

The complaint

Mr H is unhappy that Legal and General Assurance Society Limited declined a claim made on a group income protection policy.

What happened

Mr H has the benefit of a group income protection insurance ('the policy') through his employer, the policyholder. Subject to the remaining terms, the policy can pay out a monthly benefit if Mr H is unable to work due to illness (or injury) after the deferred period.

Mr H was signed off work with "epilepsy and light sensitivity under investigation" in September 2022. Legal and General declined the claim in April 2023 as it concluded Mr H didn't meet the policy definition of incapacity. The decision was appealed.

In its final response letters dated July and September 2023, Legal and General maintained its position to decline the claim and Mr H brought a complaint to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold his complaint. Mr H didn't agree, so his complaint has been passed to me to consider 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.

The relevant rules and industry guidelines say that Legal and General has a responsibility to handle insurance claims promptly and fairly. And it shouldn't unreasonably reject a claim.

The policy terms and conditions say that Mr H needs to meet the policy definition of incapacity throughout the deferred period for the monthly benefit to be paid.

The policy schedule reflects the applicable definition in this case is "suited occupation". That means: "the insured member is incapacitated by an illness or injury so that he is unable to undertake all occupations which we consider appropriate to his experience, training or education".

For this definition an occupation will not be considered to be inappropriate to an insured's member's experience, training or education on the grounds that:

- i. The pay from such occupation may be lower than that paid to the insured member prior to the deferred period in relation to his own job or lower than the amount of member's benefit, or
- ii. Such occupation lacks the status or seniority associated with the insured member's own job.

It's for Mr H to establish that he has a valid claim under the policy, taking into account the above.

I have a lot of empathy for Mr H's situation; he's been through a very difficult and worrying time. I know he'll be very disappointed, but overall, I think it was fair and reasonable for Legal and General to decline the claim. For the reasons set out below, I don't uphold Mr H's complaint.

- It's not disputed that Mr H was signed off work by his GP during (and beyond) the deferred period but that doesn't automatically mean that the monthly benefit under the policy should be paid. There's a specific policy term which Mr H needs to establish for a claim to be successful.
- The claim form completed by Mr H in February 2023 reflects the symptoms stopping him from working to be: "being unconscious, difficulty with lighting conditions affecting my eyes". And "sometimes I can be unresponsive while working without knowledge". Further, in answer to "what activities of your job can you currently do?" Mr H responds: "I'm able to work as normal, however when engaged with a customer I cannot risk going unconscious".
- Legal and General's vocational clinical specialist's report dated March 2023, around the time the deferred period came to an end concludes: "based on (Mr H's) reporting today, the member is fit to return to an alternative job role on a phased return...the reason he was initially made absent is due to the risk associated with his insured job role, whereby he is having to speak to customers over the phone and the job role requires diligence and is deemed to be high risk. Due to this, the employer should consider a job role whereby the member has no or limited contact with the customer over the phone".
- This report also reflects that Mr H advised that if he was given off-the-phone work he would return to work. Although he had not had a major seizure since April 2022, he continued to have frequent daily absence seizures (similar to daydreams). Mr H reported carrying out some household tasks (such as cooking when others were around) and collecting daughter from school, helping with homework, reading and playing. He could also manage all self-care tasks independently and spent a "few hours playing computer games" but was limited to what games he could play.
- Mr H's neurologist report, also dated March 2023, reflects that Mr H continued to have frequent "blank spells" which "are likely to interfere with his work as he will not be fully aware of his work or his environment during these". The neurologist also says that "as far as I know, his daily activities of personal care are intact", his "cognition is not impaired" and "since 2015 his symptoms have fluctuated. There seem to be fewer of the generalised attacks and blank spells have become more frequent".
- After Legal and General's decision to decline the claim was appealed, it also arranged for a transferable skills analysis report to be carried out for Mr H. The report is dated July 2023. The author confirmed the documents they'd considered when drafting the report including the neurologist's report and vocational clinical specialist's report, both dated March 2023, referred to above.
- The transferable skills analysis report identified Mr H's transferable skills based on his experience and education. And concluded there were three job role matches which were suitable, particularly if reasonable adjustments were made, including homeworking and flexibility around his work schedule and ability to 'chunk' work. Given the contents of the report, I don't think Legal and General has unfairly relied on the contents to maintain its decision to decline the claim on the basis that Mr H is able to undertake other roles appropriate to his experience, training or education, as set out in the policy terms.

- Legal and General's Chief Medical Officer also wrote to Mr H's neurologist setting out their thoughts, welcoming the neurologist's perspective on them and asking questions of the neurologist - I'm satisfied - relevant to the claim. Unfortunately, the neurologist has been on long term sick leave and hasn't been able to respond. However, I don't think Legal and General acted unreasonably by not waiting for the neurologist to return before concluding the appeal and issuing its final response. If, and when, the neurologist does return to work and provides a response, I think it would be reasonable for Legal and General to consider whether this impacts its decision to maintain declining the claim.
- Mr H has also provided the Financial Ombudsman Service with medical evidence – such as an occupational health report – dated after the date of the final response letter. This has been provided to Legal and General and it's explained why it doesn't impact its decision to decline the claim. I'm only considering what happened up to the date of the second final response letter dated 11 September 2023. If Mr H is unhappy with Legal and General's most recent decision, he's free to raise his concerns with it in the first instance.

My final decision

I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 January 2024.

David Curtis-Johnson
Ombudsman