

## **The complaint**

A company, which I'll refer to as R, complains that Unum Ltd (Unum) unfairly declined a claim made on its income protection policy.

Miss J, who is a director of R, brings the complaint on R's behalf.

## **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.

R held a group income protection policy for the benefit of its employees, underwritten by Unum. This pays a benefit if an employee is unable to work due to illness or injury, with a deferred (waiting) period of 26 weeks.

In December 2019, R's director, who I'll refer to as Mr J, suffered a heart attack and as a result became absent from work. A claim was raised with Unum, which was declined. Unum said there was insufficient evidence to prove that Mr J was totally unable to perform the requirements of his normal employment during the deferred period.

Miss J brought a complaint to our service which our investigator considered but didn't think should be upheld. He said Unum had fairly considered the available medical evidence and justified its decision not to pay the claim. He did however say that if further medical evidence was presented, Unum should reassess the claim.

Mr J sought further medical evidence of his condition and sent this to Unum for a further review - but Unum declined the claim again. It said the decision to decline the claim stood because although the new medical evidence dated November 2021 and July 2022 outlined that it would not be helpful for Mr J to not return to the heavy lifting element of his role, the comments were a conservative approach to maintaining his health, as opposed to a medical necessity. Unum remained of the opinion that the medical evidence did not substantiate that Mr J was totally unable to carry out his normal role during the deferred period.

Following Unum's review dated September 2022, Miss J provided a further 2 letters from Mr J's consultant cardiologist dated 10 October 2022 and 12 June 2023. In the new evidence provided, the consultant provided a retrospective opinion on Mr J's ability to work during the deferred period and said he was unable to return to his normal job.

Unhappy that Unum wouldn't change its stance, Miss J brought a further complaint to our service. Our investigator looked into what happened - but didn't recommend that the complaint should be upheld. In summary, he said that the new evidence provided to Unum was not contemporaneous and didn't demonstrate that Mr J was totally unable to perform his job during the waiting period, as required by the policy.

Miss J disagreed with the investigator's conclusions and in summary made the following comments:

- The previous medical records relied on by the investigator don't specifically address whether or not Mr J was able to return to undertake his normal employment, whereas the more recent consultant letter dated 22 October 2022 specifically addresses this.
- Unum didn't agree to considering the medical evidence dated October 2022 on the basis that it was out of time and the investigator failed to address this in his investigation.
- The investigator failed to address the relevance of the letter from the consultant dated 10 October 2022 which stated he was unable to return to his normal duties and instead placed more weight on the general hospital notes which were not prepared for the purpose of ascertaining his ability to return to his normal job.

Miss J asked that an ombudsman review the complaint and so the case has been passed to me.

### **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 don't think this complaint should be upheld. I'll explain why.

Both parties have provided detailed submissions to support their position. I want to assure them I've read and carefully considered everything they've said, but I won't comment on everything.

The relevant rules and industry guidelines say an insurer should handle claims promptly and fairly. And shouldn't unreasonably reject a claim.

The policy sets out the definition of 'waiting period' as follows:

"means the first 26 weeks of continuous Disablement during which no Benefit is payable..."

The policy also defines 'disablement' as follows:

"means such illnesses or injury as renders the member totally unable to follow his normal employment and he is not following any other occupation for profit or reward."

Mr J's job duties, which have been accepted by Unum, consist of three main areas: driving, heavy lifting and walking.

Unum said that the policy terms confirm that in order for Mr J to be eligible for benefit it would need to be satisfied that he is 'totally unable to follow his normal employment' for the full 26 weeks qualifying period. The qualifying period here was 16 December 2019 to 15 June 2020.

Miss J said that Mr J was unable to drive as his licence was suspended for six months following the heart attack and that it was unsafe for him to drive due to suffering from dizzy spells. I have considered this, but I agree with the investigator that the evidence suggests Mr J could have reapplied during the deferred period as his medical notes, in particular his discharge letter dated 2 July 2020, which confirmed that when the medication thought to be causing the dizzy spells, was discontinued, Mr J reported feeling better.

Unum said the medical notes confirm that following the heart attack, Mr J was in hospital for a period of time. However, the medical notes indicate that his recovery was good and within the time frame expected for an event like this. Unum also noted that in March 2020 Mr J's medical notes suggested he was making a good recovery from the heart attack as he was walking between 6,000-10,000 steps a day. Unum said this gave a good indication that he was making a good recovery and of his on-going cardiac capability. It was also noted that at Mr J's cardiac review in June 2020 he was on the whole feeling back to normal.

Following Unum's claim decline in August 2020, Miss J then provided further medical evidence dated November 2021 and July 2022, two years after the deferred period in question.

The evidence from November 2021 showed that Mr J saw the consultant for a second opinion on his heart condition. Mr J reported chronic tiredness, shortness of breath with dizziness. The letter comments on Mr J having a 'hands on' job which he found increasingly more difficult to complete. Mr J raised concerns about the nature of his job putting too much strain on his heart and therefore wanting to seek early retirement on medical grounds. The consultant said that heavy lifting could have an adverse effect on the heart as it causes blood pressure to raise and therefore supported his application for early retirement.

An application for early retirement due to deteriorating health or health concerns is different to an application for benefit under an income protection policy which requires evidence of incapacity throughout the deferred period following absence from work due to illness or an injury.

The evidence from July 2022 showed that Mr J reported feeling tired and suffering from dizzy spells again. The consultant commented on discontinuing one of Mr J's medications which could be contributing to the tiredness. The consultant also advised it would be best not to go back to lifting heavy weights and he would be happy for him to go back to carrying out other lighter duties.

Despite the length of period which had passed, Unum reviewed all of the available medical evidence that was presented to it however it concluded there was insufficient information commenting on Mr J not returning to normal duties on medical grounds.

Further evidence was then provided dated 10 October 2022 and 12 June 2023 from the consultant. The comments in these letters on Mr J's health aren't contemporaneous and while I appreciate they are retrospective, I need to also consider whether there is other medical evidence in Mr J's medical records, during the deferred period, to support what the consultant is now saying about how Mr J was feeling at the time.

In October 2022 the consultant advised carrying gentle aerobic exercises only, but this contradicts the information in Mr J's medical notes from February 2020, which says his GP advised to start with light general exercise only and gradually reintroduce heavier weights at his tolerance, indicating that there weren't any concerns with Mr J increasing to heavier weights when he felt ready to do so.

In the letter dated June 2023, the consultant says Mr J was unable to undertake his job during the deferred period due to his heart attack and requiring a period of cardiac rehabilitation. While I have no doubt that Mr J is feeling the way he describes, the medical evidence available during the deferred period doesn't support that he was totally unable to carry out his duties. This suggests to me that what the consultant is saying is based on his opinion of self-reporting from Mr J as opposed to evidence from Mr J's medical history for example his progress in rehabilitation and/or physiotherapy sessions.

Having reviewed Mr J's medical notes I'm not persuaded that there is enough evidence to say that he met the definition of 'disablement' during the deferred period. Whilst it's clear that the consultant wanted Mr J to avoid triggers of his condition, the medical evidence from the deferred period didn't suggest that Mr J couldn't carry out his role. It appears to be Mr J's perception that his role would bring on his symptoms.

Taking all of the above into account, I don't think Unum has adopted an unreasonable position in this case. Even though some of the evidence was provided after substantial time had passed, I am satisfied Unum did review the available medical evidence to consider whether Mr J was able to show he was totally unable to carry out his normal role. I don't think it was unreasonable for Unum to decline the claim as it reviewed the medical evidence in the form of GP notes, hospital notes and consultations but explained there was insufficient medical evidence showing that Mr J was totally unable to carry out his duties.

Turning now to Miss J's comments in response to the investigator, she said that Unum did not agree to consider the medical evidence from 10 October 2022. I note that the final response which Unum issued in September 2022 didn't comment on the consultant's letter from October 2022 because it wasn't available at the time. Unum said that when it was provided, it did inform R's representative that the evidence didn't change the outcome. Unum also provided its comments to our service on the evidence and said that it didn't change its stance. I'm satisfied that Unum did consider all the medical evidence provided to date.

Overall, whilst I recognise that R will be disappointed with my decision, I'm not satisfied that the medical evidence from the deferred period or later, persuasively demonstrates that Mr J's condition affected his ability to perform his role throughout the deferred period. So, I don't think Unum's decision was unreasonable.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 10 January 2024.

Ankita Patel  
**Ombudsman**