

The complaint

Ms C is unhappy with how Legal and General Assurance Society Limited handled a review of her income protection claim.

What happened

Ms C has been in receipt of income protection benefit for many years. The decision to pay benefit to her has been reviewed a number of times over the years.

In 2022 Legal and General asked Ms C to take part in a review of her condition at her home address. Ms C says, in summary, that the assessment was inappropriate and harmful. Her claim benefits were terminated, and Ms C is unhappy that the report was shared with her employer as she feels it was reputationally damaging. Ms C's claim was subsequently reinstated, but Ms C is unhappy with the process and inappropriate treatment of disabled people. Overall, Ms C didn't think Legal and General had acted in line with the Equality Act 2010.

Our investigator looked into what happened and didn't uphold Ms C's complaint. She thought Legal and General were entitled to periodically review the claim and had instructed an appropriate person to provide a report. She also thought it was reasonable for Legal and General to share a copy of the report with Ms C's employer as they were the policyholder and didn't think the report indicated Ms C was a malingerer, liar or faking a traumatic brain injury. She also noted that Legal and General reinstated the claim, and backdated payments, on receipt of further medical evidence from Ms C.

Ms C didn't agree and asked an ombudsman to review her complaint. In summary she said:

- A disabled person shouldn't be caused harm by their insurer or their agents
- A request for reasonable adjustments should be accommodated, or responded to
- The assessment shouldn't be forced on a disabled person when they've been told their benefit will be cut off immediately if they don't comply
- The insurance company has a duty of care to appoint an appropriately educated agent and perform appropriate assessments
- Reports asserting that a person is being untruthful or pretending shouldn't be sent to someone's employer.

Legal and General reiterated that the assessor who carried out the assessment was trained and qualified to do so. The test (referred to as a CPAD assessment) is evidence based and Ms C was advised that she didn't have to undertake any tests she was unable to complete. Finally, Legal and General said they were required to share the outcome with Ms C's employer and that, in any event, the benefit was reinstated.

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 claims promptly and fairly.

It's not my role to say whether a business has acted unlawfully or not – that's a matter for the Courts. My role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, I have to take a number of things into account including relevant law and what I consider to have been good industry practice at the time. So, although it's for the Courts to say whether or not Legal and General has breached the Equality Act 2010, I'm required to take the Equality Act 2010 into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint.

Ms C says she feels Legal and General has discriminated against her. I can understand why Ms C feels this way but having looked at all the evidence I don't think Legal and General has acted unfairly or unreasonably. However, I hope that it helps Ms C to know that someone impartial and independent has looked into her concerns.

I'm not upholding Ms C's complaint because:

- The assessment was completed by a Registered Osteopath with the General Osteopathic Council and Accredited Functional Capacity Assessor. I appreciate that Ms C feels that this wasn't a suitably qualified expert. There's no requirement for Legal and General to instruct a particular kind of expert or undertake a specific type of test. So, I don't think it was an unreasonable instruction in the circumstances of this case.
- I've considered what Ms C has said about her concerns about taking part in the assessment, which she outlined during a call with the relevant company and in an email. Ms C's email enclosed the NICE guidelines and included information about her experience of her condition. However, this communication was between Ms C and the independent third party who was due to carry out the test. And, in any event, as I've outlined above, the test was taking place with a suitably qualified expert.
- I appreciate that Ms C feels the CPAD test wasn't appropriate for her condition but, having considered the scope of the report I don't think it was an unreasonable request as it was designed to assess her functionality and ability to work. Ms C provided further evidence from a consultant, after the tests had taken place, which says that the tests should have taken place daily over a full working week. However, this medical opinion wasn't available to Legal and General prior to the assessment taking place. And, in any event, I don't think they decided on or had significant input into the specific format of the test. Therefore, I don't think this additional evidence means the initial planned tests were unfair or unreasonable.

- I can understand why Ms C was concerned about going ahead with the assessment as the benefit payments were her source of income and she was aware that payments could be terminated if she didn't take part in the assessment. But, Legal and General is entitled to review the claim and complete assessments in order to establish if the claim remains valid. So, whilst I can appreciate Ms C's concerns about feeling under pressure to take part, I don't think I can fairly conclude Legal and General's request for an assessment, in itself, was unreasonable.
- I don't think it was unreasonable for Legal and General to provide the report to Ms C's employer. They are the policyholder to whom benefit is paid. Legal and General were going to stop paying benefit and therefore I think it was reasonable for them to supply the report to her employer. I think it was presented fairly as an opinion on Ms C's condition. I don't think it suggested Ms C was faking a traumatic brain injury, lying or faking her condition. The opinion of the expert was set out in detail and with the evidence he relied on in support of those findings.
- When Ms C provided more information from a different medical expert Legal and General reinstated the claim and backdated it. But I don't think it means their decision to ask Ms C to attend the tests they did was unreasonable in all the circumstances.
- I'm satisfied Ms C had sufficient information to make contact with Legal and General if she needed to do so, including access to the relevant phone numbers.

My final decision

I'm not upholding Ms C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 21 December 2023.

Anna Wilshaw
Ombudsman