

The complaint

Mr F is unhappy with the way in which Unum Ltd handled an income protection claim made on a group income protection insurance policy.

What happened

Mr F had the benefit of a group income protection policy ('the policy') through his employer, which can pay out a percentage of his salary after he'd been off work for a period of time, known as the deferred period.

Mr F was absent from work due to illness from June 2022 due to a back condition. And a claim was made on the policy during the deferred period.

For a few months immediately prior to Mr F's total absence, Mr F had returned to work after an earlier period of sickness absence, on reduced duties – initially also working reduced hours before increasing to full time hours.

The policy was taken out by the policyholder – Mr F's employer – in May 2022, after it had decided to switch to a different insurer, who I'll refer to as 'X'. Unum concluded that as Mr F wasn't actively at work when the policy started, cover wasn't in place for the claim.

However, as an exception and gesture of goodwill, Unum agreed to consider the claim against the role he was doing immediately before he became absent from work in June 2022 – based on his reduced duties.

Unum obtained Mr F's medical records and he was referred for a functional capacity assessment. It also asked Mr F to complete an occupational details questionnaire to understand the nature of his reduced duties. Having considered these documents, Unum declined the claim in December 2022 on the basis that Mr F didn't meet the policy definition of being incapacity during the entire deferred period.

This decision was challenged and having considered further medical evidence, Unum offered to pay a lump sum to the policyholder equivalent to one year's monthly benefit under the policy in settlement of Mr F's claim ('the lump sum'). This wasn't accepted at the time.

Our investigator looked into what happened. He didn't uphold Mr F's complaint. He concluded that as Unum fairly and reasonably concluded that Mr F wasn't actively at work at the time the policy started, it didn't need to go on to assess the claim made under the policy.

And as the gesture of goodwill was made outside the terms of the policy, that wasn't something he could comment on as Unum wasn't required to assess the claim or offer a goodwill gesture to settle the claim. So, it had already done more than was reasonably required.

Mr F didn't agree. So, this complaint was passed to me to consider everything afresh and decide.

After this complaint was brought to the Financial Ombudsman Service, X said it would consider assessing the claim under the policy was in place before the switch to Unum. I asked our investigator to confirm with the parties whether that assessment had been completed.

Mr F has recently confirmed that X has now accepted the claim made under the group income protection policy, Mr F's employer had with it immediately before the policy with Unum. And he understands that a payment will be made by X to his employer representing backdated monthly payments. He's also said that both policies pay the same monthly benefit.

Unum has withdrawn the offer to pay the lump sum.

I issued my provisional decision in September 2023 explaining why I wasn't intending to uphold Mr F's complaint. An extract of my provisional decision is set out below.

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Unum's position is that it agreed to assess the claim made under the policy outside of the policy terms even though it could've declined cover because Mr F wasn't actively in work at the time the policy was taken out by Mr F's employer. However, it agreed to assess the claim as an exception and a gesture of goodwill because otherwise, it understood, Mr F's employer would be in a difficult position as Mr F's claim wouldn't be considered by either insurer.

I've considered whether agreeing to assess the claim outside of the terms based on the occupation Mr F was performing the day before he became absent in June 2022, working reduced duties, Unum waived its right to rely on the 'actively in work' requirement.

And if so, if Mr F was incapacitated as defined by the policy, which Unum seems to have ultimately accepted by making an offer to pay the lump sum, whether the claim should be backdated to the end of deferred period and continued to be paid until one of the events detailed in the policy terms occurs. For example, Mr F reaches retirement age, or it's deemed that Mr F no longer met the definition of incapacity.

Ultimately, I don't intend to make a finding on these issues. That's because even if Unum hasn't acted fairly and reasonably by only offering the lump sum in light of further medical evidence obtained after the appeal against the decision to decline the claim - rather than paying the backdated claim and then continuing to pay the monthly benefit - I don't think Mr F has lost out.

Mr F has recently confirmed that X has agreed to make a payment for the backdated monthly benefit due under the income protection insurance policy his employer had in place immediately before the policy switched to Unum. And that the monthly benefit will continue to be paid subject to any reassessment of whether he remains incapacitated.

I'm satisfied that puts him in the same position he would've been in had Unum agreed to pay the claim and it wouldn't be fair and reasonable for the benefit to be paid under both policies.

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I invited both parties to provide any further information in response to my provisional decision to consider.

Unum had nothing further to add. Mr F said he was “OK” with my provisional reasons but said he’d like an apology from Unum as it had waived its right to rely on the active at work clause and he’d not had the benefit of the policy for a number of months.

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 considered Mr F’s comments in response to my provisional decision, I don’t think it would be fair and reasonable for me to direct Unum to provide Mr F with an apology.

That’s because I haven’t concluded that Unum has done anything wrong in the way in which it’s handled the claim made on the policy. And ultimately, Mr F hasn’t lost out because X has accepted responsibility for the claim made on behalf of Mr F.

So for this reason, and for reasons set out in my provisional decision (an extract of which is set out above and forms part of my final decision), I don’t think Unum needs to do anything.

My final decision

For the reasons set out above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 30 October 2023.

David Curtis-Johnson
Ombudsman