DRN-4288126

The complaint

Mr D is unhappy that Legal and General Assurance Society Limited (L&G) stopped paying the monthly benefit after a successful claim had been made under a group income protection insurance policy he has the benefit of through his employer (the policyholder).

What happened

In 2019, Mr D became absent from work due to illness and a successful claim was made on the policy, underwritten by L&G.

L&G paid the monthly benefit to the policyholder for the benefit of Mr D as it accepted that he was incapacitated due to illness to the extent that he was unable to perform the essential duties of the job he carried out immediately before he became too ill to work. L&G continued to review the claim.

The policy says that after two years from the benefit start, the definition of incapacity changes. Payment of the benefit will continue only if Mr D was unable to undertake any occupation which L&G considered appropriate to his experience, training or education. L&G requested the opinion of one of Mr D's consultants, asked Mr D to complete an occupational questionnaire and arranged a call with him to discuss his daily functioning and typical day.

L&G concluded in July 2022 that Mr D was well enough to carry out other suitable work and provided notice to the policyholder that it would be ceasing the monthly benefit. Unhappy, Mr D appealed that decision but ultimately L&G didn't reinstate monthly benefit. So, Mr D complained to the Financial Ombudsman Service. Our investigator didn't uphold Mr D's complaint. As Mr D disagreed, his complaint has been passed to me to look at everything afresh 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.

That includes Mr D's submissions to the Financial Ombudsman Service dated March 2023, when first making his complaint and August 2023, in response to our investigator's view.

At the outset I acknowledge I've summarised this complaint in far less detail than Mr D has, and in my own words. I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it's an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair and reasonable outcome in the circumstances of this case.

Mr D has more recently sent our investigator an occupational health report dated June 2023 and a letter from his GP dated July 2023. Both these documents are dated after L&G's final

response letter dated March 2023. I'm only considering whether L&G acted fairly and reasonably up to the date of the final response letter. So, I haven't taken the contents of these documents into account. However, Mr D is free to forward any further evidence to L&G for consideration.

The relevant rules and regulations

The insurance industry regulator, the Financial Conduct Authority ('FCA'), has set out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). ICOBS says insurers should handle claims promptly and fairly - and shouldn't unreasonably reject a claim.

When making a claim, it's for Mr D to demonstrate that he met the definition of incapacity, and he was able to do that. As L&G ceased paying the monthly benefit, it's for it to show that Mr D no longer met the definition of incapacity. It's not for Mr D to show that he continued to do so.

The relevant policy terms

The policy says L&G will "immediately end payment of benefit if…the insured member ceases to be a disabled member".

"Disabled member" means an insured member who at any time meets the incapacity definition.

The applicable definition of "incapacity" is set out in the schedule of insurance. And this confirms the relevant definition of 'incapacity' is "progressive".

"Progressive" means payment of benefit under the policy is assessed against "own occupation for a period of two years starting on the benefit start date, then suited occupation for the next two years…"

"Suited occupation" means the insured member is incapacitated by a specific, diagnosed illness or injury so that he is unable to undertake any occupation which L&G considers appropriate to his experience, training or education.

L&G's decision to cease paying the claim

I'm satisfied that L&G's decision to cease paying the claim when it did was fair and reasonable. I'll explain why.

- I'm satisfied that L&G was correct in using the definition of suited occupation when reviewing the claim in 2022. By that stage, it had been paying the monthly benefit for over two years.
- In early 2022, Mr D completed a member's continuation statement. He said that he couldn't concentrate on admin tasks for any length of time "eg 1 hour without feeling severe mental fatigue afterwards", that he had constant upper back and neck pain and numbness in a certain part of his body. At that time, he described the main barrier to work being severe fatigue and although he could do short periods of exercise, he needed long recovery times. He estimated he could walk 2,000 meters without stopping, could write and use a keyboard and drive a car – although he said that he would have to factor in recovery time as appropriate.
- Around the same time, L&G wrote to Mr D's Consultant ENT, asking for updated information including their opinion on Mr D's ability to work. The consultant's letter

dated April 2022 reflects that they'd met with Mr D a couple of months before and he was doing well.

- The consultant goes on to say that it's reasonable for Mr D to return to work, but this might be limited by the amount of fatigue that he feels after a period of work. And it would be helpful for an employer to work with Mr D to have reduced hours or a shortened week. The type of work would have to be taken into account along with the distance of travel to work and his other comorbidities.
- In this particular case, I don't think it was unreasonable for L&G to rely on the contents of this letter when considering whether Mr D continued to meet the policy definition of being incapacitated. They'd recently met with Mr D and if they didn't feel they were in a position to comment on Mr D's ability to return to work, I think it's reasonable to assume that they wouldn't have done so. Further, this letter wasn't considered in isolation. L&G relied on other evidence before taking the decision to stop paying the claim.
- In May 2022, L&G arranged a vocational clinical specialist consultation with Mr D. The resultant report reflects that Mr D could read for an hour but then gets mentally fatigued and it's hard for him to concentrate for long periods. He finds long phone calls and socialising tiring and has to plan his day and tasks. He couldn't go out for the whole day as this would wipe him out for the next two days and he tends to go out in the morning and takes it easy for the rest of the day. It's also reflected that he was able to stand and sit for a while and that he drove approximately 35 miles to help a family member move and pack things. And he helped move some light boxes but had to rest after a few hours. He was able to do some gardening, cooking and other household chores, go on short walks and bike rides.
- Although it's reflected that Mr D reported increased fatigue levels in the afternoons, if he returned to alternative role adjustments were put into place such as flexible working to accommodate his fatigue levels, the vocational clinic specialist concluded that Mr D could return to work in an alternative role on a phased return. He would require adequate time to build up his stamina and reintegrate back into the workplace.
- In light of the vocational clinical specialist report and the consultant's letter, I'm satisfied that it was fair and reasonable for L&G to conclude at this stage that Mr D's illness no longer prevented him undertaking a suited occupation with necessary adjustments to take into account his fatigue, on a phased return.
- I've taken on board what Mr D has said about the vocational clinical specialist report exaggerating/misconstruing what he said. Further, he's unhappy that he wasn't asked to consider the report in advance of the decision being made to cease paying the claim to confirm it was an accurate reflection of what was discussed. However, having considered what Mr D now says about what was recorded, I don't think there is much disagreement on what he was and wasn't able to do. For example, Mr D says he didn't regularly drive 35 miles as mentioned by the author of the report but at the time he had recently completed two drives of similar length.
- Mr D is also unhappy that he wasn't aware that the purpose of this call was to consider whether he was well enough to undertake alternative suited occupation. However, I've seen an email from L&G to the policyholder dated 13 May 2022 which confirms that the policy definition of a disabled member had now switched to suited occupation and the claim was being reviewed. So, L&G would be arranging a telephone assessment to explore a phased return to work for Mr D. The policyholder was asked to advise Mr D about this. As Mr D wasn't the policyholder, I don't think L&G unreasonably explained to the policyholder the reason for the vocational clinical assessment and if that information wasn't passed on to Mr D, I don't think I can

reasonably hold L&G responsible for this.

- Mr D also says that the conversation with the vocational clinic specialist took place six months prior to the claim ending. However, I'm satisfied that it took place within two months of the decision being taken by L&G to cease paying the claim, with notice – as confirmed in its letter to the policyholder dated July 2022.
- From Mr D's perspective, I can understand why he thinks L&G ought to have approached his GP for a report on his ability to work before taking this decision. However, in the circumstances of this case, I don't think it was unfair for L&G not to do this or that a GP report would've made any difference. Mr D may have still been signed off work by his GP and that's a relevant consideration. But in isolation I don't think that means that Mr D was incapacitated as defined by the policy. The particular policy definition of incapacity had to be established for the monthly benefit to be paid under the policy.
- When appealing the decision to cease paying the monthly benefit, Mr D provided a letter from his GP dated January 2023. This reflects that Mr D struggles with concentration and this would have a big impact on his ability to work in an environment where accuracy and analysing data is important. The GP also says Mr D gets exhausted very quickly and unpredictably. And concludes that in their medical opinion Mr D was still unable to work in the role he was previously working in.
- However, importantly in this case, the GP doesn't conclude that Mr D wasn't able to return to work in any capacity. And it also looks like their opinion is based on Mr D self-reported symptoms of the impact of his fatigue and concentration. Whereas L&G also considered Mr D's reporting of his everyday tasks back in May 2022 and the impact his symptoms had on his ability to function. And for reasons I've already set out above, I don't think it was unreasonable for L&G to also rely on the contents of the vocational clinical specialist report.
- In his appeal letter dated January 2023 Mr D says: "if I returned to work in even a limited capacity, I would suffer disproportionately with fatigue being physically and mentally shattered in the evenings and weekend. Not to mention the chronic back pain as well…" If that's the case and working would mean that Mr D would be more fatigued at evenings and weekends, I don't think that means that illness was preventing him from undertaking a suited occupation.
- I'm persuaded by what L&G's Chief Medical Officer (CMO), an occupational physician, concluded having reviewed Mr D's case after his appeal and having considered the information relied on to stop paying the claim: "fatigue can interfere with work…but with appropriate workplace support…people are able to engage in gainful employment and not be totally excluded from the workforce, in line with a move away from an 'all or nothing' approach. And that when considering alternative suited employment: "there needs to be a degree of practicality and awareness that reported symptoms can vary on a day-to-day or week-to-week basis and the role should have appropriate flexibility built in, to maximise the chances of success at work. The activities reported by the member are indicative of good cognitive ability, motivation, concentration, attention to detail and good reaction time, which are positive from an occupational physician prognosis perspective".
- Although Mr D says there are some inaccuracies in the summary of medical history provided by the CMO, I don't think they're significant enough to undermine the overall conclusions of the CMO.
- L&G's CMO did suggest obtaining a transferable skills analysis which was undertaken in February 2023. Having considered Mr D's medical history, educational and work experience, occupational questionnaire and vocational clinical specialist

report, it was identified that Mr D had a range of transferrable skills and specified three roles he would be able to do. It reflected that Mr D would meet the requirements of the roles; one of which could be undertaken from home. The transferrable skills report acknowledges and foresees the difficulties Mr D might have undertaking the roles identified and proposes adjustments which could be made to ensure they're suitable for him. For example, being allowed additional time to complete tasks, regular breaks and a comprehensive ergonomic assessment.

- I'm conscious that the underlying medical condition which has caused Mr D's fatigue and limitations amounts to a disability as defined by the Equality Act 2010. As such, any future prospective employer wouldn't be able to treat him unfavourably because of – or for a reason associated with his medical condition. A future employer would also have a legal duty to make reasonable adjustments to the job role.
- So, despite Mr D's illness and reported limitations, I don't think L&G has unreasonably concluded that he's able to undertake an alternative suited occupation. The roles identified are different to the role Mr D was doing before he was too ill to work. They're also not as well paid. But under the policy, a suited occupation isn't deemed inappropriate if it's lowered paid than the job being done before the start of the deferred period (or lower than the monthly benefit) - or lacks the status or seniority of their own role.

Other issues

- Mr D is also unhappy that L&G reduced his monthly benefit without notice. However, I've seen a letter from L&G to his employer dated 29 July 2022 setting out its decision to cease the benefit and providing notice of this. As his employer is the policyholder, I don't think that's unfair and is in line with what I'd reasonably expect it to have done. If the policyholder didn't promptly notify Mr D of that decision, I don't think I can fairly hold L&G responsible for that.
- He's also unhappy that L&G didn't acknowledge his initial appeal letter in July 2022. However, by that stage, the decision hadn't been taken by L&G to cease paying his claim. It had only been in discussions with the policyholder about the possibility of ceasing the claim and why. And L&G notified the policyholder that although Mr D had decided to appeal the decision, it hadn't issued written confirmation that the benefit would cease. So, it couldn't consider an appeal for a claim that hadn't yet concluded. I think that's fair and reasonable.
- After receiving the final response letter in March 2023, the policyholder notified L&G that it contained information belonging to someone else. It raised concerns that there had been a data breach and asked for the final response to be re-issued without reference to that information. Mr D is very upset that he didn't receive an apology for this and was worried that L&G may have also invertedly disclosed information relating to him to someone else. Upon being notified of the issue by the policyholder, I'm satisfied that L&G promptly took remedial action. It said it reviewed the contents of the final response letter to make sure it didn't alter the outcome and reissued a correct version of it. It also apologised to the policyholder. I think that was fair and reasonable to put things right. As Mr D wasn't the policyholder, and the final response letter was addressed to the policyholder, I don't think L&G reasonably ought to have provided a personal apology to Mr D.

In summary, I know Mr D will be very disappointed with my decision. I want to assure him that it's in no way intended to be dismissive of his medical history and his past and current limitations. I can see he's been through a very difficult time. But for the reasons I've explained, I think L&G has fairly and reasonably decided to stop pay the monthly benefit under the policy when it did.

My final decision

For the reason set out above, I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 October 2023.

David Curtis-Johnson
Ombudsman