr T in the position he would have been in financially had the benefit not been terminated. I don't make any further award.

Mr T has also said that he has incurred costs in seeking legal advice. However, this is a free service for consumers – it is not necessary to be legally represented to use it. This being so I make no award for any legal costs Mr T may have incurred.

### **My final decision**

My final decision is that I uphold this complaint.

I require MetLife Europe d.a.c. to reinstate Mr T's claim. It should add interest to each payment at the simple rate of 8% per annum from the date each payment would have been made until settlement.

If MetLife considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks/ask for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 3 March 2025.

Lindsey Woloski  
**Ombudsman**