

The complaint

Miss H complains that Legal and General Assurance Society Limited (“L&G”) declined an incapacity claim she made on a group income protection insurance policy.

What happened

Miss H was a member of her employer’s group income protection policy. The policy provided cover if a member was unable to work due to accident or illness. The policy provided cover for Miss H’s own occupation and included a deferred period of 26 weeks.

Miss H has been signed-off work since May 2023 due to work related stress, anxiety and depression. Miss H was also diagnosed with a specific autism spectrum disorder in November 2019. In August 2023, Miss H’s employer made an incapacity claim on her behalf. The deferred period ran from May to November 2023.

L&G declined the claim in October 2023. It had assessed the employer’s absence notification, Miss H’s statement and a report from a Vocational Clinical Specialist. L&G said these all showed that Miss H’s absence was due to work related stress, rather than due to an illness. So, it said Miss H didn’t meet the policy definition of incapacity.

Miss H appealed L&G’s decision. She said the stress had triggered her long-term condition and she was struggling. Miss H was unhappy that L&G hadn’t contacted her GP at all. Miss H provided L&G with an occupational health report which said she wasn’t fit for work, a letter from her GP and a letter from her support worker in support of her appeal.

L&G sought advice from its Chief Medical Officer and arranged for Miss H to undergo an independent occupational health assessment with a physician. Following this, L&G said it maintained that Miss H didn’t meet the policy definition of incapacity. In short, it said that the evidence still showed the trigger for Miss H’s absence was perceived work-related concerns. Unhappy with L&G’s position, Miss H brought a complaint to our service.

One of our investigators looked into Miss H’s complaint. Having done so, she thought L&G had acted fairly and reasonably when it declined the claim. She accepted Miss H suffered from mental health conditions. But she thought L&G acted fairly by relying on the evidence which supported that Miss H’s absence was due to work related stress, which meant that she didn’t meet the policy definition of incapacity. Overall, our investigator placed more weight on the independent occupational health report carried out by a physician.

Miss H didn’t agree with our investigator’s findings. She didn’t think the occupational health report was independent. Miss H also said L&G never requested information from her GP.

Miss H’s support worker said that Miss H had been assessed and supported by her GP, mental health team and she was attending therapy. She said all these medical professionals knew Miss H far more personally, rather than an occupational health physician who made the findings based on an hour video call. She also didn’t think the physician had been impartial. The support worker said Miss H had been very unwell with her mental health for the last 12 months. This email was sent in September 2024.

As no agreement was reached, the complaint has 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.

Industry rules set by the regulator (the Financial Conduct Authority) say insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules, and other industry guidance, into account when deciding what I think is fair and reasonable in the circumstances of Miss H's complaint.

I was sorry to hear Miss H has been through a very difficult time. It may be helpful if I first explain that I'm not a medical expert, so my findings will be based on an assessment of the medical evidence provided by experts in their field. And ultimately, I need to make a finding on whether or not L&G acted fairly and reasonably by declining Miss H's claim based on the evidence it had.

Miss H's claim was for an incapacity benefit. The policy definition for this was for own occupation which is defined as:

“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.”

So, for L&G to pay Miss H an incapacity benefit, it needs to be satisfied that it's an illness which prevented her from carrying out the essential duties of her role. It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Miss H's responsibility to provide L&G with enough evidence to demonstrate that her illness had led to her being unable to carry out the essential duties of her role. Miss H also needed to provide L&G with enough evidence to show that she was incapacitated for the entirety of the deferred period – between May and November 2023 – and afterwards.

I've looked through the medical and other evidence L&G was provided with to consider Miss H's claim.

Miss H's employer provided L&G with an absence notification form in which it said she had been previously diagnosed with autism and suffers from anxiety and depression. The employer said Miss H had been signed off due to work related stress, and that work related factors were impacting absence.

Miss H completed a statement for the incapacity claim. She described her absence from work was due to stress, anxiety and depression. And she said the symptoms that stopped her from working were “*not sleeping being depression extreme anxiety*”. Miss H has said she's been diagnosed with depression since she was around 20, and with anxiety-based autism in 2019. Miss H said she was on antidepressants and had multiple therapies over the years. Miss H answered “N/A” to the question “What is your current treatment plan?”

In the statement, Miss H was asked to tell L&G about her daily activities before and after incapacity. She described that before incapacity she was anxious all the time, but she just tried her best to manage. She said she'd been getting worse through the years especially with work stress. Miss H said she had good days and bad days, and her concentration was poor on bad days. She also said she had a support worker for six hours a week.

After incapacity, Miss H said she had a support worker for 14 hours a week, and her anxiety and depression were very bad. Miss H said work made her so stressed and anxious she can't function or concentrate after being audited for almost a year. Miss H said she didn't have good days anymore and she didn't sleep much especially at night, and she was struggling to concentrate on anything. She said that whenever she heard from work it made her feel sick.

A Vocational Clinical Specialist ("VCS") completed a report on 31 August 2023 after reviewing Miss H's statement and carrying out a phone interview with her. In this report the VCS said Miss H reported her absence had been triggered by work related stress. She had been on audit since August 2022 due to failing a previous audit, and she continued to be on audit until May 2023 when she became absent from work. Miss H said this increased her stress levels. She said she'd always found work stressful, but she had usually been able to manage this. Miss H also said her manager didn't understand her condition properly, and she raised a grievance against her manager about sick pay which had been unsuccessful.

The VCS noted Miss H was on antidepressant medication and had been since 2016. Miss H didn't report any change in her medication during this time. When Miss H was given the autism diagnosis in 2019, her psychiatrist made a referral for a support worker, but it took several years to set this up. Miss H's support worker was helping her for six hours a week since January 2023, but this had increased to 14 hours a week since Miss H had been signed-off work.

The VCS carried out psychological assessments and noted Miss H's PHQ-9 score to indicate severe depression, and her GAD-7 score to indicate moderate to severe anxiety. However, looking at the scores online, it looks like the GAD-7 score indicated severe anxiety, instead of moderate to severe.

The report asked the following: *"In the member's opinion if perceived work-related stress issues are resolved, or if the role was within another place or organisation, could the member perform their job?"* The VCS noted that: *"Unable to confirm if she would have been able to carry on working."*

Overall, the VCS concluded that in his clinical opinion, Miss H was fit for work. The report didn't include any adjustments or recommendations because the absence was work related. The VCS said Miss H was experiencing stress type symptoms which were directly related to work issues. He also noted that whilst Miss H had cited issues from her day-to-day life, he thought it was clear that she had been able to work with her condition until she continued to be audited. The VCS considered the absence to be non-medical.

Following this, L&G declined the claim in October 2023. It said the evidence, including Miss H's own statement, showed that her absence was due to work related stress, rather than due to an illness. So, it said Miss H didn't meet the definition of incapacity.

Having looked through the evidence, I think L&G acted fairly and reasonably when it declined Miss H's claim at this point, for the reasons it did. It's clear that Miss H has a diagnosis of autism which impacts her, and she suffers from mental health conditions. But for Miss H to meet the definition of incapacity, there needs to be evidence to show that it's these conditions that are preventing her from carrying out her own occupation during the deferred period.

It was clear Miss H had had the mental health conditions for a long time before becoming absent from work. There was no change in her medication or other medical intervention such as therapy, and there was no treatment plan from a medical professional. And Miss H herself acknowledged her absence had been triggered by work related stress, and the VCS concluded this was the reason for absence. In other words, if the work-related stress were to be removed, for example if Miss H worked for another employer, the evidence didn't show she'd be unable to carry out her own occupation due to her diagnosed conditions alone.

Following this, Miss H appealed L&G's decision. She said the stress had triggered her long-term condition and she was struggling. Miss H was unhappy that L&G hadn't contacted her GP. She provided L&G with an occupational health report which said she wasn't fit for work, a letter from her GP and a letter from her support worker in support of her appeal. Miss H also explained that she had been offered more hours from a support worker earlier, but she didn't have time for this while she was working. But while she'd been off work the hours had been increased. Miss H said she doesn't have counselling because it doesn't help her anxiety after she loses the therapist after eight sessions.

The occupational health report Miss H provided was dated 18 September 2023. This was written by a specialist community public health nurse. During the assessment, the nurse said Miss H reported she had been struggling with her mental wellbeing for quite a while and work had been getting more stressful for her as she was being regularly audited. Miss H reported considerable sleep disruption, struggling to concentrate and being constantly on edge.

The nurse acknowledged Miss H's diagnoses, and that she perceived increased stress at work. The nurse set out the general characteristics of Miss H's autism diagnosis and said that it's likely that this condition had an impact on Miss H's anxiety and depression. The nurse said she assessed Miss H's mental wellbeing with an accredited assessment tool, and this demonstrated severe levels of depression and anxiety. The nurse encouraged Miss H to seek psychological support.

The nurse concluded Miss H was unfit for work in any capacity due to the level of her mental wellbeing. She didn't think Miss H would be fit to return in the next 2-3 months. The nurse said that on return-to-work Miss H would need support for her mental wellbeing and autism diagnosis, and she may benefit from support with a Workplace Needs Assessment and a Wellness Recovery Action Plan. She said Miss H's conditions were ongoing and re-occurrence was likely.

Miss H's GP wrote a letter to confirm her autism diagnosis. The GP also said the following: *"She also has a long history of depression and anxiety, which has been the reason for periods of being unable to work. She reports that the stress and pressure of work exacerbates her mental health problems, which is linked to her diagnosis of [autism]. She has a support worker to help her with day-to-day activities."*

Miss H's support worker wrote a letter in support of the appeal. She said she had been working with Miss H since January 2023, and a care plan had been put in place for her as *"she was struggling to cope and was battling with anxiety and depression, as well as having been diagnosed with [autism]"*. The support worker said Miss H had tried to keep in employment, but *"work became progressively more difficult as time had gone on, and that she had felt she had been unsupported in her role"*.

The support worker said that Miss H had had to move out of her home due to finances. She said that Miss H suffered from stress, anxiety and depression which had been *“greatly exacerbated by work”*. The support worker said Miss H didn’t socialise with friends, she’s unable to go out alone or travel by herself, and she doesn’t keep on top of her household chores.

The support worker said Miss H’s mental health had declined after L&G declined her income protection claim. Her GP had prescribed her beta blockers for anxiety, in addition to her antidepressant medication.

L&G reviewed Miss H’s appeal. Its Chief Medical Officer (“CMO”) commented that the main trigger for Miss H’s absence appeared to be poor performance at work and the subsequent audit. The CMO noted this was *“likely to be multi-factorial, noting the member has been supported by the support worker since January 2023 (absent since May 2023), suggesting deterioration in her overall function several months pre-absence”*. Following this, L&G arranged for Miss H to undergo an independent occupational health assessment with a GP / occupational health physician on 23 January 2024.

The physician concluded that in his opinion, with sufficient support, Miss H would be capable of both returning to work with her current employer, and that she would be capable of working with a different employer.

The physician listed the factors that culminated in Miss H’s current absence from work. These included long-standing fluctuation of depression and anxiety, relationship strain with her manager, a perceived change in the nature of her work to one which she feels less capable of performing and derives less satisfaction from, a perceived pressure to return to office-based work (due to relocation), the commencement of performance management, the increasing personal isolation (due to relocation) combined with relationship struggle/breakdown and worry about finances.

The physician said it was likely Miss H has had the characteristics and diagnostic criteria for her autism present since childhood, rather than only since her formal diagnosis in 2019. However, during these years she’s completed a university degree, engaged in a serious relationship, lived independently, and pursued a career. The physician also said the diagnosis hadn’t been associated with any change to the management of her medical profile, nor had it facilitated access to any other additional specialist support services. Overall, the physician didn’t think it likely that Miss H’s autism diagnosis had any meaningful impact on work fitness.

The physician noted that Miss H had struggled with her mental health for many years, but he didn’t think this meant Miss H was incapacitated from resuming the essential duties of her role. He said, amongst other things, that Miss H had said she struggled to maintain concentration which was a major feature in her illness. But the physician noted that she maintained excellent communication during the interview, which required lateral and dynamic thinking, for a substantial period of time.

The physician also said that Miss H had struggled with her mental health for many years but had been able to return to work with support. He said that Miss H’s mental health was a concern but appeared to be largely driven by factors within her control. The physician noted that returning to work would improve Miss H’s finances and would have a positive impact. However, she would need to discuss with her employer about her role being office based considering her relocation.

Finally, the physician said that the previous occupational health report was carried out by a nurse, rather than a physician, and he didn't think it was a well-constructed or evidence-based report.

L&G maintained its decision to decline Miss H's claim following her appeal. It had reviewed the letter from Miss H's GP and support worker, as well as the two occupational health assessment reports. L&G said that after reviewing the evidence, it remained of the opinion that with reasonable workplace adjustments Miss H would be fit to continue in her insured role.

L&G noted Miss H's autism diagnosis had not led to any changes to managing her medical profile and she had experienced challenges with her mental health for most of her adult life but had been able to maintain herself within employment for a significant period. L&G also said Miss H had noted several work-related factors that led to her absence, and these were not something covered by the policy terms.

L&G said Miss H herself had stated her absence had been triggered by work related stressors, and occupational health, Miss H's GP and support worker all said Miss H's mental health had been exacerbated by the stress and pressure at work.

Overall, L&G said that the evidence consistently showed that Miss H's absence was due to perceived work-related concerns. L&G said that the occupational health physician had said that with sufficient support Miss H would be capable to return to work with her current employer, or work with a different employer. So, L&G said the evidence showed she didn't meet the policy definition of incapacity.

Miss H doesn't think the independent occupational health physician was impartial or made a fair assessment of her circumstances.

Firstly, I think it's clear that Miss H has been struggling with her mental health for a long time. But as I've said, for her to meet the definition of incapacity, she needs to show L&G that she'd been prevented from carrying out her own occupation during the deferred period May to November 2023 due to her illness.

Overall, I don't think L&G acted unfairly or unreasonably in relying on the report made by an independent occupational health physician. Assessing someone's ability and fitness to work was the physician's area of expertise, and I can see that they considered all the factors of Miss H's circumstances when reaching their opinion.

Miss H had been referred for a support worker already in 2019 due to her autism, and she started helping Miss H in January 2023. So, whilst it's clear Miss H needed help in her day-to-day life, this was recommended for her well before she became absent from work. And the occupational health physician didn't think the autism diagnosis had a meaningful impact on her work fitness. I appreciate the support Miss H was receiving increased when she became absent from work in May 2023. But Miss H has explained this was because she had more time for this when she wasn't working. So, it doesn't look like the increase at that time was due to a change in Miss H's mental health, rather, it was due to a change in her circumstances.

Where someone's prevented from carrying out their own occupation due to a mental health condition that has been present for long period of time, I'd usually expect to see a significant change in that condition or its treatment alongside the absence from work. But I can see that Miss H's antidepressant medication remained the same during the deferred period, and I can't see that Miss H showed L&G evidence of starting therapy. I appreciate Miss H was prescribed beta blockers, but it appears this was following L&G's first refusal to pay the claim in October 2023 and the impact that had on her. So, I don't think the medical evidence shows a significant change in Miss H's mental health when she became absent in May 2023, other than an increase in work-related stress.

I think the strongest evidence in support of Miss H's claim is her GP saying that Miss H had a *"long history of depression and anxiety, which has been the reason for periods of being unable to work"*. However, the GP doesn't describe how these conditions changed that led to Miss H's absence from work and prevented her from carrying out the essential duties of her own occupation. Instead, the GP noted that Miss H reported that *"the stress and pressure of work exacerbates her mental health problems, which is linked to her diagnosis of [autism]"*.

I also note that there were assessments done on Miss H's depression and anxiety, and both suggested these were severe. However, it's again not evidenced how these had changed and how the change had led to Miss H's absence. And whilst the occupational health nurse said Miss H wasn't fit for work due to her mental wellbeing, she didn't explain how this was preventing Miss H from carrying out the essential duties of her own occupation.

What's consistent in all the evidence L&G reviewed is that Miss H was significantly impacted by factors at work, and these were causing her significant stress and preventing her from returning to work. For L&G to pay the claim, it would need to be satisfied that even if those factors were removed, Miss H would still be prevented from returning to work due to an underlying illness. I think L&G acted fairly and reasonably when it thought she could return to work with her, or another, employer if those factors were removed based on the evidence it had.

I accept there seems to have been other factors impacting Miss H and her mental health later on, including a relationship breakdown. However, I don't think L&G acted unfairly or unreasonably when it didn't think the evidence showed Miss H was prevented from carrying out the essential duties of her own occupation due to an illness (rather than stress of work-related factors) between May and November 2023. I'm sorry to disappoint Miss H but I don't think L&G did anything wrong when it declined her claim.

Fundamentally, it's for Miss H to show she has a valid claim. I've considered if L&G assessed the evidence it had up until its final response letter in February 2024 fairly and reasonably. If Miss H has further evidence after this date that she thinks shows that she was incapacitated during the deferred period, and afterwards, she can send this to L&G in the first instance.

My final decision

My final decision is that I don't uphold Miss H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 10 January 2025.

Renja Anderson
Ombudsman