

The complaint

Mr S is unhappy that Legal and General Assurance Society Limited (L&G) declined his income protection claim.

What happened

Mr S had a group income protection policy with his employer. The policy provides a benefit in certain circumstances after a deferred period of 26 weeks on an own occupation basis. L&G is the underwriter.

Mr S's role was that he was required to work from home and deal with customers on the phone. He started to get headaches which got worse over time. He suffered from anxiety and depression as a result and was off work due to his health. Mr S's GP signed him off work and the reason stated was stress, depression and migraines. He was prescribed medication and was referred for a CT and MRI scan. Results of the scans showed a cyst in his brain which was likely benign.

Mr S submitted a claim to L&G under his employer's income protection policy. L&G reviewed Mr S's medical information and declined his claim. It said Mr S didn't meet the definition of incapacity as per the terms and conditions of the policy. This was because there was no evidence that Mr S couldn't perform the duties of his own occupation (working remotely from home) due to his illness. Mr S was made redundant from his role in May 2024.

Unhappy, Mr S brought his complaint to this service. Our investigator didn't uphold the complaint. She didn't think the medical evidence provided met the definition of incapacity as required within the L&G policy terms and conditions.

Mr S 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 very difficult for Mr S. So, whilst I understand that he's been experiencing considerable pain related to his condition, my role is to reach an independent and impartial outcome that's fair and reasonable, based on the information available to me.

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 Mr S's claim, to determine whether I think L&G treated him 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 Mr S. 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 Mr S's employer and L&G.

The starting place is the policy definition of incapacity. In order for the claim to be successful, Mr S has to show his claim is valid under the terms and conditions of the policy. In other words, he has to demonstrate that he cannot perform the essential duties of his own occupation due to injury or illness.

This states on page 10, part 4:

'Absence from employment

c) For the purposes of this section the incapacity definition will apply to the job that he was doing immediately before the temporary absence started.'

I note that Mr S was working remotely from home so it's not unreasonable that his claim was assessed against this role. Whilst Mr S was working in the field before he moved to working from home, there is no evidence that this was his role when he became ill.

The policy states for a claim to be paid, the definition of incapacity must be met. The wording is as follows:

'Own occupation

Means the insured member is incapacitated by an illness or injury that prevents him from performing the essential duties of his own occupation immediately before the start of the deferred period. The insured member's capacity to perform the essential duties of his own occupation will be determined whether or not that occupation remains available to him.'

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Mr S'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 declining Mr S's claim.

I've been provided with detailed medical evidence relating to Mr S's condition and symptoms. So, the issue for me is to determine whether this medical evidence supports L&G's decision that Mr S doesn't meet the definition of incapacity.

In January 2024, Mr S had an Occupational Health (OH) report. I can see Mr S provided details of his physical and mental health. The report states there was no evidence of significant functional restrictions which would preclude a return to work. The specialist said however judgement on Mr S's fitness to work should be held until further medical evidence was provided from investigations.

I've considered Mr S's GP medical records. I can see Mr S did see his GP regularly and reported symptoms of headaches first in September 2023. He told his GP how his mental health was being impacted. It's clear Mr S reported his symptoms, and the GP notes show that Mr S was suffering. L&G asked the GP about his assessment of Mr S returning to work, the GP said he couldn't provide an opinion as he didn't have enough information to make this judgement.

I've also considered the medical information about the scans Mr S had. These clearly show he has a cyst, and this was benign. I understand there is some uncertainty about the cyst and the impact it has on Mr S's health. However, the information available shows it's asymptomatic but can cause headaches and migraines. There were no issues with Mr S's vision and a return to work was being considered as he didn't report severe functional restrictions.

I've taken into account that L&G referred the further medical information provided by Mr S to its Chief Medical Officer (CMO). The CMO confirmed there was insufficient evidence to support illness or injury to meet the definition of incapacity as per the policy. He said it was reasonable for Mr S's medication, psychological therapy and any pending investigations to continue alongside his work

The test here is whether Mr S meets the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely he does. There isn't sufficient medical evidence to say Mr S is incapable to carry out the essential duties of his own occupation. I understand Mr S has now been made redundant from his role. Having reviewed the information, while Mr S may have further investigations into his health, currently, there's no evidence to suggest Mr S was incapacitated to work due to injury or illness.

I have every sympathy with the symptoms that Mr S is experiencing, and I don't doubt that he is feeling unwell. But I must consider the medical evidence in its entirety, and, on balance, I can't say Mr S was ill to the extent that it precluded him from working. I've noted that the GP had signed him off work and the Vocational Clinical Specialist (VCS) said judgement on Mr S's fitness to return to work should be held, but the symptoms were predominantly self-reported by Mr S. I'm sorry to disappoint Mr S but that doesn't automatically mean that L&G must pay his claim in the circumstances. And neither the GP nor the VCS had Mr S's full medical information. In contrast, the CMO had Mr S's full medical information to review and on balance, his opinion carries more weight in the circumstances here.

Overall, I've taken everything into account, and I'm not persuaded the medical evidence demonstrates that Mr S meets the definition of incapacity as per the terms and conditions of the policy. I therefore don't find there are any reasonable grounds upon which I could direct L&G to pay Mr S's claim. It follows therefore that I don't require L&G to do anything further.

My final decision

For the reasons given above, I don't uphold Mr S's complaint about Legal and General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 March 2025.

Nimisha Radia
Ombudsman