

The complaint

Mr C is unhappy with Unum Limited's decision to decline his claim.

What happened

Mr C had income protection insurance with Unum through his previous employer's group scheme. He became too unwell to work in March 2020 owing to work-related stress and anxiety. The policy had a 12-week deferral period and so he made a claim in May, but this was declined. Mr C no longer works for this employer and his employment ceased in September 2020.

Unum said it declined Mr C's claim because there wasn't enough medical evidence to show he was incapacitated as described by its policy terms. The policy is for Mr C's insured occupation and so whilst it acknowledged that Mr C suffered from anxiety, this was borne from perceived problems with his previous employer, and so Mr C would have likely been able to fulfil his insured occupation elsewhere with another employer. It also said that work-related stress isn't an illness and so there wasn't cover for that either.

Our investigator agreed with Unum and said that the policy isn't designed to cover this type of absence. She also said that in order for Mr C to bring a successful claim, he'd need to show, by way of medical evidence, that he'd have been unable to meet the demands of his role with another employer. Or, in other words, that he persuasively demonstrated that this issue isn't simply driven by the perceived work-related issues Unum was told about by his previous employer. Our investigator also highlighted that Mr C had declined consent for Unum to review his therapist's notes, and that this limited Unum's ability to investigate his claim thoroughly.

Mr C disagreed with her findings. There were several comments and arguments made following her opinion, but I'll only summarise those I consider to be central to the points I'm considering as part of my final decision. Mr C said;

- There were no work-related problems that caused him to become absent. He explained that he'd not made any representations in this regard and so was at a loss to understand why this had been referred to by the investigator;
- He'd been diagnosed as suffering with anxiety as well as work-related stress. However, Unum hasn't taken this seriously or given it the appropriate attention whilst it considered his claim. Mr C subsequently, following the investigator's opinion, elaborated on some of the personal triggers that contributed to his poor mental health to show that his absence wasn't because of the perceived work-related problems;
- He maintained his position on not releasing his therapist's notes saying that they are personal and not necessary to evidence his claim with Unum. Mr C said that for Unum to make this request was unprofessional. Mr C also commented that it feels unfair that he has to effectively prove his case to Unum.

And so, it's now for me to make a final decision.

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.

Having done so, I've decided not to uphold it for the reasons already explained by our investigator. That's to say that I don't think Unum has made an error in declining Mr C's claim. I'll explain why.

Unum's policy terms say;

"Insured occupation cover

A member is incapacitated if we are satisfied that they are:

- Unable, by reason of their illness or injury, to perform the material and substantial duties of the insured occupation, and are*
- Not performing any occupation*

If the member is required by the terms governing the employment relationship to hold a licence or certificate which is issued only when the member meets required medical standards, we must also be satisfied that they are unable, by reason of their illness or injury, to perform the material and substantial duties of any gainful occupation with any employer for which they are reasonably fitted by reason of training, education or experience. The term "licence" does not include a licence to drive ordinary cars, vans or motorcycles.

Definitions

Insured occupation means the trade, profession or general role that the member was actively undertaking for you immediately prior to incapacity. For the insured occupation cover definition of incapacity, material and substantial duties means the duties that are normally required for the performance of the member's insured occupation and which cannot be reasonably omitted or modified. It is those duties required for the performance of the occupation at their, or any other employer"

The reason I've highlighted this term is because this, ultimately, sets the focus for this complaint. Having carefully considered our investigator's findings, I agree that Mr C satisfied part of the policy as there's enough medical evidence to support that he suffered a mental health condition that precluded him from working for his previous employer. But he didn't satisfy the remaining terms, which is why Unum hasn't made an error in declining his claim.

I say that because this policy is for Mr C's insured occupation, which, as already explained by our investigator, means that Mr C would need to demonstrate that he was incapacitated, by way of illness, to such a degree that he'd be unable to fulfil his duties with *"any other employer"*.

Mr C's previous employer explained to Unum that it had some concerns with Mr C's conduct at work and noted a specific incident that took place shortly before he became unwell and unable to work. The previous employer wanted to investigate this incident further and told Unum that it intended to invoke its disciplinary policy. I note Mr C has disputed this previously and I should make clear that it's not for this service to make a finding on as this was between Mr C and his previous employer. But it's still part of the background to this complaint and Unum, as the other party here, has brought this to our attention.

I think it's important because it further strengthens the view that Mr C was having problems at work in the run up to becoming absent.

Mr C also accepted that he was suffering with work-related stress and even insisted that this be documented by his GP. As our investigator explained, this isn't considered an illness and therefore I wouldn't have expected Unum to uphold a claim on that basis. But I think it further demonstrates that Mr C was experiencing work-related issues. The reason I'm referring to work-related problems, stresses and issues is because I'm persuaded that Mr C's problems, not in full, but in part, were brought on by his work. And that's important because I think it persuasively shows that Mr C, although unable to complete his duties whilst working for that employer, would have most likely been able to fulfil his insured occupation whilst working elsewhere.

I've already noted Mr C's arguments in challenge to that, but I'm not persuaded by them. Clearly, I must reach a decision on this complaint and I cannot be certain one way or the other, but that's not the test applied here. I must be satisfied, on the balance of probability, what's most likely to have happened. And for the reasons I've explained, I'm persuaded that the prominent contributory factors were work-related, because there's enough persuasive medical evidence, from Mr C's GP, Unum and indeed Mr C's own testimony that persuades me this was most likely the case.

I also thought it important that I note Mr C's comments about releasing his therapy notes. I should say that it wasn't inappropriate for Unum to request to see this information. I know Mr C received advice that this was in some way unusual or irrelevant, but I wanted to reassure him that's not the case. Insurers need to see all necessary medical information when making these types of decision. In fact, by not releasing this information, Mr C has potentially and inadvertently prejudiced his position. It's likely there would have been information captured within those notes that would have been material to the outcome of this claim. Further, it's not unusual for psychotherapists to write an assessment in support of their patient's claims and I think this could have helped in this situation.

I noted Mr C's response to the investigator, where he explained some of the other, more personal issues that were affecting him at that time and I wanted to say that I was sorry to learn about those. I think it would have been helpful for Mr C to have shared some of this background with Unum at the time because it would have given it more of an insight into what was happening and how it was contributing to Mr C's poor mental health, in addition to the work-related issues. Although, I don't think it fair to retrospectively hold Unum responsible in any way for not knowing the full extent of what was happening in Mr C's life at that time. This is perhaps something that would have been made accessible had Mr C authorised the release of his therapist's notes.

In any event, based on the medical evidence that was made available, there wasn't enough to show that Mr C fulfilled the policy terms and so Unum doesn't need to do anything more in respect of this complaint.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 April 2022.

Scott Slade
Ombudsman