

The complaint

Ms W is unhappy that Legal and General Assurance Society Limited ('L and G') stopped paying the monthly benefit following a successful claim made on a group income protection insurance policy.

What happened

Ms W had the benefit of a group income protection insurance policy ('the policy'). Subject to the remaining terms, the policy can pay out a monthly benefit if Ms W is unable to work due to illness (or injury) after the deferred period.

Many years ago, a successful claim was made on the policy in respect of Ms W's inability to work because of illness. L and G continued to pay the monthly benefit until the end of 2022, when it gave Ms W three months' notice that the claim would be terminated. That's because L and G concluded that the evidence no longer supported that Ms W met the policy definition of incapacity.

Ms W appealed that decision in early 2023 and L and G issued its final response letter in January 2024 maintaining its decision to stop paying the monthly benefit. By that stage Ms W had already brought a complaint to the Financial Ombudsman Service raising her concerns about the claim being terminated.

Our investigator looked into what happened and upheld her complaint. She recommended that the claim be reinstated. L and G didn't agree. So, this complaint was passed to me to consider everything afresh to decide.

I issued my provisional decision earlier in April 2024 explaining why I also intended to uphold the complaint and why I intended to direct L and G to do more to put things right in this case. An extract of my provisional decision is set out below.

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The insurance industry regulator, the Financial Conduct Authority ('FCA'), sets out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). ICOBS says insurers should act honestly, fairly and professionally in accordance with the best interests of its customers. It also says insurers should handle insurance claims promptly and fairly - and shouldn't unreasonably reject a claim.

The policy terms and conditions say:

Subject to terms of this policy, benefit will be paid in respect of an insured member provided he is a disabled member.

And that the benefit will end if "the insured member ceases to be a disabled member".
Disabled member means:

An insured member who at any time,

In our opinion, meets the incapacity definition...

As Ms W is no longer employed by the policyholder and as her employment ended after the benefit payments were first made, the policy terms reflect the relevant incapacity definition is "suited occupation".

Suited occupation means:

The insured member is incapacitated by a specific, diagnosed illness or injury so that he is unable to undertake any occupation which we consider appropriate to his experience, training or education.

For the purposes of this definition an occupation will not be considered to be inappropriate to an insured member's experience, training or education on the grounds that:

(i) the pay from such occupation may be lower than that paid to the insured member prior to the deferred period in relation to his own job or lower than the amount of member's benefit, or

(ii) such occupation lacks the status or seniority associated with the insured member's own job.

When making a claim, it's for Ms W to establish that she was incapacitated. She was able to do that, and the monthly benefit was paid.

Importantly I think in this case, as Ms W's claim terminated was terminated, it's for L and G to show (on the balance of probabilities) that she no longer met the definition of incapacity, based on medical evidence. It's not for her to show that she continued to do so.

Did L and G act fairly and reasonably when terminating Ms W's claim?

I'm not a medical expert. So, I've relied on all the evidence available to me when considering whether L and G reasonably terminated Ms W's claim, when it did. And where there is conflicting medical evidence, I've had to consider what I think is more persuasive in the circumstances of this case.

Overall, I don't think L and G has fairly and reasonably terminated Ms W's claim. I'm satisfied it should reinstate the claim and pay Ms W unpaid monthly benefits due under the policy backdated to the date on which the claim was terminated. I'll explain why.

- Ms W's consultant psychiatrist's letter to L and G dated October 2022 explained why, in their opinion, it would be extremely difficult for Ms W to currently engage in occupational activity, including social anxiety (outside of familiar surroundings with familiar people who aren't demanding). The letter concludes that they wouldn't expect a return-to-work duties in the foreseeable future. That letter is dated around two months before the decision to terminate the claim was made.
- I note that L and G's chief medical officer (CMO) disagreed with Ms W's consultant psychiatrist and pointed to factors indicating an improvement in her functional ability and psychological well-being. The CMO also referenced Ms W's ability to drive, manage her home life and frequently play tennis to support their opinion that Ms W should be able to carry out a suited occupation.

- Further, a transferable skills analysis was carried out in September 2022 setting out the details of several roles that were deemed suitable for Ms W in line with the suited occupation definition in the policy.
- However, after Ms W appealed the decision to terminate her claim, L and G arranged for an independent assessment to be carried out by an independent consultant psychiatrist. They produced a report and follow up report in September 2023. It's reflected in the second report that they'd considered the transferable skills analysis and all roles identified would include the need for Ms W to work within an organisational hierarchy, work with demands from other parties and tolerate stress, conflict and change. They conclude that the evidence from Ms W's history suggest this is something she would struggle with.
- The independent consultant psychiatrist also concluded that there's no convincing evidence of internal or external inconsistencies in Ms W's symptoms. And "the suggestion of the presence of motivation, energy levels, enjoyment from specific social interaction and physical exertion and maintaining the wellbeing of her son didn't contradict Ms W's reporting of symptoms".
- I've also taken into account the surveillance report undertaken on behalf of L and G. And I don't think this provides much insight into whether Ms W is able to undertake a suited occupation – which is also a point made by the independent consultant psychiatrist set out in the second report.
- An earlier chronic pain abilities determination (CPAD) report arranged by L and G concluded that Ms W retained a significant number of transferable skills for a suited role and this was based on the results of tests undertaken by Ms W over two days. That's relevant evidence which I have taken into account. But I'm not persuaded that in itself is conclusive evidence that Ms W no longer met the policy definition of incapacity. The CPAD also says L and G may wish to instruct a more in-depth neuropsychological assessment to provide further clarification of Ms W's ability to return to a suited role and it was outside of their expertise to report on her current psychiatric condition. So, I think in this case, the CPAD is less relevant.
- As stated above, before the claim was terminated, Ms W's consultant psychiatrist stated that she wasn't able to return to work. And another (independent) consultant psychiatrist has also concluded that it's unlikely that Ms W would be able to carry out the roles identified by L and G as being suitable in the transferable skills report and explained why. I've placed more weight on the reports of the two consultant psychiatrists as I think they're well-qualified and more suited to report on her functional limitations to undertake a suited occupation given the illness which resulted in her being unable to work.
- When making this finding, I've taken into account that Ms W had been, until recently, undertaking some voluntary work for a tennis club (she says between 24 and 48 hours per year). This had been identified by L and G before issuing its final response letter and it's only more recently – after our investigator issued her view in February 2024 – that it has sought to request more information from Ms W and the tennis club about this voluntary work.
- I note L and G's CMO made reference to this role in December 2023 (before the date of the final response letter) and considered a more generic job description from an Association for the type of role Ms W was doing on a voluntary basis.

- However, before issuing its final response letter, L and G didn't try to understand whether this was an accurate reflection of Ms W's responsibilities (Ms W says it isn't). So, at best, I think L and G's consideration of this voluntary role and whether it's relevant to Ms W being able to carry out a suited occupation is based on assumptions about the voluntary role she is doing which may not have been accurate. And, as at the date of the final response, I think it's unfair for it to rely on Ms W having undertaken those voluntary responsibilities as a further reason for maintaining its decision to terminate the claim based on the information it had available or could've requested at the time (including asking the independent consultant psychiatrist to consider to see if it changed their opinion on her capabilities to work a suited occupation).
- So, looking at the totality of the medical evidence, I'm not persuaded on the balance of probabilities that L and G has established that Ms W no longer met the policy definition of incapacity (based on the suited occupation definition).

Distress and inconvenience

I'm persuaded that ending the monthly benefit has had more than just a financial impact on Ms W. I'm satisfied that she's been put to the inconvenience of contesting the decision to terminate the claim, at an already difficult time for her. I'm also satisfied that being unfairly deprived of the monthly benefit under the policy because it was unfairly terminated by L and G would've caused her unnecessary and significant worry and upset.

I'm satisfied that L and G should pay her £500 compensation for distress and inconvenience to reflect this.

Other issues

- For reasons set out above, I'm satisfied that the claim was unfairly terminated when it was, and that L and G unfairly maintained its position to terminate the claim as at the date of the final response. However, L and G is still able to continue to review the claim going forwards in light of any further evidence.
- I know Ms W is unhappy that L and G arranged for surveillance but, sometimes, when reviewing an ongoing income protection claim, surveillance is undertaken. And whilst I can, of course, understand why Ms W wouldn't feel comfortable knowing she's been monitored in this way, I don't think that's unfair in principle.
- Ms W is also unhappy that L and G didn't provide her with the terms of the policy. However, the contract of insurance is between L and G and the policyholder. And although Ms W is a beneficiary of the policy, I think L and G acted fairly by not providing her with the policy terms as she isn't party to the contract.

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I invited both parties to provide any information in response to my provisional decision. Both parties accepted what I said.

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.

As both parties agree with my provisional decision, I'm satisfied that there's no compelling reason to depart from it.

So, for reasons set out in my provisional decision (an extract of which is set out above and forms part of this, my final decision), I uphold Ms W's complaint.

Putting things right

I direct L and G to:

- reinstate Ms W's monthly benefit, backdating the monthly payments that would've been paid if the claim hadn't been terminated.
- add simple interest at a rate of 8% per year* to each monthly benefit that ought to have been paid since the claim was terminated, from the date each benefit should've been paid until the date they're actually paid.
- pay £500 compensation to Ms W for the distress and inconvenience she experienced because L and G unfairly terminated the claim.

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

My final decision

I uphold Ms W's complaint and direct Legal and General Assurance Society Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 27 May 2024.

David Curtis-Johnson
Ombudsman