

The complaint

Mrs C has complained that Legal and General Assurance Society Limited ('L&G') has unfairly declined her claim.

What happened

Mrs C has a representative acting for her. All references to Mrs C include any submissions made by her representatives on her behalf.

Mrs C has a group income protection insurance policy through her employer, underwritten by L&G. This would pay a benefit if Mrs C was unable to work in her own occupation due to illness or injury throughout the deferred (waiting) period and beyond. After two years, the test for incapacity changes from 'own' occupation to 'suited' occupation.

Mrs C became absent from work in April 2015. Mrs C's employer told L&G of her claim in 2017 but Mrs C didn't return the relevant forms and so the claim was closed. In April 2019, Mrs C provided the relevant consent and information and so the claim was re-opened and assessed.

L&G declined the claim because it hadn't been able to assess whether Mrs C was incapacitated throughout the deferred period. It said the late notification had prejudiced its assessment of the claim.

Unhappy with this, Mrs C complained and referred her complaint to this service. L&G made an offer to pay the claim from the end of the deferred period until May 2017 with interest from October 2019. Our investigator thought this was a fair offer. She accepted that L&G had been prejudiced by the late notification and it would be difficult to retrospectively assess the medical evidence due to the change in occupation, the various gaps in the medical evidence and suggestions of improvements in the different illnesses Mrs C was suffering from.

Mrs C disagreed and said the medical evidence shows that she has been incapacitated since the date of her absence until now. And she has also provided independent medical evidence by way of a report dated 2020 which concluded that Mrs C wasn't able to work in any role since 2016. She said insufficient weight had been given to this evidence. In summary, she made the following points for me to consider:

- The independent report should be taken into account by L&G as her employer recommended she should get one.
- The medical evidence from May 2017 which the investigator has relied on was a post-operative review of Mrs C's left hand. She still had serious issues with her right hand.
- There were other reasons why Mrs C couldn't work in May 2017 – including problems with her right hand and her other illnesses.

As an agreement couldn't be reached, the case has been passed to me for a 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.

Having done so, I agree that L&G's offer to pay the claim from the end of the deferred period until May 2017, with interest, is fair. I also accept that it has been prejudiced by the late notification of the claim and so it doesn't need to do anything more. I'll explain why.

I should start by saying that I have considered all submissions from both sides in detail even if I don't explicitly refer to them in my decision. Instead, I have focused on what I consider to be key.

The relevant rules and industry guidelines say an insurer should handle claims promptly and fairly. And it shouldn't unreasonably reject a claim.

The policy terms and conditions

Incapacity:

"Own occupation means 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."

"Suited occupation means the insured member is incapacitated by an illness or injury so that he is unable to undertake any occupation which we consider appropriate to his experience, training or education."

Late notification:

"Payment of this benefit will be subject to us receiving:

- (i) Not later than the benefit start date, the absence notification in the format required by us, and..."*

"Where the requirement in (i) above is not met and the date of notification in the format required by us is after the end of the deferred period, benefit will be payable from the date on which the notice is received by us...We reserve the right to not pay benefit in respect of a claim where the application for benefit in the format required by us is received more than 90 days after the end of the deferred period."

So it's my role to decide whether L&G has acted fairly.

The medical evidence

The medical evidence has been summarised by both sides.

- Mrs C's position is that the evidence supports ongoing incapacity from the date of absence.
- L&G says there are gaps in the medical evidence as well as reports of improvements after the deferred period. However, it has accepted that Mrs C was incapacitated from her role between April 2015 and May 2017.

- Following this, it says the medical evidence from May 2017 shows that Mrs C had recovered well from her surgery. Her next surgery was scheduled in July 2017 and there is no medical evidence between May and July explaining why Mrs C couldn't return to work. So L&G say at this point, Mrs C could have returned to work. But due to the late notification of the claim, its position was prejudiced and it wasn't able to assess what should have happened.
- From October 2017, the relevant definition changes to 'suited' occupation and L&G would assess the claim based on the new definition of incapacity.

Having considered all of the above and both sides detailed submissions, I agree the medical evidence supports that Mrs C was incapacitated until May 2017. But L&G's assessment of the claim has been prejudiced due to the late notification. The medical evidence suggests Mrs C was coping well with her Parkinson's disease in 2017 and her pain was being managed in relation to her back and knee pains. The Carpal Tunnel Syndrome problems were ongoing but no functional capacity evaluation (FCE) or tests took place at the time. L&G was prevented from carrying out reviews and FCEs at regular review periods and intervals.

The consultant's report from 2020

Mrs C seems to have had a deterioration in health over the last few years but L&G can't be certain at which point that happened. The definition of incapacity changed after two years, so L&G would have assessed Mrs C against the 'suited occupation' definition from 2017. Mrs C may have been able to return to work for short periods with reasonable adjustments. Or she may not have done. It's difficult to say what would have happened so many years after the event. L&G has been prevented from assisting in a return to work or arranging further tests or examinations.

The 2020 report has been written retrospectively and although the consultant assessed Mrs C, he hadn't reviewed Mrs C at the time of her initial absence and when the definition changed. The consultant also disagrees with previous expert assessments on whether Mrs C is capable of returning to work, based on his own assessment. But his assessment is retrospective and so I have placed less weight on it compared to the earlier assessments which took place at the time of absence. The consultant also says Mrs C's problems have been continuous since 2016 but this contradicts the medical evidence from 2017.

Legal costs and award for distress and inconvenience

Mrs C feels her legal costs should be awarded as she instructed solicitors to represent her. I don't think it was necessary for Mrs C to have legal representation to bring her complaint to this office, as already explained by our investigator.

I've also considered whether an award for distress and inconvenience would be fair and reasonable. But as L&G has offered to pay 8% simple interest from October 2019 to the date of settlement, I don't think any further award is due on the basis that the claim was notified late. And because the terms allow L&G not to accept the claim in these circumstances.

Overall I think the offer is fair and I won't be asking L&G to do anything further.

My final decision

For the reasons set out above, I uphold this complaint and direct Legal and General Assurance Society Limited to:

- Pay the claim from the end of the deferred period to May 2017.
- Add 8% simple interest on the amount due, calculated from October 2019, to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 20 March 2023.

Shamaila Hussain
Ombudsman