

The complaint

Ms F complains Legal and General Assurance Society Limited (Legal and General) has ceased paying full benefit under an income protection insurance policy.

Ms F is being represented in this complaint, but as she is the insured member, and for ease, I've referred to her throughout.

What happened

The circumstances of this complaint will be well known to both parties and so I've summarised events.

Ms F was an insured member under her employer's group income protection insurance policy. The policy was provided by Legal and General. In 2015 Legal and General accepted a claim for Ms F following her absence from work. Prior to Ms F's absence from work she was working 28 hours per week.

In 2019 Legal and General wrote to Ms F's employer to make it aware it would be ceasing benefit as it no longer believed she met the policy definition of incapacity. Ms F appealed this decision and subsequently raised a complaint. In August 2019 Legal and General issued a final response to the complaint and said it would be reversing its decision to cease paying benefit.

In September 2022 Legal and General wrote to Ms F's employer making it aware it would be ceasing benefit as it no longer believed she met the policy definition of incapacity. Ms F raised a complaint about this decision. Legal and General reviewed Ms F's complaint and arranged for an independent medical expert (IME) report to be carried out.

In July 2024 Ms F's employer raised a complaint about claim handling delays and on 23 July 2024 Legal and General issued a final response to this complaint. It said it had previously made a payment equal to one month benefit to acknowledge delays and lack of progression with the appeal, but it was expecting the occupational health assessment report within the next two weeks.

On 20 January 2025 Legal and General issued Ms F with a final response to her complaint. It said the IME concluded Ms F would be capable of working 14-20 hours per week. So, it said it thought it would be reasonable to pay benefit equal to 14 hours per week, backdated from the date of its decision to cease paying benefit to the date of that final response letter. Benefits would then gradually reduce to 8 hours per week from around 1 March 2025.

Ms F referred her complaint to this Service. She said, amongst other things, that the alternative occupations Legal and General said she could work weren't 'suited occupations' as required by the terms of the policy. She also said she didn't think the evidence supported she could work in any occupation.

Our Investigator looked into things but didn't uphold Ms F's complaint. Ms F didn't agree with our Investigator. She provided a detailed response but in summary she said:

- The suited occupations identified by Legal and General are wholly inappropriate.
- Regardless of this, she is unable to work 14 hours at all, never mind doing so and sustaining the limited family life she has. The witness evidence is more than sufficient to prove this.
- The IME made arguments to advocate on behalf of Legal and General and wasn't expressing an independent opinion.
- It isn't reasonable to disregard the IME report Ms F had more recently obtained as part of this complaint.

As an agreement couldn't be reached, the complaint has 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.

I want to acknowledge I've summarised Ms F's complaint in less detail than she's presented it. I've not commented on every point she has raised. Instead, I've focused on what I consider to be the key points I need to think about. I mean no discourtesy by this, but it simply reflects the informal nature of this Service. I assure Ms F and Legal and General I've read and considered everything that's been provided.

I also want to be clear about what I've considered as part of this decision. I've considered the events which have taken place and to which Legal and General has responded to in its final response of 20 January 2025. Whilst Legal and General issued a final response in July 2024 about claim delays, this wasn't referred to this Service within the appropriate timeframe to allow it to be considered, so I won't be commenting on this. I'm also aware following Legal and General issuing its final response, Ms F has obtained her own IME report. However, as this report wasn't available to Legal and General at the time of issuing its final response, I won't be commenting on it as part of this decision.

Ms F can look to provide this report to Legal and General if she hasn't done so already. If she remains unhappy with Legal and General's response following her doing so she can look to raise this as a separate complaint.

The relevant rules and industry guidelines explain Legal and General should handle claims fairly and shouldn't unreasonably reject them.

The terms of the policy explain Legal and General will stop paying benefit immediately if the insured member no longer meets the policy definition of incapacity. The policy under which Ms F was receiving benefit has an own occupation definition of incapacity which then switches to a suited occupation definition of incapacity after a period of 60 months. The suited occupation definition of incapacity is therefore relevant to Ms F's claim. The policy definition is:

'means the insured member is incapacitated by an illness or injury so that he is unable to undertake any occupation 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 the 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.

In order to cease paying benefit, the onus was on Legal and General to demonstrate Ms F no longer met the policy definition of incapacity.

Legal and General are satisfied the medical evidence demonstrates Ms F no longer meets the policy definition of incapacity. I've considered the relevant available medical evidence to decide whether I think Legal and General acted fairly and reasonably when relying on this evidence to cease paying benefit. Whilst I don't intend to list every piece of evidence, I've summarised what I consider to be the key medical evidence here:

- In July 2020 Ms F's GP wrote a letter in which they say Ms F's main symptoms remain that of fatigue, and that they don't think she is suited for any occupation.
- In December 2021 Ms F's rheumatologist said they didn't think Ms F had fibromyalgia or any other underlying condition.
- In July 2022 Ms F completed one day of a two day Chronic Pain Abilities Determination (CPAD) assessment. In summary, the report from this assessment noted significant symptom exaggeration and said the results of the assessment can't be used to infer any barriers in Ms F returning to work.
- Legal and General's Medical Officer (MO) said based on the evidence provided, they would consider Ms F would be able to work 28 hours a week in a suited occupation.
- Ms F's psychologist wrote a letter in February 2023 saying Ms F was suffering from clear signs of generalised anxiety disorder and was vulnerable to developing clinical depression. They didn't consider Ms F was able to carry out any occupation and there appeared to be a decrease in her functioning. Ms F's psychiatrist wrote a letter in March 2023 saying there was little doubt she was suffering from a depressive illness with associated general anxiety.
- In June 2023 a consultant physician wrote a report. They said Ms F remained very significantly incapacitated and there appeared to be no improvement in functional status. They also said they had no doubt about the genuine nature of Ms F's chronic fatigue syndrome symptoms, and this was severe enough to render her unable to carry out any of the suited occupations suggested by Legal and General.
- A number of occupational health reports were written between October 2023 and July 2024, all of which concluded Ms F wasn't fit for work.
- In February 2024 Ms F's psychologist wrote a further letter confirming their opinion hadn't changed since their previous letter.
- Legal and General arranged for an independent occupational health physician to produce a report. The report was written in July 2024 and in summary the physician, who I'll call X, said it was their opinion that Ms F would not have been capable of

working in her own occupation since September 2022. However, they thought Ms F would have been capable of working in an alternative occupation but only with support, and assistance and efforts made to tackle her deconditioning. They said Ms F would have been capable of working a minimum of 14 hours per week but more likely 20 hours per week.

In addition to the above medical evidence, Ms F also provided Legal and General with her own witness statement as well as statements from others including her family, friends and neighbours. Legal and General also arranged for a transferrable skills analysis report to be carried out by a third-party company. This was all available to the independent occupational health physician when producing their report.

Based on the evidence provided, I don't think it was unreasonable for Legal and General to conclude that Ms F could work 14 hours per week, gradually increasing to 20 hours a week, in an alternative occupation to her own and I'll explain why.

I think the medical evidence demonstrates a difference in opinion between Ms F's treatment providers and X in relation to her ability to return to work. It's clear Legal and General are most persuaded by the opinion of X and I don't think this is unreasonable in the circumstances.

Whilst I acknowledge the report was commissioned by Legal and General, X is ultimately an independent party. They've had access to all of the available medical evidence and witness statements as well as having the opportunity to speak with Ms F. They have the relevant medical expertise to comment on this and provide an opinion on Ms F's ability to work. Additionally, the report is detailed and an explanation of how X reached their conclusions is included.

I acknowledge Ms F has raised a number of concerns with the report produced by X. These concerns include, but aren't limited to, the way X handled the witness statements, the information X quoted within their report and X's comments that Legal and General's MO summary was highly accurate.

I've considered the concerns Ms F has raised, but I've not seen anything which persuades me that it was unreasonable for Legal and General to place reliance on the report from X. In the report X has said they think moderate weighting should be placed on the witness statements, and so I think they have taken this into consideration. And they are entitled to decide how much weighting to place on each piece of evidence when forming their overall opinion on Ms F's ability to work. I've also not seen anything specifically quoted in the report that I think was clearly irrelevant or inappropriate. Whilst I know Ms F doesn't agree with everything X has said in their report, I don't think this means it can't be relied on.

I understand Ms F has since arranged for her own independent report to be carried out which she says disputes the conclusions reached by X. As I've said, Ms F can provide Legal and General with this report if she hasn't done so already, and I would expect Legal and General to take it into consideration. However, based on the evidence available to Legal and General at the time it issued its final response letter, I don't think it was unreasonable to conclude Ms F could perform an alternative occupation.

Ms F has said Legal and General hasn't said whether it agrees or disagrees that her working will adversely affect her home life, and if so, whether this is material to the complaint.

Whilst I completely understand why Ms F would have concerns about the impact a return to work would have on her personal life, ultimately the policy providing her with cover focuses solely on her ability to carry out the material and substantial duties of her own or a suited

occupation. It doesn't also state that an individual must be able to carry out the material and substantial duties of their job role, whilst having little to no impact on their personal life. So, whilst I can see Legal and General did ask the IME about the impact work may have on Ms F's personal life, I don't think it was unreasonable for it to focus its claim decision on whether Ms F could work in a suited occupation.

I can see in X's report they have said they consider the transferrable skills analysis, arranged by Legal and General, to be an accurate representation of Ms F's current work range and ability. Ms F has said the occupations suggested by Legal and General are wholly inappropriate and so can't be considered as 'suited' occupations.

It isn't my role to say what is or isn't a 'suited' occupation. My role is to consider whether Legal and General has fairly demonstrated that the occupations it has identified can be considered as suited occupations.

Legal and General arranged for a third-party company, who I'll call Y, to complete a transferrable skills analysis report. Y has said the aim of the assessment was to identify job options that were matched or reasonably fitted to Ms F's training, education and experience, whilst also taking into consideration her health limitations.

Y identified eight job roles it considered to be appropriate, which included a sales administrator, hotel receptionist, digital marketer and customer service assistant. The report includes what I consider to be a relatively detailed explanation of why it believed each role to be suitable.

Based on the evidence provided, I don't think it was unreasonable for Legal and General to consider these occupations to be 'suited' occupations based on the terms of the policy Ms F is insured under.

I think it's clear the suggested occupations aren't comparable to Ms F's own occupation as a director. However, the terms are clear that a suited occupation won't be considered to be inappropriate on the grounds that the pay, status or seniority of the role isn't comparable to the insured's own occupation.

I do think it's important to pay regard to the fact that there is a difference between what could be reasonably considered as a 'suited' occupation and what could be considered as 'any' occupation. However, I think the transferrable skills report does appropriately take into consideration Ms F's specific experience, training and education. So, overall, I don't think it was unreasonable for Legal and General to conclude these occupations are more likely than not suited to Ms F in line with the terms of the policy.

As I don't think it was unreasonable for Legal and General to conclude Ms F could work 14 to 20 hours per week in an alternative occupation, and I'm satisfied the occupations it identified can fairly be considered as 'suited occupations', I think the backdated settlement Legal and General paid was reasonable in the circumstances.

I'm aware this will be disappointing for Ms F as I know how strongly she feels about this. However, for the reasons I've explained, I don't require Legal and General to take further action in relation to her complaint.

My final decision

For the reasons I've outlined above, I don't uphold Ms F's complaint about Legal and General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 8 May 2026.

Andrew Clarke
Ombudsman