DRN-4961837

The complaint

Mr B complains that Legal and General Assurance Society Limited (L&G) has stopped paying benefit for an incapacity claim he made on a group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

Mr B made an incapacity claim on his employer's group income protection insurance policy in 2019, after he became unfit to work. At that point, the policy provided cover if Mr B was incapacitated from carrying out his own occupation. L&G accepted the claim and it began to pay monthly benefit.

In line with the policy terms, L&G kept Mr B's claim under periodic review. In 2021, Mr B's employment ended. The policy terms said that if a member left their employer, the definition of incapacity it applied when assessing claims switched from 'own occupation' to 'suited occupation'. This meant that although L&G would keep paying Mr B's claim for as long as it remained eligible, it would no longer be considering whether Mr B's illness incapacitated him from carrying out his own occupation. Instead, it would be assessing whether Mr B's illness prevented him from carrying out *any* occupation, which in L&G's opinion, was appropriate for his experience, training and skills.

In June 2023, L&G decided to stop paying Mr B's claim. It said he no longer met the suited occupation of incapacity. It relied on a functional capacity evaluation (FCE) which had been carried out, together with a Transferable Skills Analysis (TSA), along with medical evidence from Mr B's treating doctors and the opinion of its Chief Medical Officer (CMO).

Mr B was unhappy with L&G's decision and he asked us to look into his complaint.

Ultimately, an ombudsman considered the evidence. They felt the fair outcome to Mr B's complaint would be for L&G to appoint an Independent Medical Examiner (IME) to assess Mr B and provide their opinion on whether Mr B remained incapacitated from carrying out a suited occupation. So they asked L&G whether it was prepared to do so.

L&G accepted the ombudsman's recommendation and Mr B agreed to undergo assessment by the IME.

The IME interviewed Mr B in November 2023 and reviewed the available medical evidence. Ultimately, their report concluded that Mr B didn't meet the suited occupation definition of incapacity under the policy terms and that he was therefore capable of carrying out a suited occupation.

Based on the IME's report, L&G maintained its decision to stop paying benefit with effect from June 2023. So Mr B asked us to look into a complaint about L&G's position. He didn't think the IME had been independent and he didn't think they had taken the relevant medical

evidence into account. He also considered that given he'd been found to be unfit for work by the DWP, he'd be breaking employment law if he returned to work.

Our investigator didn't think it had been unfair for L&G to rely on the IME's report to stop paying Mr B's claim. He felt the report showed that the IME had considered all of the medical evidence before reaching their conclusions. And he thought the IME had appropriately decided whether Mr B met the policy definition at the time L&G had stopped paying benefit and afterwards. He also noted that Mr B's condition had seemed to get worse since the claim had ended. But he said he couldn't ask L&G to start a new claim because Mr B's cover with L&G had ended at the point it stopped paying his claim.

Mr B disagreed and so the complaint's been passed to me to decide.

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, whilst I'm very sorry to disappoint Mr B, I don't think it was unfair for L&G to terminate his incapacity claim and I'll explain why.

First, I'd like to reassure Mr B that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent. It's clear that Mr B suffered a painful injury many years ago and that he continues to experience real difficulties with his health. I'm sorry to hear he's been through such a difficult time.

I also need to make clear what I'm able to look at when considering this case. As I've explained, Mr B previously made a complaint to us about L&G's initial decision to stop paying his claim. An ombudsman looked at all of the medical and other evidence which was available to L&G at the point it made that decision and felt that the fair way to resolve Mr B's complaint would be for L&G to appoint an IME. Both sides agreed with that way forward. So it wouldn't be appropriate for me to take into account any of the medical evidence the ombudsman considered when she reviewed Mr B's previous complaint. And therefore, my decision will focus on a) whether I think it was fair for L&G to stop paying benefit based on the IME's report and b) whether L&G should consider allowing Mr B to make a new claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles and guidance, the medical evidence and the policy terms, to decide whether I think L&G handled Mr B's claim fairly.

The policy terms

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr B's former employer and L&G. While Mr B was still employed by his employer, L&G assessed his claim in line with the 'own occupation' definition of incapacity. However, the policy documentation says:

Definition of Incapacity: 'If a claimant leaves service will be based on our "Suited Occupation Definition": A member is incapacitated if: unable to perform any occupation which, in the opinion of the insurer, is appropriate to the members experience, training or education, and is not following any other occupation.'

Both parties agree that Mr B stopped working for his employer in 2021. So L&G began

assessing his claim in line with the suited occupation definition of incapacity I've set out above. I'm satisfied that L&G acted in line with the policy terms.

The policy states that L&G will continue to pay benefit for as long as its provided with evidence which shows that the claimant is a 'disabled member'. And it says that L&G will stop paying benefit if an insured person stops being a disabled member. It defines a disabled member as:

'*Means an insured member who at any time,*

i. meets the incapacity definition, and

ii. is not engaged in any other occupation, other than one which causes payment of a partial benefit in accordance with Part 3, Section 7 of this policy.'

In summary, I think the policy terms make it sufficiently clear that L&G will regularly review a claim it's paying to check whether an insured member remains incapacitated in line with the policy terms. And that if L&G thinks the evidence shows an insured member is no longer incapacitated, it will stop paying the claim. In my experience, neither of these terms are unusual in income protection insurance policies. Generally, I think an insurer is entitled to periodically review a claim to ensure an insured member still meets the policy definition of incapacity.

Was it fair for L&G to stop paying Mr B's claim?

Having considered the IME's report, L&G concluded that Mr B didn't meet the suited occupation definition of incapacity. So I've thought carefully about whether I think this was a fair conclusion for L&G to draw.

I appreciate Mr B has concerns that the IME wasn't independent. I accept that L&G paid for the IME, in line with the ombudsman's recommendation. But I've seen nothing to suggest that the IME wasn't independent and indeed, the IME's report clearly says that their duty was to provide an independent report. The report also said that the IME's fee wasn't dependent on the outcome they reached. On that basis, I think it's most likely that the IME was independent of L&G.

Mr B has been provided with a copy of the IME's report. The report details all of the evidence which the IME took into account in addition to their consultation with Mr B – including medical evidence Mr B had provided; letters from the DWP; both the FCE and TSA reports, occupational health reports; L&G's clinical team's opinion and MRI scan reports. I can see that the IME clearly referred to this evidence in their report in some detail; provided their opinion on the strength of the available medical evidence and explained their reasons for that weighting. So while I understand Mr B feels that the IME didn't consider the relevant medical evidence, it seems to me that the IME did appropriately consider the totality of the available evidence when reaching their clinical opinion.

I'd also add that I think it was appropriate for the IME to assess whether Mr B remained incapacitated at the point L&G ended benefit and at the time of the assessment, rather than based on his past medical history. That's because L&G agreed that Mr B had been incapacitated between 2019 and 2023, which was why his claim had been paid during that time. But L&G wanted the IME's clinical opinion on Mr B's capacity for work at the time the claim ended.

Next, I've gone on to consider the IME's conclusions and I've set out below what I think are the key findings:

‘Specialists involved have not identified causes for (Mr B’s) symptoms…

a. The information available to me today indicates that there have not been confirmed tests or investigations that prove pathology.

b. It strikes me that Mr B has strong internal beliefs that he would be unable to work due to his symptom profile, and this psychological approach is likely of great relevance when considering his own motivations and willingness to engage with a process that will facilitate a return to work.

On the balance of probabilities, it is my opinion that Mr B has consistently reported symptoms for which there is no proven medical pathology, and as such it is not possible to conclude that his medical profile and pathology would render him incapable of employed work.’

It’s important I make it clear that I’m not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and experts to decide what evidence I find most persuasive. I note that the IME is an Occupational Health Physician – an expert in the field of occupational medicine. So I don’t think it was unfair or unreasonable for L&G to rely on the IME’s expert findings when it considered whether or not Mr B still met the suited occupation of incapacity

And, given the IME’s specialism in the field of occupational medicine, on balance, I find their view persuasive and reasoned evidence that Mr B no longer met the policy definition of incapacity.

So whilst I’m very sorry to cause Mr B further upset, I don’t think it was unfair or unreasonable for L&G to stop paying his claim in June 2023. And I’m not telling it to pay him any more benefit.

Should L&G consider a new claim or further evidence?

Mr B has provided us with medical evidence which shows that his condition seems to have become worse since L&G stopped paying his claim. I was sorry to read about his worsening health.

However, as the investigator explained, L&G’s contract was with Mr B’s former employer. Once Mr B left his employment, he remained able to benefit from the policy for as long as his existing claim was still payable. After L&G ended the claim though, Mr B wasn’t entitled to any more benefit under the policy. And as he’s no longer employed by his former employer, he is no longer covered by the insurance contract. This means that Mr B isn’t eligible to make any new claims, even if his condition worsens. And as I’ve said, based on the information L&G had, I think it acted fairly when it stopped paying the claim in June 2023.

Summary

It’s clear how strongly Mr B feels about things. I know he’s concerned that if he returned to work, he’d be breaking employment law. I hope it reassures Mr B to know L&G isn’t telling him that he should or must return to work. It’s simply assessed the claim in line with the terms of the insurance contract it has with Mr B’s employer.

Overall, I’ve thought very carefully about all that both parties have said and provided. But while I sympathise with Mr B’s position, I don’t think L&G acted unreasonably when it ended his claim.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 November 2024.

Lisa Barham
Ombudsman