DRN-4866628

The complaint

Mr C is unhappy that Legal and General Assurance Society Limited (L&G) declined his income protection claim.

What happened

Mr C is insured through his employer's group income protection policy. The policy specified a deferred period of 26 weeks and L&G is the underwriter.

Mr C was first absent from work on 7 November 2023. He was signed off work by his GP and the reason given was work related stress.

A claim was submitted to L&G and a clinical telephone assessment took place on 7 December 2023. Mr C explained he had difficulties at work due to a change in management and issues at work had triggered his absence. He did see his GP, but he already had support from a consultant psychiatrist and a therapist due to his history of mental health. He said this was being well managed until the issues at work started.

L&G requested Mr C's medical records from his GP. The records confirmed that Mr C was absent from work due to issues he was having there, and which were worsening. The claim was declined because Mr C's absence was as a direct result of work-related stress. He didn't meet the definition of incapacity as per the terms and conditions of the policy.

Mr C appealed L&G's decision to decline his claim. L&G considered the additional information provided by Mr C but maintained its decision to decline the claim. There was insufficient objective evidence to support illness or injury of sufficient severity to result in the definition of incapacity being met during the deferred period and beyond.

Mr C brought his complaint to this service. Our investigator didn't uphold it. He reviewed the information provided by both parties and said the evidence supports that workplace issues were the main trigger for Mr C's absence from work. Therefore, the definition of incapacity hadn't been met under the policy terms and conditions.

Unhappy with the investigator's findings, Mr C asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

In summary, Mr C says the claim hasn't been fairly declined for the following reasons:

- He is still on sick leave and unable to conduct his job due to his mental health which has been ongoing for year. He hasn't seen any evidence to the contrary that he wasn't incapacitated.

- Reference has been given to him requesting his GP to go on sick leave, but we've not considered that he had severe anxiety and suicidal thoughts about the job, which rendered him to be totally incapable of continuing to undertake his job.

- His claim hasn't been fairly considered as his GP records clearly state a diminishing

mental state for well over a 12-month period.

- His GP, psychiatrist and therapist have all evidenced that he is unable to perform his essential duties and he meets both L&G's definition of incapacity and the Equality Act 2010 definition of someone who is disabled.

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 sorry to disappoint Mr C, I think L&G has declined the claim fairly. I'll explain why below.

First, I'd like to reassure Mr C that whilst I've summarised the detailed background to his complaint and his submissions to us, I've carefully considered all he's said and sent us. Within this decision though, I haven't commented on each point he's raised and nor do our rules require me to. Instead, I've focused on what I consider to be 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. So, I've considered, amongst other things, the terms of this income protection policy and the circumstances of Mr C's claim, to decide whether L&G has treated him fairly.

The policy covers for incapacity on an own occupation basis and the deferred period is 26 weeks. It states for a claim to be paid the definition of incapacity must be met. Incapacity under own occupation is defined on page 23 of the policy document as:

> *'…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…'*

A point to note is that generally, in insurance, it's for the consumer to show their claim is valid. In this case, Mr C is required to provide medical evidence to show he is unable to work and cannot perform the essential duties of his employment due to injury or illness.

To decide whether Mr C met the definition of incapacity for the benefit to be paid, I've looked at the evidence provided to me by both parties.

Mr C has provided the following evidence which I've considered:

- An occupational health opinion dated 19 January 2024.
- A letter from his consultant psychiatrist dated 19 January 2024.
- An occupational health report dated February 2024.

L&G has provided the following evidence for me to consider:

- A telephone assessment conducted in December 2023 by a vocational clinical specialist.
- GP medical records.
- The Chief Medical Officer's (CMO) clinical assessment of the medical evidence. I've

carefully considered all the evidence and comments provided by both Mr C and L&G.

While I understand that Mr C has history of a mental health condition and things were made more difficult following the change in management in 2022 at work, my role is to reach an outcome that's fair and reasonable and based on the information available to me.

The starting place is the policy definition of incapacity. In order for the claim to be successful, Mr C has to show his claim is valid under the terms and conditions of the policy. In other words, he has to demonstrate that he cannot perform the essential duties of his employment due to injury or illness.

It's really important to clarify here that we would need to see clear medical evidence provided by a medical professional that the illness or injury prevented the insured from working.

Mr C's GP medical records confirmed on his first visit that he had issues with work which caused a lot of stress. The GP confirmed diagnosis of work-related stress.

The clinical assessment carried out in December 2023 stated the absence was related to work issues and while Mr C has suffered mentally for years, the main reason for being absent from work was the issues he was facing with his manager, and which were causing him stress as opposed to a significant change in his clinical condition. While the two were linked, addressing the trigger for the work stress remains the priority.

The consultant psychiatrist letter in January 2024 provided a general opinion and there's no clear medical evidence to substantiate how he concluded that Mr C wasn't robust enough to attend work related meetings. Or that he was unfit to return to work until 30 March 2024.

The occupational health opinion in January 2024 referred to Mr C not being fit to work currently and at present not fit to engage in meetings. He also refers to Mr C experiencing a close family member's bereavement and to engage support from an occupational health physician in February 2024, following the funeral.

Then in February 2024, the occupational health report states Mr C was unfit to be in work and was managing a bereavement. He was fit to attend work-related meetings with support. Additionally, it says the key to a successful return will be to address the work concerns, but Mr C was adamant he wouldn't be able to return working under the current manager and potential alternatives, such as a change in manager, were suggested.

The CMO reviewed all of the information submitted and provided an independent and medical opinion about whether Mr C could carry out the essential duties of his own occupation. He concluded that Mr C didn't meet the definition of incapacity as per the policy as essentially there appears to be a breakdown in employer-employee relationship. The CMO's opinion was that there was insufficient objective evidence to support illness or injury of sufficient severity to result in total capacity during the deferred period for his own occupation as per the policy definition.

Overall, the evidence provided to me demonstrates that Mr C was absent from work due to work-related stress – his first visit to the GP confirms this. The clinical assessment carried out in December 2023 also confirms that his absence related to work issues and with his manager. While I appreciate that Mr C also mentions to his GP of suicidal thoughts – there was no onward referral for a clinical assessment. The GP's diagnosis was work-related stress. And the notes from the clinical assessment regarding his suicidal thoughts state there were no specific plans, but Mr C was daunted by returning to work.

I also note in December 2023, the clinical assessment stated Mr C was being performance managed due to issues with his manager and he felt it wore him down. I also note Mr C has raised a grievance at work and was appealing this. Additionally, said he had no intention of returning to work under the current manager but remained focussed to returning to work.

Mr C suffered a close family bereavement in January 2024 which must have been difficult for him. But, following the funeral, in February 2024, the occupational health report suggests that Mr C has a meeting with his work with support and to resolve the issues.

I understand that Mr C has a history of mental illness. I also understand that he had a family bereavement as well as visits to the hospital for various check-ups and medical issues. But from the evidence I have seen, it's clear the overarching reason for Mr C's absence is work-related stress. I say this because he's had the mental health condition for some time but still managed to work and function on a day-to-day basis. I realise that his condition was exacerbated but I think that's because of the stress related to work. I'm not persuaded therefore that Mr C meets the definition of incapacity as per the policy terms and conditions.

I appreciate that Mr C has provided his own evidence. However, in this case, the medical evidence provided by L&G does carry more weight. This is because no clinical assessment was carried out as far as I can see. In contrast, the GP notes, the clinical assessment and the CMO opinion show, while Mr C has a history of mental health, the cause of the absence was primarily work-related. And while Mr C has had additional sessions with his consultant psychiatrist and therapist, I can't see that there has been any further intervention in this regard.

I acknowledge Mr C believes his claim should be paid. But, taking everything into account, I'm satisfied that L&G has declined Mr C's claim in line with the policy terms and conditions and has done so fairly and reasonably. I agree there's no clear medical evidence in this case to show Mr C is incapacitated because of illness or injury which prevented him from carrying out the essential duties of his work.

Overall, I don't doubt that Mr C has a history of a mental condition and the issues at work made this condition worse. But despite my natural sympathy with Mr C's position, I don't find there are any reasonable grounds upon which I could direct L&G to pay his claim. It follows therefore that I don't require L&G to do anything further.

My final decision

For the reasons given above, I don't uphold Mr C's complaint about Legal and General Assurance Society Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 September 2024.

Nimisha Radia
Ombudsman