

The complaint

Ms R complains that Legal and General Assurance Society Limited ('L&G') stopped paying benefit for a claim she made under a group income protection insurance policy. To resolve her complaint, Ms R wants L&G to retract its decision and reinstate her benefit.

What happened

Ms R was a member of a group income protection policy, underwritten by L&G. The policy is designed to pay monthly benefit of 75% of Ms R's salary should she be incapacitated due to an illness or injury preventing her from completing the essential duties of her occupation throughout a deferred period of 26 weeks and beyond.

Ms R became absent from her employment in February 2021, and she has not been able to return to work since that date. Ms R was subsequently diagnosed with posttraumatic stress disorder ('PTSD') in May 2021.

An independent medical examination was undertaken in October 2021. In November 2021, L&G accepted a claim for income protection benefit from Ms R, backdating it to the end of the deferred period in August 2021.

In 2023, L&G reviewed the claim. Thereafter, a face-to-face clinical assessment was arranged with Ms R which took place in May 2024. Alongside this assessment, L&G obtained surveillance footage of Ms R taken over several days from 5 to 12 June 2024.

After review of all the medical evidence, L&G wrote to both Ms R and her employer in August 2024 to confirm it would be terminating the claim on 3 October 2024. It said this was because Ms R's capacity appeared greater than had been reported, and there was no sufficient evidence to demonstrate that she was medically prevented from performing her occupation. L&G also noted that Ms R was associated with a charity, which may have indicated that she had chosen an alternative career path.

Ms R appealed the decision and pursued a complaint. She provided evidence from her clinical psychologist in September 2024, a member of the charity and evidence regarding upcoming carpal tunnel surgery. She clarified she had been a charity trustee since 2012 but had stepped back in 2021 due to her illness. Ms R also explained her medical incapacity, noting the effects that PTSD had on her daily life.

Ms R explained that she had worked for the employer for over 20 years prior to her suffering PTSD, and in that time her sickness record had been minimal. She said she had been attending ongoing therapy despite L&G's assertion to the contrary, because she did want to recover. Nonetheless, she was still signed off to December 2024 with PTSD. She said that L&G having undertaken surveillance of her had heightened her symptoms of the condition.

L&G issued a final response letter to Ms R dated 17 October 2024 in which it confirmed it was not prepared to change its view on terminating the income protection benefit. It noted that the carpal tunnel surgery planned for August 2024 in Ms R's non-dominant hand should have resolved by October 2024. In respect of Ms R's PTSD, it said it remained of the view

that the available evidence – including the psychologist's letter - indicated that perceived work-related issues were the primary barrier preventing Ms R from resuming work in her insured occupation.

Unhappy with L&G's refusal to accept her appeal, Ms R brought her complaint to this service. She submitted that L&G's actions had contributed to a worsening of the triggers for her PTSD – something she feels L&G has not considered. Ms R explained that the trauma caused wholly by the employer has never resolved; her medical position was the same as it was in August 2021. On that basis, L&G had acted contrary to the group policy wording by terminating the monthly income protection benefit.

One of our investigators reviewed the complaint, but she didn't think it should succeed. She didn't believe that L&G had acted unfairly when deciding to terminate the benefit, because the primary reason for Ms R being unable to return to work was the impact of the workplace stressors, rather than her condition itself.

Ms R disagreed with our investigator and explained her position further in a telephone call, which I have listened to. She said, in summary:

- PTSD is not specific to her employment; it is a mental health condition based on triggers and environments.
- Her diagnosis and symptoms remain unchanged since 2021.
- She feels that L&G has not truly understood her condition at all.
- She also feels that L&G wouldn't consider any new medical evidence if she presented it.
- The Financial Ombudsman Service does not have expertise in PTSD, and therefore it cannot make a fair decision about the termination of the benefit.
- A comparable example would be asking a person working in the UK military to go to work for an overseas military after a PTSD diagnosis – something they could not do.
- This analogy applies to her, whilst the employer's actions caused her to go off sick, the impact from PTSD means that she can't return in the same role for any employer.
- The effects of PTSD prevent her from using a laptop or computer and has a significant impact upon every aspect of her daily life.
- Her condition has not stopped merely because she doesn't work for the employer.
- She feels that this service will side with L&G and merely take its evidence as fact, despite her having shown that it has relied on inaccuracies.

Ms R then provided a further written formal appeal. Again, I have reviewed this in its entirety. She said, in summary:

- The surveillance merely observed her walking and speaking with people she knew; it didn't observe any mental aspects of her PTSD diagnosis.
- L&G has been focusing on the physical symptoms instead of the mental health issues which continue to prevent her from returning to work.
- Observing her across five days does not give any fair conclusion of a condition that has lasted over 1,200 days and remains unchanged.
- She has attended every treatment and/or therapy that both the NHS and her private health insurance have offered.
- She denies that her inability to work is based on negative beliefs about her employer.
- Her medical specialists disagree with L&G's view of her position.
- L&G failed to consider the witness statement she supplied relating to the charity.
- She is awaiting further therapy – so it has to be the case that her PTSD is ongoing.
- All statements of fitness for work have shown she remains off sick because of PTSD.

- On some days she cannot leave the house at all, but L&G's surveillance wouldn't have shown this, because it was so brief.
- The triggers for her condition are not raised because of how the employer treated her but because of the very prospect of undertaking her job – including emails, telephone calls, using computers and sitting at a desk.
- She has now been awarded disability benefits backdated to September 2024, based on the ongoing effects of PTSD.

L&G didn't have any further comments to make. The complaint has now 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.

I've fully reviewed all the information before me, including the representations Ms R made after our investigator's assessment. However, in reaching my findings, I've focused on what I consider to be the central issues. I don't need to comment on every argument to be able to reach what I think is the right outcome in the circumstances. Our rules allow me to take this approach; it reflects the informal nature of our service, as a free alternative to the courts.

It's also important that I make the parameters of this decision clear. I will only be considering the evidence which was available to L&G up to the point it issued its final response to Ms R's complaint in October 2024, endorsing its decision to terminate benefit earlier that month. Ms R remains free to present any medical evidence from after this date to L&G for review.

Regulatory rules require L&G to handle claims promptly and fairly and to not unreasonably reject a claim. I see Ms R has noted how I'm not a medical expert, which is correct. My role isn't to make findings of medical fact, but rather to consider the evidence provided by the parties alongside the terms and conditions for Ms R's group scheme to determine whether I believe L&G treated Ms R fairly and reasonably in ending the policy benefit when it did.

Having done so, I agree with our investigator that this complaint should not be upheld. I am sorry to learn of Ms R's circumstances and I recognise that this will not be the outcome she has hoped for, but I'll explain my reasons for reaching this overall conclusion below.

L&G terminated Ms R's claim which had been in payment for several years. It is therefore for it to show that Ms R no longer met the policy's definition of a disabled member, which says:

"The benefit will be paid in respect of an insured member from the benefit start date provided he is a disabled member."

A disabled member of the group policy is an insured member who meets the policy's incapacity definition, and for Ms R this is given on an 'own occupation' basis. It 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. 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."

It isn't in dispute by either party that Ms R was originally deemed to meet the policy definitions when the claim was accepted in 2021. However, in this decision I'm considering the medical evidence that led to the review of that decision since the policy wording goes on

to permit L&G to terminate benefit in circumstances where it no longer has sufficient evidence of an insured member being disabled under the terms of the policy.

I've looked carefully at L&G's notes. I can see that it undertook regular reviews of Ms R's claim while it remained in payment. And it appears to have asked for appropriate and relevant medical information. In previous medical assessments – such as the report issued to L&G by the Consultant Psychiatrist Dr A in January 2022 – it was observed that Ms R's circumstances were materially unchanged in respect of the impact of her PTSD. Dr A had concluded that *“both therapy and medication need to be adequate so as to improve her mental health before returning to work”*.

Thereafter, some delay occurred in Ms R restarting eye movement desensitisation and reprocessing ('EDMR') treatment, though this did resume and was completed from May to August 2022. Additional treatment was also delayed due to an unrelated physical injury Ms R sustained at home and the impact of other neurological issues which were assessed during 2022 and 2023. Dr A reassessed Ms R again remotely in March 2023, noting EMDR had been unsuccessful and recommending possible NHS therapy.

In mid-2023, L&G determined that a face-to-face appointment with a Vocational Clinical Specialist ('VCS') would be an appropriate course of action. Due to a number of intervening factors, this took many months to arrange but it was eventually held in May 2024. By this time, Ms R had also begun further trauma treatment and cognitive behavioural therapy ('CBT') in March 2024.

I can see that undertaking the face-to-face appointment was distressing for Ms R; this is reflected in the assessment and her account of it. The VCS concluded that there were inconsistencies in Ms R's reporting of her functionality – such as not feeling able to leave the house, but also being able to walk her dogs every day. For this reason, the VCS noted she was unable to provide an opinion on Ms R's fitness to return to work in her insured role.

At that time, no other new clinical evidence was available – though L&G had sought assistance from Ms R's GP as to her current capacity. Overall, I do not believe it was unreasonable for L&G to have obtained surveillance of Ms R, though I accept it was of limited use; the surveillance was able to demonstrate Ms R's physical capacity, but it did not extend to any objective understanding of her mental health impairment. I also understand that the issue surrounding the suggestion Ms R was working for a charity has since been clarified, and she has provided a statement of support in that regard.

L&G referred all of the information it did have on file to its CMO in July 2024 to reach a decision – and I find that fair in the circumstances. They are a specialist in their field and on balance, I find their view persuasive. The CMO offered reasoned evidence that Ms R no longer met the policy definition of incapacity since the available objective medical evidence did not demonstrate that Ms R could not perform the duties of her occupation. Rather, she could not perform them for her existing employer given that it was the distress from that employment which had caused the onset of her symptoms and subsequent PTSD diagnosis.

Ms R was able to provide additional medical evidence from an NHS clinical psychologist, Dr N, in a letter dated 20 September 2024. In that letter, Dr N explained how Ms R had undergone 18 psychological therapy sessions which had finished that month. She also said:

“[Ms R] was referred for therapy with a diagnosis of PTSD and she was offered trauma stabilisation work and some CBT-informed work. The traumatic issues that she brought to therapy related to difficult experiences in the workplace. The therapy was of only limited

benefit in terms of resolving [Ms R's] PTSD, due to the continuance of stressors related to work".

It is clear that Ms R had engaged with the treatment offered to her. However, on review of that information, the CMO did not change their view on their decision. It was reiterated that there was not sufficient evidence that Ms R was unable to work for *any* employer. And the information from Dr N was read alongside the referral back to Dr A in March 2023 where it had been recorded that Ms R reported a belief that she could not resume work with her current employer due to the workload and the aspects of the job causing triggers for her condition.

I recognise Ms R has said this is still the case, though she feels that the impact of her PTSD means this would be true of returning to her job with any employer. However, L&G has not seen any objective evidence of Ms R's specific inability to work in her own occupation elsewhere. Ms R's symptoms are self-reported, and - understandably - based on the experience she underwent at work before she went off sick. The most recent evidence from Dr N refers to the stressors relating to the place of work, rather than Ms R's occupation itself.

I realise Ms R feels that she simply cannot undertake any work at all, despite the various treatments she has tried. However, the correct assessment for L&G to apply is to determine whether or not illness or injury prevents Ms R from carrying out her insured occupation.

In all the circumstances – and having reviewed the evidence and Ms R's comments - I'm satisfied that L&G fairly reviewed Ms R's appeal and reached a fair conclusion that she no longer met the policy definition of incapacity. It follows that I don't require L&G to reinstate Ms R's claim.

As an aside, I can see Ms R has told our investigator how she feels L&G will not consider any other information about her claim. I also note Ms R has supplied evidence from a consultant psychiatrist from October 2024 and a further GP letter relating to possible new psychological intervention treatment from January 2025. It's open to Ms R to provide L&G with any further evidence to support her position should she wish to do so, and L&G should consider it afresh. If she's unhappy with the outcome of any assessment of new medical evidence she may send to L&G, Ms R may be able to bring a new complaint to us about that issue, as the substance of a separate complaint.

Overall, despite my natural sympathy with Ms R's position, I think that L&G has provided enough evidence to show, on balance, that she no longer met the policy definition of incapacity. And so, while I appreciate that my decision is likely to be upsetting for her, I find it was fair and reasonable for L&G to terminate Ms R's incapacity claim as of October 2024.

My final decision

For the reasons I've set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 23 May 2025.

Jo Storey
Ombudsman