DRN-3300983

## The complaint

Ms S complains about the decision by Legal and General Assurance Society Limited ('L&G') to terminate her income protection claim.

## What happened

Ms S is covered under her employer's group income protection scheme, the aim of which is to pay benefit for up to five years in the event that (for the first two years) she can't work in her own occupation because of illness or injury. The scheme has a 39-week deferred period.

In October 2018, Ms S stopped work as she'd sadly been diagnosed with cancer and was experiencing side effects from the chemotherapy treatment she'd been receiving. A claim was submitted to L&G, which was accepted.

Then in March 2021, L&G made the decision to terminate Ms S's claim as of 11 May 2021. It thought the medical evidence supported that she no longer met the policy definition of incapacity. Unhappy with this, Ms S brought a complaint to this service.

Our investigator recommended the complaint be upheld. She thought L&G ought to have contacted Ms S's oncologist to ask how her symptoms impacted her, rather than Ms S's surgeon. The investigator thought the available evidence didn't support that Ms S could return to work. She therefore recommended that L&G reinstate the claim, plus interest. She also recommended that L&G pay Ms S £300 compensation for the worry and upset caused by terminating her claim.

L&G didn't agree to our investigator's recommendations, and so the matter has been passed to me for a 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.

The policy defines incapacity as:

*"…the insured member is incapacitated by illness or injury that prevents him from performing the essential duties of his occupation immediately before the start of the deferred period."*

The policy explains that 'essential duties' means the duties that are normally required for the performance of the member's insured occupation.

Our investigator has set out the relevant medical evidence in some detail, so I don't intend to repeat that here. Whilst I've considered all the evidence, I've only commented on what I consider to be most relevant.

L&G asked Ms S's plastic surgeon for information about Ms S's symptoms, and whether these impacted her ability to work. In October 2020, the plastic surgeon (Ms H) provided this

information. She said that Ms S had undergone her latest surgery in January 2020, and she had completed her cancer treatment. Ms H thought that since her operation, Ms S had healed well – though she hadn't seen her since the operation.

Ms H further explained that Ms S had been through treatment for cancer, and had been put into an early menopause by the endocrine therapy. She said she expected this to leave Ms S with a lack of energy, but that she expected Ms S to be able to return to work. Ms H said she wasn't aware of any symptoms that Ms S currently had, and that it was difficult to suggest when she may return to work as she wasn't aware of any significant symptoms, though she pointed out these may have been discussed with Ms S's oncologist. However, from Ms H's perspective from the reconstruction side of Ms S's treatment, she said she wasn't aware of any long-term problems that would impact Ms S's ability to return to work.

I don't find Ms H's evidence to be particularly relevant here. First of all, Ms H's comments were based on her last seeing Ms S in January 2020. That was 14 months before L&G made its decision to terminate the claim. Also, Ms S doesn't dispute that she had recovered from her reconstructive surgery. Instead, she said that her side effects from her medication (mainly neuropathy and fatigue) were the symptoms that prevented her from working.

Although Ms H made L&G aware that Ms S's symptoms may have been discussed with her oncologist, L&G didn't contact Ms S's oncologist.

L&G asked Ms S's GP for more information. I haven't seen a copy of L&G letter to the GP, though I see that the GP's answers were only in relation to a shoulder injury that Ms S had. I would therefore assume that L&G only asked about the shoulder injury. I note that the GP later clarified that they hadn't said that Ms S was fit for work. The GP pointed out that Ms S was still suffering the effects of chemotherapy, and had reported neuropathy in both her hands and feet which were affecting her everyday life.

In February 2021, an occupational health physician (Dr G) assessed Ms S. Dr G explained that Ms S was having side effects from her medication which was significantly affecting her sleep. Dr G thought that Ms S's functional ability was significant impacted and noted that she needed a lot of support carrying out daily activities, and said that the sensory impairment affecting her hands and fingers (as well as her fatigue) made it difficult for her to use a computer. Dr G concluded that Ms S wasn't fit for work in any capacity at that time, as she continued to receive treatment and was experiencing significant side effects which impacted her general health, daily life and functionality.

L&G's rehabilitation team thought in January 2021 that Ms S could return to work, however, this opinion was formed after a phone call with Ms S, rather than an examination. Also, I note the rehabilitation team had concluded that Ms S remained unfit to work at a previous review in August 2020, yet it seems to me that Ms S continued to report the same symptoms at that time as she did in January 2021.

L&G said that Ms S's neuropathy in her feet wouldn't impact her ability to undertake her sedentary role. It said she hadn't mentioned previously that she had neuropathy in her hands. However, I see that Ms S told L&G's rehabilitation team about this as far back as March 2020.

L&G says that Ms S's reporting became more restricted after it had decided to terminate her claim. It says that previously, Ms S hadn't reported significant restrictions with self-care, meal preparations, or walking.

I accept that Ms S had apparently advised L&G's rehabilitation team in January 2021 that she could carry out self-care and prepare meals, and that this wasn't reflected in Dr G's

report. However, putting aside these points, Dr G had said that Ms S's sensory impairment in her hands (and her fatigue) made it difficult for her to use a computer. Ms S had consistently reported these symptoms both before and after L&G's decision to stop benefit.

Overall, I agree with our investigator that L&G didn't have sufficient medical evidence to conclude that Ms S no longer met the policy definition of incapacity and could return to work.

I think Ms S was caused unnecessary worry and inconvenience as a result of L&G's decision to terminate her claim, as she has been without income since that date. L&G should therefore pay her £300 compensation for this.

**My final decision**

My final decision is that I uphold this complaint. I require Legal and General Assurance Society Limited to reinstate the claim and pay backdated benefit. *Interest should be added at the rate of 8% simple per annum from the date each benefit payment was due to be paid, to the date of settlement.

L&G should also pay Ms S £300 compensation.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 13 April 2022.

Chantelle Hurn-Ryan
**Ombudsman**