

The complaint

Mrs L has complained that ReAssure Limited has declined her income protection claim.

What happened

In summary In September 2021 Mrs L was signed off work with depression and generalised anxiety disorder. She had been suffering from symptoms for which she had originally consulted her GP in November 2020. From this time she received counselling from her employer and from July 2021 from an independent clinical psychologist.

Mrs L submitted a claim under her policy. ReAssure declined her claim, it said that she didn't meet the policy definition of incapacity. This required that during the first 24 months of disability, including the deferred period, Mrs L was unable by reason of sickness to do the occupation stated in her policy schedule. The deferred period is 52 weeks.

ReAssure concluded that Mrs L's absence from work was due to work issues, resulting in work related stress. It said that without the issues with her employer, Mrs L could do the generic duties of her occupation.

Mrs L brought her complaint here. Our investigator didn't recommend that it be upheld. She didn't find that Mrs L had shown that she was unable to perform her role due to illness throughout the deferred period.

Mrs L appealed. She said that she said that workplace stress that has a significant impact on an employee can be considered as a disability for the purposes of the Equality Act. Mrs L sent in a tribunal report in support of her argument. She said the medical evidence did support that she was unfit for work, and not only for her role with her employer. She also felt this was an unfair contract term.

As no agreement has been reached the matter has been passed to me to determine.

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 summarised the background to this complaint and some sensitive details, no discourtesy is intended by this. Instead, I'll focus 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. I recognise that Mrs L will be very disappointed my decision, but I agree with the conclusion reached by our investigator. I'll explain why.

The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. I've taken the rules into account, together with other relevant considerations, such as industry principles and guidance, the policy terms and the available evidence, to decide whether I think ReAssure treated Mrs L fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract Mrs L has with ReAssure. For completeness I note that the policy was originally taken out with another provider, for whom ReAssure now accepts responsibility.

The policy sets out when Income Protection Benefit is payable:

Subject to the terms of this Condition, Income Protection Benefit is payable if in the opinion of the company's Chief Medical Officer that life assured has become Disabled during the term of the policy.

Disabled is defined as follows:

- *During 24 months of disability, including the Deferred period, unable by reason of sickness or accident to do the work required for the occupation, or if more than one, for any of the occupations stated in the Policy Schedule and not following any other occupation.*
- *After the first 24 months of disability, unable by reason of sickness or accident to do any occupation for which the Life Assured is suited by education, training or experience, and not following any other occupation.*

I've reviewed all the medical information provided. The evidence has been seen by both parties, so it serves no purpose for me to set it out in full here.

In January 2022 Mrs L's clinical psychologist confirmed that she had been providing Mrs L psychological therapy since July 2021. She referenced her work situation, including the lack of support, inconsistent management and unrelated work levels as triggering and maintaining Mrs L's anxiety and depression.

In the claim form completed by her GP, they wrote that workplace issues were a trigger for generalised anxiety disorder and depression.

So although the first three fit notes issued by Mrs L GP in September, October and November 2021 say that the cause of unfitness for work was work place stress, from January 2022 they do show depression and or anxiety was the cause. But even accepting that Mrs L was suffering from depression and anxiety for the complete deferred period, this alone wouldn't enable me to require ReAssure to pay her claim. I say this because the medical evidence clearly shows that Mrs L's condition was due to the situation at her work place.

I quote from an August 2022 report from a Consultant in Occupational Medicine:

In Mrs L's case her affective symptoms of anxiety and depression are entirely due to her workplace issues. Waiting for her to become better so she can return to work is not only futile, but unless her workplace circumstances change substantially, any expectation that she will return only increases her stress and anxiety. The solution all along has only been to change her workplace circumstances to a point where she can adjust and return to normal working again. The fact that she can engage in all other normal daily activities without significant difficulty indicates that not only are her symptoms entirely work-related, but they are mild to moderate at most.

Mrs L has now reached the point where the duration of conflict, and lack of any apparent attempt to resolve the issues, has led to such a loss of confidence in her employer that any return to employment is not just unlikely but may well provoke additional symptoms of anxiety. The only realistic solution is to allow her to leave and move on. Once she has left

this employment, I would expect a swift and complete recovery.

There is no doubt, from the totality of the medical evidence that her work situation was making Mrs L ill – as her psychologist wrote it both triggered and maintained her anxiety and depression. Mrs L has been through a very challenging period. The missing evidence needed for her complaint to be upheld is that she was unable to perform her occupation for a different employer during the deferred period and beyond. As the Consultant in Occupational Medicine says – once she leaves her employment they would expect a complete recovery.

Mrs L has submitted an article where the Employment Tribunal found at a preliminary hearing that a formal diagnosis of a mental condition was not necessary for the tribunal to make a finding on mental impairment. I can't see that this applies here – Mrs L *did* have a formal diagnosis of a mental illness recognised as a disability for the purposes of the Equality Act.

The issue here is whether ReAssure has fairly concluded that she doesn't meet the policy definition of disability. As set out above, this requires that she is not able to perform her occupation. Mrs L has said that her GP and psychologist didn't just say that she was unfit for her role, but that she was unfit for any work. However, they haven't specifically said that. The medical evidence doesn't show that once away from the stressors of her work environment Mrs L would have been unable to work elsewhere. This being so I don't find that ReAssure treated her unfairly or contrary to her policy terms or to the Equality Act by concluding that she didn't meet the policy's definition of disability when it did.

Mrs L in her appeal has also said that the policy definition amounts to an unfair policy term. She hasn't expanded but I understand her to be saying that the requirement that not only can she not carry out her own role, but also carry out her occupation elsewhere is unfair. But I don't agree. Income protection policies generally insure one's own occupation or a suited occupation. This is set out in the policy document and forms part of the contract between Mrs L and ReAssure. I don't find it to be unfair.

I'm very sorry that my decision doesn't bring Mrs L welcome news.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 23 December 2024.

Lindsey Woloski
Ombudsman