

The complaint

Mrs M is unhappy that Unum Limited stopped paying the monthly benefit under a group income insurance policy (the policy) after five years.

Although Mrs M is represented in this complaint, for ease, I've referred to her throughout.

What happened

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

A claim was made on the policy in respect of sickness absence which started in November 2017. Unum didn't think Mrs M met the policy definition of incapacity from that date.

However, it did agree that she was incapacitated from the end of January 2018, which was when she underwent an operation. It began paying the monthly benefit under the policy with effect of July 2018 at the end of the deferred period (based on Unum's position that Mrs M was incapacitated from the end of January 2018, and not November 2017).

Unum continued to review the claim and in July 2023, stopped paying the monthly benefit. That's because it said the policyholder agreed to the terms of the policy changing with effect of 1 January 2018 which included ending a claim after five years.

Mrs M is unhappy because she says she met the policy definition of incapacity from her first day of absence in November 2017. And so, any changes to the policy shouldn't impact her claim. She says that her claim should be subject to the terms of the policy in place before 1 January 2018. If so, her claim should be continued to be paid as there wasn't a restriction of five years.

After Unum maintained its position in its final response letter dated June 2023, Mrs M brought her complaint to the Financial Ombudsman Service.

Our investigator looked into what happened and didn't uphold this complaint. Mrs M didn't agree. So, her 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.

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

Insured occupation means: "occupation that the member was following for, or at, the employer immediately prior to any further period of incapacity".

The insured occupation doesn't include the journey between the member's normal residence and the member's normal place of work.

The date of incapacity

I've first considered whether Unum has fairly and reasonably concluded that Mrs M first became incapacitated as defined by the policy at the end of January 2018 or whether her incapacity started when she first became absent from work due to sickness in November 2017.

I think that's relevant to whether Unum has then fairly applied the terms which came into effect on 1 January 2018 to the claim.

I'm not a medical expert. So, I've relied on all the evidence available to me when considering whether Unum reasonably concluded that Mrs M first met the definition of incapacity at the end of January 2018. Having done so, I think it has.

The medical evidence from shortly before Mrs M first became absent from work through sickness – and up until her operation at the end of January 2018 – doesn't give much insight into why Mrs M was unable to perform the material and substantial duties of the insured occupation.

Medical evidence from Mrs M's consultant neurologist dated October 2017 reflects that she feels vacant and tells people around her that she's having "one of her episodes". She sits quietly and feels she can't communicate well with others. She can speak during an episode but finds it difficult to put her thoughts into words. The episodes can last four to five minutes. This usually happens at her workplace, and she tells her colleagues to give her a few minutes and then returns to work normally - although immediately after an episode she may find it hard to concentrate.

A further letter from her consultant neurologist from December 2017 also reflects that Mrs M was experiencing one or two attacks of simple partial seizures every day which last "only seconds to a minute" and she doesn't lose awareness or consciousness.

Mrs M was prescribed medication which she says has strong side effects. However, the medical evidence between the end of November 2017 and the end of January 2018 is limited. So, all in all, I don't think the medical evidence supports that she was incapacitated before 30 January 2018 when she had surgery, as concluded by Unum.

When making this finding, I've taken into account sickness certificates Mrs M received from her GP signing her off work from early December 2017 and beyond the end of January 2018 when she had surgery. But that doesn't automatically mean the policy definition of incapacity was met before the end of January 2018. That's because there's a specific policy term of incapacity which needs to be met. And when making a claim, it's for Mrs M to establish that

she met the policy definition of incapacity.

Stopping the monthly benefit after five years

With effect of 1 January 2018, I'm satisfied that there were changes to the terms of the policy, including the addition of a limited benefit payment period - detailed on the schedule of insurance as "five years". Prior to that the schedule reflects that that the benefits didn't have a maximum payment period.

As I'm satisfied Unum has fairly concluded that the first date of incapacity started at the end of January 2018 – after the change to the maximum payment period came into effect – I'm satisfied Unum has fairly concluded that the claim made for Mrs M is subject to the change in terms of the policy which came into effect on 1 January 2018. That's because the policy terms say that the relevant terms are those which are in place at the time the member becomes incapacitated.

I know Mrs M will be very disappointed with my decision and I have a lot of empathy for her circumstances. I can also understand why she thinks that there is a "sinister" motive behind Unum not accepting that she was incapacitated from November 2017 as if it had done so, her claim wouldn't have been stopped after five years. However, for reasons set out above, I'm satisfied that's not the case.

I hope it helps Mrs M to know that her concerns have been considered by someone independent of the parties.

My final decision

I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 February 2024.

David Curtis-Johnson
Ombudsman