

## **The complaint**

Mrs C is unhappy that Unum Ltd declined a claim made on a group income protection policy she has the benefit of.

## **What happened**

Towards the end of January 2020, Mrs C became absent from work and was signed off sick by her GP with gastroenteritis up until the end of February - and then with work related stress and gastroenteritis until the end of June 2020. Thereafter, with work-related stress.

She had the benefit of a group income protection policy ('the policy') through her employer, which can pay out a percentage of her salary after she'd been off work for 28 weeks ('the deferred period'). She remained off work and claimed on the policy.

Unum declined the claim on the basis that Mrs C hadn't met the policy definition of incapacity. It said it wasn't clear what Mrs C's restrictions and limitations were during the deferred period. And further, the medical evidence didn't demonstrate how her function had been impaired to such extent that she couldn't perform the insured occupation during that time. Unhappy, Mrs C appealed to Unum, and it maintained its position. She then complained but, again, Unum stood by its decision to decline the claim. So, she complained out service.

Our investigator looked into what had happened and upheld Mrs C's complaint. She thought Unum had unfairly declined the claim based on the available medical evidence and policy terms. She recommended Unum to pay the claim from the end of February 2020 and to pay simple interest at a rate of 8% per annum on the outstanding amounts. Unum didn't agree and asked for an Ombudsman's 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.

The relevant rules and industry guidelines say that Unum has an obligation to handle claims promptly and fairly. And it shouldn't unreasonably decline a claim.

### The policy and terms and conditions

The policy terms and conditions say that to claim Mrs C needs to meet the policy definition of incapacity. Relevant to this complaint, a member is incapacitated if Unum is satisfied, 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.

'Insured occupation' means the trade, profession or general role that the member was actively undertaking for, or at, the employer immediately prior to 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.

### Did Unum unfairly decline the claim?

This is a finely balanced case and I've considered very carefully everything provided by parties. I've also kept in mind that, ultimately, it's for Mrs C to establish her claim under the policy.

The crux of the issue for me to decide is whether Unum fairly and reasonably concluded that Mrs C didn't meet the policy definition of incapacity during the deferred period and, as such, whether it fairly and reasonably declined her claim.

It's important to add that I'm not a medical expert. So, I've relied on all the evidence available to me when considering this issue. And for the reasons set out below, I don't think Unum fairly and reasonably concluded that Mrs C didn't meet the policy definition of incapacity in the circumstances of this particular complaint.

- Mrs C was initially signed off work with gastroenteritis, and then with work related stress and gastroenteritis. There's a suggestion that the symptoms of gastroenteritis may have been caused by stress and/or a side effect of the medication she was taking. And although gastroenteritis is listed on the GP certificates, signing her off sick from work, during most of the deferred period, there's very little mention of the symptoms and how they're affecting her in GP and occupational health reports after February. So, I don't think the symptoms of gastroenteritis impacted her ability to do the insured occupation throughout the deferred period.
- From the end of February 2020 – so around a month after Mrs C started her sickness absence – the GP certificate also reflects that she was off sick with work-related stress and that reason remained on the various GP certificates during the remainder of the deferred period. However, looking at the medical records from shortly before the start of the deferred period and into the deferred period, there's little mention of the reason why work was a factor in the stress she was experiencing, a downturn in her low mood and an increase in anxiety. There are references in her medical records in February 2020 to her feeling anxious about being chased for test results by her employer and that she had a 'horrible' manager. But I'm satisfied that there were more pertinent issues – unrelated to work – that were causing her mood to be low, and feeling anxious, irritable and fatigued. So, overall, I'm persuaded that she was off work through 'illness' rather than because of stress related to work.
- Unum has said that the medical evidence doesn't show how illness impacted Mrs C's ability to carry out the insured occupation throughout the deferred period. I appreciate what it says about this but in the circumstances of this particular complaint, I think there's enough to establish that the definition of incapacity has been met.
- Mrs C was signed off work by her GP throughout the deferred period. And I've seen occupational health reports reflecting that she wasn't fit to work. Of course, that doesn't automatically mean the policy definition of incapacity is met. However, Mrs C had regular appointments with her GP and occupational during the deferred period (and beyond). Her GP notes reflect that she appeared teary and anxious on

occasions. In the first few months of the deferred period, the GP notes reflect that she was not sleeping well, her family were finding her irritable and she was feeling fatigued, tearful and low in mood. From May 2020, there's reference to her feeling anxious about going out, having days when she doesn't want to get out of bed, feeling irritable and upset if something goes wrong and having low mood.

- Towards the start of the deferred period, around March 2020, the dosage of her anti-depressant medication was also tripled. And although it's reflected in April 2020 that she felt more motivated looking after her son, in isolation, I don't think that means she was well enough to carry out the material and substantial duties of the insured occupation at that stage.
- Unum says that Mrs C's GP notes during the deferred period don't reflect how her functionality was impaired. But the GP notes should also be read in conjunction with the other medical evidence – including the occupational health reports from the deferred period – of which there are many. In May 2020, it's reflected that Mrs C's symptoms continued to be at a level that was affecting her day-to-day function in terms of looking after herself, the confidence to be out of the house and participating in everyday activities at home. And although an occupational health report from the month before reflects that the increased dose of medication was helping her mental health - particularly her sleep pattern - her mood was reported to still be low. And that she hadn't yet reached "the stage of persistent improvement in her mental health" to return back to work.
- The occupational health reports from after May 2020 also suggest that her symptoms began to worsen rather than improve for reasons relating to the Covid-19 pandemic, which triggered Mrs C - causing her mental health to deteriorate further. For example, it's reflected in July 2020 that her function continued to be significantly affected for day-to-day activities at home. This related to low mood and significant anxiety for normal daily activities with areas such as her sleep continuing to be affected. And it concluded that "a number of months is needed to work through the new form of therapy alongside changes in medication".
- I'm also satisfied from the medical evidence that Mrs C had been referred for a psychiatric assessment and to undergo trauma therapy. However, this was delayed because of the emergence of the Covid-19 pandemic.
- Mrs C did undergo a psychiatry assessment at the end of May 2020, but the report mainly reflects Mrs C's historical symptoms rather than how her mental health was impacting her ability to function, the degree of any impairment. However, the psychiatrist did suggest adding a further anti-depressant to the existing medication.
- I'm conscious that many of Mrs C's symptoms during the deferred period are self-reported. But I'm satisfied that her account of her symptoms has been broadly consistent over a sustained period, as reflected in her contemporaneous GP records and occupational health reports. She'd also seen those medical professionals many times during the deferred period. Further, the suggested dosage in anti-depressant medication had tripled in March and it had also been suggested that she take a further anti-depressant in conjunction with her existing medication in May 2020. I think this supports that the medical professionals she spoke with were persuaded that Mrs C presented as being unwell, that her functionality had been impaired, and she needed further treatment/professional support. So do the onward referrals to other medical professionals during the deferred period.
- I've also considered the opinion of Unum's medic at the internal round table

discussion in July 2020. It's reflected that they believed there was "no substantial evidence of clinical diagnosis of anxiety disorder or depressive disorder or PTSD in the form of detailed description of symptoms, their persistence, severity, duration and the resultant functional impairment". However, under the policy illness means: "ill-health or disease as evidenced by a significant or objectively determined deterioration in physical or mental health". So, there's no need for a clinical diagnosis. From the medical evidence I've seen during the deferred period, in particular, I'm satisfied that Mrs C did have an illness as defined by the policy.

As such, I think Unum should've accepted the claim. Although Mrs C was signed off work sick with effect of 24 January 2020, for the purposes of this complaint, I consider that she was incapacitated as defined by the policy terms with effect of 21 February 2020 as that's when stress was first detailed on the GP's certificate and when she's noted to be 'tearful, anxious'. So, for the purposes of payment of the monthly benefit, I think that's the date on which the deferred period should be calculated from. Unum is free to review the claim going forwards.

### **Putting things right**

I direct Unum to accept Mrs C's claim. It should pay:

- the policyholder (in this case, Mrs C's employer) the accrued monthly benefit going back to the end of the deferred period to date.
- Mrs C simple interest at a rate of 8% per annum on each of the backdated monthly benefit payments from the date each monthly benefit was due to be made to the date on which the lump sum payment for the benefit is made to the policyholder.

If Unum considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs C how much it's taken off. It should also give her a certificate showing this if she asks for one. That way Mrs C can reclaim the tax from HM Revenue & Customs, if appropriate.

### **My final decision**

I uphold Mrs C's complaint and direct Unum Ltd to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 30 December 2022.

David Curtis-Johnson  
**Ombudsman**