DRN-5635785

The complaint

Mr L complains that Legal and General Assurance Society Limited ('*L&G*') has unreasonably refused a claim he made under a group income protection policy. Specifically, he says L&G hasn't sought reasonable medical evidence and has placed unfair reliance on a Transferable Skills Analysis ('*TSA*') assessment.

To resolve his complaint, Mr L wants the claim decision to be overturned, compensation for the emotional, physical and financial impact he has suffered, along with a written apology from L&G.

What happened

The background to this complaint is well known to the parties, so I will summarise it below.

Mr L was a member of his employer's group income protection policy, underwritten by L&G. At the time he was employed, the policy was designed to pay monthly benefit of 75% of Mr L's salary should he be incapacitated due to an illness or injury preventing him from completing the essential duties of any occupation for which he is suited, throughout a deferred period of 26 weeks and beyond.

Mr L went off sick from 6 September 2024, after having had approximately one year of intermittent absences from work with a number of medical issues including abdominal pain, an irritable bowel, sleep apnoea, insomnia, chronic fatigue and flu-like symptoms.

On 10 October 2024, Mr L pursued a claim to L&G after he had expired his entitlement to contractual sick pay. In support of his claim, Mr L provided documentation from his GP, the employer's occupational health ('*OH*') physician, and a consultant rheumatologist.

L&G has confirmed that the deferred period would end on 26 December 2024, due to the accumulation of Mr L's periods of sickness prior to 6 September 2024.

On 7 November 2024, L&G rejected the claim. It said in conclusion, whilst it understood Mr L had undergone investigations with a further colonoscopy to be carried out, the information it received did not provide sufficient evidence of illness of such severity that prevented Mr L from working in an alternative job role, or his own role with reasonable adjustments.

On 27 November 2024, Mr L appealed. He explained how L&G had unfairly reached its decision, without consulting his GP, OH specialist, or treating consultant. L&G treated that appeal as a complaint.

In January 2025, L&G issued a final response letter to Mr L, rejecting the complaint. It said it had reviewed the fresh medical evidence from Mr L's OH specialist and his GP along with the TSA that it had asked Mr L to undertake and the view of its chief medical officer ('*CMO*').

L&G remained of the opinion that there was insufficient medical evidence of an illness or injury relative to the demands of a suited occupational role which would support Mr L's continued incapacity from work. It believed there were some suited occupations entailing

lesser demands that he could perform with adjustments, noting that suited roles could be less cognitively demanding than Mr L's employed role.

In February 2025, Mr L's consultant diagnosed him with both chronic fatigue syndrome ('*CFS*') and fibromyalgia.

The complaint was referred to this service, where it was reviewed by one of our investigators. Mr L also supplied three further pieces of medical evidence by way of updates from the OH specialist from late January 2025, and two letters from his consultant rheumatologist from early February 2025. Our investigator put these to L&G.

On 26 February 2025, L&G provided an addendum final response letter in which it still rejected the complaint.

Though it acknowledged Mr L's confirmed diagnoses, it noted that the consultant rheumatologist hadn't made any clear assessment of Mr L's day-to-day abilities or specific functional restrictions. It still remained of the view that there was insufficient objective evidence of continued illness or injury of sufficient severity to result in total incapacity relative to the demands of a suited occupation during the whole deferred period. L&G said it believed that Mr L would be capable of returning to a suited work role.

Mr L explained that he felt L&G had unfairly relied on the view of its CMO to reject his complaint. Mr L also said that the TSA did not account for fluctuating conditions, post-exertional malaise, or cognitive dysfunction — and these were hallmarks of CFS and fibromyalgia. He also felt that the clinical assessment was unreasonable because it was produced before he had received his key diagnoses and lacked medical credibility when contrasted to the medical evidence supplied from his treating professionals.

Mr L also explained that his employer had terminated his employment on capability grounds in March 2025.

L&G confirmed that the TSA assessor had provided an addendum to the December 2024 assessment, in which her view – considering Mr L's recent diagnoses – was that he should still be able to undertake a suited occupation of a lesser cognitive demand, with adjustments.

Our investigator thereafter issued his view on the complaint, in which he believed L&G had fairly refused Mr L's claim. He felt that it had been reasonable in concluding that the medical evidence did not demonstrate that Mr L had been unable to pursue any suited occupation, but rather that he would be able to undertake some suited work, with adjustments. He also felt L&G had approached its assessment fairly, as it had sought wider evidence than solely relying on the view of its CMO.

Mr L disagreed. He said he wanted his complaint to be reconsidered or otherwise passed to an ombudsman.

Mr L explained how, in his view, given the severity and functional impact of his condition, he was not fit for any occupation regardless of pay, status, or sector. He made extensive written submissions, all of which I have read in their entirety. He said that in summary L&G had:

- Misinterpreted the definition of incapacity and misapplied the 'suited occupation' wording in the policy terms.
- Ignored multiple, consistent clinical opinions demonstrating his functional incapacity.
- Breached regulatory duties required of it by the Financial Conduct Authority ('*FCA*') including failure to seek clarification where ambiguity was claimed.

- Relied inappropriately on a non-clinical TSA over primary medical evidence.
- Disregarded the requirements of the Equality Act 2010, particularly in relation to fluctuating and invisible disabilities.
- Caused significant and ongoing harm to his health, finances, and wellbeing.

Though he reviewed everything Mr L had to say, our investigator did not change his conclusion that the complaint shouldn't succeed. He said he felt L&G had acted within the terms of the policy and fairly reviewed the claim, based on the information it had received. He also did not believe L&G had acted discriminatorily, nor did he think it had acted contrary to any regulatory obligation.

Mr L maintained that his complaint should be passed to an ombudsman. He wanted to note that L&G had handled his claim unfairly because:

- L&G placed undue weight on the vocational TSA, whilst discounting the consistent clinical evidence - which he says shows that he cannot perform any occupation at all.
- It relied on outdated internal reports once he had been diagnosed with CFS and fibromyalgia.
- Its failure to properly account for those conditions amounts to indirect discrimination under the Equality Act 2010.
- It is wrong to shift the burden of proof onto him to evidence his claim, because he consented to L&G obtaining all relevant medical information it needed to satisfy the claim.

He also provided another extensive set of written submissions. I have read these in full, though it's not necessary for me to set them out again here.

L&G had nothing further to add.

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 send Mr L my best wishes given his ongoing health concerns. I appreciate that he has taken considerable time and detail in setting out his written submissions both to L&G and to this service; these discuss the full impact of his various diagnoses. However, I will not be setting out my decision in the same format. This service's role is to investigate disputes and resolve complaints informally, including taking into account relevant laws, regulations and industry guidance, such as the regulatory requirements Mr L has referred to in his written submissions.

I've set out the background to this complaint in less detail than the parties and I've done so using my own words. And, in reaching my conclusions, I've focused on what I consider are the key issues. Our rules allow me to take this approach; it simply reflects the informal nature of our service as a free alternative to the courts and no discourtesy is intended by it. If there's something I haven't mentioned, it isn't because I've ignored it. It's since I don't need to comment on each individual argument to be able to reach what I consider is the right outcome in the circumstances.

On that basis, I haven't set out the complete details of Mr L's medical or employment circumstances, though I've carefully considered everything I've seen when reaching my decision.

It's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the FCA, where it may look at wider issues governing how businesses conduct their operations or exercise what may be commercial judgement on the provision of a particular service.

Regulatory rules require L&G to handle claims promptly and fairly and to not unreasonably reject a claim. I've therefore considered the evidence provided by the parties alongside the terms and conditions for Mr S's employer's group policy to determine whether I believe L&G treated him fairly and reasonably by refusing his claim and subsequent appeal.

Having done so, I agree with our investigator that this complaint should not be upheld. That means I won't be asking L&G to pay the claim retrospectively. I know this will be a disappointment for Mr L, but I'll explain my reasons for reaching this view below.

The policy terms set out when the income protection benefit is payable after the deferred period, as follows:

> "*Suited occupation*
>
> *Means the insured member is incapacitated by an illness or injury so that [they are] unable to undertake all occupations which we consider appropriate to [their] experience, training or education.*
>
> *For the purposes of this definition an occupation will not be considered to be inappropriate to an insured member's experience, training or education on the grounds that:*
>
> *i. the pay from such occupation may be lower than that paid to the insured member prior to the deferred period in relation to [their] own job or lower than the amount of member's benefit, or*
> *ii. such occupation lacks the status or seniority associated with the insured member's own job.*
>
> *For this definition 'own job' means the essential duties required of the insured member in [their] occupation immediately before the start of the deferred period.*"

It is not in doubt that the diagnoses Mr L has received – in combination with his existing gastrointestinal issues, insomnia, sleep apnoea, an ASD spectrum diagnosis, pain and other symptoms suffered since receipt of a vaccine in 2021 - have combined progressively such that Mr L felt he was no longer able to perform the material duties of his employment. And I can see how this conclusion is supported by the medical evidence Mr L has supplied from his consultant rheumatologist, the GP and the OH specialist.

However, the measure used in Mr L's employer's group scheme policy is that of any suited occupation. It means that benefit is only payable if he is unable to perform his own role ***and*** a suited occupation. I don't agree with Mr L where he says L&G has misinterpreted the policy terms regarding suited occupations. Rather, I am satisfied that it has assessed his circumstances against the above policy definition.

On the information it reviewed, including the updated assessments from January 2025 and February 2025, L&G's CMO took the view that the treating specialists had assessed Mr L against the backdrop of him returning to his own job role. And I think that was a fair and reasonable conclusion to draw. For example, only one paragraph of the updated correspondence from the rheumatologist addressed Mr L's functionality, in which it said "*on detailed questioning, Mr [L] tried a phased return to work, which gave him a lot of stress and*

he couldn't manage. I would recommend he takes 3-4 months off work and then reconsider his position after using the above measures [those including prescribed medicine, exercise and stress avoidance]. He may then need to consider going back to a phased return to work."

Similarly, the February 2025 OH report noted how CFS can be highly variable in its progression and set out how "*if [Mr L's] symptoms remain severe and disabling despite medical input, a long-term inability to work may need to be considered. However, if he responds well to treatment and symptom management strategies, a phased return could be reconsidered in the future, though this would require medical reassessment.*"

That report also refers to adjustments and redeployment, in the context of Mr L's existing job role at that time. It did not go on to consider any other suited employment as defined by the policy wording above.

Whilst I have no doubt that Mr L suffers from a set of genuine and debilitating conditions, L&G has decided that the medical evidence he has supplied does not support the conclusion that he was prevented from carrying out a suited role during the deferred period or after December 2024. And the burden of proof does rest with the claimant; so, it is for Mr L to show sufficient evidence to satisfy the claim.

In her updated March 2025 addendum assessment, the vocational specialist that carried out the December 2024 TSA with Mr L set out that "*my opinion remains unchanged, this is based on Mr [L's] reported function, level of disability and medical intervention. I believe Mr [L] should be able to sustain some suited work around his symptoms*".

I don't find L&G to have acted unfairly in reviewing the evidence against the findings from the TSA report, along with the updated assessment of the vocational specialist from March 2025. The TSA suggested that Mr L could carry out a suited occupation in other sectors. It specifically identified three roles that Mr L's experience and skills would potentially enable him to undertake, taking into account Mr L's fatigue, reduced cognitive function through tiredness, and additional requirement for rest and toileting breaks.

Overall, I don't think L&G needs to do anything further to resolve this complaint. I'm sorry that my decision won't bring Mr L welcome news, but for the reasons given I don't find that L&G has treated him unfairly nor acted contrary to the policy terms or in law by declining his claim.

Finally, I note that Mr L has told our investigator how he could have received policy benefit for a number of years, if a valid claim could have been made before the date of the termination of his employment. Whilst L&G's claim decision did not have any bearing on the separate decision made by the employer, Mr L remains free to supply any further medical evidence regarding his incapacity for any suited occupation (during the deferred period and beyond up to the end of the policy cover) directly to L&G, if appropriate.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 July 2025.

Jo Storey

Ombudsman