DRN-5818204

The complaint

Mr R complains that Legal and General Assurance Society Limited (L&G) has turned down an incapacity claim he made on a group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the main events.

Mr R was insured under his employer's group income protection insurance policy, which provided cover if Mr R became incapacitated due to illness or injury. The policy deferred period was 52 weeks.

Unfortunately, in 2018, Mr R suffered three strokes and he was diagnosed with an aneurysm, which was later found to be inoperable. In brief, Mr R was advised that he wasn't fit for work because of the risk that stress could cause his condition to deteriorate. He was also diagnosed with post-traumatic stress disorder (PTSD). So in January 2019, Mr R was signed off from work and subsequently, went on to make an incapacity claim on the policy.

L&G obtained medical evidence so it could assess Mr R's claim. This evidence included GP reports, evidence from Mr R's treating doctors and psychologists, occupational health (OH reports), reports from its vocational rehabilitation consultant (VRC) and it asked its Chief Medical Officer (CMO) for their clinical opinion on Mr R's claim. It later went on to appoint an independent medical examiner (IME) to assess Mr R. Based on its assessment of the evidence, L&G concluded that Mr R wasn't suffering from a neurological, psychological or cognitive condition of such severity that he was prevented from performing his own occupation throughout the deferred period. Instead, it considered Mr R was signed off from work due to the fear that stress could worsen his condition. So it didn't think he'd met the policy definition of incapacity and it turned down his claim.

Around 18 months later, in September 2022, Mr R appealed. He provided more evidence in support of his claim. But L&G maintained its decision and so Mr R asked us to look into his complaint.

Our investigator didn't think L&G had treated Mr R unfairly. He didn't think the medical evidence indicated that Mr R had been incapacitated in line with the policy terms throughout the deferred period and beyond. Therefore, he thought it had been reasonable for L&G to decline Mr R's claim.

Mr R disagreed and so the complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Mr R, I don't think L&G has treated him unfairly and I'll explain why.

First, I'd like to say how sorry I was to hear about Mr R's illness and the impact this has had on his life. It's clear that this has been a very upsetting and worrying time for Mr R and for his family.

I'd also like to reassure Mr R that while I've summarised the background to his complaint and his submissions to us, I've carefully considered all he's said and sent us. In this decision though, I haven't commented on each point that's been made and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. I've taken those rules into account, amongst other relevant considerations, such as regulatory principles, the available evidence and the policy terms, to decide whether I think L&G handled Mr R's claim fairly.

I've first considered the policy terms and conditions, as these form the basis of the contract between Mr R's employer and L&G. Mr R made a claim for incapacity benefit, given he wasn't fit for work. So I think it was reasonable and appropriate for L&G to consider whether Mr R's claim met the policy definition of incapacity. This says incapacity:

'means the insured member:

> *(i) is incapacitated by a specific, diagnosed illness or injury which prevents him from performing the essential duties of the job he carried out under his contract of employment immediately before the start of the deferred period, and*
> *(ii) continues to be in employment.*

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.'

This means that in order for L&G to pay Mr R incapacity benefit, it must be satisfied that he had an illness or injury which prevented him from carrying out the essential duties of his own occupation for the entire 52-week deferred period and beyond.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mr R's responsibility to provide L&G with enough evidence to demonstrate that an illness or injury had led to him being unable to carry out the essential duties of his own occupation for the full 52-week deferred period (up until late December 2019) and afterwards.

L&G assessed the evidence Mr R provided in support of his claim, including with clinical members of its staff. While it sympathised with Mr R's position, it concluded that he wasn't suffering from a serious mental or other illness or injury which prevented him from carrying out his role.

Instead, it felt that the barrier to Mr R returning to work was his fear that the stress of his job would cause the aneurysm to rupture. So I've next looked at the medical and other evidence to consider whether I think this was a fair conclusion for L&G to draw.

I've first looked at the evidence supplied by Mr R's GP and in particular, the fit notes the GP issued during 2019. These state that Mr R was unfit for work due to '*aneurysm – history of bilateral stroke.'* And in August 2019, the GP made the following entry in Mr R's notes:

'*He has longstanding problems with an inoperable aneurysm and recurrent strokes that are most likely related to stress. Both his stroke consultant and neurosurgeon advised minimal*

stress. His work…is stressful and his occupational health doctor from his company has recommended that he is not fit to return to work long term.'

Next, I've considered the OH reports. I note that the OH doctor felt that Mr R was unfit for work. In July 2019, the OH doctor said:

'No cause for strokes has been found and they are now thought to have been stress-related. (Mr R) is, in my opinion, not fit to work or return to his current role long term. There are no adjustments which the business could make in my opinion that would reduce stress in his employment to consistently minimal levels. As the medical opinion remains that there is no clear surgical or medical interventions possible for his conditions, the focus is on reducing all external possible contributing factors to the best of his ability.'

Following our assessment of the complaint, Mr R's OH doctor provided us with a letter dated June 2025, which stated that, in their opinion, Mr R was medically incapacitated, although the letter didn't explain how or why Mr R would be prevented from carrying out the essential duties of his insured role.

In May 2019, Mr R's psychologist diagnosed Mr R with PTSD. And in March 2020, the psychologist wrote the following to L&G: '(*Mr R's) anxiety, depression, mood changes, loss of memory an insomnia would make any high functioning role problematic and distressing. He can easily get increased blood pressure when worried and, as a result of the severity of his diagnosis, often finds himself trapped in anxiety about anxiety…I would not see Mr R being able to return to his current job.'*

Additionally, L&G asked its VRC to assess Mr R's health. In October 2019, the VRC concluded that Mr R wasn't fit to work. And in March 2020, the VRC said:

'*Based on the evidence and information available today the member is unfit to return to his contracted and insured role due to the psychological impact of his stroke and aneurysm.*

In June 2021, a clinical psychologist wrote the following letter on Mr R's behalf:

'Further to this point, given his current cognitive profile and experience of anxiety I do not believe Mr R would be able to perform within his role as he once did, as this would likely lead to further experiences of anxiety and stress which may prove fatal given his physical health condition.

L&G also asked Mr R's treating specialists for their opinions. In June 2019, a neurological registrar noted that Mr R's condition was stable. In January 2020, Mr R's consultant neurosurgeon wrote to L&G to give their opinion on Mr R's condition They said:

'I believe Mr R should be able to perform duties of lighter nature. However, I would advise against heavy strenuous work involving heavy manual jobs. Any rehabilitation programme involving counselling and stress relief will be helpful for Mr R return to work.'

Subsequently, in June 2020, Mr R's stroke consultant reported:

'*The patient has suffered from a right ischemic stroke that is by definition a permanent brain damage. There is a potential impact on his cognitive abilities. However only constant follow ups may be able to tell us the prognosis…*

From the stroke point of view he has been stable and he has not reported new neurovascular symptoms according to my last consultation.'

As I've set out above, in July 2020, L&G also arranged an IME – a consultant clinical psychologist - to assess Mr R's condition. I've set out below what I consider to be their key findings:

The primary issue affecting (Mr R) appears to be pervasive anxiety about his health, his future centring on his reduced life expectancy…I would describe this as a fundamental set of fears affecting him deeply….

I have not carried out a cognitive assessment, but my informal observations based on a telephone conversation is that Mr R did not show obvious cognitive impairment. His memory appeared to be good, his concentration did not falter and he was articulate…

The IME was asked whether Mr R was suffering from a clinical psychological condition of such severity that he was prevented from carrying out his insured role. The IME answered:

'*He is suffering from a great deal of anxiety and worry and low mood at times, but this is not what is preventing him from performing his insured role.'*

L&G was also provided with a letter dated January 2021, from a registrar in neurosurgery. They said:

'*I could understand that Mr R is very anxious and I reassured him that his is surveillance MRA scan is satisfactory; however, the prognosis is uncertain, but we believe the risk of spontaneous cerebral haemorrhage from the fusiform basilar aneurysm is likely to be very low. We also recommend that Mr R should be able to perform his duties of lighter nature; however, we advised him against any strenuous or involving heavy manual jobs. We also advised him to be in a stress free environment.'*

As I've explained, in 2022, L&G referred Mr R's claim and all of the evidence it had received to its CMO, a specialist in occupational medicine. Again, I've set out below what I think are the CMO's key comments

'I am not a Psychologist or Psychiatrist but I do not believe Mr R's condition would meet the diagnostic criteria for PTSD. In itself, PTSD is not a condition that, by definition, precludes work totally in any event; such cases would be evaluated based on symptoms, response to therapy and functional ability. However, the member has not shared any documentation with ICD-10 diagnoses of serious mental illness (e.g. psychosis) or PTSD and any treatment / response to treatment for the same by a Psychiatrist for the insurer to review.

Furthermore, I am not even aware of any medication for reported anxiety and mood symptoms (nil taken according to IME report in August 2020 and no mention in the Psychologist report from 2021), which is further reassuring and excludes serious mental illness and anxiety or depression of a 'more severe' nature, in my view…

Current occupational medicine focuses on diversity and inclusion and enabling individuals to work with reasonable adjustments, in line with current legislation, with the emphasis on what can be done rather than otherwise. Several individuals with strokes and persistent neurological deficit (not the case here) have resumed work (as this member did) and remain in gainful employment, with appropriate workplace adjustments, including flexible working, amended duties etc. Mr R works in a sedentary role….

I am concerned about his ongoing exclusion from work (and its associated benefits), noting he is not under a memory clinic, neurorehabilitation service / Neurologist or Psychiatrist for any cognition or mental health issues..

The member is being monitored for his aneurysm with annual scans – it is very stable. Risk of spontaneous haemorrhage is 'very low'. He has not suffered with any further neurological / cardiovascular incidents or had hospital admission for any condition, to the best of my knowledge. There is no pending specialist treatment or intervention pending to address any reported concerns. There is no evidence of serious mental illness or formally diagnosed cognitive deficit to suggest the member is totally incapacitated from working in his own occupation, in my opinion…

In summary, there is no objective medical evidence to support the current absence relative to the L&G policy decision and my opinion is the appeal information has not revealed anything to change the original decision.'

I've thought very carefully about all of the evidence that's been provided. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive and decide whether I think L&G fairly relied on that evidence to turn down Mr R's claim. It isn't my role to substitute expert clinical opinion with my own – and it would be inappropriate for me to do so.

In my view, this is a finely balanced case. On the one hand, Mr R has provided evidence from his treating psychologists, OH (an expert in occupational medicine) and his GP that he isn't fit for work and that stress could seriously impact his condition. I note too that neurological medical experts have indicated that Mr R should be in a stress-free environment. And indeed, L&G's VRC concluded that Mr R's condition left him unfit for work.

On the other hand, having carefully reviewed the evidence from the neurologists treating Mr R, it seems that they believed Mr R could return to work, but that he shouldn't do strenuous or manual work. Mr R's job was sedentary. All of the evidence from the neurologists also indicates that Mr R's aneurysm had remained stable and that he hadn't experienced any further symptoms relating to stroke or to the aneurysm itself. So it doesn't appear that the treating doctors believed Mr R's aneurysm presented an immediate or medium-term risk.

The IME too – an expert in psychological conditions - didn't conclude that Mr R had cognitive impairment or a psychological condition of a seriousness which would stop him from working. They stressed that they didn't think Mr R's anxiety or low mood were the reasons he couldn't work. Instead, they concluded that Mr R's primary issue was anxiety about his life expectancy.

It's clear to me that L&G's CMO reviewed all of the available evidence in 2022, following Mr R's appeal. As I've said, the CMO is also an expert in occupational medicine. Their conclusions - based on the medical evidence - were that there was no evidence that Mr R's aneurysm was unstable nor that he had a serious mental illness which incapacitated him. I've borne in mind too the CMO's observations that Mr R wasn't prescribed medication to treat anxiety.

I've taken into account the totality of the medical and other evidence available to L&G. And I think it was reasonable for L&G to rely on its CMO's opinion to conclude the evidence showed that, during the deferred period, Mr R was suffering from understandable health anxiety about the potential impact of returning to work on his stable condition, rather than a psychological illness or deterioration of his existing condition. So I don't find that L&G acted unreasonably when it concluded that the main reason for Mr R's absence was the underlying fear that returning to work might cause his health to worsen rather than because of the aneurysm itself or any mental health condition of a severity which prevented him from carrying out the essential duties of his role.

On this basis then, I don't think it was unfair for L&G to conclude that Mr R's absence wasn't due to an incapacity in line with the policy definition.

I appreciate Mr R was medically signed off. And I understand he's been through a very difficult time. But I need to decide whether I think he's shown he met the policy definition of incapacity for the whole of the 52-week deferred period. As I've explained, I'm not persuaded he has.

It's open to Mr R to provide L&G with any further evidence he might wish to in support of his claim and it would be for L&G to assess the new evidence in line with its regulatory obligations and the policy terms. If Mr R is unhappy with any new assessment of his claim by L&G, he may be able to make a new complaint to us about that issue alone.

Overall, based on all I've seen, despite my natural sympathy with Mr R's position, I don't think it was unfair or unreasonable for Unum to turn down his claim.

My final decision

For the reasons I've given above, 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 R to accept or reject my decision before 30 October 2025.

Lisa Barham
Ombudsman