

## **The complaint**

Mr A complains that Unum Ltd has turned down a claim he made on a group income protection insurance policy.

Mr A is represented by a solicitor. But for ease of reading, I've referred to Mr A throughout.

## **What happened**

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

Mr A is insured under his employer's group income protection insurance policy. The policy provides cover for Mr A's own occupation and includes a deferred period of 26 weeks.

In October 2020, Mr A was signed-off work with post-viral fatigue. In January 2021, Mr A was referred to occupational health (OH) by his employer. He was later referred to a rheumatologist, who felt Mr A's symptoms could be caused by a psychological illness. So Mr A was referred to a consultant psychiatrist and subsequently, for cognitive behavioural therapy (CBT). Mr A was ultimately diagnosed with anxiety and depression. In March 2021, Mr A's employer made an income protection claim on the group policy.

Unum assessed the available medical evidence. Based on that evidence, Unum didn't think there was enough to indicate that Mr A had a significant, impairing mental health condition during the 26-week deferred period (between October 2020 and April 2021). Instead, it concluded that Mr A's mood and anxiety appeared to be caused by work-related concerns. Accordingly, it wasn't satisfied that Mr A had met the policy definition of incapacity and it turned down his claim.

Mr A was unhappy with Unum's decision and he appealed. He provided further medical evidence in support of his claim, which indicated that Mr A's condition had potentially worsened since the end of the deferred period.

But Unum maintained its stance and it issued a final response to Mr A's complaint in March 2022. It told Mr A that given the potential deterioration in his condition, he could consider making a new claim.

As Mr A remained unhappy with Unum's position, he asked us to look into his complaint. Our investigator didn't think Mr A's complaint should be upheld. He assessed the available medical evidence. He didn't think Unum had unfairly relied on the evidence to conclude that Mr A hadn't shown he met the policy definition of incapacity during the deferred period. And therefore, he concluded it'd been fair for Unum to turn down Mr A's claim.

Mr A disagreed and so the complaint was referred for an ombudsman's decision.

Following that referral, Mr A's representative provided three new pieces of medical evidence in support of Mr A's claim – a letter dated 5 April 2023 from Mr A's CBT therapist; a letter

dated 5 May 2023 from his psychiatrist and a letter from his GP dated 2 June 2023. This new evidence has not been shared with Unum.

### **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, whilst I'm very sorry to disappoint Mr A, I think it was fair for Unum to turn down his claim based on the evidence available to it in March 2022, at the point it issued its final response to his complaint. I'll explain why.

First I'd like to reassure Mr A that while I've summarised the background to his complaint and his detailed submissions to us, I've carefully considered all he's said and sent us. I'm very sorry to hear about the circumstances that led to Mr A needing to make a claim and I don't doubt how upsetting and worrying the situation has been for him and his family. Within this decision though, I haven't commented on each and every point he's made and nor do our rules require me to. Instead, I've focused on what I consider to be the key issues.

It's also important that I make the parameters of this decision clear. Mr A has sent me three pieces of new medical evidence, which was provided by his treating practitioners in April May and June 2023. This medical evidence was all dated over a year after Unum assessed the claim and issued its final response in March 2022. Both the investigator and I have only considered whether Unum handled the claim fairly up until the point it issued its final response. It isn't at all clear to me that Unum has a) seen this evidence and considered whether it would affect its claims decision or b) had an opportunity to comment on the evidence. And our role isn't to handle claims on an insurer's behalf, or to effectively act as a postal service between an insurer and a consumer. As such then, it wouldn't be reasonable or appropriate for me to comment on the new medical evidence, or to consider it as part of my assessment of this particular complaint. However, it's open to Mr A and his representatives to now send this new evidence to Unum for its review. If they're unhappy with the outcome of any assessment of the new evidence by Unum, they may be able to bring a new complaint to us about that specific decision.

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 the group policy and the available medical evidence, to decide whether I think Unum handled Mr A's claim fairly.

I've first considered the terms and conditions of the policy, as these form the basis of Mr A's employer's contract with Unum. Mr A's employer made a claim on his behalf for incapacity benefit, given he wasn't fit for work. So I think it was reasonable and appropriate for Unum to consider whether Mr A's claim met the policy definition of incapacity. I've turned then to look at Unum's definition of 'incapacity'. This 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 it was Mr A's illness which prevented him from carrying out the material and substantial duties of his own occupation, for the entirety of the deferred period and afterwards. The policy doesn't cover Mr A being unable to work at a specific workplace or for a specific employer. Unum needs to be satisfied that Mr A would be unable to carry out the material and substantial duties of his own occupation at any workplace or for any employer.

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 Mr A's responsibility to provide Unum with enough evidence to demonstrate that an illness had led to him being unable to carry out the duties of his own occupation for the full 26-week deferred period between October 2020 and April 2021 and afterwards.

Unum assessed the evidence Mr A provided in support of his claim and concluded that it didn't indicate that he had a significant, impairing mental health condition or that he met the policy definition of incapacity. So I've next looked at the medical evidence available to Unum up until it issued its final response to Mr A's complaint to assess whether I think this was a fair conclusion for Unum to draw.

Mr A's GP records indicate that in October 2020, he was signed-off of work with a viral illness. It appears that the GP believed that Mr A was suffering from chronic fatigue syndrome and he was subsequently referred to a rheumatologist.

In the meantime, in January 2021, Mr A's employer referred him to OH. In their report, dated 15 January 2021, the OH advisor set out the symptoms Mr A was suffering from, along with their opinion that Mr A wasn't fit for work. The OH advisor said:

*'(Mr A) also reports that he felt stressed at work prior to his current absence and he is currently ruminating frequently about these concerns and worries about losing his employment as he is off sick...*

*(Mr A) is currently very anxious about both work and personal matters and recognises that his mood is also low.'*

Mr A saw the rheumatologist in February 2021. The rheumatologist referred to Mr A's ongoing physical symptoms and stressful factors Mr A had experienced at home and in his working life. I note that at this point, four months after the start of the deferred period, the rheumatologist stated: *'I think there is a significant mental health problem here, triggered by a combination of your physical health problems and the shock of (a family member's illness).'*

Subsequently, Mr A continued to see OH; and he was also seen by a consultant psychiatrist and a CBT therapist, along with his GP.

In February 2021, the OH report stated: *'Mr A reports that he continues to feel stressed and anxious about his work-related concerns but hasn't yet had any dialogue with his employer about this.'*

Mr A first met with the consultant psychiatrist in February 2021. I've set out what I consider to be their most relevant findings:

*'We spoke of the factors relevant in the onset of symptoms. In this respect, there were four key factors...He next spoke about his new boss, who he felt undermined and even bullied by...*

*We formulated from a psychological perspective some factors that may be contributory to his ongoing symptoms. It is noted that he is hard-working, a worrier, perfectionist and with a great sense of personal responsibility. The series of events described above (a bereavement and family illness, increased work intensity and a difficult relationship with his boss) acted on this background, leading to many of the symptoms above.'*

The psychiatrist referred Mr A for CBT but didn't make a formal diagnosis of anxiety or depression at this point.

In March 2021, a further OH report said: *'There do seem to be significant perceived workplace issues and I would advise that these are addressed via the appropriate business channels to resolve these issues.'*

Subsequently, following the expiry of the deferred period, in April 2021, the GP noted that following cardiac testing, Mr A *'would be raising a grievance with workplace.'* A later entry said he had *'ongoing issues with employer, having CBT, stress at work...'* The OH reports make further mentions of work-related concerns.

And on 22 April 2021, the consultant psychiatrist stated:

*'He presented with symptoms of depression and anxiety...However, I did not feel that a diagnosis of depression and anxiety adequately captured the difficulties with which he presented. It was my view that a series of life events on the background of his premorbid personality characteristics induced many of the symptoms with which he presented.'*

*I saw him again (in April 2021) at which times he gave additional details of some of the background details in his life that may have been germane and to add context to his presentation. He added that work-related issues were an ongoing factor in his mood symptoms, and I believe that resolution of this will be one factor relevant to his recovery.'*

The CBT practitioner also referred to Mr A's work-related issues and worrying life events in a letter of April 2021 following their first consultation with him.

After the initial decline of the claim, Mr A's treating practitioners provided further evidence. In October 2021, his GP referred to a diagnosis of depression and anxiety that had been made in February 2021. However, I note that the GP referred to a consultation they'd had with Mr A on 19 March 2021. The GP said:

*'During this consultation, we discussed the triggers for his anxiety and depression and Mr A opened up about the main reason, he informed me that since 2018 he has been bullied at work and he specifically mentioned his manager...'*

*From my assessment of Mr A over the last year and as he has mentioned to me on multiple occasions his work-related stress and the bullying... have led to his mental health deteriorating.'*

Further letters written by the CBT therapist in October 2021 also make clear reference to the work-related issues Mr A was experiencing and how they'd affected his health, albeit they did also set out that Mr A was being treated for anxiety, depression and PTSD.

I've thought very carefully about all of the evidence that's been provided. It's important I make it clear that I'm not a medical expert. In reaching a decision, I must consider the evidence provided by both medical professionals and other experts to decide what evidence I find most persuasive. It's clear that Mr A was suffering from symptoms which can also be indicative of a significant mental health condition and indeed, in February 2021 – four months into the deferred period, the rheumatologist did conclude that Mr A had a significant psychological condition. I'm conscious that during the deferred period, Mr A was referred to a consultant psychiatrist and for CBT. I'm also mindful though that the consultant psychiatrist – a specialist in mental health conditions – didn't diagnose Mr A with a mental health condition during the deferred period. In fact, they specifically referred to not making such a diagnosis.

Taking into account the totality of the medical and other evidence available to Unum in March 2022, I think it was reasonable for it to conclude that the evidence showed that Mr A

was suffering from an understandable reaction to the work and external circumstances in which he found himself. And that one of the main triggers for Mr A's absence during the deferred period was likely the workplace stress he was experiencing as opposed to a diagnosed mental health condition. This is supported by the GP's evidence stating that the main trigger had been work-related stress. And so I think this evidence points towards the cause of Mr A's upsetting symptoms between October 2020 and April 2021 being the workplace issues he experienced. I think it indicates too that he was suffering from an understandable reaction to his personal circumstances, rather than a functionally impairing mental illness which prevented him from carrying out the material and substantial duties of his role. I also don't think it was unfair for Unum to conclude that the evidence didn't indicate that Mr A wouldn't have been able to carry out his own occupation for another employer.

This means I don't find that Unum acted unfairly - in March 2022 - when it decided that Mr A wasn't suffering from a significant mental health condition, during the whole of the deferred period, which prevented him from carrying out the material and substantial duties of his occupation.

On this basis then, I don't think it was unfair for Unum to conclude, in March 2022, that Mr A's absence wasn't due to incapacity in line with the policy definition. Instead, I think it fairly concluded that Mr A's absence over the full deferred period was more likely due to workplace stress and a reaction to his circumstances.

Unum has told us that it has asked Mr A's GP for further medical information, as it thinks that Mr A's condition may potentially have deteriorated since it issued its final response. It remains open to Mr A's employer to make a new claim on his behalf should he wish to do so. And as I've explained, it's open to Mr A to send the new medical evidence I've referenced above to Unum for it to consider. If he's unhappy with the outcome of any further assessment of that new evidence or an assessment of any new claim, he may be able to make new complaint(s) about those issues.

But, overall, despite my natural sympathy for Mr A's position, I find it was fair and reasonable for Unum to rely on the evidence available to it in March 2022 to turn down his income protection claim

### **My final decision**

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 August 2023.

Lisa Barham  
**Ombudsman**