



NEW HOPE FOR CHRONIC SUFFERERS

by Brian Barr

Let us assume you took out a critical illness policy, a mortgage protection policy, an accident protection policy or an income protection policy. You have a nasty condition, but it is not one of the well known ones. You do not have cancer, stroke, paralysis or a serious heart condition. Can you claim under your policy?

I am pleased to say that the answer is a resounding “yes”. These policies will invariably also cover “total permanent disability”. That is a “catch-all” which may well be the key to making a successful claim under your policy, and the amounts can be large, perhaps £200,000 or more.

As always, you have to start with the definition. “Total permanent disability” usually means that you have an illness or injury from which you will not recover before the age of 65, resulting in your being unable to carry out your normal or any occupation (definitions vary). Sometimes it is defined as an inability to do certain tasks unaided, such as taking a bath or shower, dressing and undressing,

getting to and from the toilet, moving in and out of a chair or bed and eating and drinking.

“Total permanent disability (or incapacity)” is intended to provide cover for conditions not specifically mentioned in the policy, but where there has been a severe effect. The illness or injury must be such that you will not be able to work again.

This may sound impossible to prove. How can anyone say that they will never recover before the age of 65 and never get back to work? The fact is that the law does not expect a definite answer on this. The test is whether more probably than not you satisfy the policy definition. If you can satisfy that test, there is no reason why you should not be able to claim successfully under the policy.

You will need good medical evidence to back the claim. We can help on that, having a panel of medical experts ready to provide the necessary reports.

Clients of ours, with our help and guidance, are able to persuade insurers that they have valid claims. Insurers are not initially keen to meet the claims, but the medical evidence assembled on behalf of Claimants can be sufficiently impressive that insurers are compelled to pay out.

Anybody who has had to give up work or is on

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long-term sick should be looking at their insurance policies to see whether there is a chance of a claim. Their condition may be one of those named in the policy. If not, they may be able to use the “total permanent disability” part of the policy to good effect.

Timing is also important. If you apply to insurers very shortly after going off work, it is likely that they will say that you might get better. If you have been off for more time that argument becomes harder for them to sustain. They are also likely to allege you have not explored all treatment options. We can help with the timing of a claim - if you

leave it too long, you may be out of time - and with ensuring that your medical evidence is compelling. Your treating specialist may not be the best person to give an independent view. We have access to a broad range of independent experts who may well make all the difference between success and failure. These can be very valuable claims, but they have to be properly handled.

Funding the case may not be a major worry.

If you would like us to look at your Policy or Policies and personal circumstances on a “no-obligation” basis, please contact us.

Two Brian Barr Case Studies

44 year old nursery nurse LB from Basingstoke developed the chronic widespread pain condition fibromyalgia and it stopped her working in January 2005. LB was not fit enough to return to work and she was dismissed on ill health grounds in April 2007.

LB had a critical illness insurance policy entitling her to a lump sum if she became permanently unable to work in her own occupation as a nursery nurse. Her insurers rejected her claim, she continued to pursue it, but to no avail.

In February 2008 LB approached Brian Barr Solicitors. We looked at the documentation and advised the insurance company that they should be paying out under the policy. They proposed a functional capacity evaluation. We objected because this type of evaluation is inappropriate for fibromyalgia sufferers. An appropriate expert was agreed upon and following sight of his report, the insurance company accepted the claim. LB received just over £150,000 in August 2008, just six months after Brian Barr Solicitors had first been instructed.

Mrs GL of Norwich was injured in lifting incidents at work in 2004 and felt she would never be able to work again. She had an accident protection policy and claimed under the Permanent Total Disablement section of the policy. She had to establish that she had sustained accidental bodily injury which within 12 months resulted solely and independently of any other cause in death, permanent disability or hospitalisation.

Mrs GL was insured for £100,000. Insurers said that she had been left with a 15% to 20% global disability as a result of the accidents and they put forward a total offer of £17,500.

Mrs GL instructed Brian Barr Solicitors to act. When we questioned the £17,500 offer, insurers promptly withdrew it.

Mrs GL instructed us to obtain reports from two rheumatologists. These were supportive. Insurers again refused to pay. Eventually they instructed their own rheumatologist and they paid out the full £100,000 plus substantial interest and costs.

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