

The complaint

Miss P is unhappy that Legal and General Assurance Society Limited (L&G) stopped her benefits payments under her income protection policy.

What happened

Miss P has a group income protection policy through her employer. The policy provides a benefit in certain circumstances after a deferred period of 28 weeks on an own occupation basis. L&G is the underwriter.

In May 2015, Miss P was unwell and was off from work. In November 2015, L&G accepted Miss P's claim for income protection and her payments started in December 2015.

Following a review of Miss P's claim, in December 2023, L&G stopped paying Miss P her income protection benefit. L&G said Miss P reported medical conditions of visual vertigo, hearing loss, nausea, vomiting and dizziness. These were not enough to continue paying the benefit on the policy and there was no objective evidence which supported Miss P's incapacity to work. L&G said Miss P's GP medical records showed no evidence of active medical problems requiring continued treatment or further referral to a specialist. There was a considerable variance between Miss P's self-reported symptoms and her level of functioning. L&G said whilst it didn't doubt that Miss P's condition fluctuates, with reasonable employer adjustments, she should not continue to be excluded from returning to work.

Miss P brought her complaint to this service. Our investigator upheld the complaint. She didn't think L&G had provided sufficient medical information for L&G to terminate Miss P's benefit payments or show Miss P no longer met the definition of incapacity as per the terms and conditions of the policy. She recommended that L&G re-instate Miss P's claim and pay the benefits in line with the policy terms and conditions up to the point that Miss P stopped working for the employer and add 8% simple interest. She also recommended that L&G pay Miss P £200 for the distress and inconvenience caused to her.

L&G disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

At the outset, I wanted to acknowledge that the whole situation has been difficult for Miss P. I have every empathy for the circumstances of Miss P's claim.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've considered, amongst other things, the terms of this income protection policy and the circumstances of Miss P's claim, to decide whether I think L&G treated her fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Miss P or L&G. Rather it reflects the informal nature of our service, its remit and my role in it.

I've first considered the terms and conditions of this policy, as it forms the basis of the contract between Miss P's employer and L&G.

On page 18, '*Disabled member*' is defined in the policy as:

'Disabled member 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 caused payment of a partial benefit in accordance with Part 3, Section 7 of this policy.'

Own occupation is defined in the policy on page 20 as:

'... 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.'

In a situation like this, where an insurer has accepted a claim and subsequently terminates that claim, it's for the insurer to show that the claimant no longer meets the definition of incapacity.

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Miss P's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available medical evidence to decide whether I think L&G acted fairly and reasonably in terminating Miss P's claim.

I've been provided with medical evidence relating to Miss P's diagnosis and symptoms from 2015 onwards. It's not in dispute that Miss P met the definition of incapacity from 2015 to 2023. L&G was paying the claim during this time. The issue for me to determine is whether I think the medical evidence supports L&G's decision that Miss P no longer meets the definition of incapacity as of 1 December 2023.

I've carefully considered the medical information provided. Miss P's historic medical evidence shows she suffered from various medical conditions which meant that she was incapacitated from performing the essential duties of her role. The claim was accepted and paid until 1 December 2023. A review of the claim took place and after an appeal, it was terminated from 1 December 2023.

I've considered the telephone assessment that was carried out by a vocational clinical specialist on 12 January 2023. L&G states Miss P said she was unable to work as she couldn't use a computer for extended periods. Miss P said she was able to have an active lifestyle if she didn't have to use the computer and avoid stressful situations. She explained she enjoyed sketching and had an aspiration to open a company with support from people to help her with computer work. The assessment reported that Miss P was unfit to work in her contracted role because elements of the role triggered her symptoms.

Miss P's GP medical records from 1 January 2020 to 22 May 2023 shows an entry in the records – from April 2023, that she was '*working at the moment – not feeling*

overworked/stressed' but she was absent from her employed role at the time. L&G says this shows Miss P could perform the essential duties of her role. There's no evidence in the GP records of Miss P's condition deteriorating or that she was receiving ongoing medical support.

On 23 May 2023, a medical report was provided by a Consultant Physician in Audio Vestibular Medicine a number of points were put forward. It stated Miss P's condition pre-dated the absence from work, was stable and there was no active medical intervention required for managing the symptoms. The consultant reported that her condition was permanent and unlikely there will be any improvement. She suggested continued monitoring and that the ongoing symptoms had a significant impact on her ability to cope with activity.

I've considered L&G's Chief Medical Officer's (CMO) opinion. This recommended workplace employer adjustments for a phased return to work.

L&G says additional information shows Miss P using a business email other than her own personal email in a reply to the GP, involvement with her football team, evidence of her attendance at trade shows and her involvement in a company as a director.

I appreciate L&G's comments that it thinks there is evidence to show there is clear capability and intent in carrying out other work, away from her employer and this needs to be considered. And I note that Miss P carried out activities in her daily life which L&G say potentially point to her capability of performing the essential duties of her role.

However, I haven't seen sufficient persuasive medical evidence that shows the change in her medical conditions which would mean she would not meet the definition of incapacity. The medical evidence I have seen refers to Miss P having vertigo and her condition not showing signs of improvement. The clinical assessment reported that Miss P was unfit to work, and she should take up hobbies/tasks to keep herself mentally and physically engaged for her overall well-being. So, taking up some of the tasks/activities that L&G has provided evidence of aren't of itself sufficient to demonstrate Miss P can perform the duties of her role.

Based on all the evidence, I don't think L&G has stopped Miss P's income protection claim fairly or in line with the terms and conditions of the policy. I haven't seen any persuasive medical evidence to show that a detailed assessment has been carried on Miss P's capacity to work. Essentially, the burden of proof lies with L&G to provide this medical evidence. And in the absence of this evidence, I don't think the claim has been terminated fairly and in line with the terms and conditions of the policy. There's no independent medical opinion or assessment carried out in the circumstances here.

In terms of the additional evidence L&G has provided and its references to Miss P engaging in another occupation, attendance at trade shows and her involvement in a football team, whilst I understand the reasons for providing this information, it's not sufficient in the circumstances of this complaint. L&G has also said Miss P is a director of a company. Miss P has explained that she wasn't earning an income but supporting her partner. So, I'm not persuaded that of itself is enough evidence as her taking part in another occupation. Having reviewed this, I don't think the information necessarily shows she is now able to perform the duties of her role. Miss P had a claim that was accepted, and L&G must provide sufficient medical evidence that Miss P was not incapacitated to the extent that she was able to return to work – and provide medical evidence to show what's changed in her condition.

Miss P has said that her condition didn't stop her from using technology or the computer. However, her work environment involved long hours on the computer which stopped her from returning to work. Her condition had stabilised as she wasn't using the computer for

extended periods of time. I acknowledge L&G's comments that based on some of her daily activities, there's evidence of her using her computer or laptop. However, this isn't sufficiently persuasive. She's always maintained that her condition prevented her from using a computer for extended periods of time. The evidence L&G provided doesn't necessarily show otherwise. I find Miss P's explanations plausible.

Essentially, the test here is whether Miss P continues to meet the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I'm satisfied there isn't sufficient medical evidence that Miss P no longer meets this definition and that she's unable to carry out the essential duties of her occupation.

I'm satisfied Miss P's claim should be re-instated from 1 December 2023 until the time she ceased her employment in July 2024. And I understand that Miss P has suffered distress and inconvenience as a result of L&G's actions. I'm satisfied that £200 compensation is fair and reasonable in acknowledgement that the claim could have been handled better and has impacted Miss P.

Putting things right

L&G needs to put things right by:

- Reinstating Miss P's claim from 1 December and backdate the benefits until the point Miss P ceased her employment in July 2024 in line with the remaining terms and conditions of the policy.
- Add 8% simple interest per annum from the date each benefit payment was due to the date of settlement.
- Pay £200 compensation to Miss P for the distress and inconvenience caused to her.

*If L&G considers that it's required by HM Revenue & Customs to take off income tax from the interest, it should tell Miss P how much it's taken off. It should also give Miss P a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**L&G must pay the compensation within 28 days of the date on which we tell it Miss P accepts my final decision. If it pays later than this, it must also interest on the compensation from the deadline date for settlement to the date of payment at 8% simple per annum.

My final decision

For the reasons given above, I uphold Miss P's complaint about Legal & General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 7 February 2025.

Nimisha Radia
Ombudsman