

TURKSLEGAL Q&A

“The Capability of the Capability Clause”

In this edition of TurksLegal Q&A, we respond to the following client's question about the Capability Clause.

Q What is the capability of the Capability Clause in IP policies?

A The Capability Clause was introduced in the mid to late 80's in some income protection policies. It is intended to address an insured's capacity for return to work in circumstances where an insured is partially disabled and not working to the extent of their capability as a result of causes other than injury or sickness. For example, redundancy or simply an inability to find work.

Difficulties can arise with the application of capability clauses when terms such as 'partially disabled' are not defined within the Capability Clause or are inconsistent with the policy definition of 'Partial Disability'.

For example, if an insured were to lose their employment through say, redundancy rather than injury or illness, they may not meet a partial disability definition that requires that they have returned to work, albeit in a reduced capacity. They may also not satisfy a total disability definition that may require them to be unable to perform the important duties of their occupation as a result of injury or an illness (not redundancy).

In such circumstances, whether the Capability Clause has any application will depend upon the precise wording of the clause. It must be clear, concise and be linked appropriately with the definition of partial disablement.

Capability clauses usually provide that insurers can take into account available medical and other evidence when making an assessment as to what an insured might earn if they were working to the extent of their capability. The insurer can then increase or decrease the claimant's benefit under the Capability Clause depending on this evidence and subject to the terms of the policy.

To avoid potential for dispute when assessing this evidence, care should be taken to follow the relevant policy terms, not take into account irrelevant considerations when assessing the medical and other evidence going to the insured's capacity and, as always, act with the utmost good faith.