

The complaint

Mr M has complained that Legal and General Assurance Society Limited (“L&G”) has declined a claim made under his group income protection policy.

What happened

The background to this complaint is well known to the parties so it serves no purpose for me to repeat the details in full here. In summary Mr M had the benefit of an income protection policy through his employer. This would provide benefit after a deferred period of 26 weeks if the member met and continued to meet the policy definition of incapacity.

The definition is as follows: *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.*

Mr M became absent from his role as a director in June 2022.

In April 2023 L&G admitted a claim under the policy for a set period and paid benefit from 19 December 2022 until 31 March 2023. L&G ceased benefit from that date on the basis of its conclusion that Mr M could return to work. Mr M appealed and submitted supportive evidence from his GP.

L&G carried out a clinical review which included a face-to-face meeting with a vocational clinical specialist. However in the light of all the evidence didn’t conclude that Mr M was incapacitated from his own occupation.

In February 2024 Mr M agreed a settlement by way of a confidential agreement with his employer which resulted in his employment being terminated.

Our investigator recommended that the complaint be upheld. They agreed Mr M was able to return to work in February 2023 but concluded that he was unfit for work from April 2023. As it wasn’t clear exactly when, they took April 15 as a mid-point. Because Mr M hadn’t returned to work a further deferred period came into play before they considered benefit would be payable from 14 October 2023. Although Mr M’s employment ended in February 2024 the investigator recommended that L&G continue to pay benefit in line with the direct benefit section of the policy.

L&G didn’t agree with investigator’s recommendations. Its detailed response was shared with Mr M who made further comments.

As no agreement was reached the matter was passed to me to determine. I issued a provisional decision saying as follows:

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Firstly I'd like to reassure Mr M and L&G that whilst I've summarised the background to this complaint and the detailed submissions made both before and in response to the investigator's view, I've carefully considered all that's been said and sent to us. In this decision though I haven't commented on each point or piece of evidence rather I've focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. Having done so I have reached a different conclusion to our investigator with regard to the payment of benefit, and if payable I don't agree benefit can continue after Mr M's employment came to an end. I'll explain the reasons why:

- The relevant regulator's rules say that insurers mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of the group policy and the available medical evidence, to decide whether I think L&G has treated Mr M fairly.
- With regard to the benefit payment made from the end of the deferred period until the end of March 2023, I find that the admission of the claim (in April 2023) for a short period was fair. Although diagnosed with bi-polar affective disorder in January 2023, the medical evidence doesn't support that Mr M was incapacitated from his role past mid-February 2023. The recommendation was for a phased return and L&G allowed for this in the payment of full benefit until the end of March. That this was fair was also the conclusion reached by our investigator. Mr M said that he had no objections to this finding, so I don't intend to elaborate further.
- However Mr M didn't return to work so I've looked carefully at the medical evidence to see if the situation as reported in mid-February changed. Mr M continued to be signed off by his GP. L&G's Chief Medical Officer ("CMO") didn't think there was sufficient objective medical evidence indicating a change. However in September 2023 a clinical review was carried out by a registered nurse and vocational clinical specialist I'll call "Ms R". This was at L&G's request in order to understand Mr M's function, treatment and progress since February 2023. I find this was appropriate.
- Following the face-to-face review Ms R reported that Mr M did not appear medically fit to return to his own occupation due to the deterioration of his symptoms from April 2023. In the light of this report L&G's CMO wrote to Mr M's GP in order to understand what services were being arranged for him, or whether the GP was satisfied that Mr M was sufficiently stable without specialist services. Having had sight of Ms R's report the GP concluded that Mr M didn't appear medically fit to return to his own occupation due to deterioration in symptoms since April 2023. The GP said that he would be guided by the occupational health team and should that team suggest that Mr M was ready to return to work, he would support Mr M with "Maybe Fit For Work" certificates. I note too that Mr M had been engaging in therapy and that that from March 2023 he was under the care of his community mental health team.
- It is not for me to make a medical decision; rather my role is to assess all the evidence in order to determine whether Mr M has been treated fairly. I haven't ignored L&G's representations or those of its CMO, who is a qualified doctor with occupational health training. I do note that there has been no referral back to the psychiatrist or further advice regarding pharmacological therapy. I find these observations are fair. As is the observation that Mr M's treatment pathway isn't clinically consistent with a deterioration in his health. But I don't see that Mr M is responsible for this. Importantly, there is medical evidence, from medical practitioners who had met with Mr M, supporting the conclusion that he met the policy definition of incapacity from April 2023.

- *I have taken into account to Mr M's role as a director. I understand that Mr M was responsible for allocating projects to a team of 140 employees in addition to performance managing two employees. His role, or similar elsewhere, carry great responsibility. Mr M has said he worked up to a 60-hour week. Given his reported mental health in September 2023, and notwithstanding employers' duties regarding reasonable adjustments, it is apparent why Mr M would have been worried about how he would manage work-based triggers. I say this having noted the other symptoms which Mr M experiences as part of his condition including anxiety, insomnia and significant variations in mood. I accept these are self-reported, but that in itself doesn't mean Mr M's evidence should be discredited.*
- *On balance, I find there is evidence to demonstrate that from around April 2023 until October 2023 Mr M met the policy definition of incapacity. As Mr M didn't return to work, I'm satisfied that it is fair to commence a deferred period from mid-April 2023. This means that benefit may be payable from 14 October 2023, although L&G has not yet assessed the claim beyond October 2023. I was sorry to note from the occupational health reports that Mr M was unfit for work past October 2023, but this evidence has not been seen or assessed by L&G. My provisional decision is that it should now do so.*
- *However should L&G admit the claim from the end of the October deferred period, I don't find that there would be any basis for the Service to require it to pay benefit after Mr M's employment came to an end. I recognise that this will be disappointing for him and I'm sorry that this is so. But income protection is a benefit under his policy for employees. It doesn't continue when employment comes to an end. I think Mr M is aware of this as he fairly indicated so in his complaint form to this Service.*
- *There is a discretionary pay direct term in the policy, but this must be requested by Mr M's employer, the policyholder, whilst the employee is employed. This didn't happen. Further I haven't seen the confidential agreement reached. This means that I'm not aware of the reasons for the termination or the terms of the agreement. It wouldn't be fair and reasonable for me to require L&G to exercise a discretion in these circumstances in the event it agrees to pay the claim from October 2023.*
- *Mr M has also made that point that he believes his recovery was hindered by L&G as he wasn't referred to their treatment providers for early intervention support. I've thought about this, but I don't find there was any failing on the part of L&G here. The claim was referred late, and Mr M was self-funding treatment at the time.*

My provisional decision was that I was minded to uphold this complaint and to require Legal and General Assurance Society Limited to assess Mr M's claim from 14 October 2023 until his employment ended on 29 February 2024.

I invited the parties to respond.

L&G said it broadly agreed but made two points. Firstly it said that it was happy to consider a linked claim, rather than a new one from 15 April 2023. L&G said it would need to carry out a further assessment to ensure the terms and criteria of the policy had been satisfied. It said that this would mean that the deferred period wouldn't need to be served again and if valid L&G would reinstate the claim from 15 April 2023 which would be more favourable to Mr M

L&G's second point was that the only evidence it was in receipt of was between 6 July 2023 and October 2023 and these reports had been compiled based on Mr M's self-reporting. It didn't agree that there was satisfactory medical evidence between April and October 2023 and proposed that it was given the opportunity to assess the claim from 15 April 2023 to 29

February 2024.

Mr M also commented. With regards to my provisional decision Mr M:

- asked for a re-assessment of the medical evidence from the early part of 2023
- felt that benefit should continue beyond the end of his employment
- said that his recovery was hindered by L&G's lack of rehabilitation support
- wanted clarification as to why I was asking L&G to assess the claim from October 2023 rather than concluding that it was payable

With regards to L&G's proposal in response to my provisional decision Mr M had concerns that the proposal perpetuated the uncertainty that this process was striving to resolve. He said that framing the period from April 2023 as a linked claim gave L&G 'an unwarranted second opportunity to decline his appeal'. He felt that the deferred period should be unequivocally waived from 31 March 2023.

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 given careful consideration to the representations made by both parties and to L&G's proposal. Having done so I'm not persuaded to change my provisional decision and I adopt the findings here.

The evidence from the early part of 2023 has been assessed by L&G and I provisionally concluded that the assessment was fair. This was also the conclusion reached by our investigator with which Mr M had no objections. I'm satisfied that the recommendation of a phased return to work in February 2023 was fair. By analogy the evidence post October 2023 *hasn't* been assessed by L&G so it wouldn't be fair for me to require it to pay for this period without having this opportunity.

I do appreciate that it would have been disappointing for Mr M to receive my provisional decision which, contrary to that of our investigator, didn't recommend that benefit should continue beyond the end of his employment. However there is little more I can add to the reasons given in my provisional decision as to why I don't find benefit should continue beyond this time.

Likewise I don't find that L&G hindered Mr M recovery or that there was any failing on the part of L&G with regard to not supporting the cost of facilitating a return to work. Such payments are discretionary and I'm not persuaded to change my provisional conclusion by the representations that Mr M now makes.

I have considered L&G's counter proposal to consider a linked claim – obviating the need for Mr M to serve a new deferral period. L&G says this is potentially more favourable to Mr M. But this would only be so if it were to accept that the terms and criteria of the policy have been satisfied throughout. L&G has seen what I considered to be persuasive for this period and didn't find it showed Mr M met the required threshold. This includes both evidence from Mr M's GP and the Vocational Clinical Specialist. So it seems unlikely to me that a reassessment would put Mr M in a better position. I say this in particular given L&G's comments regarding self-reported evidence.

In any event Mr M didn't return to work in February 2023 so for the reasons I gave I don't find it unfair for a new claim to be commenced from 15 April 2023 or for the deferred period to be served. However I remain satisfied on the evidence that the policy definition was met during the deferred period, that is until October 2023.

I recognise that my decision will not be fully welcomed by either party. I'm sorry that this is so but I have reached my decision based on what is, in my opinion, fair and reasonable in all the circumstances and by taking into consideration all the evidence and representations.

My final decision

My final decision is that I uphold this complaint. I require Legal and General Assurance Society Limited to assess Mr M's claim from 14 October 2023 until his employment ended on 29 February 2024.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 May 2025.

Lindsey Woloski
Ombudsman