

## The complaint

Mrs N complains Legal and General Assurance Society Limited unfairly terminated her claim, delayed assessing her appeal, and provided poor customer service.

## What happened

Mrs N is a beneficiary of her employer's group income protection scheme. In 2020, she made a claim against the policy following a diagnosis of cancer. L&G accepted the claim and began paying benefits in April 2021.

The policy defines incapacity as follows.

*“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.”*

Following a review in March 2022, L&G said Mrs N's symptoms no longer met the policy definition of incapacity, and said it would terminate the claim in June 2022.

Mrs N appealed L&G's decision and sent further medical evidence at the end of April 2022. L&G said it would review the appeal and gave a timescale of 45 days for an answer. However it took much longer than this, and Mrs N was unhappy with the delay.

L&G treated Mrs N's appeal as a complaint, and gave its full answer in October 2022. It said it'd had trouble obtaining a report from Mrs N's treating oncologist – Dr G. But once it had received this report and reviewed the content, it had decided to overturn its decision to terminate the claim. The claim was re-instated and back-dated payments were made to Mrs N.

Unhappy with L&G's response, Mrs N brought her complaint to this service. She said she'd been impacted financially due to being without the benefit payments, and said the delays and L&G's handling of her claim had caused her worry and distress. In particular she said she thought L&G had caused unnecessary delays in looking into her appeal, didn't meet the timescale it originally set, and didn't contact Dr G right away. She asked to be reimbursed £25 for a letter she obtained from her GP and for the tax and other deductions taken from her backdated benefit payment, as well as compensation for the overall level of service.

L&G said it had reviewed Mrs N's additional complaint points about the appeal, and it offered her £150 in compensation and £25 for the GP letter she obtained.

An investigator here looked into what had happened. They said they thought L&G had acted unfairly in terminating Mrs N's claim when it did, and should have done more to investigate her ability to return to work. They thought Mrs N should receive interest on the backdated

claim payments and compensation of £600 in respect of the overall distress and inconvenience caused, in addition to what L&G had offered.

Mrs N accepted the investigator's view. However L&G disagreed. In summary it said it thought the investigator had misinterpreted some of the evidence due to a typing error in the view. It also said it didn't think it should be held responsible for delays in obtaining the report from Dr G, as it had been chasing for this, and the delays were beyond its control. It accepted it had caused some delays, but thought the offer of compensation it had made was sufficient.

As L&G disagreed, the case has been passed to me to make 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.

And I've looked at the relevant rules and industry guidelines, which say L&G has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

Having done so, I'm upholding this complaint and I'll explain why.

Firstly, I've reviewed all of the supplied medical evidence supplied in relation to this complaint. This has been summarised by the investigator in their view and is well known to both parties, so I won't repeat it here.

#### *Termination of the claim*

Having reviewed the evidence available at the time L&G originally decided to terminate the claim in March 2022, I don't think its decision was fair. In terminating the claim, the burden of proof was on L&G to show Mrs N no longer met the policy definition of incapacity, and I don't think it did so adequately.

Much of the evidence took the form of Mrs N's own self-reporting during clinical reviews with L&G's nurses. I appreciate L&G had attempted to contact Mrs N's treating Oncologist, Dr G, in the past without success. But I've seen no evidence that it did this in early 2022 when reviewing the claim and in the lead up to the decision to terminate. And I think this would have been some of the most relevant evidence for L&G to consider. And, once L&G received a report from Dr G following Mrs N's appeal of the termination, this persuaded L&G to reinstate the claim.

Mrs N reported little change or improvement in her symptoms and abilities between the reviews six weeks apart in January and February 2022, however L&G made the decision to terminate the claim after the February review. L&G has said between the reviews, results of Mrs N's latest scan had become available and were not of immediate concern. Whilst I accept this, Mrs N was still reporting various physical and mental symptoms, particularly difficulty with her arm on the side where she'd had surgery, side effects of medications she was prescribed and the effects of radiotherapy. And I think it's reasonable to expect L&G should have done more to investigate how this was impacting Mrs N's capacity, before terminating the claim. This could have been in the form of contacting Mrs N's treating oncologist again for a report, or if this was still not forthcoming, I think instructing an independent medical exam or functional capacity assessment would have been a reasonable alternative.

During the clinical review in February 2022, the nurse discussed a return to work with Mrs N and she became upset. Following this, Mrs N sent further details to L&G about her symptoms and how these would prevent her from returning to work. However, L&G went on to terminate the claim without addressing those points, or obtaining any additional medical opinion. L&G sent a return to work plan to Mrs N's employer, and said it would continue to pay the benefits over the eight week return period. However I've not been persuaded it had sufficient medical evidence to show this plan would be achievable for Mrs N at the time. And so I think the decision was unfair.

#### *Delays handling the appeal*

L&G originally advised Mrs N of a 45 day timescale for it to make a decision on her appeal, and this was not met. L&G later gave additional clarification to Mrs N on what it would do within the first 45 days, and then went on to keep her regularly updated on its progress. However, it still originally led Mrs N to think that she would have a decision on her appeal within 45 days. And I think L&G should have set the correct expectations from the outset.

I accept that much of the delay in assessment of the appeal was beyond L&G's control, as it was chasing Dr G without a response. It contacted Dr G in July 2022, and didn't receive the requested report until October 2022. However, there was some delay in L&G starting to contact Dr G, and I think it could have acted on this sooner after receiving the appeal at the end of April, whereas the first request to Dr G was not sent for over a month. And, as I've stated above, I think it's reasonable to expect L&G should have attempted to contact Dr G for a report in early 2022, before making a decision to terminate the claim.

After L&G agreed to reinstate the claim, Mrs N received the backdated benefit payments. However she said the payment was sizeably reduced by tax and other deductions. Mrs N has asked that this service award her a payment equivalent to the deductions. However this isn't something I'm going to ask L&G to pay, as it's my understanding Mrs N's employer would always have had to have made the relevant deductions from the benefit payments, as they are designed to cover some of her employment income. But, I don't think Mrs N would have experienced the distress of having a large payment unexpectedly deducted from the amount thought she was owed, had her claim not been terminated and her benefits had continued to be paid monthly.

#### *Other customer service issues*

Mrs N has complained about other customer service issues including the way L&G handled its calls with her, the timing and notification of calls, and lack of continuity of staff. I've considered these points, but overall I don't think L&G acted unreasonably here and I don't think it needs to do anything further in respect of this.

I can of course appreciate Mrs N was going through an incredibly difficult and distressing time due to her health issues, and accept it would have been upsetting for her to receive requests for detailed information about this. However, I think the information L&G was requesting was relevant and necessary to the claim.

I've seen evidence of occasions where L&G let Mrs N know what would happen next and when it would contact her again. And whilst it was unfortunate that Mrs N's usual contact point left L&G and was replaced by another member of staff, I think this was beyond its control. In terms of the call on a day when Mrs N had not yet had her consultation, I think this was most likely unfortunate timing, and I don't think it was L&G's intention to add to Mrs N's worry on that day.

## **Putting things right**

As I've explained, I think L&G unfairly terminated Mrs N's claim, so it should pay interest on the back-dated benefit payments, to recognise the time she was without this money. And I've found L&G didn't set clear expectations about how long the review process would take, and caused unnecessary delays in first contacting Dr G after receiving Mrs N's appeal.

I think Mrs N has suffered a significant amount of distress and inconvenience stemming from L&G's decision to terminate the claim in June 2022. And I've considered that she had to wait through a lengthy appeal process, and has explained she was caused significant worry as well as financial challenges causing her to borrow money from family, at a time when she was already unwell and deeply concerned about her health.

So, in recognition of the overall distress and inconvenience caused, L&G should pay Mrs N £600 in compensation. This is in addition to the compensation which it has already offered.

## **My final decision**

For the reasons I've given, it's my final decision that I uphold this complaint. And I direct Legal and General to pay Mrs N:

- interest at 8% simple on the back-dated benefit payments, from the original date each payment was due until the date of settlement; and
- £600 in respect of the overall distress and inconvenience caused, in addition to the £150 and £25 it has already offered.

Legal and General Assurance Society Limited must pay the compensation within 28 days of the date on which we tell it Mrs N accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 29 June 2023.

Gemma Warner  
**Ombudsman**