

The complaint

Mr C is unhappy that Legal and General Assurance Society Limited ('L&G') declined a claim made on a group income protection insurance policy ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my 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.

L&G has an obligation to handle claims promptly and fairly – and it shouldn't unreasonably reject a claim.

The relevant terms of the policy

The policy terms and conditions say:

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...

The policy schedule says that the relevant definition of incapacity is "own occupation switching to suited occupation 24 months after the benefit start date"

Own occupation 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.

Essential duties mean:

The duties that are normally required for the performance of the insured member's insured occupation and which cannot reasonably be omitted or amended.

When making a claim, it's for Mr C to establish that he was incapacitated.

Did L&G act fairly and reasonably when declining the claim?

I'm not a medical expert. So, I've relied on all the evidence available to me when considering whether L&G has reasonably declined the claim. Having done so, I'm not persuaded that L&G has fairly and reasonably declined the claim. I'll explain why.

- I'm not persuaded that L&G has fairly and reasonably concluded that Mr C didn't meet the policy definition of being incapacitated. I don't think the totality of the medical evidence supports that it was work related issues which ultimately resulted in Mr C being off work sick from April 2023 or were the cause of his low mood and anxiety. Although there is reference to a work-related issue around the time Mr C was signed off work, there's other reference in his medical records to Mr C having mixed anxiety and depressive disorder a few months before this and he'd been taking anti-depressant medication before he was signed off work sick. Further, his GP records, and the independent medical expert (IME) report dated February 2024, refers to many other personal issues which impacted his mood and anxiety.
- After Mr C was signed off work by his GP, there was an escalation in his treatment. He continued to be prescribed different and increased doses of anti-depressant medication and started regular therapy. However, the medical records reflect that in August 2023, Mr C reported that he wasn't feeling the benefit of any of the medication. And the occupational health reports from around this time support that, in the opinion of the occupational health advisors, Mr C wasn't fit to return to work due to his reported level of psychological health symptoms and the impact of his functional capacity. And that there were no recommendations which might facilitate an earlier return to work.
- Although Mr C's symptoms are largely self-reported, what he's said and is reflected in medical records, has been largely consistent during the deferred period (and subsequently). It also supports what he said in his claim form dated August 2023 that the symptoms stopping him from working were depression, anxiety, anger, focus/concentration issues and panic attacks. There's also mention in his medical records of feeling very tired due to a lack of sleep and forgetting things. In the circumstances of this particular case, I accept what he says about his symptoms.
- I've taken into account that the IME report dated 2023 (prepared by a consultant psychiatrist) says at section 17 that "there is no absolute reason by virtue of capability... that would prevent an attempted, graded return to work" albeit with a period of adjustment and treatment. It goes on to say that "the nature of the depressive aspect would not be considered as severe, given the presentation on mental state examination, level of functioning reported, and the total number of clear depressive symptoms". However, importantly in this case, the report doesn't provide much evidence in support of that opinion. There is more focus on Mr C's more recent diagnosis of neurodiversity.
- Further, the IME report also says at section 17 that "lacking matching/adjusting/accommodating the role to Mr C's health needs is a significant barrier to returning to work". It goes on to set out many workplace changes that could assist with Mr C returning to work which includes "providing a role with tasks that are less likely to be impacted by unpredictable and multiple contributions from different parties". Whilst the policyholder (Mr C's employer) does have a legal duty to make reasonable adjustments under the Equality Act 2010, I've taken into account the policy definition of 'essential duties' above. Given the number of adjustments identified by the IME report, and without anything more, I'm not satisfied that the

adjustments identified can reasonably be put in place without changing the essential duties of the role Mr C was doing before he was signed off sick.

- I've also taken into account that Mr C has expressed an interest to switch roles. However, I've placed less weight on that given that I'm considering whether L&G has fairly concluded that Mr C wasn't incapacitated based on the own occupation definition set out in the policy terms.

Putting things right

I direct L&G to:

- accept the claim from the benefit start date and pay the monthly benefit, backdating the monthly payments that would've been paid if the claim had been accepted.
- add simple interest at a rate of 8% per year* to each monthly benefit that ought to have been paid since the benefit start date, from the date each benefit should've been paid until the date they're actually paid.

* If L&G considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr C how much it's taken off. It should also give him a certificate showing this if he asks for one. That way Mr C can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I uphold Mr C's complaint and direct Legal and General Assurance Society Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 October 2024.

David Curtis-Johnson
Ombudsman