DRN-5188040

The complaint

Mr N complains that Legal and General Assurance Society Limited ("L&G") hasn't paid a claim he made under an income protection policy.

What happened

Mr N was a member of his 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 Mr N's own occupation and included a deferred period of 26 weeks.

Mr N has been signed-off work since 3 March 2023 due to stress, anxiety and depression, and he made an incapacity claim under the policy with L&G. The deferred period ran from 3 March until 1 September 2023. To have a valid claim under the policy, Mr N needed to show he was incapacitated as per the policy terms for the duration of the deferred period.

One of our investigators looked into Mr N's complaint. Having done so, she didn't think L&G had acted unfairly or unreasonably when it declined the claim. Overall, she didn't think the evidence showed Mr N had met the definition of incapacity for the duration of the deferred period.

Mr N didn't agree with the investigator's findings. He said, amongst other things, that he tried to return to work with reasonable adjustments but this resulted in panic attacks. He also said he's been providing fit notes to L&G to show he's not fit to work, and he wasn't told it was his responsibility to provide information to L&G.

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.

Firstly, I've only considered if L&G assessed the evidence it had up until its final response letter in April 2024 fairly and reasonably. If Mr N has further evidence after this date that he thinks shows that he was incapacitated as per the policy terms during the deferred period, and afterwards, he can send this to L&G in the first instance. So, I haven't considered the further evidence Mr N has provided since L&G's final response, as it needs an opportunity to review this first.

Mr N's policy was taken out by his employer. So, it would have been for his employer to provide Mr N with the terms and conditions of the policy. But I can see that L&G explained to Mr N when it declined the claim that if he wanted to dispute its decision, it would consider any new or relevant medical information in support of the claim. Overall, I don't think I can fairly say that L&G should have done more to help Mr N in the circumstances.

Industry rules set out 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 Mr N's complaint.

Mr N's claim was for an incapacity benefit. The policy definition for this was for own occupation which is defined in the policy terms 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 Mr N an incapacity benefit, it needs to be satisfied it's an illness which prevented him from carrying out the essential duties of his 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 Mr N's responsibility to provide L&G with enough evidence to demonstrate that his illness had led to him being unable to carry out the essential duties of his role. Mr N also needed to provide L&G with enough evidence to show that he was incapacitated for the entirety of the deferred period – between 3 March and 1 September 2023 – and afterwards.

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

Mr N completed a statement for the incapacity claim on 8 June 2023. He described his absence from work was due to anxiety and depression. And he said the symptoms that stopped him from working were *"low mood, unable to focus, sleep deprivation, anxiousness"*. Mr N said he'd received medication and therapy for his current symptoms/diagnosis.

A Vocational Clinical Specialist ("VCS") completed a report on 8 June 2023 after a phone consultation with Mr N. The VCS noted Mr N had re-started taking antidepressant medication around March 2023 after taking a break from it about eight months previously. The VCS also said Mr N had declined talking therapy as he found it hard to speak to unfamiliar people about his mental health. Mr N had also been offered some Cognitive Behavioural Therapy ("CBT") previously, but he didn't feel able to engage with it. The VCS noted Mr N's symptoms as anxiety, low mood, stress and worrying, and feeling tired and difficulty sleeping.

Overall, the VCS concluded that in their opinion, Mr N was fit to undertake his role from a cognitive and physical perspective. The VCS said that whilst Mr N felt his sleep and fatigue prevented him from doing his role, he was able to drive to the gym and do resistance training five mornings a week. The VCS also said Mr N reported anxiety talking to customers, but he was able to attend the local store and engaged well during the consultation. The VCS noted that there had been no increase in medication or escalated input from Mr N's GP, and it was unclear what prevented Mr N from undertaking his role.

The VCS said Mr N would likely benefit from a stress risk assessment, as well as a phased return over four weeks. They said it was unclear how remaining absent from his role was going to improve Mr N's stress symptoms, especially given that he didn't report any work-related issues.

L&G considered Mr N's claim based on Mr N's statement, as well as the VCS report. It said that Mr N's symptoms were not in line with his reported level of activity, nor was he under specialist care. L&G also said Mr N had declined talking therapies and CBT.

Overall, L&G concluded that Mr N's claim related to symptoms triggered by personal stressors rather than as a result of a significant clinical condition preventing him from fulfilling the duties of his own occupation. So, L&G declined the claim on 19 June 2023.

Mr N appealed L&G's decision, but he didn't send any further evidence in support of his appeal despite L&G inviting him to do so. So, L&G responded to the appeal on 3 April 2024 and maintained its position to decline the claim, for similar reasons it did in its letter of 19 June 2023 after reviewing the evidence again. Overall, L&G said there was insufficient objective evidence to indicate that Mr N had been prevented from performing his own occupation during the whole deferred period.

Mr N says that he'd had poor experiences of talking therapy in the past, and his GP agreed this wasn't for everyone. So, instead, he used exercise and mindfulness to help negate the effects of depression and anxiety. He also says that he tried to return to work but this resulted in panic attacks.

Mr N says he's provided fit notes from his GP which show he's not fit to work. But for Mr N to show he has a valid claim, he needs to provide medical evidence which shows he met the policy definition for incapacity for the deferred period. In other words, evidence which shows he was prevented from carrying out the essential duties of his own occupation due to an illness between March and September 2023. The only medical evidence L&G had which commented on this specifically was the VCS report. This concluded Mr N was fit to work.

I appreciate Mr N's reasons for declining talking therapy and what he's said about trying to return to work. But fundamentally, Mr N hasn't provided evidence of further medical intervention to his illness such as therapy, new or increased medication or a treatment plan from a medical professional. I can see that Mr N had previously taken antidepressant medication and he started this again in March 2023. But the VSC report noted there had been no increase in the medication or escalated input from Mr N's GP.

Having considered everything, I'm sorry to disappoint Mr N but I don't think L&G acted unfairly or unreasonably when it didn't think the evidence showed Mr N het met the policy definition of incapacity for the duration of the deferred period, for the reasons it did, based on the information it had. So, I don't think it did anything wrong when it declined the claim.

My final decision

My final decision is that I don't uphold Mr N's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 4 March 2025.

Renja Anderson
Ombudsman