

The complaint

Mrs M is unhappy with Unum Limited's decision to stop paying her income protection claim.

What happened

Mrs M has income protection with Unum through her employer. In May 2022, Mrs M discovered she had breast cancer and was therefore unable to work whilst she went through treatment. Unum accepted liability for her claim and began making payments six months later in November. Mrs M also completed her radiotherapy treatment the same month. Unum continued to pay her claim until June 2023, when it decided to cease paying her benefit, saying she no longer met the incapacity term.

Mrs M said Unum's decision to stop her claim was unfair because it was based on out-of-date medical evidence which didn't provide the full picture about her on-going poor health. She explained although the breast cancer had been treated, she still had to take medication to continue to reduce her risk of it coming back. She explained this came with side-effects which affected her ability to do her job. Mrs M also explained her mental health was severely affected by the trauma of having breast cancer and that she's been left with feelings of anxiety, for which she also takes medication and undergoes regular psychotherapy. Mrs M has also raised other health-related issues with her shoulder, neck, fatigue, aching joints, sleeplessness and depression. She said she's simply too unwell to return to work because of these issues.

Unum said it decided to stop paying Mrs M's claim because there wasn't enough medical evidence to suggest she continued to be incapacitated as described by the policy. It said Mrs M's reason for her absence was breast cancer and that this was successfully treated and so there was no reason she couldn't attempt a return to work. Unum referred to medical evidence from the radiotherapy, the oncologist, Mrs M's GP and its internal medical team, including a vocational rehabilitation consultant to support its position. It said the new reasons for Mrs M's absence appear to relate to anxiousness as opposed to any remaining impairment to function caused by an illness.

It said her other health complaints were present before her breast cancer and so doesn't think they are serious enough to prevent her from working. Unum recognised Mrs M had breast reconstruction surgery in May 2023 and although it said this should only take two weeks to recover, it'd continue to pay her claim up until the end of September 2023, as a goodwill gesture. It said should Mrs M return to work before that, she wouldn't need to repay any overpayment of benefit.

Our investigator said Unum declined Mrs M's claim fairly. She explained that Mrs M's initial reason for absence was for the treatment of her breast cancer and that her radiotherapy finished in November 2022 without any particular concerns. She also acknowledged Mrs M's other health concerns, however, she said there wasn't enough persuasive medical evidence to suggest she continued to meet the policy definition of incapacity.

Mrs M disagreed with those findings. She said Unum didn't do enough to verify her other medical conditions. She explained it contacted her GP in March 2023 and then made the

decision to cease her claim almost two months later. She also said she'd been diagnosed with depression and low mood and is having difficulty sleeping. Mrs M said she has joint pains, memory issues, brain fog and other conditions and that it's her belief that she's unable to fulfil the requirements of her role. And so, it's 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. My reasons for doing so are similar to those explained by our investigator. I don't doubt that Mrs M has been through a tough time in the past two years, and I'm pleased to learn that she's made a recovery from the breast cancer diagnosis in May 2022. However, in order to continue to receive benefit under her policy, she must show that she continues to meet the policy definition of incapacity and I'm satisfied there's not enough persuasive medical evidence to show that she does. And so, I don't think Unum has done anything wrong by stopping her benefit. I'll explain why.

The relevant rule that applies here is the Insurance Code of Business Sourcebook. In summary, it says Unum must handle claims promptly and fairly and not reject claims unreasonably. I'm satisfied Unum has complied with its obligation here because it accepted liability for Mrs M's claim and paid her benefit whilst she was suffering with breast cancer. In November 2022, Mrs M's radiotherapy treatment concluded and, according to her oncologist's notes, there were no on-going issues related to the breast cancer.

Unum's policy says benefit payments will continue as long as the medical and other relevant evidence supports a claim.

Mrs M continued to convalesce afterwards and so I thought it fair that Unum continue to pay her claim for the months that followed. Mrs M said she has to continue to take medication to limit the possibility of the breast cancer returning, drawing a parallel that she's still effectively being treated. However, I don't consider that to be reason enough to say that would prevent her returning to work. I say that because this is medication regularly prescribed in the circumstances and there's no medical evidence that says she's suffering with side effects that would satisfactorily meet the definition of incapacity and therefore preclude her from work.

Mrs M made the argument that Unum requested her medical records from the GP in March 2023, yet it continued to accept liability of her claim for a further two months, before deciding to review it and ultimately end it. Mrs M said that within those two months, she was diagnosed with severe depression and that had Unum requested up to date medical records, it would have seen that she was still not well enough to return to work. But I'm not persuaded by what she says here because Unum accepted liability for her breast cancer claim only. And so, whilst Mrs M said she was diagnosed with depression, it doesn't mean Unum must automatically accept liability for it.

Mrs M's testimony is that she believes her mental health is preventing her from returning to work, and whilst I don't doubt what she says here, there's not enough persuasive medical evidence to support that. Her GP signed her off with *recent breast cancer under treatment* but there's no mention of severe depression on her FIT note. But even if there was, that in isolation isn't persuasive enough to show that she automatically meets the policy's definition of incapacity. To be clear, the policy describes incapacity as being;

Unable, by reason of their illness or injury, to perform the material and substantial duties of their insured occupation"

I've not seen any detailed medical evidence that explains why Mrs M is unable to fulfil the responsibilities of her insured occupation owing to her poor mental health. Similarly, I've considered Mrs M's other health-related issues, but there's a significant lack of medical evidence to adequately and persuasively explain, why they prevent her from returning to work. I also note some of those reported conditions were present prior to her breast cancer diagnosis and Unum highlighted this didn't preclude her from work then – which I also thought a reasonable observation for it to make.

Mrs M said her shoulder and arm problems have culminated in a relatively new diagnosis of steno clavicle arthritis and that this too means she's unable to work. I note there were previous discussions with Unum where Mrs M said she was suffering with on-going pain in those areas as well as pain in her knee. I accept that was some time ago now and there's potentially been some progression of her symptoms since then, but Unum said this would not prevent her working. It highlighted Mrs M's symptoms were present before she was diagnosed with breast cancer and that she was still physically able to work at that time. Unum said it could see no reason why those issues would become a barrier to her returning to work in some capacity.

I thought that was a reasonable position to take at that time. I also note Unum considered Mrs M's ability to complete tasks at home that required similar movements. Unum concluded there would not be any reason why she'd be unable to fulfil the requirements of her sedentary role at work – which I also thought was a fair consideration.

In any event, I'm satisfied Mrs M's newly diagnosed condition is a separate issue and therefore not one Unum had to consider as part of Mrs M's breast cancer claim. The same should be said about the other subsequent issues Mrs M's experiencing, including the bulging discs in her spine. I should also say it's for Mrs M to now show why those conditions are preventing her from working so Unum can assess those claims respectively.

I partially agreed with Mrs M's comments related to her corrective surgery scheduled in May 2023 – the month Unum decided to end her claim. Mrs M was due to have some cosmetic corrective surgery related to her breast cancer in May and so arguably, it may not have been fair for Unum to cease paying her benefit whilst she underwent that procedure and its recovery period. However, this was nullified by Unum's decision to continue to pay her benefit until the end of September 2023 as a gesture of goodwill.

The expected recovery for that treatment is between one-two weeks and had Unum not taken the approach it did, I'd have said it should pay Mrs M benefit up to the point of her recovery. However, Unum went beyond that and so I find there's nothing more it could have reasonably done here. I'm also unaware of any medical complications arising from the surgery that would mean its liability should have been extended beyond September 2023. Because Unum paid Mrs M benefit until then, I think it reasonably covered the anticipated phased return to work.

From the evidence provided by Unum, it expected Mrs M to participate in a phased return to work so that she could build her confidence and resilience, culminating in a full return to the workplace. It thought this would take no longer than five weeks, which the overpayment of benefit more than covered. And so, I make no further finding here either because Mrs M received full benefit until the beginning of October 2023.

Therefore, I conclude that Unum stopped paying Mrs M's claim fairly because the key piece of medical evidence from her oncologist says her breast cancer treatment had ended without any concerns. I don't doubt Mrs M is suffering with the conditions she's explained but the test being applied here is whether she meets the criteria of the policy terms, specifically, the definition of incapacity. For the reasons I've explained, I don't think she does because the

initial reason she was off work, and the premise upon which Unum accepted liability of her claim, was treated successfully.

Mrs M made other subsidiary arguments about receiving government-backed benefits in relation to her poor health and the perceived barriers preventing her from returning to work, however, I don't find them persuasive in the circumstances. I say that because the criteria for Unum's income protection benefit is separate to any of those schemes.

My final decision

For the reasons I've explained, I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 17 October 2024.

Scott Slade
Ombudsman