

The complaint

Mr P complains that Zurich Assurance Ltd hasn't paid a claim he made under an income protection policy.

What happened

Mr P was diagnosed with a generalised anxiety disorder in 2020. He was taking regular medication to manage his condition. But around November 2022 he started reducing his medication without medical advice. By December 2022 he was only taking one of the two medications he had been prescribed, at a lower dose. Mr P continued to work for his employer during this time, though he wasn't on a permanent contract.

Mr P's permanent contract with his employer started on 1 March 2023. At this point he joined his employer's group income protection policy, provided by Zurich. The policy paid a benefit in the event a member couldn't work due to illness or injury, and it had a deferred period of 13 weeks.

Mr P was signed off from work on 9 March 2023 due to anxiety, and he didn't return to work in full capacity and his employment ended on 6 October 2023. Mr P's employer made a claim on the income protection policy, but Zurich declined the claim. It said Mr P had not been Actively At Work, as per the policy terms, when he went off sick, which meant that he wasn't eligible for the policy at the time. Zurich also said Mr P didn't meet the definition of incapacity. Unhappy with Zurich's position, Mr P brought a complaint to our service.

One of our investigators looked into the complaint. Having done so, she didn't think she needed to make a finding if Mr P was Actively At Work, because she thought Zurich had acted fairly and reasonably when it said Mr P didn't meet the definition of incapacity. She thought this was because the evidence suggested Mr P's absence was due to his work, rather than his medical condition, and the medical evidence lacked detail about the specific impact his symptoms had on his ability to perform the essential duties of his job. Overall, the investigator didn't think Zurich had done anything wrong when it declined the claim.

Mr P didn't agree with our investigator's findings on the incapacity, and he also felt strongly that he was Actively At Work and eligible for the policy before he went off sick. Zurich, on the other hand, maintained that Mr P wasn't Actively At Work, and therefore not eligible for the policy, and wanted us to consider this.

As no agreement was reached, the complaint was passed to me to decide. I then issued my provisional decision in December 2024. Here's what I said:

"Industry rules set out by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Mr P's complaint."

Actively At Work

Given the strength of feeling both parties have about Zurich's decision whether or not Mr P was Actively At Work, I've considered this aspect first.

The eligibility conditions of the policy say the following:

"An Eligible Employee must be included in the policy automatically as a Member from:

- the Policy Start Date, if they meet the eligibility conditions by that date, or*
- the Entry Date, if they meet the eligibility conditions after the Policy Start Date.*

Cover for a Member under the policy will start from the Policy Start Date or, if later, the Entry Date if the Member is Actively At Work on that date.

If the Member isn't Actively At Work on the day cover starts, they will not be covered. Their cover will start when the Member is next Actively At Work."

The policy terms also include the following definition:

"Actively At Work means an employee who:

- has not received medical advice to refrain from work*
- is not absent from work or restricted from working due to illness or injury, and*
- is actively following their normal occupation.*

This means working at their normal capacity for the normal number of hours required by their contract, either at their normal place of business or at a place where the business requires them to work.

If an employee becomes eligible to be included in the policy on a day that is not a working day, we will treat them as Actively At Work unless their medical record shows that they were suffering from a medical condition that would reasonably have been expected to prevent them from working normally."

Zurich says Mr P was already struggling with his mental health at the point he started his permanent role on 1 March 2023, and his mental health hadn't improved to the extent that he was fit to commence his role and perform the duties required of his employment contract. Zurich's Chief Medical Officer ("CMO") also noted that Mr P was absent twice during the first week of employment due to exacerbation of pre-existing anxiety. So, Zurich says Mr P hadn't been Actively At Work, as per the policy terms, by 9 March 2023 when his long-term absence started. In other words, Zurich says Mr P wasn't eligible for the policy when he became absent.

Mr P accepts he was absent twice during his first week of employment, but these were for a different reason – migraine. He accepts he wasn't Actively At Work on 1 March 2023 as he only worked half a day, but he says he was following his normal occupation from 2 March 2023 onwards.

I accept what Zurich says about Mr P's condition pre-dating the policy start date. However, the key consideration here are the policy terms for Actively At Work. Firstly, I haven't seen evidence to show that Mr P had received medical advice to refrain from work before being signed off from 9 March 2023 onwards. Both parties accept Mr P was absent on 1 March 2023. But as far as I understand, the reason for absence was due to migraine, rather than Mr P's long-term condition. And he was back at work the next day.

Zurich has said that Mr P was restricted from working due to illness, and he wasn't following his normal occupation, between 1 and 9 March 2023. It has referred to a report by Mr P's psychiatrist on 16 March 2023 where they said that "his stress at work has been increasing over the last couple of months, and six weeks ago his anxiety symptoms relapsed completely, and therefore a couple of weeks ago he increased the dose of the medication he was taking back to the previous levels on which he was stable".

I accept that Mr P was experiencing symptoms of his anxiety before the start date of his policy. However, this doesn't mean he wasn't Actively At Work as per the policy terms simply because he had a relapse of symptoms. For Mr P to not meet the policy definition of Actively at Work, I'd expect to see evidence to show these symptoms restricted him from working between 1 and 9 March 2023. I haven't seen such evidence. In fact, Mr P saw a consultant psychiatrist about his anxiety on 7 March 2023 who noted that the plan was for Mr P to start seeing his therapist again, and they prescribed medication for Mr P's anxiety – but there's no mention of Mr P not being fit to work.

I also haven't seen any persuasive evidence to suggest Mr P wasn't actively following his normal occupation prior to 9 March 2023. Zurich has said being present at work isn't evidence that an individual has met all aspects of the work. However, Zurich hasn't provided evidence to show that Mr P didn't do so.

Overall, I currently think Mr P was Actively At Work on 2 March 2023, and therefore eligible for the policy from that date onwards.

Incapacity

I've then considered if Zurich acted fairly and reasonably when it said Mr P didn't meet the definition of "incapacity". Having done so, I don't think it did. I'll explain why.

The policy schedule sets out that the incapacity definition is "standard". This is defined in the policy terms and conditions as:

"The Member cannot perform the Material and Substantial Duties of their employment and they are not doing any paid work."

This means that in order for Zurich to pay incapacity benefit, it must be satisfied that it's a policyholder's illness which prevents them from carrying out the main duties of their employment. In Mr P's case, I think it means Zurich needs to be satisfied that his illness prevented him from performing the material and substantial duties of his role with his employer.

Zurich has referred to Mr P being able to perform his role with another employer. However, this would be the case if the policy terms referred to "own occupation". But instead, the policy terms refer to "their employment". I think the everyday, ordinary, meaning of the word "employment" refers to working for or being employed by an organisation. So, I think a reasonable consumer would understand the term to mean the job Mr P was contracted to do with his employer.

To have valid claim under the policy, Mr P needs to show he was incapacitated as per the policy terms for the duration of the deferred period of 13 weeks – so, from 9 March 2023 until 8 June 2023.

Zurich accepts Mr P suffered from anxiety. However, it said that he had been able to apply for jobs elsewhere and go through the interview process, as well as go on several holidays whilst off work. Zurich said that if Mr P was able to tolerate these, he could be expected to have recovered sufficiently to return to his role. Overall, Zurich concluded that Mr P was prevented from working due to work related stress with his employer, rather than his anxiety preventing him from working with any employer in his own occupation. However, as I set out above, I don't think it's relevant whether or not Mr P could work for another employer.

Mr P says his role with his employer was very demanding, and he wasn't able to work in that role due to his anxiety. He says this is supported by him applying for a completely different job with less responsibilities and lower levels of stress. Mr P doesn't think Zurich acted reasonably by saying him talking about his skills for 30 minutes meant he wasn't prevented from working in his role.

I've looked through the medical evidence, and specifically the findings reached by medical professionals about Mr P's condition impacting his ability to work in his employment.

Mr P saw a psychiatrist on 16 March 2023. The psychiatrist noted that Mr P had been on two different medications for his anxiety for about two years, but around November 2022 he started slowly reducing the medication, and by December 2022 he stopped taking one altogether. This was done without consulting any doctor. The psychiatrist noted that Mr P said his anxiety started becoming very severe around six weeks earlier, and he'd been off sick for a week. Mr P had started increasing his medication back to the previous levels a couple of weeks earlier.

The psychiatrist concluded that Mr P was suffering from a generalised anxiety disorder, but he was also very anxious about work and his anxiety usually circulated around work. Mr P had explained that it had been a particularly pressured period at work which made him feel stressed and anxious. The psychiatrist provided a sick note until 31 March 2023 in which he said that "the recent deterioration in his mental health seems to be related to the pressure he is experiencing at work".

The psychiatrist wrote another sick note from 31 March 2023 onwards until 12 May 2023. The psychiatrist increased the dose of Mr P's antidepressant medication and said that "given [Mr P's] severe anxiety at the present time, I believe that it might respond to the highest dose". They also didn't believe Mr P was fit to go back to work and signed him off work for six weeks. The psychiatrist noted in the care plan that Mr P will continue seeing his psychologist regularly for weekly sessions.

Mr P had an appointment with his psychiatrist on 12 May 2023, who noted there had been improvements in Mr P's mental state, but he still had some residual anxiety symptoms. The psychiatrist prescribed an increased dose of Mr P's antidepressant, said Mr P will continue seeing his psychologist on a weekly basis, and that he'll gradually return to work from the following week (15 May 2023 onwards).

Mr P tried to return to work from 15 May 2023 onwards. During the first week he worked reduced hours on Tuesday and Thursday to catch up on emails and complete mandatory training. Mr P was on annual leave the following week, and he tried to continue the phased return the following week. But he only worked on Tuesday 30 May 2023 and then went off sick again.

Another psychiatrist assessed Mr P on 8 June 2023. They noted that Mr P had attempted to return to work but his condition started to relapse. Mr P reported intense recurrent intrusive thoughts, 1-2 hours of sleep per night, and low energy levels, concentration and motivation. The psychiatrist concluded Mr P wasn't fit to work for at least four weeks.

Mr P's own psychiatrist saw Mr P on 23 June 2023. They said in a sick note that his mental state was still unstable, and they were in the middle of changing him to another medication with the hope that his mental state will improve. The psychiatrist said the current working diagnoses were mixed anxiety and a depressive disorder of moderate severity. The psychiatrist recommended Mr P should stay off work from 1 June 2023 until 27 July 2023. The psychiatrist also noted that Mr P will continue seeing his CBT (Cognitive Behavioural Therapy) therapist on a weekly basis.

Zurich asked Mr P's psychiatrist to complete a report to allow it to assess an income protection claim on 24 July 2023. In this report the psychiatrist described Mr P as having normal function on all physical activities listed on the report, except they scored his cognitive function as "very reduced function". The psychiatrist had also circled "moderately reduced function" to a question "as a result of your most recent clinical examination, please describe your patient's current abilities using the current scale".

The psychiatrist said Mr P's condition was improving but slowly, and they would support a graded return to work but not today. The psychiatrist answered "yes" to a question if Mr P's absence had been caused by work related stress, and if they thought Mr P could return to work if this could be resolved or removed.

Firstly, I think it's clear from the medical information that Mr P suffered from an illness, namely anxiety. Zurich has said the absence was triggered by workplace stress, rather than an illness. But I don't think the medical evidence supports that. It's clear from the evidence that Mr P experienced stress and pressure at work. But his psychiatrist explained that this led to a deterioration of his mental health. So, the stress appeared to be a symptom of Mr P's illness, rather than a standalone symptom unrelated to an illness.

Mr P's psychiatrist increased the dose of Mr P's anxiety medication during the deferred period and changed it after the deferred period when Mr P had tried to return to work but experienced a relapse of his condition. Mr P was also having regular therapy sessions during this time. I think both the medication and therapy support that Mr P suffered from an illness during the deferred period that prevented him from working in his employment.

Zurich has said that in the case of severe anxiety, it would expect to see the same disabling features affecting social-domestic function. However, Mr P was able to go on holidays during the deferred period, as well as apply for a different job.

I've thought about what Zurich has said. But I'm also mindful that Mr P's psychiatrist assessed Mr P's cognitive function as "very reduced function". Considering Mr P's role, I think he needed to maintain sufficient cognitive function to perform the duties of that role. I think the psychiatrist's assessment is more persuasive evidence about Mr P's ability to perform his job, rather than his ability to go on a holiday or apply for a less demanding job. I can also see that the psychiatrist reports referred to the holidays Zurich has referred to. So, I think the psychiatrist was able to assess Mr P whilst knowing this information.

In the circumstances of this complaint, I think Mr P's psychiatrist's assessment and treatment of his illness, ability to work, and cognitive function are persuasive evidence to show that Mr P met the definition of incapacity.

I've considered the fact that Mr P returned to work on 15 May 2023, and a phased return was put in place. I understand Mr P didn't carry out any substantial work during the days he worked. The psychiatrist report following this says that Mr P had a relapse of his condition and was again unfit to work. Overall, I think this means Mr P continued to be unable to perform the material and substantial duties of his employment during this time.

Having considered everything, I currently think the medical evidence supports that Mr P couldn't perform the material and substantial duties of his employment during the deferred period. I think Zurich should pay Mr P's claim in line with the remaining terms and conditions of the policy."

Mr P accepted my provisional decision. Zurich didn't, and it responded in detail. Fundamentally, it doesn't think Mr P met the definition of Actively At Work, because it believes he was restricted from working due to illness or injury. I've summarised Zurich's key arguments below:

- This policy term makes specific reference to covering a member unless their medical records show they were suffering from a medical condition that would reasonably have been expected to prevent them from working normally. The medical evidence should be used as a basis of determining if this term was met, and the evidence doesn't support that Mr P was working in his normal capacity.
- Mr P's psychiatrist assessed Mr P on 16 March 2023 and clearly documented that his illness started well before 1 March 2023, and he'd been suffering severe symptoms for some time. Zurich referred to the psychiatrist reporting that Mr P's *"anxiety started becoming very severe around 6 weeks ago"*, and that Mr P had said that *"his concentration is significantly affected by his anxiety, and he complained of low concentration and poor energy levels"*. Zurich says the comments in this report demonstrate Mr P wasn't fit to be at work and he should have consulted a doctor at a much earlier point.
- Mr P had reported taking high levels of medication on 1 March 2023 which are known to have significant side effects and would have impacted his ability to concentrate and work normally. Mr P had told our service that when he started his permanent employment, he was suffering from the effects of the anxiety disorder. Mr P has a cognitively demanding role and as his concentration was significantly affected, this demonstrates he would not have been functioning normally in his role.
- These were not new symptoms or ones that improved, they were deteriorating. The medical reports explained that Mr P had stopped taking his medication without medical advice four months ago, his stress at work had been increasing over the last couple of months, and six weeks ago his anxiety symptoms relapsed completely.
- A psychiatrist noted on 7 March 2023 that Mr P had said he had been working late and much more stressed in the last weeks now that his role had been made permanent, and Mr P described having a recent panic attack. Zurich said that as Mr P was not able to complete his work in his normal contracted hours, he wasn't working in his normal capacity.
- The psychiatrist noted on 31 March 2023 that Mr P had improved since 16 March 2023, but was still unfit to work. Zurich said it's reasonable to conclude from this that if Mr P couldn't work when his symptoms improved, he wouldn't have been able to work during the period in question and meet the Actively At Work definition.
- Zurich's CMO had explained that Mr P's absence did not arise spontaneously as a newly experienced clinical entity. The CMO noted Mr P reducing his medication without medical advice, and this making him vulnerable to a relapse. And when *"faced with increase workplace demands and environment stressors, he quickly realised he could not cope and became absent"*.

- In summary, Zurich concluded that the medical evidence showed that Mr P had not been operating at his normal capacity for some time before 1 March 2023, and therefore he didn't meet the Actively At Work policy term.

As both parties have now had the opportunity to review and comment on my provisional findings, I'm issuing my 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.

Firstly, I already considered all the reports Zurich has referred to when I reached my provisional findings. Overall, having considered Zurich's comments carefully, I'm not persuaded to change my decision. I'll explain why.

Zurich has referred specifically to the last paragraph in the "Actively At Work" section which says that "*unless their medical record shows that they were suffering from a medical condition that would reasonably have been expected to prevent them from working normally*". However, I don't think this paragraph strictly applies in Mr P's situation, as it refers to an employee who becomes eligible to be included in the policy on a day that is not a working day. Both 1 and 2 March 2023 were working days. That said, I have considered the medical evidence, and if this shows Mr P met the Actively At Work definition.

I accepted in my provisional decision that Mr P was experiencing symptoms of his anxiety before the start date of the policy, and I specifically referred to Mr P's relapse of symptoms. But for the reasons I explained, I don't think this meant he wasn't Actively At Work as per the policy terms.

Zurich said Mr P should have consulted a doctor at a much earlier point. He did. Mr P had an appointment with a different psychiatrist first on 7 March 2023. And as I explained in my provisional decision, there was no mention of Mr P being unfit for work at that time. The psychiatrist also noted in the treatment plan that "*no acute concerns today*".

I think this report also shows a recent change in Mr P's symptoms. The psychiatrist noted that Mr P had said he had been "much more stressed in the last weeks now his role has been made permanent", and he described having a recent panic attack.

Zurich has referred to Mr P admitting the impact of the medication he was taking on 1 March 2023. I considered this when reaching my provisional findings. However, I'm not persuaded that the medical evidence shows the medication restricted Mr P from working, or that he wasn't actively following his normal occupation.

I've considered Zurich's argument about Mr P working long hours. However, what's key here is that I haven't seen any medical, or other, evidence that would persuade me that Mr P working long hours meant that he wasn't working at his normal capacity. Mr P has explained that this was a normal expectation of his role.

Zurich has referred to the report on 31 March 2023, and that the psychiatrist had noted Mr P had improved since 16 March 2023 but was still unfit to work. However, the psychiatrist concluded that "*[t]here has been some minimal improvement in Mr P's mental state*." I don't think the argument Zurich has made about this is persuasive as the psychiatrist's conclusion only refers to minimal improvement in Mr P's mental state.

I considered Zurich's CMO's comments before reaching my provisional findings. But fundamentally, the key consideration here is the Actively At Work policy term. Based on the evidence I've seen, I'm persuaded Mr P wasn't restricted from working, and he was following his normal occupation on 2 March 2023, and therefore met the policy term for Actively At Work on this date – for the reasons I've set out above and in my provisional decision.

As neither party has given me anything new to consider in respect of if Mr P met the definition of incapacity, I see no reason to depart from the findings I reached in my provisional decision. Overall, I think the medical evidence supports that Mr P couldn't perform the material and substantial duties of his employment during the deferred period.

My final decision

My final decision is that I uphold Mr P's complaint and direct Zurich Assurance Ltd to:

- accept Mr P was Actively At Work from 2 March 2023 onwards,
- pay Mr P's income protection claim in line with the remaining terms and conditions of the policy,
- add interest at the rate of 8% simple per annum from the date each benefit payment was due to the date of settlement*, and
- pay Mr P £200 for the distress and inconvenience caused when it unfairly declined his claim**.

*If Zurich considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Mr P how much it's taken off. It should also give Mr P a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**Zurich must pay the compensation within 28 days of the date on which we tell it Mr P accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 5 February 2025.

Renja Anderson
Ombudsman