

The complaint

Miss T complains that Legal and General Assurance Society Limited ('L&G') terminated her income protection claim.

What happened

Miss T is covered under her employer's group income protection scheme, the aim of which is to pay benefit in the event she can't work because of illness or injury.

In May 2017, Miss T stopped work due to illness. After having surgery, Miss T returned to work on reduced hours in November 2017. A claim was made under the scheme, which L&G accepted. L&G paid Miss T partial benefit to recognise her earnings had reduced because of her illness.

In September 2020, L&G concluded that Miss T was fit enough to return to work full-time. It therefore terminated the claim as of November 2020. Unhappy with this, Miss T brought a complaint to this service.

Our investigator recommended the complaint be upheld. She thought the medical evidence supported that Miss T couldn't return to work on a full-time basis. She recommended that L&G reinstate the claim and pay backdated benefit. She also recommended L&G pay Miss T £300 compensation for the distress caused by its decision to terminate the claim.

L&G didn't agree with 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.

Miss T has 'own occupation' cover under the scheme for the first 60 months. The scheme terms explain this means:

"the insured member...is incapacitated by a specific, diagnosed illness or injury which prevents him from performing the essential duties of the job he carried out under his contract of employment immediately before the start of the deferred period..."

The terms and conditions say the following about partial benefit:

"A disabled member who, on or at any time after benefit start date, either

- (i) returns to his occupation on a part-time basis, or*
- (ii) takes up another occupation*

but, as a direct result of the illness or injury giving rise to the incapacity at the start of the deferred period, suffers a loss of earnings compared to when he was following his

occupation will continue to be regarded as a disabled member. In this case partial member's benefit and partial additional benefit, if any, will be payable."

Before Miss T stopped work, she worked 35 hours a week. After she returned to work following her surgery, she reduced her hours to 28 hours a week.

As our investigator has explained, in terminating the claim for partial benefit, the onus is on L&G to show that Miss T could work full-time as of November 2020.

Miss T says she continues to suffer with post-surgery issues, namely fatigue, chronic abdominal discomfort, and poor sleeping. She says her cognitive function has been impacted due to this, which has in turn affected her work performance leading to depression. Miss T has explained that having one day off a week has been essential for her, as she says it allows her to recover from working.

I've looked at the medical evidence to see if L&G's decision to terminate the claim was reasonable.

In May 2020, L&G's rehabilitation specialist spoke with Miss T over the phone. Although Miss T continued to report ongoing physical and mental fatigue, they thought she described an active lifestyle working and exercising. They therefore concluded that Miss T's level of functioning had improved, and thought she should be able to return to full-time work (increasing her hours by half a day initially).

In June 2020, Miss T was reviewed by her treating consultant surgeon (Ms P). Ms P has been Miss T's treating consultant since 2017 and had performed Miss T's surgery. Ms P noted said that Miss T was experiencing insomnia. She said that Miss T was still working four days a week, and commented that she thought this was the right thing for her to do. That was because, following Miss T's surgery, she was suffering from depression and anxiety, and hadn't gained back her strength.

After L&G decided to terminate Miss T's claim, Ms P provided her view on the matter in October 2020. Ms P said that Miss T hadn't completely recovered from her surgery and continued to experience symptoms (including diarrhoea, memory loss and fatigue). Ms P was of the view that Miss T wasn't fit enough to be working full-time for five days a week.

Ms P then had a consultation with Miss T in December 2020, a few weeks after L&G had terminated the claim. She noted that Miss T continued to have difficulties with sleep as well as difficulty focusing and suffered with memory loss. She said that Miss T's digestive problems also continued, which increased her fatigue.

L&G's medical officer (MO), who is a GP and occupational physician, was of the view that Miss T could return to work full-time. He said that, as Miss T was performing her role for four days a week with no employer concerns, this would suggest that her memory and concentration issues were sufficiently resolved.

Miss T provided additional medical information to this service which L&G hasn't seen. I note that L&G was aware it had been provided to us, but didn't ask to see it. It therefore might be helpful if I explain that in July 2021, Miss T's employer arranged for her to be assessed by occupational health. The reason for that was because Miss T's employer said her performance had fallen below the company's expectations, and there were a series of specific areas of concern. Whilst I recognise that this was some months after L&G terminated the claim, it does suggest that Miss T hadn't been able to perform her role for four days a week without employer concerns.

Though even if I were to disregard this information (given that it was provided after Miss T's claim had been terminated), I think the available evidence from Ms P does support that Miss T wasn't fit enough to return to work full-time. Ms P explained that Miss T continued to experience digestive problems, difficulty sleeping, and fatigue. It's apparent that Ms P thought Miss T couldn't work full-time, and was supportive of her continuing to work reduced hours.

I recognise that L&G's MO has a different opinion to Ms P. In cases where there is a difference in medical opinions, this service generally places greater weight on the opinion of the treating specialist over a practitioner who hasn't met the insured. That being the case, I think it's reasonable to rely on Ms P's view in this matter.

I therefore agree with our investigator that it wasn't reasonable for L&G to terminate the claim. I require it to reinstate the claim and pay backdated partial benefit due to Miss T.

Miss T has explained that L&G's decision to terminate her claim put financial pressure on her and caused her anxiety. I think an additional compensation payment would be fair to recognise this. I agree with our investigator that £300 would be an appropriate amount in the circumstances, and adequately reflects the inconvenience and worry that Miss T was caused.

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 partial benefit due, in line with the scheme terms and conditions.

Interest should be added at the rate of 8% simple per annum from the date each benefit payment was due to the date of settlement*.

L&G should also pay Miss T £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 Miss T how much it's taken off. It should also give Miss T 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 Miss T to accept or reject my decision before 28 July 2022.

Chantelle Hurn-Ryan
Ombudsman