

The complaint

Mrs G complains because Legal and General Assurance Society Limited ('L&G') hasn't paid her claim under an income protection insurance policy.

What happened

Mrs G is insured under her employer's group income protection insurance policy, provided by L&G. The policy pays a benefit in certain circumstances if Mrs G is unable to carry out a suited occupation for a deferred period of 26 weeks.

In August 2022, Mrs G was injured and was subsequently unable to work. A claim was made under the group insurance policy on behalf of Mrs G later that year. L&G considered the available medical evidence and arranged for Mrs G to undergo a telephone assessment with a Vocational Clinical Specialist. Having done so, L&G declined the claim as it said the evidence showed that Mrs G would be able to perform a suited occupation working from home.

Following an appeal on behalf of Mrs G, L&G considered further medical evidence but maintained its position that her claim wasn't covered under the policy.

Unhappy, Mrs G brought a complaint to the attention of our service. One of our investigators looked into what had happened and said she didn't think L&G had acted unfairly or unreasonably by declining Mrs G's claim.

Mrs G didn't accept our investigator's opinion and sent us new medical evidence. Mrs G's complaint has now been referred to me as the final stage in our process.

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.

Industry rules set out by the regulator, the Financial Conduct Authority, say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when making my final decision about Mrs G's complaint.

When deciding whether I think L&G acted unfairly or unreasonably by turning down Mrs G's claim, it's not for me to reach my own medical conclusions about Mrs G's ability to work, or to substitute expert medical opinion with my own. Instead, I've considered whether I think L&G made a fair decision based on the available medical evidence, which I've reviewed independently and impartially. I've taken into account all the medical information which has been provided in connection with this claim – including the new evidence which Mrs G sent to us in October 2023, which has since been shared with L&G for its comments as required under the rules that govern our service's handling of complaints.

The policy which Mrs G is insured under pays a benefit if Mrs G is incapacitated by an illness

or injury so that she is unable to undertake a 'suited occupation'. 'Suited occupation' is defined to mean all occupations which L&G considers appropriate to Mrs G's experience, training or education. So, in order to be eligible for a claim payment under this policy, Mrs G must be unable to carry out not only her own occupation, but any suited occupations too. And it's for Mrs G to demonstrate that she meets the policy criteria for a valid claim to be paid to her.

I've considered a report from Mrs G's Consultant Orthopaedic Surgeon dated 13 January 2023. This says that Mrs G:

'... might be able to work from home for part of the week at some point in the next few weeks but return to the office might only be possible in 3-6 months ...'

A report from a Vocational Clinical Specialist dated 19 January 2023 says of Mrs G:

'... in my clinical opinion she is fit to work in a suited occupation ... she would be able to do a sedentary role at home using a computer ...'

In reaching this conclusion, the Vocational Clinical Specialist considered the details of Mrs G's role as well as her previous occupations.

I think this medical evidence suggests that Mrs G wasn't incapacitated from performing a suited occupation for the entirety of the policy's deferred period. So, I'm satisfied that it was fair and reasonable in the circumstances for L&G to rely on this medical evidence to conclude that Mrs G's claim isn't covered under the terms and conditions of this policy.

I've taken into account a letter from Mrs G's Consultant Orthopaedic Surgeon dated 21 February 2023. While this letter comments on Mrs G's inability to get to work – and says that trying to set a timeframe for her ability to return was not appropriate or realistic – the letter doesn't mention Mrs G's ability to perform her own or a suited occupation from home. So, I don't think this is persuasive medical evidence in support of Mrs G's claim.

I've also had regard to a report from an Occupational Health Physician dated 3 May 2023, which says that Mrs G is unfit for work. The report goes on to say:

'... whilst in theory some work from home role may be possible – as it would eliminate the strain of the commute and the more physically demanding nature of branch based work, however, her personality type is such that a work from home role does not appeal to her at all and it is not something that she would be likely to tolerate psychologically... it is evident that a work from home role will very likely not be feasible. I would recommend though discussing this directly with her given a return to the branch is still at least six months away'.

The contents of this report are limited to commenting on Mrs G's ability to perform her own occupation, rather than any suited occupations. So, I don't think this report is persuasive medical evidence in support of Mrs G's claim either.

I understand Mrs G says she has never worked from home, that Mrs G may not wish to work from home and that a main feature of her occupation prior to her incapacity was dealing with customers in a face-to-face setting. But L&G says it considers that Mrs G would be able to work from home in a suited role – such as an admin role or call centre role – based on Mrs G's transferrable skills. Based on the evidence I've seen I don't think it's unreasonable for L&G to conclude that Mrs G could carry out an occupation suited to her experience from home. Any training, reasonable adjustments or equipment which Mrs G requires to support this would be for her to explore with any potential employer. The fact that Mrs G says that up

until the outbreak of Covid-19, working from home wasn't an option in most occupations isn't relevant to whether I think Mrs G meets the criteria for a claim to be paid to her in 2023. The test is whether Mrs G is incapacitated to the extent that she cannot carry out a suited occupation, not whether Mrs G wishes to carry out a suited occupation.

While I appreciate Mrs G says she has statements of fitness to work from her GP, I wouldn't usually consider that statements based on self-reported symptoms are sufficient evidence to demonstrate that a policyholder cannot carry out their own, or any suited, occupation. The threshold for a GP to issue such statements is not necessarily the same as the policy criteria for a claim to be paid.

Overall, I don't think Mrs G has provided medical evidence to show that she is incapacitated from working in a suited occupation. This means Mrs G doesn't meet the criteria for a claim to be paid to her under this policy.

I understand Mrs G says L&G never telephoned her to discuss her claim or corresponded directly with her about the claim – but, Mrs G isn't the policyholder, her employer is. So, I wouldn't necessarily have expected L&G to communicate directly with Mrs G. L&G arranged for a Vocational Clinical Specialist report to be carried out, which I think was fair and reasonable in the circumstances. I don't think L&G needed to arrange for an Occupational Health report – this was for Mrs G and/or her employer to organise and provide, as subsequently happened.

I'm sorry to disappoint Mrs G but I don't think L&G has acted unfairly or unreasonably by declining her claim and I won't be directing L&G to do anything further.

My final decision

My final decision is that I don't uphold Mrs G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 29 December 2023.

Leah Nagle
Ombudsman