

The complaint

Miss F is unhappy that Legal and General Assurance Society Limited (L&G) declined her income protection claim.

Miss F is being represented on this complaint.

What happened

Miss F has a group income protection policy with her employer. The policy provides a benefit in certain circumstances after a deferred period on an own occupation basis. L&G is the underwriter.

Miss F has had a history of problems with her hip from a young age. In August 2022 she underwent surgery and was absent from work from 23 August 2022. She unfortunately had a fall in November 2022 so couldn't return to work. Miss F has had walking issues and suffers from a lot of pain since November 2022. She's been seeing an orthopaedic specialist and has had physiotherapy.

Miss F submitted a claim to L&G under her employer's income protection policy. L&G reviewed all her medical records and in January 2024; it declined her claim. It said Miss F didn't meet the definition of incapacity as per the terms and conditions of the policy.

Unhappy, Miss F brought her complaint to this service. Our investigator didn't uphold it. She didn't think the medical evidence provided met the definition of incapacity as required within the L&G policy terms and conditions.

Miss F disagreed and asked for the complaint to be referred to an ombudsman. So, it's been passed to me.

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.

At the outset, I wanted to acknowledge that the whole situation has been very difficult for Miss F. So, whilst I understand that she's been experiencing considerable pain related to her hip condition, my role is to reach an independent and impartial outcome that's fair and reasonable, based on the information available to me.

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 Miss F's claim, to decide whether I think L&G treated her fairly.

It's important to point out that we're an informal dispute resolution service, set up as a free alternative to the courts for consumers. In deciding this complaint I've focused on what I consider to be the heart of the matter rather than commenting on every issue or point made in turn. This isn't intended as a discourtesy to Miss F. Rather it reflects the informal nature of

our service, its remit and my role in it.

I've first considered the terms and conditions of this policy, as it forms the basis of the contract between Miss F's employer and L&G.

The starting place is the policy definition of incapacity. In order for the claim to be successful, Miss F has to show her claim is valid under the terms and conditions of the policy. In other words, she has to demonstrate that she cannot perform the essential duties of her own occupation due to injury or illness.

The policy states for a claim to be paid, the definition of incapacity must be met. The wording is as follows:

'Means the insured member is incapacitated by an illness or injury that prevents him from performing the essential duties of his own occupation immediately before the start of the deferred period. 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.'

For the avoidance of doubt, I'm not medically qualified so it's not for me to reach any determinations about Miss F's medical diagnosis or to substitute expert medical opinion with my own. Instead, I've weighed up the available medical evidence to decide whether I think L&G acted fairly and reasonably in declining Miss F's claim.

I've been provided with detailed medical evidence relating to Miss F's condition and symptoms from 2022 onwards. So, the issue for me to determine is whether I think the medical evidence supports L&G's decision that Miss F doesn't meet the definition of incapacity.

In July 2023, an independent Functional Capacity Evaluation (FCE) was carried out to determine Miss F's functional capacity to undertake her own role. These results concluded that when compared to the self-reported demands of her role, from a functional perspective, *'Miss F is fit to resume her normal occupation'*, on a part-time basis over five days rather than three days. Recommendations were made to assist her back to work and her functional abilities were tested which represented her overall true capabilities.

I've considered Miss F's GP records and notes which suggested she was maybe fit for work with adaptations. The GP discussed work as a distraction from the pain, but Miss F didn't think this would work for her. I can also see a note in the GP records where Miss F has said the target and deadline environment at work alongside managing her pain wouldn't work for her.

L&G's Chief Medical Officer (CMO) reviewed all of Miss F's medical records in August 2023, and his opinion was:

'Based on my review of the available evidence, my opinion is the objective evidence is supportive of the member demonstrating sufficient functional ability to resume her own occupation at any employer on a part-time with reasonable workplace adjustments, which should remain in place as long as required.'

The reports provided by a Vocational Clinical Specialist dated 26 January 2023, 28 February 2023, 17 April 2023, June 2023, August 2023 maintained throughout that: *'Based on the member's account, I see no medical reason why the member cannot undertake her insured role working from home.'* Employer reasonable adjustments were recommended as her role was sedentary.

In September 2023, Miss F was seen by an orthopaedic surgeon (who I'll call Mr A) who recommended a hip replacement surgery. And another orthopaedic surgeon (who I'll call Mr B) said Miss F would unlikely be fit enough to perform her work duties due to the pain she was experiencing. L&G requested further information from both orthopaedic surgeons; Mr A said he wasn't in a position to comment upon Miss F's suitability to return to work. Mr B sent the reports to Miss F who didn't consent to releasing them to L&G.

I've further considered that the CMO reviewed all of the additional medical information since Miss F's first review. His overall opinion was that Miss F was capable medically to perform her weekly contractual hours with reasonable adjustments given the nature of her role. He said his opinion was based on the objective evidence that was supportive of Miss F demonstrating functional capability to resume her own occupation with workplace adjustments.

Miss F says that her physiotherapist said she was unfit for work and Mr B also said she would unlikely be fit for work. I've thought carefully about this. However, I have to look at the medical evidence in its totality. The physiotherapist reports provided predominantly relate to self-reported symptoms and Miss F was seeing this professional with a view to help managing the condition. And while Mr B said initially Miss F would unlikely be fit enough to work, following a request for further information from L&G, this wasn't provided.

In contrast, the FCE carried out an independent FCA to determine Miss F's capacity to carry out her own role. And the CMO reviewed all of Miss F's related medical history and medical records. So, on balance, I think they carry more persuasive weight.

The test here is whether Miss F meets the definition of incapacity as per the terms and conditions of the policy. And having reviewed everything, I don't think it's likely she does. There isn't sufficient evidence to say that Miss F is currently incapable to carry out the essential duties of her own occupation. It's not up to L&G to give any thought to the practical requirements of the return-to-work plan – that's a matter which is between Miss F and her employer.

I understand Miss F recently provided a letter to us regarding a procedure she had in September 2024. However, I can only consider information that forms part of this complaint and that which has been considered by L&G. So, I'm unable to comment on this. If Miss F wants this information considered, then this should be directed to L&G.

I have every sympathy that Miss F is experiencing a difficult time and has painful symptoms. And I'm sorry to disappoint her but this doesn't automatically mean that L&G must pay her claim.

Overall, I've taken everything into account, and I don't think on balance, the medical evidence demonstrates that Miss F meets the definition of incapacity as per the terms and conditions of the policy. I therefore don't find that there are any reasonable grounds upon which I could direct L&G to pay her claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 2 January 2025.

Nimisha Radia
Ombudsman