

The complaint

Mr E complains that Legal and General Assurance Society Limited (hereafter “Legal and General”) unfairly ceased his group income protection claim.

What happened

Mr E had access to a group income protection policy through his employer. The policy was underwritten by Legal and General and paid benefit if an employee was unable to work because of illness or injury after a deferred period.

Legal and General accepted a claim for Mr E in 2013 due to hip and joint pain. Mr E later received a diagnosis of osteoarthritis and experienced mental health difficulties too, and his claim was reviewed at different intervals. In 2022 Legal and General said Mr E’s symptoms no longer met the policy definition of incapacity and he was considered ready to return to a suited occupation. So, it ceased the claim and confirmed it’d be unable to continue paying benefit.

Mr E didn’t think the claim had been ceased fairly and complained. He explained why he remained incapacitated and raised concerns about the evidence relied on, but Legal and General maintained its decision so Mr E brought that complaint here.

As our investigator didn’t think the claim had been ceased unfairly they didn’t recommend Mr E’s complaint be upheld. But Mr E disagreed, reiterated his concerns about the medical evidence relied on, and set out that he remained incapacitated. He asked for the complaint to be considered by an ombudsman and so the matter was passed to me.

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.

Mr E clearly feels very strongly about what happened and I thank him for taking the time to set out his position. This decision will not address every point made, it will focus on those matters I consider central to the outcome of this complaint, and having considered all of the available evidence and arguments I won’t be upholding it for the following reasons.

Legal and General has a responsibility to handle claims both promptly and fairly and not reject them unreasonably.

Mr E was insured on a ‘suited occupation’ basis. The policy defined this as meaning:

*“...the **insured member** is incapacitated by an illness or injury so that he is unable to undertake any occupation appropriate to his experience, training or education.*

*For the purposes of this definition an occupation will not be considered to be inappropriate to an **insured 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."*

So it wouldn't be sufficient for the medical evidence to demonstrate that Mr E was incapacitated from undertaking his own role because of illness or injury. Rather, it would need to demonstrate that he was incapacitated from undertaking any occupation that was appropriate to his experience, training, or education.

I won't refer to all of the evidence made available to Legal and General at the time of its review, but in particular I note:

- A transferable skills assessment (TSA), designed to identify the potential of his transferable skills in relation to suited return to work options that met his functional capacity, took place with Mr E on 21 March 2019. The TSA found three suited occupations – a patient transport service call handler, a taxi dispatcher, and a warehouse administrator.
- A vocational clinical specialist consultation (VCS) took place with Mr E on 21 December 2021. This was designed to gain a better understanding of Mr E's current medical situation, potential future prognosis, new or existing treatments, and potential barriers to returning to work. And it found *"little evidence to suggest that [Mr E] would not be capable of doing some suitable work-related activities on a part time basis."*
- A functional capacity evaluation (FCE) also took place with Mr E on 8 February 2022. Similarly, this too found there to be *"no contra-indications during today's assessment to (Mr E) making a return to work, either to his previous role (providing there is only a light to medium lifting requirement), or any other role of a light to medium physical demand..."*

It's not for me to make a medical finding on Mr E's ability or inability to work, but I don't think Legal and General's conclusions (that much of what was made available supported Mr E being capable of working in a suited occupation) was unreasonable. Legal and General's company medical officer (CMO) provide their opinion on the available evidence too, and without reciting everything I note they found:

- Mr E had been reviewed by specialists circa 2012 to 2014, but there were no surgical interventions or specialist reviews pending for him, he wasn't under a psychiatrist for care, and he wasn't under the care of any orthopaedics/spinal surgery/pain clinic.
- There'd been demonstratable improvement/objective assessment of Mr E's functional ability, relative to previous reviews. The suitable roles identified for him remained valid and the major barrier to a return to work appeared to be animosity with his former employer and deconditioning.
- Mr E's functional ability was compatible with a phased return over a 10 to 12 week period likely with some support needed at first.

In addition to the above the CMO also explained that many people with chronic conditions had been able to successfully re-engage and participate in the workplace given the advances in technology and wider awareness of and focus on workplace adjustments and inclusion.

I know that Mr E says the activities in the FCE caused him ongoing pain/injury and he is concerned about this particular report being relied on as evidence of his ability to work. Our

investigator explained that Mr E didn't appear to have sought input for this reported pain/injury until some two months after the FCE took place. And I too note that the letter his GP provided in relation to this reported pain was also written some four months after the FCE.

So although I acknowledge Mr E's concerns, I'm not persuaded they invalidate the FCE in its entirety. Legal and General took the FCE into account as part of its wider assessment of all the evidence made available to it, and I don't think it was unreasonable of it to do so.

For all of the reasons given above I'm not persuaded that Legal and General unreasonably concluded that the medical evidence no longer supported Mr E being precluded from engaging in a supported and carefully managed phased return to work. And I am satisfied its decision to cease this claim was in line with the policy too. So, I'll not be directing Legal and General to reinstate this claim.

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 Mr E to accept or reject my decision before 17 August 2023.

Jade Alexander
Ombudsman