

## **The complaint**

Ms H complains that Legal and General Assurance Society Limited (hereafter Legal and General) unfairly ceased her income protection claim.

## **What happened**

Both parties are familiar with the background of this complaint, so I'll only summarise what happened in brief.

Ms H has access to a group income protection policy through her employer. The policy is underwritten by Legal and General and in 2019 it accepted a claim for her. An immediate review into Ms H's multiple medical conditions commenced following that and the claim remained in payment until 2022, when Legal and General made the decision to cease it.

Legal and General said the medical evidence available to it no longer suggested that Ms H continued to satisfy the policy's definition of incapacity. Ms H complained about that stance and provided more evidence. But Legal and General said her evidence largely covered the period 2020 to 2021 – so wasn't up to date or a reflection of her ability to perform her own occupation in 2022 – and maintained its decision.

Ms H brought her complaint to this service, but our investigator said the claim hadn't been ceased unreasonably. They said Legal and General had sought up to date medical evidence (which included a functional capacity assessment and an independent medical examination), had taken into consideration the opinions of medically trained professionals, and had made a reasonable decision based on both the available evidence and the terms of the policy.

Ms H disagreed at length and said the medical evidence relied on was weak, pseudoscientific, and inconsistent. She said Legal and General's approach to it was irrational, it hadn't had regard to up-to-date evidence, and she'd undergone more recent testing/assessment which explained some of the findings in the evidence relied on. Ms H felt an award of compensation might now want to be considered given the totality of Legal and General's behaviour, and as no agreement was reached the matter was 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.

Ms H has set out her position at length and I thank her for taking the time to do so; it's clear she feels very strongly about what has happened. Within this decision I'll only be addressing those matters I consider central to the outcome of this complaint. I may not respond to every point or argument raised and for the reasons I'll now explain I'm not upholding it.

Legal and General had a responsibility to handle Ms H's claim both promptly and fairly and to not reject it unreasonably.

It's not disputed that Ms H was considered incapacitated from 2019 onwards when her claim was first accepted. Much of the medical evidence made available in this complaint reflects that and while I won't recite it all, I can see that in 2021 Legal and General's chief medical officer noted the complex mix of Ms H's reported psychological and physical barriers to work would have indeed precluded her from resuming work at that point.

Since then however, Legal and General's position has changed. So because it originally accepted the claim it now has to demonstrate that Ms H no longer satisfies the relevant policy terms.

Looking at the income protection cover available in this complaint I note:

- The policy was designed to provide benefit to those that became a disabled member.
- A disabled member was an insured member that met the relevant incapacity definition. For Ms H that was the 'own occupation' definition:  
*"... the insured member is incapacitated by illness or injury which prevents him from performing the essential duties of his 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."*
- If an insured member ceased to be a disabled member, payment of benefit would end immediately.

Legal and General's current position is that more up-to-date medical evidence on Ms H's reported psychological and physical barriers to work no longer shows that she continues to meet the definition of incapacity.

It isn't for me to reach a medical finding on Ms H's ability or inability to work. But I have considered all of the medical evidence that was made available to Legal and General, and having taken that into account alongside the terms of this policy I don't think the conclusions it reached were unreasonable. For example, without referring to everything I note:

- An independent medical examination (IME) took place with Ms H in March 2022. Legal and General concluded that no specific psychiatric illness was identified as a result of the IME and said it indicated Ms H's anxiety was centered on her pain.

The IME was conducted by a consultant psychiatrist who said he couldn't identify any specific work-related stresses or concerns. He gave two differential diagnoses, chronic pain syndrome and persistent somatoform pain disorder, but said there was no specific psychiatric illness apart from those.

The IME reported on there being a "*non-specific anxiety that maybe contributing to the perception of pain*". And it also said "*in terms of motivation, (Ms H) has a focus on pain, basic functioning, and worry about lack of function. This seems to be a barrier to extending her thoughts specifically to returning to work.*" So, I don't think Legal and General's position here was unreasonable.

- A functional capacity evaluation (FCE) also took place with Ms H in August 2022. Legal and General said this indicated Ms H had attempted to stimulate weakness and hadn't performed to her true functional capabilities – so the FCE's results couldn't be used to support her reported functional restrictions.

The FCE was designed to establish Ms H's current safe working capabilities and determine her fitness to undertake her own occupation. It determined that the results couldn't be viewed as barriers preventing Ms H from returning to work, because the functional abilities demonstrated by her at the time couldn't have represented her overall true capabilities. And it said that Ms H's "*actual abilities are far greater than she was willing to perform during the assessment.*".

In its summary the FCE also reported that, "*Based on the above inconsistencies and discrepancies, it is concluded that (Ms H) attempted to stimulate disability during FCE testing, and therefore her reported levels of disability, pain, and exertion, and demonstrated restricted and limited physical workday tolerances during formal testing cannot be viewed as barriers preventing her from returning to her normal occupation.*"

So again, based on the content of the FCE I don't think Legal and General's position was unreasonable here either.

Ms H has raised much concern about the findings of the FCE, for example that it was conducted with no common sense in mind and was weak and pseudoscientific. While I appreciate the many concerns and disagreements raised, the FCE was a detailed assessment of functional ability carried out by an independent third party. I don't think it was unreasonable of Legal and General to rely on it as part of its overall review into Ms H's current incapacity, and I don't think the conclusions Legal and General reached because of it were unreasonable either.

Ms H has also raised concerns about Legal and General's approach to the available medical evidence. I'm satisfied Legal and General has reviewed all of the evidence made available to it and reached a reasonable conclusion about Ms H being no longer incapacitated. It wasn't unreasonable of Legal and General to say the medical evidence Ms H provided which covered periods prior to its 2022 cessation decision didn't negate its current position either.

However, I do appreciate Ms H's frustration with Legal and General relying on evidence from that same period to support its own 2022 position. As the investigator before me explained, if Legal and General wasn't prepared to accept some evidence in support of Ms H's position because it wasn't up-to-date, I don't think it was fair of it then rely on some of the same evidence in support of its own up-to-date position either.

That being said, I remain satisfied that Legal and General took account of all of the medical evidence made available to it and sought up-to-date independent assessments on Ms H's reported psychological and physical barriers to work.

Given the available evidence and the terms of the policy, I am of the opinion that Legal and General acted both fairly and reasonably when ceasing this claim and did so in line with the policy terms.

I am sorry to hear of the impact Ms H says her health continues to have on her. But for all of the reasons given above I'll not be interfering with Legal and General's position and for the avoidance of doubt I'm not persuaded an award of compensation is warranted here either.

Separate to the above I am mindful that Ms H has provided this service with what I'll call 'new' medical evidence. This was in response to our investigator's opinion and concerned more recent testing and diagnosis. The new evidence didn't form part of Ms H's complaint to Legal and General and as far as I understand matters it isn't something that's been shared with it. So given Legal and General hasn't yet had the opportunity to consider the new evidence I'm not persuaded it would be fair of me to consider it here.

Ms H may want to consider sharing that new evidence with Legal and General, but it's not something I am going to take into account for this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 11 September 2023.

Jade Alexander  
**Ombudsman**