

The complaint

Mr S is unhappy with the way Unum Ltd handled his claim.

What happened

Mr S has a group income protection policy underwritten by Unum which has a 28 week deferred period.

In April 2022 he made a claim on his policy as he was unable to work in his role as a cyber security specialist. Unum said Mr S didn't meet their 'actively at work' requirement prior to his absence because he was on a gradual return to work following an earlier absence. So they were only able to assess Mr S's claim from the date of his first absence from work, which was from 17 September 2020 until 7 February 2022. They moved the deferred period to the start of this absence, so it ran from 17 September 2020 until 1 April 2021.

Unum assessed the claim on that basis and concluded there wasn't enough medical evidence to show Mr S was incapacitated during the deferred period. So cover was declined.

Mr S said it was unfair for Unum to link his absences together in the way they had. He disagreed with how they applied the 'actively at work' terms of the policy and he didn't think his claim had been handled fairly.

He referred the matter to our service. Our investigator looked at what happened and said he thought Unum had declined cover fairly based on the available medical evidence over the deferred period of Mr S's first absence in 2020.

Mr S remained unhappy and asked for an ombudsman to review the case. He provided further detailed submissions and a timeline of his medical history to support his position. He said Unum hadn't taken account of the fact his symptoms had progressed, and his health had deteriorated. In summary he explained:

- In 2017 his eye sight would deteriorate every four to six weeks. He was physically tired, had disrupted sleep, but the pain in his eyes was manageable. In 2019 it got worse and was happening every two – four weeks. Then by mid-2020 it was occurring every two weeks which led to his absence in September 2020 until 7 February 2022.
- In June 2022 an Orthoptic assessment was carried out by a Consultant Ophthalmic Surgeon and he was diagnosed with Thyroid Eye Disease (T.E.D).
- He was then referred to a Consultant Physician in Endocrinology in September 2022 who confirmed he had ongoing Hyperthyroidism that needed treatment given his T.E.D. So he began block and replace therapy in March 2023, which is expected to last up to two years.
- The progression of his T.E.D combined with the variability of Hyperthyroidism caused

his incapacity in April 2022 and he continues to have further investigations and receive additional medical opinions. In August 2023 he was referred to a T.E.D. specialist and surgeon by his Retinal specialist.

Mr S also provided an extract from his contract of employment and confirmation from his employer that he'd worked 3 x 8hr full contractual days for 10 weeks prior to his absence. He said this demonstrated he had worked his normal number of contractual hours and duties on several relevant days, so Unum should accept he was actively at work prior to his absence in 2022.

The case was then passed to me for a decision. I issued a provisional decision explaining that I was intending to uphold this complaint. I said:

Mr S has provided detailed submissions in support of his case, and I've reviewed everything provided by both parties carefully.

The relevant rules and industry guidelines say Unum has a responsibility to handle claims promptly and fairly and shouldn't reject a claim unreasonably.

Actively at work

Unum said Mr S didn't meet the actively at work criteria prior to his absence in April 2022, so they were unable to consider his claim from this point.

Actively at work is defined as:

'Actively at work means that an employee:

- Is actively following their normal occupation, and*
- Is working the normal number of hours required by their contract of employment, and*
- Is working at their normal business or at another business location, and*
- Has not received medical advice to reduce or stop their work activity.'*

Mr S has provided his contract of employment which states 'Your normal working hours will be 9:00am – 5:00pm with a lunch break of one hour. Your normal working week runs from Monday to Friday'

He said the policy doesn't explicitly state he needs to have worked five full days a week or 35 hours per week. So he thinks it would be fair for Unum to accept the contractual day interpretation of the actively at work term, rather than the contractual week.

Unum concluded Mr S was expected to be working a total of 35 hours a week. So they didn't think his reduced 3 days a week met this requirement.

But, I don't think the actively at work term is relevant here, so it was unfair for Unum to rely on that to decline cover for the 2022 absence. I say that because I think it was reasonable for Unum to link Mr S's absences together and treat the 2022 absence as a continuation and deterioration of Mr S's ongoing symptoms. As such, Mr S's working hours prior to his 2022 absence becomes irrelevant for the purpose of my decision.

Assessing incapacity

Having reviewed everything, I agree that the medical records don't show Mr S met the threshold for incapacity when he first became absent in September 2020. It's clear he was suffering from fatigue, loss of concentration and visual disturbance, but there isn't enough medical evidence to show how his symptoms prevented him from working.

However, I don't think Unum then went on to handle the claim fairly. They should've taken into account the progressive nature of Mr S' condition following his diagnosis in 2022 and considered their ability to move the deferred period to accommodate this. I'll explain why:

- Unum noted themselves that the medical evidence demonstrates a change in Mr S's symptoms at the time of his absence in 2022. Mr S has explained in detail that his symptoms became progressively worse, and the medical evidence from 2022 supports this – there is much more medical evidence available as Mr S is diagnosed with T.E.D and is now attending regular appointments with several consultant specialists in different fields. But I can't see any evidence Unum explored this further which I think is unfair.
- Although Mr S wasn't incapacitated from the date of his first absence in 2020, he may have met the definition of incapacity by 2022 following an increase in the severity of his symptoms and receipt of his new diagnosis. But Unum didn't consider this when they assessed the claim which I think is unreasonable based on the medical evidence they had.
- There are reports from two Consultant Ophthalmic Surgeons and regular sessions with Mr S's Consultant Physician in Endocrinology that I think Unum should've assessed against the incapacity threshold. I'm mindful that Mr S himself made his claim from 2022 when he experienced this deterioration in his health. So in the circumstances, I think it would be fair and reasonable for Unum to have explored this avenue rather than just excluding this change in health due to the actively at work conditions.
- Unum also said the notification of the claim was 468 days late and this had affected their ability to assess the claim, so they imposed the late notification clause under the policy. But I don't think this was fair either. Mr Shad submitted a claim for his April 2022 absence within a reasonable timescale. It was only when Unum moved the claim start date to September 2020 that his notification became late. So it was unreasonable for Unum to use this against him as a reason to decline cover for his 2022 absence. Had they explored things further as above.

I don't think it's fair Unum based their claim decline on the date of Mr S's first absence as I'm persuaded there is enough evidence to show his health deteriorated and he was diagnosed with a progressive disease. This means Mr S could meet the definition of incapacity after he first became absent, and for the length of the deferred period.

So in the circumstances of this particular case, I think it would be fair and reasonable for Unum to reassess the claim with the deferred period starting from Mr S's absence in April 2022 because this is when his change in health occurred.

I explained I intended to uphold the complaint and ask Unum Ltd to put things right by reassessing the claim as though the deferred period started from Mr S's absence in April 2022 in line with the remaining policy terms. Should Unum Ltd decide that benefit is payable, then I intend to direct it to pay 8% simple interest on any amount due from the date Mr S's first claim was declined.

Responses to my provisional decision

Unum said the terms of the policy state they can only consider a later claim if it is made within a year of the previous claims commencement date. They'd previously considered the

claim with a deferred period that ended on 01 April 2021, so they were unable to look at a later claim from 29 April 2022 because it's over a year later.

Mr S agreed it was fair for Unum to be given the opportunity to reassess his claim from April 2022. But he said they should've done this sooner and avoided the referral to our Service and extended effort required from him at an already difficult time. He asked that I consider an award of compensation to reflect the unnecessary and prolonged distress and financial uncertainty this caused him.

I must now reach 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.

I've taken into account the further submissions from both parties, but they've not changed my thoughts about the outcome of this complaint for the reasons I'll go on to explain.

The terms of the policy state:

"If we decline or stop paying a claim because the member does not meet the definition of incapacity, but the member does not return to work, you can submit a new claim if their condition worsens, or they suffer a new condition within a year from our decision".

But I don't think on this occasion its fair for Unum to apply the above term in the way it has.

The circumstances of this complaint are unusual. This isn't a case where Mr S made a claim for a first absence that was declined and then submitted a new claim over a year later. Mr S has only submitted one claim, in April 2022.

Unum is aware the only reason his deferred period initially ran from 7 September 2020 until 1 April 2021, was because they moved it (making it significantly earlier) after he'd made his claim. So, in those circumstances, I don't think it's fair for Unum to apply this term.

My position remains that in this particular case, it is fair and reasonable for Unum to reassess the claim with the deferred period starting from Mr S's absence in April 2022 because this is when a clear change in his health occurred.

I appreciate Mr S's point regarding compensation for the effort and distress of escalating this matter. However, this is a finely balanced case where I've asked Unum to step outside their terms and conditions and move the deferred period on a fair and reasonable basis. So I'm satisfied in the circumstances, the redress set out in my provisional decision goes far enough to remedy what has happened here. And it is a fair outcome for both parties.

Putting things right

Unum Ltd to put things right by:

- Reassessing the claim as though the deferred period started from Mr S's absence in April 2022.
- Should Unum Ltd decide that benefit is payable, then I intend to direct it to pay 8% simple interest on any amount due from the date Mr S's first claim was declined.

My final decision

I uphold this complaint against Unum Ltd and direct them to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 October 2024.

Georgina Gill
Ombudsman