

The complaint

Mrs B complains that Unum Ltd has turned down an incapacity claim she made on a group income protection insurance policy.

What happened

The background to this complaint is well-known to both parties, so I've simply set out a summary of what I think are the key events.

Mrs B is insured under her employer's group income protection insurance policy. The policy provides cover for Mrs B's own occupation and includes a deferred period of 13 weeks.

In May 2022, Mrs B was signed-off work by her GP, suffering from symptoms of anxiety and depression. She was also experiencing symptoms of chronic neck pain and a sleep disorder. Mrs B remained unfit for work, so in August 2022, her employer made an incapacity claim on her behalf.

Unum obtained Mrs B's medical records and it spoke to Mrs B. It didn't think she was suffering from a functionally-impairing mental illness; it noted that Mrs B had been abroad and that in July 2022, a GP had felt she might be fit to start a phased return to work. So Unum didn't think Mrs B had shown she met the policy definition of incapacity throughout the entire deferred period. Therefore, it turned down her claim.

Mrs B was unhappy with Unum's decision and she asked us to look into her complaint. She provided us with evidence from her treating psychiatrist and a clinical psychologist who both concluded that Mrs B had been incapacitated from carrying out her role by her symptoms. She also let us know that she had begun a phased return to work.

Our investigator sent the new evidence to Unum for its consideration. However, it didn't change its position. It considered that the new evidence had been specifically written to challenge the decline of the claim and that it had also been written several months after the end of the deferred period. Therefore, it felt the contemporaneous evidence from the time of the deferred period was more persuasive.

The investigator felt that Mrs B's complaint should be upheld. Based on the medical evidence available to Unum when it initially assessed the claim, she felt it had been fair for Unum to decline it. However, she considered that the psychiatrist's letter was compelling and persuasive evidence that Mrs B's symptoms had caused her to be incapacitated throughout the entire deferred period. So she thought that Unum should accept, backdate and pay Mrs B's claim, with interest. She also felt Unum should pay Mrs B £150 compensation to reflect the trouble and upset it had caused her.

I issued a provisional decision on 26 September 2023, which explained the reasons why I intended to uphold Ms B's complaint. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And that they mustn't turn down claims unreasonably. So, I've thought about, amongst other

things, the terms of this policy and the available medical evidence, to decide whether Unum handled Mrs B's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mrs B's employer's contract with Unum. Mrs B made an incapacity claim, given she wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Mrs B's claim met the policy definition of incapacity.

The policy says:

'A member is incapacitated if they are unable to perform the material and substantial duties of their insured occupation because of illness or injury.'

This means that in order for Unum to pay incapacity benefit, it must be satisfied that a policyholder's illness prevents them from carrying out the material and substantial duties of their own occupation. In Mrs B's case, it means that Unum needs to be satisfied that an illness prevented her from performing the material and substantial duties of her insured role and that she'd be unable to carry out the same role for any other employer.

The policy deferred period is 13 weeks. So in order for benefit to be paid, a policyholder must be incapacitated in line with the policy terms, for the entire deferred period and afterwards.

It's a general principle of insurance that it's for a policyholder to show they have a valid claim on their policy. This means it was Mrs B's responsibility to provide Unum with enough evidence to demonstrate that her illness led to her being incapacitated in line with the policy terms.

Unum assessed the medical evidence Mrs B provided at the outset (including GP records) and didn't think it showed that she'd been incapacitated in line with the policy terms. It concluded that the evidence suggested that Mrs B had been struggling with her work-life balance and the demands of a new role. It thought that Mrs B had been suffering from chronic pain and a sleep disorder for many years and had been able to work through those issues. And it noted that in July 2022, Mrs B's GP had indicated that she could be fit to begin a phased return to work.

Like our investigator, I don't think Unum reached an unreasonable conclusion when it initially assessed Mrs B's claim, or when it issued its final response to her complaint. In my view, it wasn't unfair for Unum to consider that neither the GP's evidence nor Mrs B's account of her symptoms showed that she was significantly impaired, or that she met the policy definition of incapacity.

However, since Unum issued its final response to the complaint, Mrs B provided two new pieces of evidence. One from a psychiatrist and one from a clinical psychologist. Unum has seen both pieces of evidence and has had an opportunity to comment on them. It wasn't persuaded to change its position, so I've now explored whether I think this was a fair conclusion for it to draw.

The psychiatrist, who I'll call Dr A, provided a letter dated 20 March 2023. I've set out what I think are their key conclusions below:

'In retrospect, certainly from May 2022, it is likely that the burden of somatic, post traumatic, depressive and anxiety phenomena (meeting criteria retrospectively for complex PTSD and moderate depression) rendered her incapable of performing material and substantial duties in the occupational domain, and also significantly reduced her capability and function in non-

occupational activities of daily living. It will be difficult for her to sustain the current level of work, or indeed increase her hours, unless there is a material improvement in her physical and psychological state...

In summary, Mrs B is..premorbidly high functioning and intelligent...who presents with symptoms consistent with complex PTSD and a moderate depressive disorder, both from her narrative and the questionnaires. Together with anxiety and depressive phenomenology, she has chronic neck pain, migraines, hypersomnolence and brain fog, all of which have a significant effect on her day-to-day functioning, in both occupational and domestic domains.'

I've thought about this evidence carefully. I'm mindful that, as Unum has pointed out, this letter was drafted some months after the end of the deferred period and is based on retrospective reporting. It doesn't appear that Dr A had the opportunity to assess Mrs B during the deferred period.

Nonetheless, I've also borne in mind that Dr A is a consultant psychiatrist and therefore, an expert in their field. In their opinion, Mrs B's symptoms would've resulted in her being unable to carry out the material and substantial duties of her insured role from May 2022 onwards. I find this evidence compelling and, given Dr A's medical specialism, more persuasive evidence than the GP's notes. I agree with our investigator that Dr A, as a consultant psychiatrist, was likely better placed to comment on Mrs B's psychiatric diagnosis than her GP. I note too that Dr A's findings draw together the symptoms Mrs B experienced over a period of years, which are detailed in the GP records. As such then, I don't find Dr A's conclusions to be particularly inconsistent with or contradictory to the contemporaneous GP notes.

I've considered too the letter from Mrs B's clinical psychologist's letter, which was also dated March 2023. They stated:

'Mrs B was incapacitated due to the severity of her symptoms and it would have been inappropriate for her to remain in work at that time. Indeed, it appeared that attempting to remain in work full time for such a long period despite extreme fatigue was detrimental to her mental health.'

Again, while I'm mindful that this letter post-dates the end of the deferred period by some months, this is evidence from another mental health professional, who'd been involved in Mrs B's treatment, which corroborates Dr A's findings. As such, I find this letter further persuasive medical evidence to demonstrate that Mrs B did meet the policy definition of incapacity during the deferred period.

Overall, I currently think that the new medical evidence of March 2023 is compelling and persuasive evidence which shows that Mrs B was medically incapacitated from carrying out the material and substantial duties of her insured role for the whole of the deferred period. Therefore, I don't think it was reasonable for Unum to maintain its decline of the claim once it had had an opportunity to review the new evidence. I'd add too that I don't think that Mrs B's travel abroad on holiday is persuasive evidence that she was fit to carry out the material and substantial duties of her role during the deferred period.

This means that I currently think that the fair outcome to this claim is for Unum to now accept and pay Mrs B's claim, backdated to the date that benefit first became payable. Unum should add interest at an annual rate of 8% simple to each benefit payment, from the date it was due until the date of settlement. I'm aware that Mrs B did return to work on a phased basis, so it will be for Unum to assess and pay the claim in line with the policy terms.

Our investigator felt that Unum should pay Mrs B compensation. However, I don't think that

Unum acted unfairly or unreasonably at the point it initially assessed the claim and issued its final response to Mrs B's complaint. I don't think it had enough evidence to admit the claim at that time. So I don't think it would be fair or reasonable for me to make an additional award for Mrs B's trouble and upset here.'

I asked both parties to provide me with any evidence or comments they wanted me to consider.

Unum told us that it had asked its Chief Medical Officer (CMO), who has a background in psychiatry, to review Mrs B's file, including the new evidence. The CMO didn't think that Mrs B had met the full diagnostic criteria for PTSD and that there was no record of what her trauma was. The CMO felt that Mrs B's absence and reported psychological presentation were linked to her struggles with her work/life balance. It said it disagreed that a claims decision should be based upon reports which were written after the end of the deferred period and by experts who hadn't seen Mrs B during that period. But it said it appreciated how I had explained my position.

However, Unum queried the interest award I'd recommended. It said that I'd acknowledged that it had made the correct claims decision at the end of the deferred period. So it proposed that interest shouldn't be applied from the end of the deferred period, but from the first payment due after the date it received the medical report on 17 July 2023. It also explained that as Mrs B has returned to work, it's likely proportionate benefit will be required.

Our investigator put Unum's comments to Mrs B, who told us that if I decided interest should be applied from the date it received the medical report, she'd be happy to accept it.

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 still don't think it was fair for Unum to turn down Ms B's claim and I'll explain why.

I'm grateful to Unum for the comments from its CMO. I've considered these points carefully and I appreciate that the CMO has a background in psychiatry. However, in the round, I'm still more persuaded by the opinion of Dr A, a consultant psychiatrist, and the opinion of the clinical psychologist - for the reasons I've given above. Briefly, I find their expert opinions to be persuasive evidence that Mrs B did meet the definition of incapacity for the whole of the deferred period and afterwards. So it follows that I still find that the fair outcome to this complaint is for Unum to accept and pay Mrs B's claim, in line with the policy terms.

With that said, I do accept Unum's point that I acknowledged it hadn't had enough medical evidence to show Mrs B was incapacitated in line with the policy terms until it received the new specialist evidence on 17 July 2023. So I agree that it would be fair and reasonable for interest to be awarded and applied to each benefit payment due after 17 July 2023. That's because that's the date I think Unum had enough evidence to show the policy terms were met. Mrs B has indicated that she would be happy to accept whatever award I decide.

As I set out above, it appears that Mrs B has returned to work on a phased basis. So it will be for Unum to assess and pay the claim in line with the policy terms and to consider whether, and at what point, proportionate benefit might be due.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct Unum Ltd to accept and pay Mrs B's claim, backdated to the date benefit became due. It must add interest at an annual rate of 8% simple to each benefit payment due after 17 July 2023 until the date of settlement.

If Unum considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 10 November 2023.

Lisa Barham
Ombudsman