DRN-5719011

The complaint

Mrs T is unhappy Legal and General Assurance Society Limited declined a claim on her income protection policy.

What happened

Mrs T has a group income protection policy underwritten by Legal and General Assurance Society Limited (L&G) with a deferred period of 26 weeks.

In January 2024 she became absent from work due to pain in her neck and back. She returned to work again in February 2024, but said the pain was too much to endure so became absent again in April 2024.

Mrs T made a claim on her policy. L&G reviewed the available medical evidence and obtained an opinion from their chief medical officer (CMO). They declined cover and said there wasn't enough medical evidence to support she met the definition of incapacity for her type of injury. The evidence also suggested Mrs T could return to work on reduced hours. Although her employer hadn't agreed to this adjustment, this didn't mean she couldn't carry out her own occupation under the policy terms.

Mrs T appealed so L&G arranged a Functional Capability Assessment (FCA) to be carried out. Following this they maintained their position that they didn't think Mrs M met the policy definition of incapacity.

Our investigator looked at what had happened and said he thought L&G had fairly declined the claim based on the medical evidence suggesting she could return to her role if her employer agreed to reduced hours.

Mrs T disagreed and asked for an ombudsman to review everything. So the case has been passed to me to make a decision.

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.

The relevant rules and industry guidelines say an insurer has a responsibility to handle claims promptly and fairly. And they shouldn't reject a claim unreasonably.

Mrs T's policy terms define incapacity as:

Own occupation

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 onus is on Mrs T to evidence she has met the above policy definition. Having reviewed everything, on balance I don't think there was sufficient medical evidence to do so in this case.

The letter Mrs T provided from her Chiropractor said:
"My professional opinion is that a reduction in work days would be greatly beneficial …allowing her to have sufficient time to rest her neck and shoulder and arm between work periods."
This opinion is shared by her General Practitioner (GP) who reported:

"a solution would be a permanent change to her duties such that she has more recovery time and fewer days at work i.e. part time working or reduced days at work"

I think it was fair for L&G to take these submissions into account when assessing Mrs T's claim. And it was reasonable for them to conclude she wasn't totally unable to work in her role.

I acknowledge Mrs T's GP had also provided fit notes to cover her absence. And her Occupational Health therapist said throughout the claim that she wasn't fit to work. But I'm persuaded both opinions were most likely based on Mrs T being unable to work because her employer hadn't agreed to her requests for a more flexible working arrangement. And in any event, I think it was fair for L&G to add more weight to the detailed submission from her GP above, and the opinion of her treating Chiropractor.

I note Mrs T's comments that she initially discussed the possibility of reducing her hours with her employer, but it since became clear to her that she'd been overly optimistic about her ability to continue working. And she now feels her proactive efforts have been used against her during the claims process. However, I'm mindful that its repeatedly mentioned in Mrs T's medical records covering her period of absence that she was having discussions with her employer to try and reduce her working hours. And she appeared to give her employer several different options to change her working pattern – all of which were rejected by them. So I don't think it was unfair for L&G to give weight to these discussions.

The evidence suggests that Mrs T's employer refused her requests for a more flexible working pattern due to a business need at that organisation. I don't think it was unfair for L&G to conclude Mrs T may not face this barrier if she was to carry out her role with a different employer who was able to agree to a more flexible working arrangement.

Following Mrs T's appeal L&G conducted a further review of the claim and arranged for an FCA to take place. I think this was a reasonable course of action for L&G to take at this stage to help them determine the extent of Mrs T's functional capabilities.
After L&G provided clarification on Mrs T's role, the FCA concluded:

"*if reasonable adjustments can be made to her working environment through appropriate ergonomic advice (such as voice recognition software, ergonomic seating, keyboard, mouse, hot keys, and taking micro-breaks), I would expect her to be able to return to her role on a full- time basis via a managed phased return programme as suggested above over a 4-6-week period, starting at 2.5-hours per day, 5-days per week."*

I'm satisfied it was fair for L&G to rely on the results of this independent functionality assessment which suggested Mrs T would be able to return to work on a full time basis if her employer agreed to ergonomic adjustments and a phased return to work plan.

L&G also asked their CMO to review everything again as part of the appeal process. His opinion remained that Mrs T's reported symptoms should respond well to being managed

through ergonomic adjustments and they don't form the basis for total exclusion of a role of this nature.

So I don't think L&G's decision to decline cover was unreasonable at appeal stage either.

Summary

I appreciate this will be disappointing for Mrs T, but having reviewed all the medical opinions provided to L&G I don't think it unreasonable for them to conclude its likely Mrs T could return to her role if her employer agreed to a more flexible working pattern or reduced hours. This means she didn't meet the definition of own occupation incapacity under the policy terms.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 28 October 2025.

Georgina Gill
Ombudsman