

## **The complaint**

Mr W is unhappy that Unum Limited stopped paying the monthly benefit following a successful claim on a group income protection insurance policy.

## **What happened**

Mr W has the benefit of an income protection insurance ('the policy') through his employer, the policyholder. Subject to the remaining terms, the policy can pay out a monthly benefit if Mr W was unable to work due to illness after the deferred period.

A successful claim was made on the policy in respect of Mr W's absence from work because of illness in 2019, and Unum paid the monthly benefit until the end of November 2022 (after giving the notice that the benefit would stop). That's because Unum concluded that Mr W no longer met the policy definition of incapacity. Mr W appealed that decision.

Unum issued its final response letter maintaining its decision to stop paying the monthly benefit. Unhappy, Mr W complained to the Financial Ombudsman Service. Our investigator looked into what happened and didn't uphold his complaint. Mr W didn't agree. So, his complaint has been passed to me to consider everything afresh to decide.

## **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 insurance industry regulator, the Financial Conduct Authority ('FCA'), sets out rules and guidance for insurers in the 'Insurance: Conduct of Business Sourcebook' ('ICOBS'). ICOBS says insurers should act honestly, fairly and professionally in accordance with the best interests of its customers. It also says insurers should handle claims promptly and fairly - and shouldn't unreasonably reject a claim.

When making a claim, it's for Mr W to establish that he met the definition of incapacity. Mr W was able to do that, and the monthly benefit was paid. As Unum terminated the claim - it's for it to show that Mr W no longer met the definition of incapacity, based on medical evidence. It's not for him to show that he continued to do so.

### The relevant terms and conditions of the policy

I've included below some of the terms of the policy I think are relevant to this complaint. A member is incapacitated if Unum is satisfied that they are:

- unable to perform the material and substantial duties of the insured occupation because of illness or injury, and are
- not performing any occupation.

Insured occupation means: "the trade, profession or general role that the member was actively undertaking for you immediately prior to incapacity".

Material and substantial duties mean: “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 other employer”.

The policy says the insured occupation doesn’t include “the journey between the member’s normal residence and the member’s normal place of work”.

#### Did Unum act fairly and reasonably when terminating Mr W’s claim?

I’m not a medical expert. So, I’ve relied on all the evidence available to me when considering whether Unum reasonably terminated Mr W’s claim, when it did. Having done so, for the reasons set out below, I think it has.

- As of September 2022, when the decision was taken by Unum to stop paying the monthly benefit under the policy, I don’t think it has unreasonably concluded that Mr W no longer met the policy definition of incapacity.
- A clinical nurse provided a report dated August 2022 (‘the August report’), summarising the review which took place in clinic towards the end of July 2022. The August report reflects that Mr W usually changed his stoma bag once a day, he “wakes between 1-2 hourly overnight to check pouch and empties as needed”. No leakage from the pouch was reported and intermittent ‘blockage’ has resolved spontaneously without medical attention. There was some minor skin inflammation. It’s also reflected that Mr W was in a “better place” and felt in a good routine with his stoma management. So, I’m satisfied that Unum has fairly relied on the August report to conclude that Mr W didn’t have any significant issues managing his stoma at this time.
- In terms of returning to the workplace, the August report concludes it would depend on Mr W “managing his anxiety and depression and feeling confident that he can manage his stoma in an environment with good cloakroom facilities, access to refreshments”. There’s also mention of Mr W explaining that he was currently being treated by his GP for anxiety and depression. And that Mr W continued to express his anxiety issues with travel and crowds of people.
- So, relying on the August report, I’m satisfied that Unum has fairly concluded that the main barrier to Mr W returning to work was Mr W’s concern about commuting and toilet facilities (somewhere to manage his stoma). When considering incapacity, the policy terms are clear that the insured occupation doesn’t include the journey between the member’s normal residence and the member’s normal place of work. And Mr W’s employer have a duty to make reasonable adjustments under the Equality Act 2010 to ensure that he isn’t placed at a substantial disadvantage. As an employer, it also has a duty of care towards Mr W as its employee. So, I don’t think Unum has unfairly concluded that worries about having somewhere to manage his stoma – although completely understandable – means that Mr W continued to meet the definition of incapacity.
- From the medical history and considering the reasons why Unum first accepted the claim, I’m satisfied that Unum has fairly concluded that Mr W was in a different place than he was in 2019, in terms of managing his stoma, skin irritations and the time awake each night because of his stoma.
- I accept that during 2021 and 2022, Mr W’s GP notes reflect that he was signed off work with mixed anxiety and depression disorder. But that doesn’t automatically mean the policy definition of incapacity continued to be met. That’s because there’s a

specific policy term which needs to be continually met for the benefit to be paid.

- In April 2022, it's reflected in the GP notes that Mr W's mood was "stable", he declined (anti-depressant) medication and talking therapy. The GP notes Mr W was "happy with things at the moment". And although he has occasional dips in moods, he rests and goes for walk. Other than Mr W's self-reported symptoms, from a medical perspective, I haven't seen anything from the date of the GP records in April 2022 to the date on which Unum stopped paying the benefit under the policy which persuades me that Mr W's anxiety and depression meant that he was unable to perform the material and substantial duties of the insured occupation.
- After the decision was taken to stop paying the benefit, the clinical nurse provided a follow up report dated October 2022 ('the October report'). The October report reflects that the nurse wanted to clarify that Mr W's stoma issues "are a constant source of concern to Mr W's physical and mental wellbeing". And Mr W needs to "get up every night to empty his stoma pouch which disturbs his sleep pattern causing a chronic tiredness". And that Mr W experiences "intermittent intestinal obstruction causing the stoma to stop working. This causes severe abdominal pain, usually followed by vomiting resulting in A&E attention. Mr W has been able to manage these episodes himself, by not eating and resting the gut. These episodes can take time to resolve completely and can leave Mr W feeling incapacitated for some days". There's also mention of "intermittent peristomal skin complications" and flare-ups can cause "extreme soreness" and "greater fear of leakage which affects his confidence going out or mixing with people".
- However, based on what I've seen, I don't think there had been any recent flare ups in the manner described by the time the benefit was cancelled and although Mr W reported poor sleep due to checking his stoma, there appears to be no significant impact to daily activities, and could be managed as part of a phased return to work. Further, the October 2022 report seems to contradict the August 2022 report (written only a couple of months earlier) which reflected that Mr W was in a "better place" and felt in a good routine with his stoma management.
- I also note the occupational health report dated March 2023. The occupational medicine specialist says on examination of Mr W's stoma, "nothing untoward was identified" and there was "no evidence of clinical depression". Also, that Mr W reported three to four stoma blockages per year that last up to a week. And although he has been advised by the stoma nurse that he must "go to casualty if this arises; this has not been found necessary". So, whilst I can completely understand Mr W's concern about the blockages described, I don't think they, by themselves, mean that he continued to meet the definition of incapacity.
- The occupational medicine specialist concluded that Mr W did meet the policy definition of incapacity due to untreated anxiety disorder/adjustment reaction. However, I'm satisfied that this was based on Mr W's self-reported symptoms and not based on any objective clinical tests. Further, the report is dated over six months after Unum's decision to give notice to stop paying the benefit. So, whilst I've taken it into account, I've placed less weight on its contents compared with the medical evidence leading up to, and around, September 2022 – when the decision was taken to stop paying the benefit.

I know Mr W will be very disappointed with my decision and I have a lot of empathy for his circumstances and what he's been through. I hope it helps him to know that his concerns have been considered by someone independent of the parties.

**My final decision**

I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 January 2024.

David Curtis-Johnson  
**Ombudsman**