

## **The complaint**

Miss L is unhappy with Legal and General Assurance Society Limited's decision to decline her income protection claim.

## **What happened**

Miss L has a suited occupation income protection policy with L&G, provided through her employer. She became absent from work in April 2024 suffering with back, neck and shoulder pain. Miss L was diagnosed with foraminal stenosis caused by osteophytes in the C6 and C7 vertebrae. She claimed on her income protection policy and sought treatment from her physiotherapist.

Miss L's symptoms appeared to reduce by August 2024 and so she attempted a phased return to work. L&G declined her claim on 17 August noting the improvement, however, after completion of the phased return, Miss L's symptoms returned and by October 2024, she was off work again.

Miss L said her symptoms became aggravated by returning to work and that they became more severe. In addition to the earlier symptoms, she also began experiencing cervicogenic headaches and pins and needles in her left hand and pain in her left arm, which lasted for several days. Miss L would like L&G to pay her claim.

L&G said Miss L hasn't met the definition of incapacity as described by its policy. It said Miss L must show, through medical evidence, that she's unable to work in an occupation it considers appropriate by way of her experience, training or education, because of her illness. L&G acknowledged the medical evidence shows Miss L's unable to meet the demands of her current occupation, given the significant reliance on her ability to use a computer. But said there were other occupations she's suited to because of her experience.

Our investigator upheld Miss L's complaint. He agreed L&G had initially declined her claim fairly in August 2024 as the evidence showed her symptoms had improved and that she was attempting to return to work at that time. But he said by October 2024, when Miss L became absent again, there was evidence that her symptoms had returned and with additional complications. He said the presence of the cervicogenic headaches and increased pain in her neck, shoulders and left arm and hand, was supported by medical evidence and that L&G should reposition the deferred period to begin from that point.

Our investigator said L&G should accept Miss L's claim, pay the benefit amounts due from March 2025 plus 8% simple interest and pay £600 compensation for the distress and inconvenience caused.

Miss L accepted his findings, however, L&G didn't. In summary, L&G said:

- Our investigator has disproportionately placed more weight on Miss L's medical evidence, particularly that provided by the occupational health physician which is inconsistent with other evidence provided by specialists involved with Miss L's care.
- Its chief medical officer said there's no evidence to support the symptoms Miss L

reported during either deferred period. He said there was no evidence of pathology like injections or surgery and that Miss L had been referred back to the care of her GP. He also highlighted the occupational physician didn't assess her in person – meaning less weight should be placed on her report in February 2025.

- It's sourced an independent transferrable skills analysis (TSA) report which has suggested suitable alternative roles it believes Miss L is functionally able to perform.

And so, it's now for me to make a final 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 rule that applies in this case comes from the Insurance Conduct of Business Sourcebook (ICOBS) and is set by the Financial Conduct Authority. ICOBS says L&G must handle claims promptly and fairly and that it mustn't reject a claim unreasonably or avoid one.

The policy terms say;

#### ***"1 BENEFIT PAYABLE***

*Subject to the terms of this policy, the benefit will be paid in respect of an insured member from the benefit start date provided he is a disabled member"*

#### ***"Disabled member***

*Means an insured member who at any time, i. meets the incapacity definition, and ii. is not engaged in any other occupation, other than one which causes payment of a partial benefit in accordance with Part 3, Section 7 of this policy."*

#### ***"Suited occupation***

*Means the insured member is incapacitated by an illness or injury so that he is unable to undertake all occupations which we consider appropriate to his 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 his 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 his occupation immediately before the start of the deferred period."*

Having taken everything into consideration, I've decided to uphold Miss L's complaint and for similar reasons to those set out by our investigator. I'm not satisfied L&G has assessed Miss L's claim fairly because I find its grounds to reject her claim unreasonable in the circumstances. I'm persuaded the medical evidence shows Miss L is suffering with an illness (cervicogenic headaches) that precludes her from fulfilling the duties of her current occupation, as well as those recommended by the TSA report. I'll explain why.

The evidence shows that up until September 2024, Miss L's symptoms of neck, shoulder, arm and hand pain were responding relatively well to treatment. Miss L had suffered previously with similar symptoms in 2022, which were treated through physiotherapy and pain relief medication. And so, Miss L said when these issues presented again in April 2024, she thought it best to follow a similar treatment pathway. The evidence I've seen suggests

her symptoms responded well and that she was able to return to work through a phased return in August 2024. However, by September 2024, her symptoms not only resurfaced, but also progressed to include cervicogenic headaches.

Miss L had an MRI scan in July 2024 which identified anomalies with her C6 and C7 discs which were compressing her nerves through stenosis. This was supported by a consultant spine specialist and in September 2024; he said should the issue continue to cause Miss L difficulty, then an anterior cervical discectomy and fusion may be an appropriate way to address the issue. Miss L said this wasn't a procedure she wanted to undergo and that she preferred to try to manage this more conservatively. I should say I think that's an entirely reasonable response in this situation, and I note Miss L began acupuncture treatment to help manage her symptoms and pain.

So, because Miss L declined surgical intervention, she was referred back to the care of her GP as there was no pathology that could reasonably be explored through the consultant spinal surgeon at that time. L&G suggested this means there's evidence to support that Miss L is not suffering with a medical condition that's severe enough to warrant surgical intervention; but that's not what the evidence says. Rather, Miss L wanted to pursue other, less invasive options before considering surgery. And given the evidence shows since then, Miss L has been treated with regular acupuncture therapy and physiotherapy, I'm persuaded that's what she did. I don't think it's fair that L&G effectively minimised her condition and associated symptoms simply because she preferred not to have surgical treatment.

The consultant spinal surgeon documented the pain Miss L was suffering in her neck, shoulders and arms had extended to the left side of her skull and forehead. The acupuncturist and senior physiotherapist also document her symptoms of headaches and pain around her eye, temple and occiput and so I'm satisfied these specialists have consistently reported Miss L's symptoms.

Perhaps the most persuasive piece of evidence in this case is the occupational physician's report from February 2025. The physician noted Miss L's significant cervical spine disease and the unpredictable nature of her illness meant she couldn't reasonably sustain contractual employment at that time. L&G argued this wasn't an in-person assessment and said it was therefore less persuasive when considered against the comments provided by its chief medical officer. I should say its CMO also didn't conduct an assessment of Miss L in any personal capacity, rather, he reviewed the available medical evidence and provided an opinion on what other occupation Miss L may be suited to. In addition, the occupational physician outlined that he'd reviewed the previous medical reports and occupational health reports prior to conducting his assessment and so I'm satisfied he was well aware of Miss L's medical history.

L&G said the evidence showed Miss L's symptoms had greatly improved by August 2024, which I agree with, but it also shows she began suffering with cervicogenic headaches after that, which is supported by her GP's notes from October 2024.

Miss L injured her lower spine in December 2024 whilst bending to feed her cat. L&G said this was a separate issue that would respond acutely to treatment. I agree that's how it started and there's a note from Miss L's physiotherapist that said he expected that issue to resolve in around four weeks. However by February 2025, Miss L was still suffering with lower back pain, in addition to the other issues she'd been experiencing with her neck, shoulders and cervicogenic headaches.

The occupational physician captured this in his report and said Miss L's ongoing cervical spine issues had developed bilateral hip pain and acute lower back pain. He said this was likely caused by postural compensation due to her significant spine disease. I think that's

persuasive because initially, the issue was thought to be an acute condition, caused by a separate event. However, the evidence shows this issue was still present almost eight weeks later and far from being resolved. It was documented the pain was no longer affecting just her right side, but had become bilateral, indicating progression of her lower back pain symptoms. The report linked this to her ongoing significant spine disease which I find consistent and therefore more persuasive in the circumstances.

I've also considered Miss L's contemporaneous medical evidence in the form of a pain diary. This was also shared with L&G in November 2024. The diary entries show that even whilst she's been away from work, her symptoms of back pain and cervicogenic headaches have persisted, which is also consistent with the medical evidence provided by the specialists. This further persuades me that she's unable to work in any of the suited occupations L&G recommended through its Transferable Skills Assessment (TSA) report in December 2024. As this is a suited occupation policy, I'd expect L&G to carefully consider other roles Miss L may be suited to based on her experience and education, but must also consider her functional capability.

I'm less persuaded by the TSA report than L&G because I don't think it sufficiently demonstrates that Miss L was functionally able to meet the demands of the respective occupations. The TSA report recommended Miss L would be suited to roles as a theatre attendant, library assistant and visitor welcome assistant. Miss L's currently employed as an IT specialist. I have some concerns with L&G's position here as I'm not persuaded it's given enough consideration to the *suited occupation* part of the policy terms. Whilst I accept L&G's argument that it won't consider a role as unsuitable based on lack of seniority, I don't think that negates its responsibility to assess Miss L's claim fairly under ICOBS.

These roles, in my opinion, are roles that would be suited to most people, and the TSA report does little to persuade me that L&G fairly considered Miss L's professional career history in order to recommend a suited occupation. Instead, the report relies on arbitrary justification for recommending roles which show little regard for Miss L's professional competence. The TSA documented the required skills for those roles, and I've decided to list some of these skills to reinforce this point. For the visitor welcoming role, the report said the role was suitable because Miss L could provide directions, has the ability to work in a team or on her own, has a willingness to learn, has knowledge of English Language, and can be flexible and open to change.

I think these are basic skills which most ordinary people of working age would possess. And whilst the TSA report attempts to link these skills with the attributes acquired through Miss L's working history, I'm not persuaded that's fair for those reasons. Miss L highlighted L&G appears to have assessed her claim against *any occupation* rather than *any suited occupation* and I'm persuaded by what she says here.

But even if I was persuaded by L&G's TSA report – and to be clear I'm not – Miss L's barrier to returning to work was her back and neck pain caused by her significant spine disease and her cervicogenic headaches. These are functional restrictions that are supported by sufficient medical evidence. The TSA report and L&G's arguments largely focus on Miss L having the flexibility within these roles to walk, sit and get fresh air when needed. I should say these are actions available to her whilst she's not in work and her issues have persisted throughout that time, which is another reason I remain unpersuaded she was able to work.

These roles would also appear to require some ability to bend, lift items and clean which given Miss L's symptoms of pain, I would argue is an unreasonable expectation in these particular circumstances, as this would likely have aggravated her symptoms further. It's for these reasons I think L&G has handled Miss L's claim unfairly.

I'm aware Miss L has since returned to work from 27 May 2025. She successfully completed a phased return and is now back in work full time facilitated by ergonomic adjustments which has helped to stabilise her conditions. Miss L reports to still be under the care of her physiotherapist and acupuncturist which she's found helpful to manage her conditions. L&G should now pay her claim and any proportionate settlement due whilst she completed her phased return to work.

I'm also persuaded the £600 compensation is a fair way to acknowledge the distress and inconvenience cause by L&G's poor handling of Miss L's claim. I say that because I'm satisfied L&G has caused considerable distress and inconvenience to Miss L by not handling her claim fairly and unreasonably rejecting it. Miss L said L&G's actions made her symptoms worse, because of the stressful situation she found herself in by not having a regular income. She's provided evidence from her specialist to support her argument here and I find that persuasive as it makes a clear link between Miss L's increased stress levels and her delayed recovery between February and May 2025.

### **My final decision**

My final decision is to uphold Miss L's complaint for the reasons I've explained. Legal and General Assurance Society Limited must now pay Miss L's claim, taking October 2024 as the beginning of the deferred period. It must also pay 8% simple interest from that time until the claim is settled and £600 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 6 January 2026.

Scott Slade  
**Ombudsman**