DRN-5162712

The complaint

Ms W is unhappy with Legal and General Assurance Society Limited's decision to cease paying her claim.

What happened

Ms W had income protection through her employer, provided by L&G. She began suffering with pain in her arm and elbow in 2015. Her symptoms persisted and she became too unwell to work by May 2022. She was diagnosed with lateral epicondylitis and had symptoms consistent with the early onset of carpel tunnel syndrome in July the same year. Ms W was able to return to work in a reduced capacity at the beginning of June 2022, however, this was short lived owing to pain symptoms and so she became absent from work as of 26 July 2022. Ms W returned to work in September 2023.

Ms W said L&G only paid part of her claim until April 2023. She would like L&G to pay her between then and the date she eventually returned to work. Ms W is no longer an employee and said she had to leave her job because of her condition and the lack of support from her employer – the policy holder.

L&G said it accepted Ms W's claim after reviewing the medical evidence and the evidence given by the policy holder. It said the evidence showed Ms W was unable to perform the duties of her insured sedentary occupation. However, L&G said it stopped paying her claim because there was no longer persuasive medical evidence to show she was suffering with an on-going medical condition that would preclude her from working.

Our investigator didn't uphold Ms W's complaint. She said L&G had relied on medical evidence to support its decision, in particular, letters from Ms W's specialist consultant, an independent medical examination (IME) and the opinion of its own medical officer. She concluded that L&G had therefore stopped paying her claim fairly.

Ms W disagreed and asked for an ombudsman to review her complaint. She said that her symptoms of pain continued after April 2023 and that she was unable to complete everyday tasks, such as driving and washing her hair because of her condition. She explained that her employer was also unsupportive and wouldn't accept adjustments that she considered reasonable. Ms W also noted L&G didn't conduct an inspection of her working conditions and felt that it failed to fully understand the demands of her role. And so, it's now for me to make a final 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.

Having done so, I've decided not to uphold it. My reasons for doing so are largely similar to those already explained by our investigator in that Ms W hasn't provided persuasive medical evidence to show she continued to be incapacitated to such a degree that she couldn't return to work in some capacity. I accept there are also other factors which impacted Ms W's

decision not to return to work sooner, however, I don't find those persuasive either. I also don't consider some of those reasons to be L&G's responsibility. I'll explain why.

The relevant rule is from the Insurance Code of Business Sourcebook (ICOBS). This says L&G must handle claims promptly and fairly and must not unreasonably reject a claim. I'm satisfied L&G fulfilled its obligations under ICOBS because it stopped paying Ms W's claim, based on the contemporaneous medical evidence, as well as completing an independent medical examination (IME) – which further supported that Ms W's symptoms weren't severe enough to preclude her from working.

When Ms W initially saw her consultant in July 2022, she was told her condition would most likely improve after around seven – nine months from the date her symptoms began. It was also recommended that she undergo a work-place assessment to help manage her symptoms, as well as use a counter-force brace and wrist support. The consultant said he didn't need to see Ms W again, unless there were any further problems. I'm aware the assessment went ahead and Ms W received adjustments in line with the recommendations made by that report.

L&G said Ms W didn't see the specialist again after that, however, she continued to receive FIT notes from her GP that said she was unable to work owing to the symptoms of epicondylitis. L&G's position is that it paid Ms W's claim for the period recommended by her own consultant and so doesn't think it should pay any more than that – and I agree. Ms W's position is that she didn't fully rest her arm during that period and that therefore, L&G should effectively pay her benefit from the date she feels her arm was fully rested. I'm not persuaded by what she says here. I say that because that's not the way in which the policy works.

I think it's important to mention the consultant's report in July 2022 says nothing about Ms W resting her arm, nor does it say she's unable to work. It makes mention that she required ergonomic desk adjustments and noted that she works in a high-pace environment, suggesting her employer should reduce its expectations of her during that period of recovery. And so, I find her arguments about that unpersuasive in the circumstances. I also note the consultant said he didn't need to see Ms W again, and that she wasn't at the stage where surgical intervention was necessary or appropriate.

Ms W questioned why L&G didn't conduct an in-person review of her office so it could better understand the demands of her role. In particular, Ms W's argued that L&G doesn't understand the physical demands on her arm as she works in a high-paced environment which requires a significant amount of typing and mouse-clicking. To be clear, I wouldn't have expected L&G to conduct an inspection of Ms W's place of work. However, I would expect it to have a good understanding of the work she does and how that might impact her condition. The evidence I've seen persuades me that it did that. I've seen evidence that shows L&G discussed Ms W's role and responsibilities with a senior member of staff and her line manager. There was also some discussion around her employer's expectations and Ms W's performance against that.

I also think it's clear that Ms W was unable to achieve her objectives at the early onset of her condition, however, I think it's fair to say that was to be expected given the symptoms she experienced. This was further supported by Ms W's medical evidence. I note the specialist suggested there would perhaps need to be a realignment in the employer's expectations of Ms W moving forward as her condition was likely to impact her productivity. Ms W said this was one of the reasons she left her position as her employer wasn't understanding, but that's not something I can reasonably hold L&G responsible for. L&G's role here was to consider whether it continued to meet the claim based on the available medical evidence.

L&G argued that there wasn't enough medical evidence to satisfactorily explain why Ms W was unable to return to work in some capacity, other than her anxiousness about returning to the workplace – I agree with what it says about that too. I've not seen any medical evidence to show that Ms W visited her GP, or reached out to the consultant during the months that followed her assessment in July, until such time as L&G began talking about stopping her claim.

Ms W explained that L&G didn't complete the IME until August 2023, which was after it stopped paying her claim in April the same year. She's made the argument that it was unfair to stop paying her claim prior to receiving that evidence, which I'd be inclined to agree with her, but for the conclusions reached in that assessment. The IME explained that Ms W was most likely able to return to work in some capacity and said the barrier preventing Ms W's return to the workplace was psychological. It found that Ms W's anxiety about the perceived damage it could potentially do to her arm was the main reason behind her anxiety about returning.

I understand Ms W's arguments about that, and I can also understand why she'd be anxious about it, however, that argument is hypothetical and therefore I find it unpersuasive in the circumstances. The IME said that long-term discomfort should be anticipated and expected, however, that the experience of pain or discomfort shouldn't prohibit a return to work because of the benefits being at work would provide Ms W. It goes on to say;

"…there has been no deterioration, or advancement to the lateral epicondylitis…no escalation in her treatment plan towards steroid injections or surgery, and therefore on the balance of probabilities it is my opinion that she is capable of a return to work" and;

"[Ms W] would be able to return to a contractual role and this would be medically feasible"

L&G said this further supports its decision to stop paying Ms W's claim and I should say that I also find that argument persuasive in the circumstances. The medical evidence doesn't support Ms W's testimony that she was unable to return to work after her claim stopped because of the significant lack of progress of her recovery.

I also acknowledge Ms W's comments about her tenure of service with her employer. In summary, she said this is the only long-term absence she's had in almost 20 years of her employment with the company. I understand the connection she's making here, but that doesn't mean L&G should have continued to meet her claim. I say that because there's not enough persuasive medical evidence to show that Ms W's incapacity continued to prevent her from returning to work beyond the prognosis given by her own specialist.

So, I think L&G stopped paying her claim fairly in the circumstances of this complaint.

My final decision

I've decided not to uphold Ms W's complaint for the reasons I've explained.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 7 January 2025.

Scott Slade
Ombudsman